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M&A DISPUTES

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HOT TOPIC

M&A DISPUTES

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Neil Blake helps clients deal with a wide range of commercial disputes and all forms of dispute resolution, including High Court litigation, arbitration, adjudication and mediation. Many of these cases have been international in nature. Mr Blake's expertise includes complex contractual disputes, professional negligence claims, M&A-related litigation, claims for breach of directors' duties and sovereign debt disputes. He has particular experience in media and sports law, advising clients on sector-specific regulatory and contentious matters. He also advises a broad range of clients on claims of defamation, privacy and breach of confidence.

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CD: Could you provide an overview of the M&A disputes landscape in recent times? What key trends and developments have you observed?

Puri: We continue to see disputes on issues such as completion accounts and price adjustments, which are often resolved at an early stage or through negotiation and discussion between the parties. We have also seen disputes arising from anti-corruption related issues. We have also seen M&A disputes involving allegations of serious wrongdoing, such as the ongoing litigation between HP and the former management of Autonomy plc which has now reached trial in the commercial court and where there have also been parallel regulatory and enforcement investigations and criminal proceedings.

Trevan: In the European M&A market, the majority of disputes we are seeing arise out of the reps and warranties given by sellers in relation to tax, financial statements and compliance with laws. The first two factors are perhaps unsurprising. The third has become increasingly prominent in recent years as regulation and regulatory enforcement has come to the fore, especially where parties are buying or selling in heavily regulated sectors. In the Asian M&A market, by contrast, we are seeing an increasing number of disputes relating to allegations of fraud discovered post-closing and the misappropriation of assets by shareholders or senior management. We are also seeing battles for control among strategic shareholders, with professional shareholders often caught in the middle.

Reed: We have seen a moderate uptick in shareholder litigation in Texas in recent years. Plaintiffs also tend to file suit in the courts that they believe will be most hospitable, both to their substantive arguments and to quick settlements. While Texas courts have been out of favour in recent years, recent decisions by the Delaware courts that expressed scepticism about strike suits, and more importantly, attorneys' fee awards, appear to be motivating plaintiffs to file cases outside of Delaware and in federal courts again.

Blake: The increased availability and understanding of warranty and indemnity (W&I) insurance policies, particularly in the private equity and real estate sectors, but also increasingly used by strategic sellers, has increased the likelihood of disputes arising because the claiming party, generally buy-side, has insurance to target, reducing any enforcement risk. Statistics suggest that notifications of potential claims or circumstances which may give rise to a claim are made in respect of approximately one in five policies. The prevalence of buyer claims perhaps reflects ongoing high asset prices, increasing the number of buyers who with

hindsight consider that they have made a bad bargain from which they wish to recover additional value. Market volatility and related difficulties with taking a true and fair view of asset values increase the risk of holes being picked in warranted accounts by buyers who are actively looking for an opportunity to bring claims in relation to transactions.

Hansen: Specifically related to completion accounts disputes, the increased use of W&I insurance is providing transaction parties with an opportunity to pursue claims under such policies to address items that previously may have resulted in a dispute. For example, an expert determination process may be the contractually provided dispute resolution process related to undisclosed liabilities or financial statement items that do not conform to the applicable accounting guidance. A claim under the W&I policy is now the likely first step, depending on the coverage obtained. The increased usage of W&I insurance, coupled with much of Europe and the UK, and to a lesser degree the US, having moved to locked box transactions, has decreased the occurrence of purchase price adjustment disputes. Regardless, many purchase agreements for cross-border deals involving a US-based counterparty still include purchase price adjustment provisions that can drive disputes.

CD: What types of dispute have been most prevalent? Are there any common, recurring themes that are driving conflict?

Trevan: There is now more aggressive regulatory oversight and record fines in areas such as data privacy, cyber security, anti-bribery & corruption and sanctions that are relevant across a number of sectors. We are seeing an increase in disputes over the allocation of risk in these particular areas, and we expect to see more in the future. In the Asian market, the trend is toward growth through M&A rather than organic growth, particularly in industries and jurisdictions where there are regulatory barriers to entry. This has resulted in a spike in shareholder battles for controlling stakes and winding-up and

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>
> *Samantha Trevan, Freshfields Bruckhaus Deringer LLP*

unfair prejudice actions. Another specific trend we are seeing in this market is that attractive assets are often privately owned by a conglomerate or single family with less formal approaches to corporate governance. This often leads to a spate of claims being made post-closing once the buyer takes control of the target and takes a closer look.

