



Anatomy of an M&A Deal

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- Where to Start
- Deal Structure Basics
- The Letter of Intent
- Understanding Due Diligence
- Key Deal Documents
- Negotiation Tactics
- Deal Killers
- After the Deal Closes
- War Stories

Where To Start

- Non-Disclosure Agreement
- Make Sure You're Really Ready to Sell
- Run as a Sales Process
- Start Preparing for Your Exit from Day 1
 - Avoid high-risk, unique deals
 - Get and keep your paperwork in order
 - Follow standard financial practices

Where To Start (cont'd)

- Do Yourself a Favour – Hire Great Advisors
- How?
 - Get references
 - Look at more than billing rate and intellect
 - Check negotiation style
 - Check for experience in comparable deals
- Top Tier Firm can mean Second-Tier or Junior People on your Deal

Deal Structure Basics

- Asset Purchase
- Share Purchase
- Other Deal Structures:
 - Joint venture
 - Merger of equals
 - Amalgamation
 - Minority strategic investment
- General Rule: Buyers Prefer Asset Deals while Vendors Prefer Share Deals

Deal Structure Basics (cont'd)

- Anatomy of a Share Purchase Deal
 - Acquisition of 100% of shares through formal takeover process, standard share purchase procedure or plan of arrangement structure



Deal Structure Basics (cont'd)

- Purchase Price
 - Cash vs. Shares vs. Combination
 - Type of Shares Purchaser is Using as Currency
 - Securities Law Matters
 - Registration Rights



Deal Structure Basics (cont'd)

- Purchase Price (cont'd)
 - Structure
 - Deposit (refundable or not?)
 - Timing of Payments
 - Working Capital Adjustment
 - Earn-out
 - Management Retention Pool
 - Escrow/Holdback

Deal Structure Basics (cont'd)



Letter of Intent

- What is it?
 - Non-binding expression of business deal
- Get advisors involved at LOI stage



Letter of Intent (cont'd)

- Basic Terms
 - Type of Deal
 - Purchase Price
 - Closing Date
 - Conditions Precedent
 - No Shop Clause / Exclusivity
 - Break fee
 - Avoid “Standard” Language



LOI's Signed, So You're Done Right?



Not Even Close!



You're Just Getting Started...



Due Diligence



Due Diligence

- Objectives of Purchaser
- Objectives of Company
- Advance Preparation is Critical!
- Use a Deal Room
- Disclosure

Disclosure

Disclosure



Key Deal Documents

- Non-Disclosure Agreement
 - One-way v. Two-Way
 - Timing
 - What's Covered?
 - What's Not?
 - What If the Deal Falls Apart?
 - Exclusivity

Key Deal Documents (cont'd)

- Purchase Agreement
 - Track the business deal in LOI
 - Representations and Warranties
 - By whom and for how long?
 - Consider use of separate Disclosure Schedule

Key Deal Documents (cont'd)

- Purchase Agreement (cont'd)
 - Indemnities
 - How much?
 - How long?
 - Baskets and Caps
 - Exceptions
 - Conditions to Close

Key Deal Documents (cont'd)

- Purchase Agreement (cont'd)
 - General Ts & Cs
 - Governing law
 - Transaction costs
 - Announcements
 - Covenants of vendor and purchaser

Key Deal Documents (cont'd)

- Employment Agreements
- Non-competition Agreements
- Registration Rights Agreement
- Ancillary Deal Documents
 - Legal Opinion
 - Third Party Consents
 - Director and Shareholder Approvals
 - Share Certificates

Negotiation Tactics

- Reality: Most People are Weak Negotiators
- 3 Most Important Things For You:
 - Get a Good and Fair Result
 - Understand Your Deal
 - Don't Kill Personal Relationships
- Focus on Key Elements in the LOI



Negotiation Tactics (cont'd)

- Common Mistakes
 - Failing to Have a Plan
 - Not Researching/Understanding Your Opponent
 - Lack of Perspective
 - Not Listening
 - Getting Closure on Each Point Before Moving On
 - Falling For The “Market” Argument
 - Assuming Other Side Plays By The Same Ethical Code as You

Negotiation Tactics (cont'd)

- BATNA (Best Alternative to a Negotiated Agreement)
 - Have a Back-up Plan
- Have Leverage
 - Competing LOIs
 - Pick Positions on Key Points and Stick to Them
 - Pre-determine Order of Negotiation Points

Deal Killers

- Presenting Your Own LOI
- Incomplete/Late Disclosure
- Failure to meet sales forecasts during diligence period



Deal Killers (cont'd)

- Ownership Issues
 - IP Ownership Agreements are Mandatory
 - Watch for Free/Open Source Software
- Employee Disputes
 - Need Key People Happy and Onboard with Deal
- Litigation



Deal Killers (cont'd)

- Continuous Ultimatums During Negotiations
- Working Against Your Investors During Negotiations
- Inability to Secure Shareholder/Director Approvals
- Inability to Secure Third Party Consents
- Penalties in Government Grant Agreements

Closing The Deal



After the Deal Closes

- Integrating Your Employees Into the New Company
- Distributing the Purchase Price
- Payment of Deferred Portion of Price
- Post-closing integration is where many deals fail to generate ROI:
 - Need to mesh cultures of buyer and seller

War Stories





Thanks For Your Time!

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