

Private acquisitions in Ireland: market analysis overview

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MARKET OVERVIEW

1. What are the current major trends in the private M&A market?

There continued to be significant M&A activity in Ireland during the past 12 months. Ireland continues to be an attractive destination for foreign buyers with both private equity and trade buyers active in the Irish market.

In terms of sectors, the financial services sector was active with 17 transactions for a total aggregate consideration of EUR7.3 billion. The energy sector was also active with eight transactions for a total aggregate consideration of EUR1.6 billion.

Notable private M&A transactions over the past year include:

- Greenergy's acquisition of Inver Energy Limited.
- Infravia's acquisition of the Carechoice group.
- AMP Capital's acquisition of a majority stake in enet.
- Pilgrim's Pride's acquisition of Moy Park.
- TELUS International Inc's purchase of Voxpro Limited.
- Intas Pharmaceuticals/Accord Healthcare's acquisition of Actavis UK and Ireland.
- Fortuna Entertainment Group N.V's acquisition of Hatrick Sports Group Ltd.
- CIP Capital's acquisition of The MoneyMate Group.

There has been an increase in partial rather than full acquisitions in the Irish market over the last 12 months. This is driven by new players seeking to enter the Irish market in partnership with established businesses.

Currently the market seems to favour sellers as there are a significant number of buyers seeking to purchase quality businesses.

2. What has been the level of private M&A activity in the previous year?

During 2017, there have been over 163 private M&A transactions in Ireland, with an aggregate value of EUR13.1 billion (up in terms of number of deals comparing to figures from 2016: 136 with an aggregate value of EUR40.9 billion).

DEAL STRUCTURES

3. What are the current trends in the structuring of private M&A transactions?

Share sales remain the most common structure. Business and asset sales and merger structures are also seen.

Cash is the most common consideration, however, loan stock and share consideration is also common.

Deferred consideration remains a common feature of Irish private M&A deals, in particular for high growth companies.

Price adjustment mechanisms are almost invariably used, with no strong trend towards either completion accounts or locked-box mechanisms, both of which are commonly used.

4. What are the current trends in the terms and documentation of private M&A transactions?

The two material notable trends are:

- Warranty and indemnity insurance is being used far more commonly, not just in deals where the sellers are private equity or there are many sellers, but also in deals where the sellers are simply seeking to de-risk their position.
- Liability caps continue to reduce in line with broader European trends and are usually no greater than 30%. Liability caps generally remain higher in Irish deals than in US/Canadian deals, however, lower caps are often seen if the seller or the buyer is based in the US/Canada or another jurisdiction where the American practice is often followed.

5. What are the current trends in how private M&A transactions are conducted?

The nature of due diligence conducted by outside counsel has changed. Many buyers are now seeking specific input from outside counsel and conducting much of the other due diligence in-house, where such in-house expertise exists.

Negotiated sales remain the most common process but relatively tight timetables and short periods of initial exclusivity are often put in place at the outset to mitigate against unnecessary delays or execution risk. Auction processes are common for certain types of transactions, for example the sale of loan books.

CROSS-BORDER LITIGATION AND ARBITRATION

6. **Is it common market practice for a share purchase agreement to provide for a foreign governing law and/or jurisdiction? If so, in what circumstances does this occur and which governing law and/or jurisdiction are common choices?**

Transactions that principally relate to a target located in Ireland are almost invariably governed by Irish law. If the seller or the buyer is based in the US, the share purchase agreement is sometimes (relatively rarely) governed by New York or Delaware law but the ancillary transaction documents (such as tax deed or non-compete provisions) are governed by Irish law.

7. **Is it market practice for an arbitration provision to be included in private M&A documents? Are arbitration clauses enforceable in your jurisdiction? Do local courts respect the choice of jurisdiction in an arbitration clause?**

Arbitration provisions are rarely included in private M&A documents. Arbitration clauses are fully enforceable in Ireland and Irish courts respect choice of jurisdiction clauses.

RECENT DEVELOPMENTS AND PROPOSALS FOR REFORM

8. **Have there been any significant recent or proposed legal developments affecting the market that could impact on transactions?**

The rate of stamp duty that applies to business and asset sales has increased from 2% to 6% in October 2017. Stamp duty on the transfers of shares in Irish companies remains at 1% (except for transfers of shares in companies listed on the Irish Enterprise Securities Market (ESM) (equivalent to the AIM market) and Irish companies that are listed in the US whose shares are traded through the Depository Trust Company (DTC). Therefore, share purchase structures will continue to be the most common structures for M&A deals and business and asset sales will need to be carefully structured.

Mergers may become a more common structure to effect M&A deals, including deals under domestic law, the EU cross-border regime and contractual cross-border merger structures that can be implemented for companies merging out of a number of jurisdictions.

9. **What will be the main factors affecting the market next year, and how do you expect the market to develop?**

We believe that there will be significant M&A activity in Ireland over the coming 12 months. We continue to see material amounts of interest from potential buyers for quality businesses. US and UK investors continue to be active in the Irish M&A market, despite some uncertainty around the US tax reforms and the UK's decision to leave the EU.

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