



FORENSIC  
M&A SERVICES

OUR CREDENTIALS

IDEAS | PEOPLE | TRUST

**BDO**



# OUR SERVICES

## HOW CAN WE HELP YOU?

Whilst many transactions will progress smoothly, it is important to prepare for situations where a dispute over buyer and seller value expectations or other unforeseen problem may arise. Our Forensic M&A Services team offers a range of specialist services, both to maximise the client's position in relation to transaction value and to reduce risk exposure thereon pre-deal, and also to assist with transaction value or liability issues that may arise post-deal.



### FORENSIC M&A ADVISORY SERVICES

#### PRE-TRANSACTION FORENSIC M&A ADVISORY SERVICES

Our team can assist with providing pre-transaction SPA advisory services such as:

- ▶ Review of pre-completion SPA accounting issues (e.g. accounting definitions, warranties and indemnities, limitations on liability)
- ▶ Assistance with the compilation of Completion Accounts/Earn-out/Locked Box mechanisms
- ▶ Review and assist in the preparation of Completion Accounts/Earn-out/Deferred Consideration schedules
- ▶ Liaison with legal advisers, and Due Diligence and M&A professionals to ensure the SPA adequately reflects your intentions
- ▶ Provide advice regarding warranty & indemnity insurance, including liaising with brokers and reviewing policy terms.

#### NON-CONTENTIOUS POST-TRANSACTION FORENSIC M&A ADVISORY SERVICES

We can offer a range of services in respect of parties' immediate post completion obligations, and to assist you navigate the often complex post-deal landscape.

Our services include:

- ▶ Completion accounts review
- ▶ Leakage review
- ▶ Price adjustment mechanism review
- ▶ Purchase Price Allocation service
- ▶ Earn-out / deferred consideration review
- ▶ Assist with negotiations with the opposing party following our review in relation to the above.



# OUR SERVICES

## HOW CAN WE HELP YOU?



### POST-TRANSACTION FORENSIC M&A DISPUTE SERVICES

#### COMPLETION ACCOUNTS AND EARN-OUT DISPUTES

Completion accounts and earn out disputes are commonly dealt with under the SPA process by way of expert determination.

When acting on your behalf we will ensure you are in the best position to submit a successful report to the relevant adjudicator. We can support you in the following ways:

- ▶ Advising on the independent expert's terms of reference
- ▶ Assessing the strengths and weaknesses of your position, including buyer / seller ring fence provisions on earn-outs, in accordance with the SPA
- ▶ Analysing and assessing any potential leakage issues following the preparation of Locked Box accounts
- ▶ Assistance in the preparation of submissions to the independent expert
- ▶ Analysing and critiquing the opposing side's submissions
- ▶ Assisting with responses to and questions from the independent expert
- ▶ Providing expert witness evidence.

#### BREACH OF WARRANTY CLAIMS

We have significant experience with claims arising from breach of warranties. We can assist with:

- ▶ Providing you with an understanding of the issue giving rise to the dispute
- ▶ Advising on liability issues and with the assessment of quantum in the pre-action phase
- ▶ Advising on warranty true / warranties false valuation issues
- ▶ Providing expert witness services in court, arbitration or alternative dispute resolution proceedings
- ▶ Advising on warranty and indemnity insurance claims, including policy issues as well as quantum and liability
- ▶ Liaising and negotiating with counterparties' advisors.

#### WARRANTY & INDEMNITY INSURANCE

We have significant experience of working on claims made under a W&I insurance policy. We can assist with:

- ▶ Reviewing liability (i.e. breach). We can advise on liability specifically in relation to financial, accounting, tax and pensions warranties and indemnities
- ▶ We can advise on quantum, whether on an indemnity or contractual basis. This may include an assessment of "£ for £" losses, or a more intricate loss of value calculation to assess the 'warranties true' / 'warranties false' basis of damages
- ▶ Where legal proceedings are issued we can act as expert advisor or expert witness, in each case providing written reports for either private use or Court proceedings
- ▶ We work alongside you and your professional advisors to co-ordinate and undertake the required work in an efficient way.

#### EXPERT DETERMINATION: ACTING AS INDEPENDENT ACCOUNTANT

We have significant experience as independent expert accountants of determining high-profile and complex disputes across a range of sectors and countries. Our experts are recognised by the ICAEW President's Nomination Scheme.

Subject matters includes:

- ▶ Completion accounts
- ▶ Earn out accounts
- ▶ Leakage determinations
- ▶ Shareholder disputes
- ▶ Valuation disputes.

# OUR EXPERIENCE

## HOW WE HAVE RECENTLY HELPED CLIENTS

### PRE-TRANSACTION ADVISORY

Our client was acquiring a US business via a complex deal which included earn-out and loan note consideration mechanisms.

Working alongside the client, US and UK legal advisers, DD and M&A teams, we:

- ▶ Reviewed and strengthened the Seller warranties and indemnities; and
- ▶ Reviewed the accounting policies and hierarchy to be used in the Completion and Earn-out Accounts

Our work ensured that the Buyer was not exposed to undue risk in respect of potential payments regarding Working Capital and future Earn-out payments.

