

Evolution of M&A Due Diligence

Issues in a New World

1. ESG (Environmental, Social & Governance) issues are fast becoming key considerations for businesses and their investors and other stakeholders, so there is a growing focus on these issues in corporate DD. Overlooking them can give rise to potential liabilities and other costs, reputational issues and a drag on the creation of sustainable value.
2. Adoption of new technologies, increasing use of the cloud and embrace of remote work are making our lives easier in many ways, but also exposing us to new vulnerabilities and increasing attack surface for cyberthreats. Make a point to understand the target's security practices and plans for continued investment in mitigating these risks. Work quickly to bring these practices up to standard (in accordance with company policies and as agreed with your insurer) to avoid potential loss of, e.g., coverage, customer trust, etc.
3. Just as technological advances are adding to the number of issues we need to consider on DD within target businesses, they are also changing the way we conduct DD on businesses of all descriptions. For example, AI technologies allow us to review thousands of documents in DD data rooms by reference to specific issues (such as whether they contain change of control clauses or anti-assignment clauses) in a fraction of the time – and therefore at a fraction of the cost – that would have been needed only five years ago.
4. We have to evolve our international DD fast. Laws and business practices in foreign jurisdictions dealing with cyber issues, employment, employee share schemes, tax, privacy and more are new or changing.
5. W&I insurance is a specialist insurance product increasingly being used in private M&A to bridge the gap between buyer and seller's interests. Most frequently used on private equity (PE) exit deals, W&I insurance has now become more prevalent in other types of transactions.

Richard Latta

Moderator

STAFFORD ROSENBAUM LLP

Madison, Wisconsin

rlatta@staffordlaw.com

Daniel Rosenberg

CHARLES RUSSELL SPEECHLYS LLP

London, United Kingdom

daniel.rosenberg@crsblaw.com

Brett Cowell

COWELL CLARKE

Adelaide, Australia

bcowell@cowellclarke.com.au

Ignacio López-Balcells

BUIGAS

Barcelona, Spain

ilb@buigas.com