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How to attract US investment

With the dollar strong and expectations for an M&A boom driven by the incoming Trump administration, US acquirers are increasingly interested in UK companies. James Goold and Alexandra Poland of law firm Taylor Wessing look at what UK companies can do to facilitate a sale.

When a US-based private equity fund considers acquiring a UK company, several strategic motivations could be at play – achieving transformational growth, say, or expanding into new markets. A US buyer is also likely to concentrate on high-risk areas and hot topics in the UK.

To attract US investment and ensure a smooth transaction process, UK business owners should focus on:

- **Commercial contracts** – ensure you have comprehensive standard terms and conditions and well-negotiated agreements with key partners. US buyers will want to understand the target's approach to contracting and its risk appetite.
- **Intellectual property** – confirm that IP is properly registered with adequate assignments to evidence ownership. US buyers may also scrutinise open-source software used in developing IP.
- **AI compliance** – if the business is AI-focused, ensure regulatory obligations have been met, as specialist due diligence is likely.
- **Ongoing disputes** – the judicial systems in the UK and the US have their differences. Be prepared to provide information on any claims' nature, status and potential outcomes.
- **Regulatory requirements** – recognise differing regulatory landscapes between regions and implement adequate preventive procedures for issues like bribery, tax evasion and economic crime prevention.
- **ESG performance** – verify compliance with reporting requirements and maintain satisfactory performance metrics for environmental practices, health and safety standards and diversity and inclusion policies.

When preparing for a sale, it's also essential to understand the key differences between market practices in the UK and the US, so you can effectively bridge any gaps in expectations.

- **Closing conditions** – US buyers often expect a wide array of conditions (including the right to walk away from the deal if there is any material adverse change to the target), in contrast to the UK approach of limited mandatory approvals.
- **Pricing mechanics** – traditionally, US buyers have been accustomed to completion accounts, rather than the locked box mechanism commonly used for UK deals, particularly auction sales. However, US PE funds are becoming more comfortable with the fixed price of locked box mechanisms.
- **Restrictive covenants** – US non-compete provisions tend to be for longer, although a ban on non-competes in employment agreements has been proposed. In the UK, restrictive covenants typically last one to three years, as longer periods are often deemed unenforceable.
- **PE specific differences** –
  - Options vs equity: US transactions favour share options or profit interests, but these can complicate the capital gains tax treatment. In the UK, key managers are granted 'rollover' equity (shares in the company in place of cash) or 'sweet' equity (shares or options issued at a discount). Managers should carefully consider tax advice and request reasonable tax planning accommodations as part of their minority protections.
  - Leavers (rollover equity): in the US, investors often have a call option over rollover equity when someone leaves. In the UK, managers retain rollover equity, except in certain 'bad leaver' situations.
  - Leavers (sweet equity): 'bad leavers' in the US forfeit sweet equity and 'good leavers' exercise vested awards at fair value. In the UK, 'good leavers' typically receive fair value for sweet equity, whereas 'bad leavers' receive the lower of cost or fair value.
  - Vesting: this combines time and performance based criteria in the US but is generally just time-based in the UK (often used in 'intermediate leaver' situations, e.g. dismissal without 'cause'), with gradual vesting over one to five years.

Whether starting a sale process or preparing for future opportunities, understanding the market and tackling key transatlantic challenges is critical to ensuring a smooth transaction and achieving full value.

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