Reed: Historically, the big driver for M&A litigation has been the judiciary's willingness to entertain these lawsuits, and its willingness to approve class action settlements that include attorneys' fees awards, even where class members receive little economic benefit. So the courts' increasing antipathy toward strike suits has led the plaintiffs' bar to shift its focus in several ways. We now see many more books and records demands from shareholders who are investigating whether to challenge a transaction before filing suit. And when the bigger plaintiff firms bring class action lawsuits, they are bringing them post-closing for money damages, and appear to be willing to litigate rather than looking for a quick settlement. Finally, we have seen a significant uptick in shareholder activism. Some large shareholders, for instance, will engage in proxy contests to defeat M&A transactions.

Blake: Warranty claims in relation to financial statements and completion accounts remain the most prevalent, though often these disputes reveal more fundamental issues with the target business including in relation to its material contracts, employees, intellectual property (IP), environmental risks and ongoing litigation. Increasingly, disputes about completion accounts give rise to technical questions about compliance with accounting standards and, where two or more approaches may be permissible under the relevant accounting standards, whether the correct approach has been used in order to reach a true and fair view. The determination of the correct approach is ultimately a judgement call on which professional accountants may reasonably differ, making the outcome of disputes more difficult to predict.

"Disputes relating to completion accounts are most prevalent, triggered typically by disagreements on whether the appropriate accounting policy was applied."

Nallini Puri,
Cleary Gottlieb Steen & Hamilton LLP

Hansen: While the overall number may have decreased, the most prevalent type of dispute we still experience as forensic accountants is completion accounts disputes. These disputes are being resolved through both expert determination and arbitration forums, depending on the specific purchase agreement provisions and the nature of the dispute. Many completion accounts disputes are driven by differences of opinion regarding the more subjective financial statement items, such as inventory valuation, allowance for doubtful accounts, warranty reserves and contingencies. Management judgment is involved in assessing such items and a new owner could, and often does, disagree with some aspects of management's judgment. Revenue recognition is another area that drives conflict, especially in more complicated entities such as those that involve software licensing and servicing or other rateable revenue recognition products and services.

Puri: Disputes relating to completion accounts are most prevalent, triggered typically by disagreements on whether the appropriate accounting policy was applied and whether the adjustment amount has been correctly calculated. While less common in comparison, warranty and tax indemnity claims are also not unusual, and, in relation to the former, often in connection with data protection or cyber breaches. Completion statement disputes generally result either from accounting policies not being drafted with sufficient precision, such that parties are able to interpret them differently or, from a more macro perspective, the adverse impact of the global slowdown on financial prospects of the target, which encourages parties to use the completion statements to achieve a better commercial outcome. Disputes also frequently result when diligence fails to uncover an issue which is not dealt with in the transaction documents, and subsequently, when the issue comes to light, parties attempt to retrospectively interpret provisions in a manner that favours their position.

