DAVIDSON McDONNELL

# TOP 5 TIPS FOR BUSINESS BUYERS

## 1. Funding

Most of our clients will debt-fund their acquisitions. They might use traditional bank debt, or some of the alternative funders who are now becoming more active in the NI the market. With an ever-increasing range of funding alternatives, we are also seeing a variety of terms and timescales for debt funding. Whatever the mix, buyers should be comfortable with the availability, timing and terms of their funding before kicking-off the other workstreams.

## 2. Heads of Terms

Although Heads of Terms are usually expressed to be non-binding, they still set out the agreed commercial structure and are often difficult to move away from later in the process. It is therefore important that all key deal terms are covered.

Introducing a completely new item, such as a retention structure for key staff or a deferral of part of the purchase price, later is not impossible but would have to be justified by reference to (for example) due diligence findings. In any event, this may make negotiations difficult ( increasing transaction cost ) and can jeopardise relationships with key staff if there isn't a clean break after completion.

## 3. Due Diligence / Integration

Purchasers need to know exactly what it is they are buying and where potential issues lie before the deal is signed. The due diligence process can help avoid nasty surprises, ensure that the right price is paid for the assets, and allow for smoother business integration post-acquisition.

Fast tracking commercial and financial due diligence may help avoid wasted costs on legal due diligence if, on closer inspection, the deal does not stack up financially.

## 4. Negotiation

As well as keeping on top of the due diligence findings, buyers will get a better outcome if their internal deal team works closely with their advisory teams when negotiating legal and commercial items with the sellers. Having timely input from all advisors is critical to ensuring that nothing falls between stools. In addition, making sure that all advisors clearly understand what points matter most will allow them to prioritise deal issues and know what points they can trade or concede in negotiations.

## 5. Redress Against the Sellers

Even the most thorough due diligence process may leave some gaps and, having paid a significant sum for a business, the buyer will want to be sure it has appropriate redress against the sellers if there are post - acquisition issues. In circumstances where some sellers are retained and are key to the successful integration of the business post-acquisition, it may not be ideal to have to bring legal proceedings against them while they remain engaged in the business.

Buyers should therefore think carefully when the deal is being structured about whether they may need to withhold a portion of the purchase price, leave an element of the purchase price in escrow, or put in place warranty and indemnity insurance.

At Davidson McDonnell, we regularly advise on the full range of M&A matters, acting for buyers and sellers. If you have any queries, or would like to discuss anything with us, please contact:

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