



Blickpunkt

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Acquiring Targets in the United States

Foreign acquirers of U.S.-based firms face a number of risks unique to the U.S., ranging from statutory requirements for workers' compensation and auto liability, to environmental liability, to self-insurance obligations with surety and collateral requirements. Such cross-border deals present two major challenges from a risk management standpoint: managing future risks (i.e., determining the optimum structure and integration of the programs post-close) and properly addressing the target's pre-close legacy liabilities. But it all starts with understanding the target's risk.

The Private Equity and M&A Practice of Marsh (Marsh PEMA) has a long history of assisting clients with cross-border transactions. Simply put, we work closely with our colleagues in the UK, Europe and Asia to service the M&A needs of Marsh's institutional client base - this is all we do.

Over 300 Private Equity and institutional clients have found Marsh PEMA's services to be invaluable in improving their negotiating leverage, and in helping avoid unwanted surprises and costly mistakes. They typically look to enhance their accounting and legal due diligence efforts by engaging Marsh PEMA to assist them in evaluating the target's risk & insurance programs. Typical areas of concern include:

- Adequacy of self-insured reserves on the balance sheet (workers' compensation and general liability are usually a significant portion of the target's Total Cost of Risk).

- Impaired aggregates and insolvent insurers (such as Kemper and/or Reliance).
- Unknown pollution legal liability from older manufacturing locations.
- Qualified self-insurance in certain U.S. jurisdictions requiring approval and posted collateral.
- Foreign sourcing issues overseas.
- Trade credit and Intellectual property rights.
- Legacy liabilities and the insurance assets available to offset those liabilities.

Depending on the materiality threshold, these can not only have a potential impact on the deal economics, but also play a significant role in the integration of the companies (design, cost projections and implementation of a combined risk and insurance program).

How to Integrate the U.S. Acquisition

Performing a thorough risk and insurance due diligence review will form the basis for planning the integration, developing proforma cost projections, and identifying/implementing synergies. Often, the best answer is to maintain separate and distinct insurance programs to reflect the specific needs of each geography and business operation, but in other cases a global integrated program makes the most sense. Marsh PEMA can identify the factors that drive this decision and make re-recommendations for the client's consideration. There are many other risk and insurance integration issues that often do not receive proper attention from foreign buyers. Marsh PEMA can assist in all of these areas to ensure that key issues are identified and addressed:

Transactional solutions

- Identify/resolve issues in the sale/purchase agreement.
- Help control litigation costs from unknown claims.



- Transfer credit, asset and other operational and market risks to insurers

Environmental solutions

- Cap the cleanup costs of known liabilities.
- Transfer the risk of third party bodily injury/property damage and cleanup cost arising from unknown environmental conditions.

Post-Acquisition Services

- Assess and benchmark opportunities to reduce retained losses and minimize collateral obligations.
- Develop in-depth loss analysis to facilitate intelligent deployment of loss reduction solutions.
- Drive and monitor execution of the loss reduction strategy.
- Identify opportunities to mitigate and close legacy claims.
- Evaluate the feasibility of alternative risk management strategies and solutions.

Risk Management Infrastructure and Staffing

- Examine and benchmark all risk management processes against leading practices.
- Facilitate outsourced alternatives where appropriate.

- Identify required risk management skill sets that are unique to geography of operations.
- Develop an optimum risk management staffing model based on findings.
- Evaluate technical qualifications of candidates for staff positions.
- Supply interim staffing support as needed.

These services are exclusively available to existing institutional clients of Marsh. Separate engagement letters are executed for each assignment so that the scope of work can be custom-tailored to the needs of each transaction. Fees are charged in addition to other compensation earned by Marsh. We can provide an estimate of total cost after identifying the desired scope of work and data available.

Statements concerning legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal advice, which we are not authorized to provide. All such matters should be reviewed with the client's own qualified legal advisors in these areas.

Contact:

For further information do not hesitate to contact us. We will be pleased to help establish contact with our Private Equity and Mergers & Acquisitions experts in the U.S.

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