

Navigating M&A Deal Activity During and Post COVID-19



Earlier this year many of Ireland's leading executives and M&A advisors expected M&A activity in 2020 to surpass the level of activity experienced in 2019. However, since the outbreak of COVID-19 things have changed, rather dramatically. The unpredictability of the magnitude and uncertainty of its potential impact is significantly impacting business confidence and the deal environment in Ireland and globally.

The global business environment is currently witnessing an unprecedented challenge. Although lockdowns and restricted social activity are essential to deal with the current pandemic, these restrictions are resulting in unprecedented disruption in supply chains, cash flow issues and funding gaps, reduced consumer spending and encounters in uncharted territories for many businesses and communities alike.

It is difficult to predict the consequences of a global pandemic and long-term lockdowns that are affecting every aspect of daily life. With such uncertainty and unpredictability, post crisis the focus of business owners and management teams are likely to be on managing the core business and its recovery; consequentially inorganic M&A activity may have to take a backseat for a period.

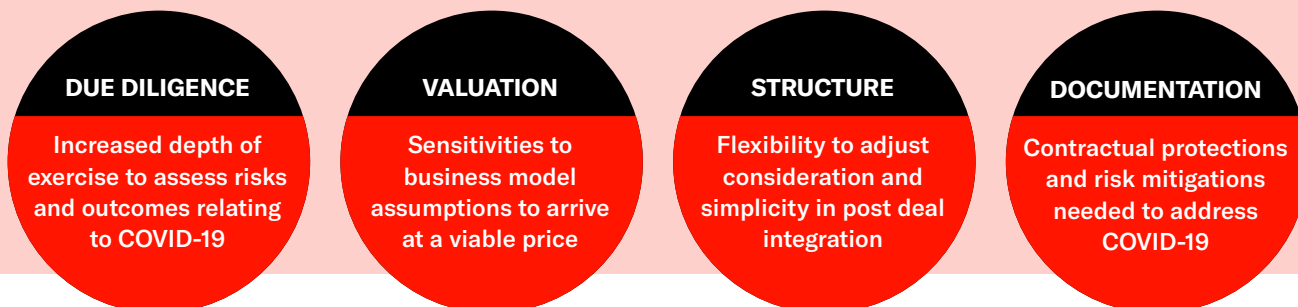
However, the COVID-19 shock may actually propel global M&A activity in the months to come, as businesses will seek to raise capital and identify opportunities created by adversity to execute

acquisitions of assets and/or businesses at more equitable valuations. Consolidation with players in the supply chain as well as one-time competitors may also become a factor in the months ahead for businesses, as a mutually beneficial strategy to survive, sustain and grow becomes apparent. Opportunities may also arise in the stressed assets/insolvency domain, where banks and lending institutions may look to salvaging such assets post the crisis period. Indeed, this may yet turn out to be a strong period for corporates with strong balance sheets and cash reserves to get deals at reasonable valuations.

Consequently, opportunities remain for businesses through (i) proactive planning; (ii) strengthening deal capabilities; and (iii) engaging with advisors who can facilitate the closure of these transactions. M&A deals will need to be approached from a different perspective than historically, with a critical-thinking and problem-solving mindset crucial to transaction success as certain conventional approaches may no longer be relevant in the current environment.

Successful M&A will likely emerge as a critical tool for survival, growth and long-term shareholder value-creation in the post COVID-19 period. In such times, success in M&A will be measured by an ability to create opportunities, assess risks and factor these risks in the deals appropriately, without limiting the transaction approach merely by applying existing practices and benchmarks of doing deals.

The Top 4 areas that would need special focus are:



AREA / CHALLENGES	SPECIAL FOCUS ITEMS	WAY FORWARD
<p>DUE DILIGENCE</p> <ul style="list-style-type: none"> - Lack of access - Travel restrictions - Remote working arrangements - Sensitive data on employee health 	<ul style="list-style-type: none"> • Cash burn rates and business continuity assessment • Impact on revenue • Costs associated with supply chain alternatives • Obligations under material contracts, including exercising force majeure • Special adjustments to working capital due to slower pace of collections, etc. • Counterparty risks • Assessment of pre-COVID EBITDA vs COVID period EBITDA and expected time taken to return to pre COVID EBITDA • Insurance coverage • Emergency preparedness and management succession plan • Employee welfare liability • Cyber safety assessment 	<ul style="list-style-type: none"> • Adjust expectations related to access to information and timetables for diligence completion and revisit any past work based on new facts • Extensive use of virtual data rooms and video conferencing • Significant senior level time from diligence team • Management interviews to assess business continuity robustness and challenges encountered and surmounted during the crisis period
<p>VALUATION</p> <ul style="list-style-type: none"> - Uncertainty in forecasts - Lack of benchmarks to support projections - Market multiples severely distorted 	<ul style="list-style-type: none"> • Liquidity assessment of business • Revenue impact during and post crisis period • One-time/special costs/debt-like obligations to return to normality • Factor deal structure aspects on the business • Sensitivity analysis under different scenarios • Choice of comparable companies and data 	<ul style="list-style-type: none"> • Avoid locked-box and fixed pricing; offer deferred or staggered consideration • Agree for post-closing purchase price adjustment mechanics to adjust consideration to reality
<p>STRUCTURE</p> <ul style="list-style-type: none"> - Limited deal financing - Unquantified risks and exposures due to COVID-19 	<ul style="list-style-type: none"> • Tax and regulatory considerations of transaction structure on all parties • Legacy issues and potential penalties/claims related to COVID-19 	<ul style="list-style-type: none"> • Consider cashless/share-swaps where feasible • Build in escrow or holdback arrangements • Factor tax waivers/benefits/concessions that may be available
<p>DOCUMENTATION</p> <ul style="list-style-type: none"> - Material Adverse Change (MAC) clause - Drop-dead dates - Reps and warranties (R&W) - Sellers authority between signing and closing 	<ul style="list-style-type: none"> • Consider full authority to get an ability to terminate upon MAC • Factor realistic time to obtain governmental/regulatory approvals and other change of control approvals or third-party consents • Interim operating agreements with powers balanced for action to be taken as a result or in anticipation of the consequences of COVID-19 	<ul style="list-style-type: none"> • Careful wording of MAC clause • Flexible extension in drop-dead dates to factor contingencies • Greater emphasis on comprehensive interim operating agreements with specific information rights and reserved matters till closing • Agree on situation specific R&W against general R&W and specific indemnities • Accept only specific disclosures in disclosure letters, against generic ones



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Transaction advisors will play an important role in assisting and defining the framework for doing deals through robust diligence, sensitivity in modelling projections and most importantly, a flexible mindset towards negotiation and closing transactions.

Each deal and transaction requires a fact-specific approach and customised solution. Our cross disciplinary team of valuation, diligence and M&A professionals offer guidance at every stage of the deal process, providing value-added solutions, along with timely identification and resolution of any roadblocks.

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