### **ROLE OF THE M&A LAWYER**

- Advising on transaction structure and timing
- Conducting or facilitating legal due diligence
- Rendering advice on fiduciary duties and minority stockholder rights
- Providing tactical advice during negotiations
- Negotiating and drafting transaction documents
- Interfacing and assembling team of specialist attorneys
- Incorporating comments to transaction documents from client personnel and specialists
- Communicating with client's non-legal due diligence personnel to identify and address areas of risk and priorities
- Managing and driving the transaction process and getting the deal to closing
- Post-transaction matters

#### **LEGAL DILIGENCE**

- Conducting legal diligence is a crucial step in purchasing a company. Typically, a purchasing company will define the scope for review, which
  - o Material Contracts, Licences and Permits: Reviewing regulatory, material and operational contracts the vendor is a party to for the purpose of identifying risk involved in contracts, including any notices or consents required for change of control (share-sale) or assignment (asset-sale)
  - Employee Contracts: Reviewing the vendor's employee contracts to understand the risks and future liabilities of the vendor's employees
  - Regulatory Compliance: Purchaser must ensure that the vendor company is in compliance with the law and adheres to regulatory requirements
  - Public Diligence Searches: Conduct searches on the vendor to investigate if the vendor is subject to any liens, litigation claims etc.

#### COMMON COVENANTS

#### Non-Compete Covenant

The vendor and its key employees would typically be bound by this restrictive covenant, which forbids them from participating in any activities that would compete with the business of the purchasing company. This prohibition applies for a specific geographical area. specific geographical area

#### Non-Solicitation Covenant

The purpose of this restrictive covenant is to prevent the vendor from actively seeking or recruiting employees or customers of the purchaser for a specific period following closing. By doing so, it aims to safeguard against the potential loss of crucial talent or valuable clients

#### **Confidentiality Covenant**

Both parties usually agree to maintain the confidentiality of sensitive information shared during the transaction



## STAGE 1

Preparation: Evaluation of business operations, financials, etc.



#### STAGE 2

Initial business valuation by the most reliable valuation method and appoint external consultants



## STAGE 3

Initial contact between the buver/seller

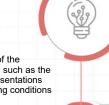


#### STAGE 4

Confidentiality/ Non-Disclosure Agreements



Negotiate the terms of the purchase agreement, such as the purchase price, representations and warranties, closing conditions



## STAGE 6

- Due Diligence (Financial, Legal, Tax)
  - a. Financial Due Diligence
  - i. Business and process
  - ii. Finance function/teams
  - iii. Financial statements
  - iv. Balance sheet positions
  - v. Financial performance vi. Financial controls

  - vii.Contracts and agreements viii.Contingencies
  - b. Tax Due Diligence
  - i. Tax function
  - ii. External advisor outputs
  - iii. Current and past tax disputes
  - iv. Tax returns filed/paid taxes in a
  - v. Standardized list of questions for the
  - c. Common Legal Due Diligence
    - i. Legal Structure: minute book review ii. Reviewing material contracts
    - iii. Public Diligence Searches
    - iv. Intellectual Property: contracts, licences or pending litigation against the IP of the vendor company
    - Health and Safety: compliance with health and safety standards and inquires about any potential litigation under non-adherence with environmental law



# STAGE 5

Letter of Intent: Outlining the proposed terms of the acquisition, including the purchase price, transaction structure and any contingencies



#### STAGE 8

- Legal aspects and ownership transfer includes, but is not limited to:
  - a. Ensuring director and shareholder resolutions are signed authorizing the transaction
  - Conveyance of assets (if necessary) c. Bring-down certificates and
  - d. Authorizations for transferring, cancelling and creating new share certificates (if applicable)
  - e. Assignments and undertakings
  - Payouts and discharges of any pre-existing charges
  - Obtain any third party consents (if necessary)



# **STAGE 9**

- Post-transaction actions - integration, covenants, PPA
  - a. Discharge of security registration (if applicable)
  - b. Change of directors and officers, address and name of vendor company (if applicable)
  - Notice to the ministry or applicable regulatory agency
  - d. Liquidation of applicable corporations (deal specific)

#### **CLOSING/POST-CLOSING**

- Legal
  - Obtaining third party consents
  - Regulatory filings
  - Coordinating financial advisers, accountants and proxy solicitors
- Accounting
  - Financial consolidation and integrations
  - Financial reporting requirements
  - Purchase price allocation
  - Identification and valuation of intangible assets 0
  - Fair market value of tangible assets
    - Goodwill calculation and recognition



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