### POST-TRANSACTION DISPUTES (ACTING ON BEHALF OF CLIENT)

Our client was party to an expert determination following the sale of its telecommunications business. The dispute concerned the revenue recognition policy to be applied to certain long-term contracts in the deferred consideration accounts.

We prepared an expert report that was exhibited to our client's submission to the expert. We also advised our client during the preparation of their submissions and the wider determination process.

The expert agreed with our position as to the deferred consideration payable.

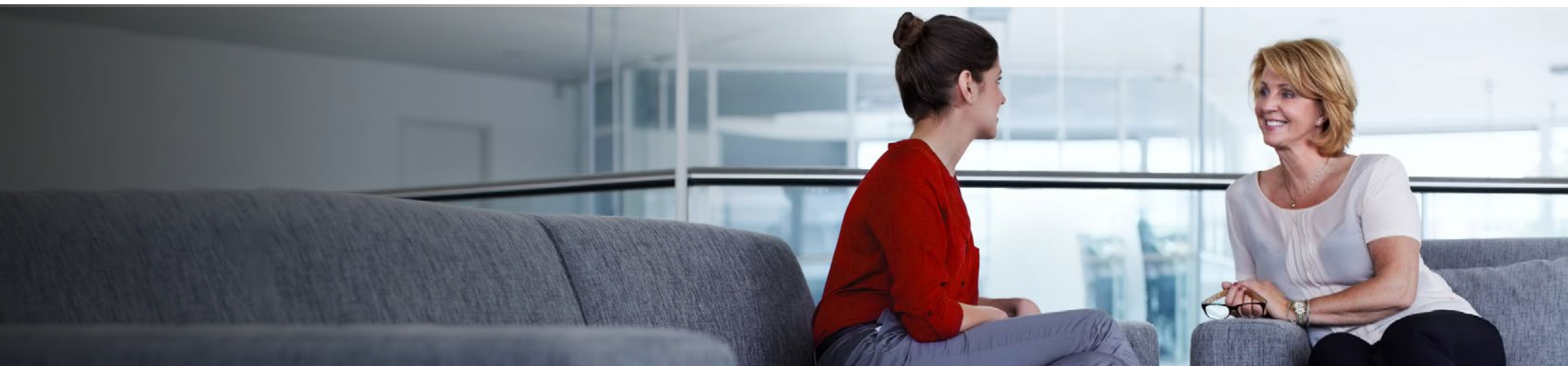
### POST-TRANSACTION DISPUTES (ACTING IN A W&I CLAIM)

We were appointed to review a W&I Claim following the acquisition of a food manufacturing business. We liaised directly with the insured to gather information on the claim and prepared a detailed report to the insurer setting out:

- ▶ Our view of the insurer's liability under each warranty claimed
- ▶ Our overall conclusions on liability of the insurer, specifically identifying the warranties breached
- ▶ The impact of the breach on the quantum paid by the purchaser
- ▶ Our work ensured that a satisfactory negotiated settlement was reached between the insurer and insured.

### POST-TRANSACTION DISPUTES (ACTING AS EXPERT WITNESS)

We assisted in a completion accounts dispute following the sale of our clients' construction business. The dispute centred around the final adjustment amount to the purchase price, and in particular focused on the appropriate accounting for long term construction contracts per the terms of the SPA. The Buyer also alleged a breach of warranties under the SPA. The case was submitted to a Swiss Arbitration Tribunal. Our analysis identified fundamental accounting and valuation issues with the claimants claim and our analysis contributed to a favourable settlement before the hearing.





## A HIGHLY EXPERIENCED TEAM OF FORENSIC M&A SPECIALISTS



**NICK ANDREWS**  
Partner

+44 (0)77 8843 5618  
nick.andrews@bdo.co.uk



**GERVASE MACGREGOR**  
Partner

+44 (0)77 7075 6770  
gervase.macgregor@bdo.co.uk



**SAT PLAHA**  
Partner

+44 (0)77 2007 8030  
sat.plaha@bdo.co.uk



**LAURENCE MILLS**  
Director

+44 (0)78 0068 2039  
laurence.mills@bdo.co.uk



**ROSIE BARNES**  
Director

+44 (0)78 0068 2280  
rosie.barnes@bdo.co.uk



**PHILIP DE VOIL**  
Director

+44 (0)73 8546 6210  
philip.devoil@bdo.co.uk



**LAWRENCE MCGINLEY**  
Director

+44 (0)78 0068 2721  
lawrence.mcginley@bdo.co.uk



**MICHAEL SMITH**  
Director

+44 (0)79 2905 6468  
michael.j.smith@bdo.co.uk



FOR MORE INFORMATION:

**NICK ANDREWS**

Partner

+44(0)778 843 5618

nick.andrews@bdo.co.uk

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