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ARTICLE

Earn-outs: A Bridge to Troubled Water?

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For dealmakers in M&A and private equity, securing a good deal is only half of the battle.

Post-completion disputes often centre on earn-outs, an increasingly popular mechanism for bridging gaps between a buyer and seller's estimates of a target's value, under which sellers are entitled to additional remuneration if the target business performs as they expect.

Corporate acquirers face real risk when earn-out clauses are unclear or poorly governed:disputes can disrupt operations, delay future exits, and inflate acquisition costs. Failure to adhere to strict notice provisions can lead to lengthy litigation, as recently demonstrated in the English High Court case involving the DXC Group, which centred on the sellers' response to two earn-out calculation determinations sent by the buyers via email, in disregard of the contractual notice provisions. Ultimately, the court ordered the parties to specifically perform the dispute resolution procedure under the share purchase agreement, which had not been adhered to.

Below, we outline why earn-out clauses often go wrong, and how private equity sponsors and other corporate acquirers can mitigate the risks they present.

Read the full article (subscription required).

Trainee Solicitor Christopher Hull also contributed to this article.

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