**Consents**

This section considers the need for consents in a corporate transaction.

**Regulatory consents**

Another important consideration in an acquisition is whether consent from particular authorities for the **change in control** of the Target is necessary. Some examples include:​

* 1. Merger control clearances (for example confirmation from the Competition and Markets Authority in the United Kingdom or the European Commission if there is an EU element);  and/or​
  2. National Security or restrictions on Foreign Direct Investment approvals (for example under the **National Security and Investment Act 2021**);
  3. specific consents due to the nature of the Target’s sector, for example:
     + - certain newspaper mergers are prohibited without consent of the Secretary of State;
       - when acquiring a company with oil and gas interests or a UK utility licence, consent of the relevant regulator is often required; and
       - aircraft operators are required to hold an Air Operators’ Certificate issued by the Civil Aviation Authority.
  4. specific consents for regulated financial services firms:
     + - where the Target group includes a company regulated by the Financial Conduct Authority (‘FCA’) - for example, a company offering consumer lending facilities - consent for the change in control must be obtained from the FCA. There are different thresholds depending on the classification of the firm but an acquisition, or disposal, of just 10% can require consent from the FCA.
       - where the Target group includes a company regulated by the Prudential Regulation Authority (‘PRA’) - for example, a bank, insurance company or investment firm - consent for the change in control must be obtained from the PRA. A holding of just 10% in an PRA-authorised company or its parent constitutes ‘control’ for these purposes.

If a company is regulated by both the PRA and the FCA only the consent of the PRA is required.

You should note that this course is focused on the law of England and Wales but may be similar regulatory consents in any relevant jurisdictions the Target operates in so you should check with local counsel for any relevant changes.

**Contractual consents**

Contractual consents may be required from certain third parties contracting with the target due to change of control provisions in the contracts. This will be considered further in Topic 2 : Due Diligence

These third parties may include (for example) suppliers, landlords and/or lenders

**Effect of consents on timing**

Where a consent is seen as a material issue or requires consent of a regulator, that can take time and may make it difficult to maintain confidentiality. It may be necessary to delay completion until all the necessary consents have been obtained. This means a split between signing and completion, with the consents being listed as conditions precedent.

If signing has occurred the parties will then be contractually bound to proceed with the transaction as long as the condition(s) precedent\* are met (that is, that the consents are obtained). You will analyse this in more detail later in the knowledge stream.

\*Note that in the context of Debt Finance this term can be used slightly differently and refer to all items to be delivered prior to lending.

However, for consents that are within the parties’ control (such as many private company shareholder consents) or seen as less important for the ongoing operations of the business (such as a contractual consent for a small supplier) they are unlikely to be considered made a condition precedent.

The parties will either ask for evidence of the consent before being bound into the contract (sometimes referred to as a deliverable) or they may consider the risk of not getting the consent to be low and proceed to completion without explicit consent.

**Consents - Summary**

* It is important to check at the outset of the acquisition process what consents are required as this may delay the timetable for completion.
* Regulatory consent may be required due to the type of transaction or the specific sector that the target company operates in.
* Consent may additionally be required from third parties who contract with the target company.
* The requirement for consent can sometimes lead to a split between signing and completion. You will consider this in later Topics.