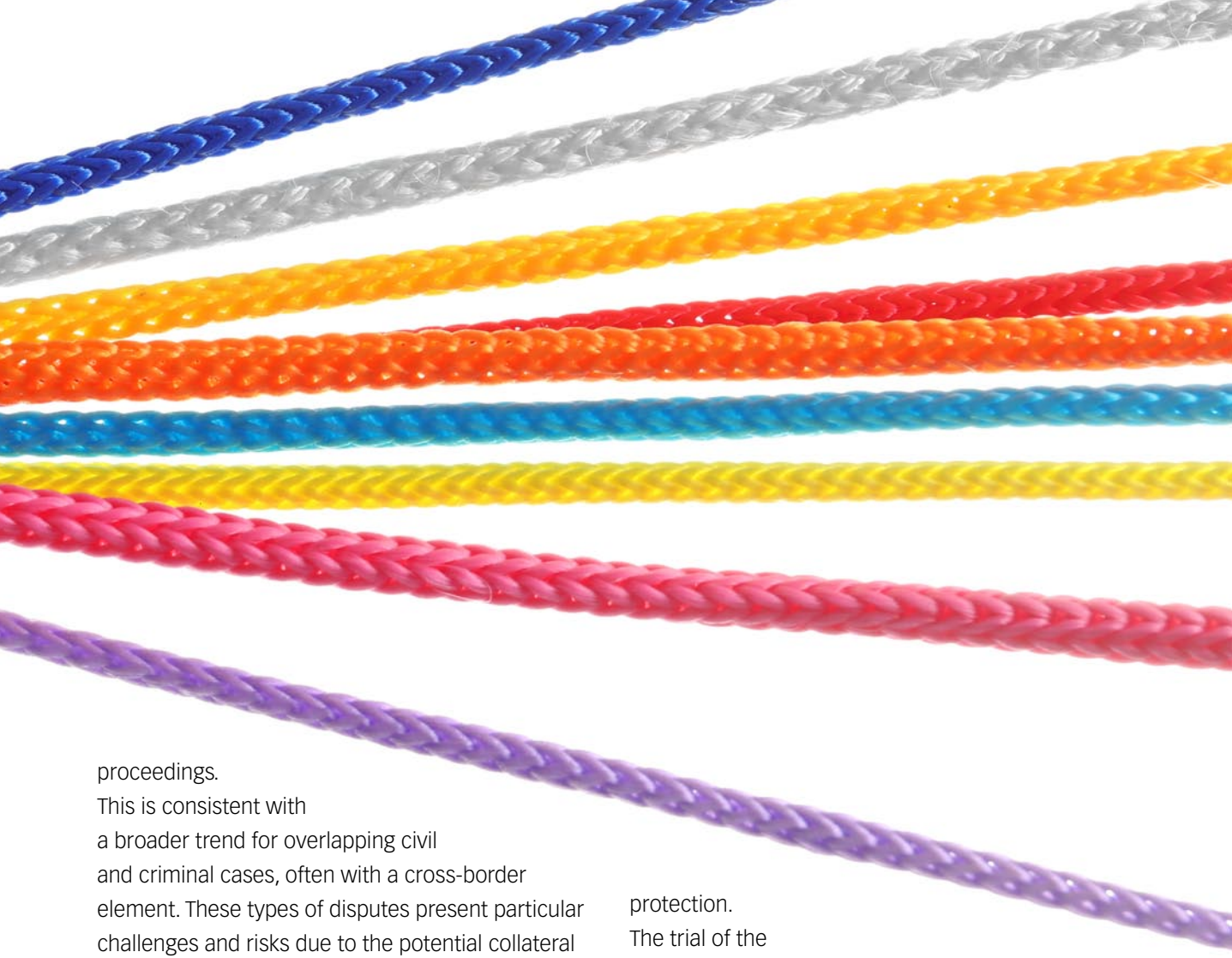
CD: Could you highlight any recent M&A dispute cases which proved to be particularly notable in terms of how they were conducted and ultimately resolved?

Reed: The Delaware Superior Court recently issued an insurance coverage decision in the *Solera Holdings v. XL Specialty Insurance* litigation that has important consequences for M&A. Solera sought to recover from its directors & officers (D&O) insurers the $13m it spent defending against an appraisal claim as well as the interest payments it made pursuant to the appraisal statute. The insurers moved for summary judgment. The court denied the motion, holding that an appraisal claim is a 'securities claim' under the insurance agreement. The court next held that the definition of 'loss' extends to interest paid on fair value under the

appraisal statute. Although D&O insurers may react to this by changing standard contract language, it is an important decision because the court found that fairly typical D&O coverage terms extend to the costs of defending appraisal claims and the interest paid under the appraisal statute.

Blake: It has been a bumper year for breach of warranty claims that have progressed all the way to judgment. One notable feature about how these cases have been conducted is that the courts have been required to rule on novel approaches to quantification of damages in a breach of warranty context as buyers look for ways around the contractual framework. For example, in *Oversea-Chinese Banking Corporation v ING Bank*, we saw a buyer unsuccessfully argue that had it known that a warranty was untrue – as alleged – it would have sought an indemnity from the seller and the seller would consequently have paid under this indemnity, increasing the amount of the buyer's recovery. The claim failed because the buyer could not establish that the parties would have agreed an indemnity, there being no difference between the value of the target as warranted and the true value alleged by the buyer.

