

Jingle Bells, Jingle Bells, Jingle All the Way

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We are about to wrap up an eventful year for M&A. Not only have we seen a flood of new legislation, but parties have also had to adapt to changing market conditions. It is safe to say that 2020 will leave a lasting mark, from new laws to trends in deal structuring, on the M&A market for years to come.

Dashing through 2020 ...

New Year's Day 2020 kicked off the entry into force of the Belgian Code of Companies and Associations' mandatory provisions which apply to all companies and associations ([Strelia M&A Series January 2020](#)). It marked the start of the application of the new Code on Corporate Governance also, enticing listed companies to improve board diversity and director independence.

In February to March, things got slightly more complicated. Undoubtedly, the Covid-19 pandemic was a game changer for M&A practice. Many would have found themselves in the middle of fierce discussions on company valuation and the interpretation of certain clauses, which would have been seen as standard otherwise. Parties are reminded of the importance of carefully drafting clauses concerning price adjustment, material adverse change, conditions precedent, interim operations, and long stop dates ([Strelia M&A Series March 2020](#)), especially in times of a health crisis. The pandemic also made parties rethink about the entire due diligence exercise, representations and warranties, and indemnification ([Strelia M&A Series April 2020](#)). Isolation and social-distancing rules forced law firms to conclude deals using e-signing tools, which proved its efficient and essential role in M&A. April was memorable as the Shareholder Rights Directive II was transposed in Belgium—finally, being nearly a year late—strengthening the rights of shareholders and featured changes in terms of remuneration to directors and managers, conflict of interest procedure, and role of proxy advisors.

Throughout 2020, we have seen alternative deal structuring trending, which will surely continue ([Strelia M&A Series September 2020](#)). Parties are no longer primarily looking into plain vanilla asset and share deals, as they are also drawn by joint ventures, cooperation agreements, minority investments, etc. The SPAC is certainly one of these newbies that is conquering the M&A scene at lightning speed. The promise of knowledgeable management in combination with access to otherwise unreachable private equity investments lures investors, especially in the US but this is already visible in Europe. ([Strelia M&A Series October 2020](#)).

In the last quarter (by 11 October), all EU member states had to give effect to the Foreign Direct Investment Regulation No. 2019/452 and implement a cooperation mechanism. Even though Member States are not obliged to adopt an FDI screening mechanism, many countries have since done so or strengthened their existing screening mechanisms. Belgium is currently working on a draft law that is expected to introduce screening of foreign investments in various key sectors. From what we've learned from our neighboring countries in this regard, FDI screening will become another regulatory factor—with rippling consequences—that M&A parties will have to bear in mind: impacted timeline, carefully drafted conditions precedent and other risk allocation clauses ([Strelia M&A Series November 2020](#)).

The 1st of December marked the entry into force of the new Belgian prohibition on the abuse of economic dependence in B2B relations. Its very large scope of application will impact M&A practice significantly as it applies indeed to many contractual documents in an M&A context, namely (i) Share Purchase Agreements, (ii) Non-Disclosure Agreements, (iii) Letters of Intent, (iv) Partnership Agreements, (v) Shareholders' Agreements and (vi) Option Agreements, etc. This new law aims to protect weaker parties by prohibiting a myriad of clauses that are considered unfair by operation of law, that are presumed unfair, or that upsets the balance between parties. In the light of this new law, parties must exercise due caution when drafting certain key M&A clauses such as conditions precedent, Representations & Warranties, MAC-clauses, caps, baskets, de minimis, deadlines, etc.

Oh, what fun it is to ride into 2021 ...

The insights, new trends, and game changers we have shared with you in our M&A newsletters throughout the year 2020 should equip you to take the reins of M&A deals more confidently in 2021. But do keep a lookout for pending legislative changes and bring your contractual and deal documentation up to date so that your deal-making process is aligned with the new regulatory framework and changing market conditions.

Before we ring in the new year together, Strelia wishes all of you good health and prosperity in 2021.