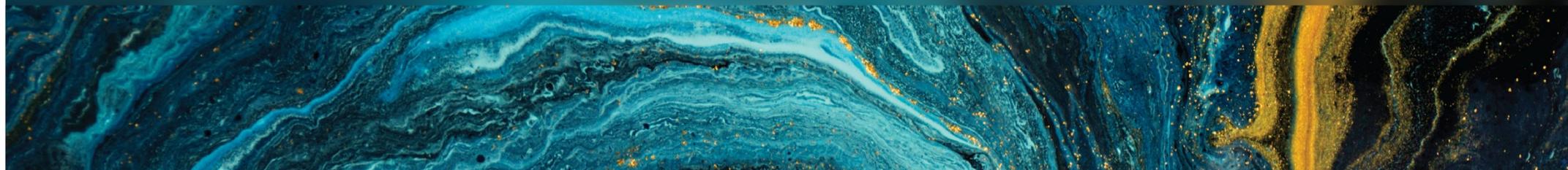


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**EUROPEAN M&A:
TRANSATLANTIC PERSPECTIVES ON DEAL CERTAINTY**
2020

INTRODUCTION

TRANSATLANTIC PERSPECTIVES

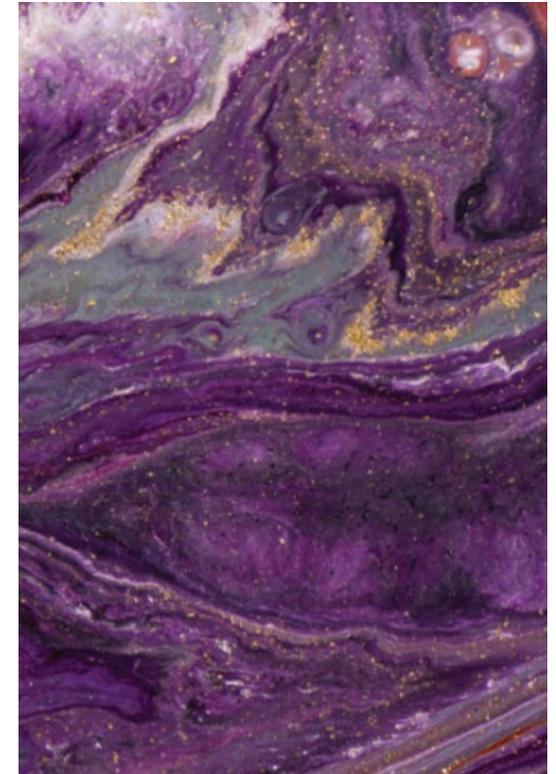


The impact of the Covid-19 pandemic on targets resulted in counterparties analysing whether they were still obliged to complete transactions that had signed or able to renegotiate price.

As financial sponsors and strategic acquirors in Europe considered their options, certain buyers in the U.S. decided to fast-track their thinking and moved to walk away.

Here we analyse conceptual differences between European and U.S. market practice surrounding “deal certainty” and what deal terms may make it easier for counterparties to renegotiate or terminate transactions using U.S. style deal technology as compared to that used in the European market.

This briefing aims to provide an overview of those key elements of the U.S. M&A “toolbox” that (i) could be utilised on European transactions in a post Covid-19 world to account for volatility emerging between signing and completion, or (ii) European investors should consider when transacting on U.S. style deal terms.



To request a copy of the full report, please contact **Rosie Draper** (rosie.draper@cliffordchance.com / +44 20 7006 2110)

EXECUTIVE SUMMARY

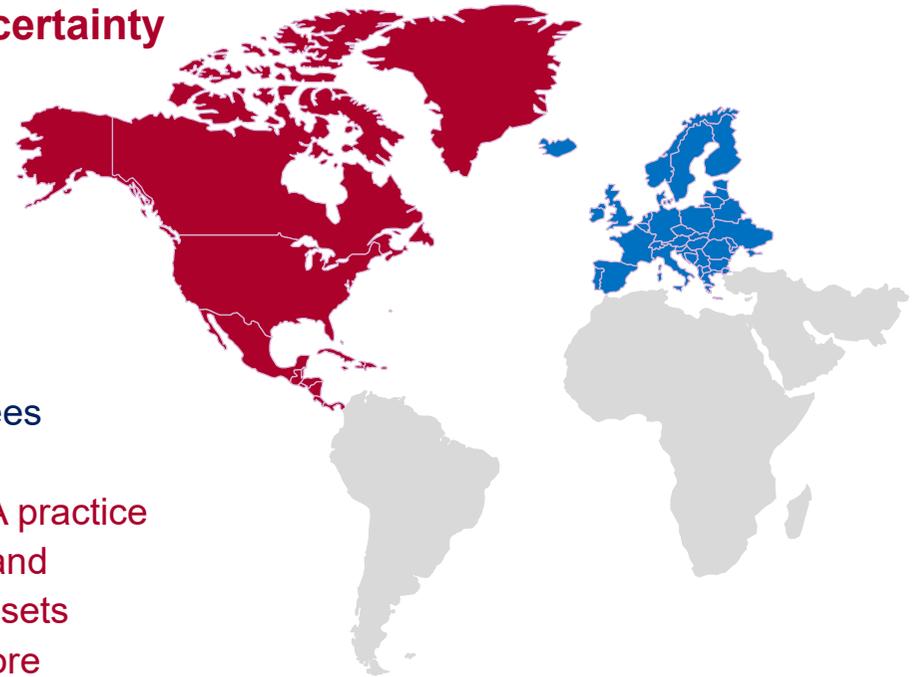
DEAL CERTAINTY



Key topics in the analysis and negotiation of deal certainty comprise:

- Conditions to completion
- Material adverse change provisions (if any)
- Warranties
- “Gap Controls” or interim operating covenants
- Termination Rights, Certain Funds Financing and Break Fees

While rights for termination or postponement in European M&A practice are customarily focused on the failure to (i) obtain mandatory and suspensory regulatory approvals, and (ii) deliver the shares/assets simultaneously on completion, U.S. style deals can provide more opportunities for a buyer to walk away or renegotiate.



Here we explore each of these topics, including drawing on case studies from the U.S. market during Covid-19 to assess how they play out in practice.

Page 27 contains a “Tear Sheet” providing tips on the key differences in terms of deal certainty between European and U.S. M&A practice, including purchase price adjustments (a topic we can cover in a separate presentation).

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