Puri: One of the most substantial ongoing M&A disputes is the case brought by HP against the former management of Autonomy plc, following HP's $11bn acquisition of Autonomy in 2012. HP alleges that Autonomy's accounts were manipulated prior to the acquisition, and shortly afterward HP wrote down the value of Autonomy by $8.8bn. It is particularly notable that the case has involved a number of related investigations and criminal



proceedings.
This is consistent with
a broader trend for overlapping civil
and criminal cases, often with a cross-border element. These types of disputes present particular challenges and risks due to the potential collateral impact of one proceeding on another. For example, companies in the HP group received a subpoena from the US Attorney's Office seeking copies of "all documents produced by any party" in the English civil proceedings. This then led to a dispute before the English court about whether documents produced by the defendants could be provided in response to the subpoena. The English court ruled that the documents could not be provided, essentially because the documents were protected under English law and the subpoena did not provide sufficiently compelling reasons to override that protection.
The trial of the
case is now in progress before
the commercial court. One expectation
is that large and complex M&A disputes will increasingly involve overlapping proceedings and related criminal prosecutions.

Hansen: Two items come to mind that are not really related to procedural aspects of dispute resolution, but rather to the core issue causing the dispute and the ultimate resolution. In this case, one of the primary issues causing the dispute was the lack of a definition of a specific inventory term,

which provided an "opportunity" for each party to define what the term meant in the context of the purchase price adjustment. This would likely not have resulted in a disputed item, had the agreement provided a clear definition. The second item was a provision in this same agreement that placed the burden on the seller of proving that the buyer's proposed adjustments were not warranted. The buyer did not have to prove that its proposed adjustments represented a change from the seller's historical practices, rather the seller had to prove that was the case.

Trevan: Courts in both the UK and the US have been grappling with how unexpected events outside of the parties' control should affect the rights and obligations of parties to a contract. In the US, the Delaware Supreme Court has concluded for the first time that a material adverse change clause justifiably permitted a buyer to decline to close a transaction on the basis of losses suffered by the target between signing and closing. The UK courts have considered whether Brexit frustrated the performance of a contract, ultimately deciding that it did not in the particular circumstances of that case. With today's precarious global political and economic climate, it is likely that courts in these and other jurisdictions will increasingly be asked to grapple with these sorts of questions.

CD: Generally speaking, what dispute resolution methods lend themselves to M&A-related disputes? What additional challenges do multi-party or multi-contract structures bring to the process?

Hansen: Both expert determinations and arbitrations are appropriate forums for resolving M&A disputes, depending on the items or issues in dispute. Litigation is also an option, but it is not a contractually provided for dispute resolution method, whereas expert determinations and arbitration are commonly provided for in the purchase agreement. An expert determination process is typically the appropriate method for resolving completion account disputes due to the nature of the items commonly in dispute. Other M&A-related disputes, such as breaches of reps and warranties, fraud and other breach of contract matters, are better suited to an arbitration forum, or possibly litigation. These dispute resolution methods are normally private proceedings with a typically faster resolution time frame than litigation. Multiple parties and multiple contracts can increase the complexity of the process and increase the expense of the dispute resolution process, but the underlying disputed items are normally not impacted.

Trevan: There is no 'one size fits all' dispute resolution mechanism for M&A disputes. Resolution

often depends on the parties and the circumstances of a particular transaction. For example, if the parties are particularly concerned with privacy and confidentiality, that might lend itself to arbitration. On the other hand, if precedent-setting and certainty is a priority, then the courtroom may be a more appropriate forum. Where parties are looking to resolve narrower disputes in the context of an ongoing commercial relationship, expert or written determination can also be an effective mechanism, enabling parties to resolve differences quickly. The important thing is that parties entering into a transaction actively consider and agree upfront the dispute resolution mechanism that best suits their particular circumstances instead of simply defaulting to standard form clauses. Multi-contract and multi-party structures, in particular, increase the risk of parallel proceedings and satellite litigation if the dispute resolution mechanism is not thought about in advance and in the round. One potential way of tackling these challenges is to set out the agreed dispute resolution mechanism in the 'main' agreement or in a separate umbrella agreement, which governs each of the contracts and binds each of the parties.

