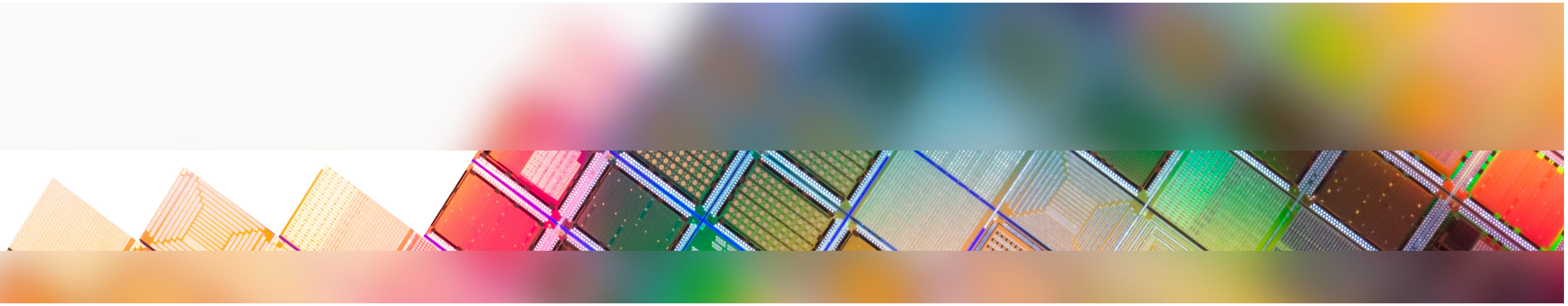

M&A OPPORTUNITIES IN UNCERTAIN TIMES
KEY POINTS FOR CORPORATE BUYERS

Economic growth is slowing, and the global economic indicators are pointing towards a long-term downturn. In preparation for this, many businesses are taking steps to protect themselves, including cutting costs, identifying efficiencies, carrying out reorganisations, pausing M&A strategies and focusing on their core businesses.

However, an economic downturn will create opportunities for well-funded companies, including PLCs, to acquire businesses at attractive valuations. Sellers are likely to be struggling corporates looking to divest non-core businesses, lenders who have enforced security and wish to sell the assets as quickly as possible, or administrators who are running insolvency processes.

These acquisitions may provide businesses with the opportunity to enter new markets at a lower cost than pursuing organic growth, or provide for acceleration in markets where they already have a footprint.

Where corporates are interested in a distressed asset they should bear in mind the nature of distressed sale processes, which can be fast-paced and there is typically less deal protection for the buyer.

AT A GLANCE

1. **Timing:** Be prepared to move very quickly
2. **Deal Protection:** Expect reduced due diligence and fewer contractual protections
3. **Flexibility:** Embrace flexibility, particularly in transaction structuring
4. **Financing:** Consider new and established options in current climate
5. **Shareholder Approval and Class Tests:** Factor into timetable and consider mitigation

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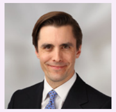

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1. Timing

Buyers will need to be able to move quickly. Competitors for assets in distressed sales processes will include financial sponsors and privately-owned businesses who are typically more nimble than PLCs and other large corporate buyers. Where administrators have been appointed, or where lenders have enforced security, timetables are likely to be very aggressive to minimise ongoing costs for the target business.

2. Deal protection

Partly as a function of compressed deal timelines, the level of due diligence provided in a distressed M&A process is typically less than that provided on a non-distressed M&A process. Buyers should focus on key risk areas, such as defined benefit pension scheme deficits, which can be particularly difficult to deal with in distressed sales. Buyers should be prepared for very limited warranty and other contractual protection.

In certain circumstances, it may be possible to obtain contractual comfort (and, potentially, W&I cover), but this will be deal specific. As sellers will be focused on speed and deal certainty, buyers should resist imposing conditionality, except where mandatory regulatory clearances are required. In particular, buyers should be aware of conditionality and execution risk imposed by the expanding reach of global FDI regimes, including the UK's National Security and Investment Act.

3. Flexibility

Buyers will need to be flexible on transaction structuring. Transactions are likely to involve asset acquisitions and buyers may need to be prepared to take on a significant element of risk in relation to the usual issues presented by carve-out acquisitions, such as the transfer of customer and supplier contracts at closing, as well as post-closing integration. For transactions involving share acquisitions, corporate groups will also want to consider at an early stage appropriate post-closing reorganisation steps aimed at optimising the cash generative revenue streams of the target business or achieving tax efficiencies.

4. Financing

Ideally, listed company buyers would seek to draw on existing cash resources. However, if external financing is required, then (following the changes to the Pre-Emption Group Guidelines) PLCs are now able to raise up to 20% of their issued share capital on an undocumented, non-pre-emptive basis, potentially enabling PLCs to raise significant sums of equity finance on a compressed timetable. Listed companies could also look to draw on existing Revolving Credit Facilities to bridge the required amounts. If new debt is required, Investment Grade syndicated loan markets remain open at present but macro-economic uncertainty means that there is increased sensitivity to certain sectors and processes may take longer than usual to complete. Syndicated leveraged loan and high yield markets are severely constrained, with reduced liquidity and high pricing, so lower-rated borrowers may need to be creative in seeking alternative sources of debt finance.

5. Class tests and shareholder approval

Listed companies will need to arrange for their sponsors to carry out Listing Rule 'Class Test' analysis on any transaction in the usual way. In particular, care should be given when considering the 'profits' test – if the target business is making losses then these losses should be used when making the calculation (and the negative disregarded). If shareholder approval is required, PLCs should consider how to de-risk their shareholder vote – for example seeking irrevocable undertakings from major shareholders to vote in favour of the transaction.

Planning Ahead in Uncertain Times

Businesses are making plans now, in the face of uncertain times ahead which, as always, will present both challenges and opportunities.

We are currently helping our corporate clients understand current market trends and navigate legal and business risks and opportunities around: treasury and finance, M&A and other corporate activity, commercial arrangements, business risks and disputes, human resources and pensions, and corporate reporting.

We have leading practices in all of these areas. If any of them are of interest, we and our experts would be pleased to discuss them with you.

Across the Board

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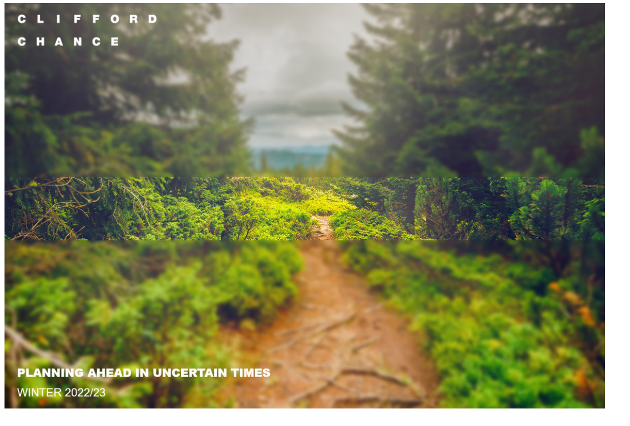

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