Puri: Parties often consider arbitration to offer some advantages because the process is conducted in private, and because an arbitration award is widely enforceable around the world under the New York Convention. Arbitration can, however, become complex when multi-contract structures are involved, or where a number of parties with interconnected contractual arrangements are involved. Careful consideration should be given to the dispute resolution process at the outset, to avoid creating an unwieldy situation where there might be parallel proceedings. M&A contracts will often include contractual provisions requiring good faith discussions, or escalation to senior management, before a party can commence arbitration. These arrangements are often useful in providing a formal means of escalation once a dispute has crystallised, and can facilitate a quick and consensual resolution. Outside of arbitration, the English commercial court has considerable expertise in resolving M&A

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Jerry Hansen, Forensic Risk Alliance

disputes, with judges who were often leading commercial litigators before going to the bench.

Blake: There is no 'one size fits all' approach. For contractual interpretation disputes, litigation or arbitration remain the best options for resolution of what can often be a binary question. Arbitration is less appropriate for a multi-party dispute where the contract is not the only source of claims, for example as a result of a tort claim which may arise out of alleged fraud or serious wrongdoing by related individuals or entities not party to the arbitration agreements. At the other end of the spectrum, a completion accounts dispute is often best dealt with by expert determination because the expert is likely to be better placed to determine the issues than a judge relying on expert testimony. Warranty claims tend to be well suited to mediation. Absent rare circumstances in which the nature of the alleged breach fundamentally undermines the commercial logic for the transaction, mediation can drive a commercial renegotiation and settlement.

Reed: In shareholder disputes involving public companies, there typically is no formal alternative dispute resolution (ADR) mechanism that the parties must follow. Instead, they must decide what form of ADR, if any, makes sense in the context of a particular dispute. In a claim for damages, mediation is still the preferred form of ADR. In a dispute with shareholder activists, the most effective form of ADR may be a face-to-face meeting between the principals. Privately-held companies, by contrast, have more flexibility to address ADR issues up front. Many privately-held companies now include ADR provisions in their key agreements, which range from mandatory arbitration to requiring an aggrieved party to meet and confer with the other side before filing suit. We have seen several cases recently where the parties used this pre-dispute process to settle their differences before a lawsuit was filed. The process succeeded because the parties treated it seriously rather than as a mere condition precedent that had to be completed before a lawsuit could be filed.

"In shareholder disputes involving public companies, there typically is no formal alternative dispute resolution (ADR) mechanism that the parties must follow."

Noelle M. Reed,
Skadden, Arps, Slate, Meagher & Flom LLP

CD: What steps can companies take at the initial stage of a transaction – and throughout the process – to help avoid a dispute further down the line?

Trevan: In the current climate of high opportunity, high uncertainty and high publicity, we would encourage companies to spend more time planning for dispute avoidance, rather than spending time and money down the line on dispute resolution. Thoughtful and careful due diligence focused on key risk areas is invariably a good investment. Working closely with financial and other advisers to test the drafting of complex pricing mechanisms and suites of financial reps to ensure they work as the parties intend is also key. We are also increasingly seeing litigators being brought in pre-signing to do a litigation review of mission-critical deal terms.

Puri: Clearly understanding and articulating at the outset the parties' commercial objectives, including for joint ventures, by looking ahead at different points in the life of the joint venture, such as governance, funding, exit and so on, the issues that the transaction documents are intended to solve for and the routes intended to be adopted to solve for those issues, are critical in avoiding disputes further down the line. Comprehensive due diligence is key, including discussions between legal advisers and those conducting tax, financial or other specialist diligence, to ensure that all issues are adequately addressed and there is no gap between the legal drafting and the diligence issues identified. Lastly, but perhaps most importantly, simple and unambiguous drafting is invaluable.

Reed: The steps to be taken depend largely on whether a transaction is public or private. For public transactions, the likelihood of litigation largely depends on the judicial climate. If the courts are not carefully policing the merits of shareholder lawsuits, but are approving substantial attorneys' fees awards in class action settlements, then there is very little that a company can do to avoid M&A litigation. In the private arena, by contrast, companies have more flexibility to limit the risk of disputes. We often see private M&A contracts include no-reliance provisions that carefully delineate what the counterparty is and is not relying on. Many companies also include indemnification provisions that limit any recovery for breach of a representation, warranty or covenant to a discrete sum of money. And companies will often include jury waivers, limitations on consequential damages, or forum selection provisions that reduce the upside of bringing questionable lawsuits.

Hansen: The single most impactful step that transaction parties and their counsel can take in helping avoid or mitigate M&A disputes is the careful crafting of the purchase agreement language. This includes language related to post-closing

mechanisms and dispute resolution methods. Many disputes we encounter are related to 'loose' language in the agreement. Taking additional time during the drafting, even though often seen as unlikely to come into play, can, at a minimum, mitigate disputes. We are not suggesting that careful agreement language could or would prevent all disputes, there will still be disputes between the parties. Transaction parties will still disagree on certain financial statement items and there will still be breach of contract issues. Careful attention to the agreement language, however, can result in disputes being more about substantive issues, rather than an unfair advantage to one party due to an ambiguous provision.

Blake: There really is no substitute for seeking to anticipate potential future issues and deal with them at the outset, clearly assigning risks under the sale and purchase agreement (SPA) having undertaken relevant due diligence. Disputes rarely arise completely out of the blue – often, the issue is known to the parties and a compromise which appears commercially acceptable on both sides was reached at the time of the SPA, only for the issue to increase in magnitude at a later date. Early engagement with, and careful negotiation of, the SPA warranties by a buyer can drive the provision of disclosures by a seller to illuminate the key transaction risks – warranties are not just a route for post-deal redress. Ensuring that sellers continue to have 'skin in the game' post transaction through meaningful deferred or contingent consideration, coupled with set-off or withholding rights, can reveal issues prior to, and give a buyer leverage following, signing.

CD: What general advice can you offer to parties on preparing to resolve an M&A-related dispute? Are there any critical issues that parties need to consider?

Hansen: Many transaction parties have not been through an M&A dispute resolution process and even if they have it is not their daily job. In addition, an expert determination process is normally not well defined in the purchase agreement and, unlike arbitration proceedings, there are no codified sets of standard procedures the parties can refer to for guidance. Experienced advisers and counsel can assist the parties in evaluating the strength of their argument, drafting persuasive briefs or reports, and preparing sufficient support for positions. On occasion these disputes get personal and sound judgment can go by the wayside. To avoid some of the pitfalls this can cause, parties should pick their battles by critically assessing the strength of position on each disputed item and should attempt to settle those that are likely to be lost. Receiving a 50 percent settlement for an item likely to be completely lost is a win.

Blake: It is critical that parties meet deadlines and requirements as to the form, content and delivery of any notice for making a claim. While it is rare in practice for a party completely to miss a deadline, it is reasonably common for a party to leave its notification until the last minute – often due to ongoing investigations of the underlying issues or hope that the dispute can be resolved amicably – which can result in a less-than-polished notice being delivered. When later challenged as incomplete or deficient, it may be too late to deliver proper notice. Contractual notices should tick all of the relevant boxes at the first attempt – it is better to get key personnel and advisers involved at an early stage to ensure that the requirements are properly understood and that any technical matters – such as estimating alleged losses from a breach of warranty – can be properly articulated.

Reed: The threshold issue is deciding whether to fight or settle. Until fairly recently, companies could settle shareholder class actions with modest disclosures, or other non-monetary benefits, accompanied by relatively small fee awards. Now that these settlements have fallen out of favour, the plaintiff bar has recalibrated and M&A litigation is arising in different ways. For example, we are seeing, among other things, serious challenges by large investors who oppose a transaction and are willing to commit substantial resources to defeating it, lawsuits by individuals who seek a relatively minor sum of money in exchange for not challenging a transaction, books and records demands by shareholders, both large and small, who are investigating whether to bring claims, appraisal actions by shareholders who are dissatisfied with the merger consideration, and more traditional strike suit litigation by a plaintiffs' firm who believes that a transaction is particularly susceptible to attack, such as a merger that involves a related-party transaction. So, when a company is working on an M&A transaction, it should consider the facts and details of the matter at hand and consider the potential challenges that may emerge based on those circumstances.

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Neil Blake,
Herbert Smith Freehills LLP

Puri: Once a potential dispute has been identified, it is important to look ahead to the dispute resolution process to understand how it can be resolved. This may involve following any contractually agreed escalation processes, which can often be effective in resolving disputes at an earlier stage, particularly where the issue is relatively clear-cut or modest in value. Notice requirements and time limits should be followed to the letter. Where a potential dispute is more substantial, an investigation is required or there are potential collateral issues such as regulatory or criminal liability, then other considerations may be important. It may be necessary to consider the structure of an investigation to ensure that risks around legal privilege and data privacy are managed, and it may also be necessary to consider if any public disclosures are required or if it is advisable to make any disclosures to regulators or law enforcement authorities.

Trevan: Look for the earliest opportunity to head disputes off at the pass. Our experience shows that parties often see the warning signs far earlier than they do anything about them. If a dispute cannot be avoided, be sure to get on top of and comply with the notification of claims clauses in transaction documents. The English courts tend to interpret notification provisions in contracts strictly and there are several recent examples of disputes being stalled or prevented from proceeding entirely because the steps set out in the SPA were not correctly complied with.

CD: How do you envisage M&A-related disputes unfolding in the months ahead? What trends and developments are likely to dominate this space?

Blake: Recent trends in other areas of the law, for example in relation to potential parent company liability for allegedly tortious acts of a subsidiary – as recently considered by the Supreme Court in *Lungowe v Vedanta* – have led buyers to identify new risks for which the traditional machinery of an SPA may need to be adapted. Unpredictability as to the imposition of international sanctions on commercial entities has added a new dimension to the scrutiny of the commercial counterparties of target businesses. Governmental decisions in this area have the potential to undermine the prospects of recently acquired businesses, particularly in the natural resources, energy and telecoms sectors. One can see that this is also likely to be fertile ground for disputes.

Reed: Recently, the plaintiffs' bar has been evaluating how to respond to a more sceptical judiciary. The firms have pursued disparate approaches. Some firms appear to have adopted more of a commodity-style practice that depends on reaching quick, relatively inexpensive settlements

with a minimal time investment. Other firms have been gearing up for large-scale litigation battles that might result in larger settlements, albeit with more of an investment and risk by the plaintiffs' firms. The Delaware Court of Chancery appears to be favouring the latter approach, stating that it is much more likely to award significant attorneys' fees in matters that lead to a tangible economic benefit for shareholders. In the latter situation, the plaintiff firms' approach is to be more selective in deciding which cases to bring, and devoting more resources to those that they choose to bring. How the courts respond to these two approaches, and what the rate of return is like for each model, will have a substantial impact on the future of securities litigation.

Puri: We would expect disputes in relation to price adjustment clauses, such as completion accounts and earn outs, will likely continue to account for the bulk of M&A-related disputes. This general trend may be exaggerated by the prevailing global uncertainty which could potentially have an unexpected impact on a target's financial condition, resulting in a post-completion dispute on whether the buyer or seller should bear the cost of such an impact. To avoid this, parties and their legal and accounting advisers will need to be thoughtful in identifying contentious areas and ensuring that the SPA clearly describes the required treatment, negating the need for management judgment. In addition, the increasing importance of technology in businesses and the regulatory scrutiny of data protection violations and cyber security breaches may result in increased warranty or indemnity claims in relation to data protection and cyber security matters.

Trevan: With an unpredictable and rapidly changing global political and economic outlook, the M&A disputes landscape is similarly difficult to predict. Brexit, protectionism, the trade war between the US and China, rising tensions in the Gulf, sanctions and disruptive technology are just some of the factors that will make future-proofing deals even harder than it is in times of relative stability. Given this context, one area to watch is disputes where parties look to material adverse change clauses, doctrines such as frustration and other ways to escape or renegotiate bad deals. We also expect to see more shareholder activism, with the potential to disrupt M&A activity. Another area to watch is tech – not just the tech sector, but the tech aspects of non-tech deals. This includes data risk and cyber security. Buyers are increasingly seeking to understand the data standards, cyber security and related practices of targets, assessing the regulatory and other risks, and thinking about warranties, indemnities and price adjustments to mitigate or reallocate them. We have already started to see disputes unfolding in this area, and we expect to see more.

Hansen: Based on the increase in M&A activity in the last couple of years, we expect the volume of disputes to increase in the short term. There is normally a period of several months or even a year or more between the closing of a transaction and the need for a formal dispute resolution process. This is due to a number of factors, and on occasion is due to the parties seeking to litigate a dispute prior to the contractually provided dispute resolution process. We anticipate that there will be an increase in disputes related to W&I claims due to the increased use of these insurance products. For example, insurers and transaction parties will encounter disputes related to the claimed amount or denial or reduction in the claim amount. CD