

Thorough preparation is crucial to any successful merger or acquisition. Preparing for a transaction requires a full analysis of the business, assets, liabilities, and human resources of the target. The first goal is to be able to execute the deal on favorable terms. However, the ultimate goal is to integrate the target company into your own organization. These goals require an appropriate team of outside advisors and executives from your own organization.

Outside Counsel

Your outside legal counsel will generally manage the legal issues that arise during “due diligence,” when you review the corporate structure, contracts, and other legal matters affecting the business being sold. Your lawyers will also advise how to best structure the transaction to meet your company’s needs. Finally, your legal counsel will draft and negotiate appropriate merger or acquisition agreements for the deal.

In the United States, legal advisors provide advice on a broad range of legal issues. Most commonly, these will include human resource issues, pension plans and employee benefits issues, environmental risks, and tax issues.

If proper procedures are followed, correspondence with lawyers can remain confidential, even from governmental requests or lawsuits. Law firms will typically charge by the hour, and will expect to be paid whether or not the deal reaches completion.

Outside law firms often serve as “deal manager” for clients, coordinating, helping to resolve all regulatory issues, and overseeing the activities of the other specialists retained by your company.

Financial Advisor

Financial advisors are typically investment banks, but sometimes consultants or accounting firms provide financial advisory services as well. Financial advisors help put deals together, introducing buyers and sellers and structuring the deal. They advise on the purchase price and often help the buyer finance the acquisition. In many cases they can provide a “fairness opinion” to the board of directors of the buyer or seller, stating that the price paid for the business was “fair.” Fairness opinions can protect the board of directors from shareholder lawsuits or other claims.

Financial advisors can also serve as “deal manager,” particularly for sellers. They help analyze the business being sold and prepare an Information Memorandum or similar document to market the business to potential buyers. Financial advisors frequently manage auctions, which help sellers negotiate the most favorable deal terms. Financial advisors typically set up the data room for due diligence materials and oversee the due diligence process.

Financial advisors typically get paid a percentage of the deal price, and are generally only paid upon successful closing of the deal.

Your company will enter into an engagement letter with the financial advisor that will include a description of the contemplated transaction and will set forth the extent of the services to be provided. Due to the complexity of engagement letters, it is recommended that you involve your outside legal counsel in the review and negotiation of the terms of the engagement letter.

Accountants

Accounting firms play a critical role in evaluating financial statements, valuing assets and liabilities, and addressing tax issues.

In the due diligence stage, your accountants will review the target company's financial records to identify any accounting issues and provide an accurate accounting value of the target company. The accountants will be able to review the company's cash flows and income, assess future cash flow projections, and verify the book valuation of assets and liabilities.

The deal price is often based on the target company's future cash flow or book value. As a result, it is critical for your accountants and financial advisors to coordinate their review so that the price will reflect your accountants' analysis. Similarly, your accountants and outside legal counsel will typically work together on transaction structure and tax issues.

Accountants typically charge on an hourly basis and will expect to be paid regardless of whether the deal is completed.

Other Outside Advisors

Depending on the company being acquired, you should consider outside specialists such as environmental engineers, pension actuaries, and executive compensation specialists. Outside consultants can also provide advice on more specialized areas such as the value of patents or product brands, business efficiencies, and specialized technologies.

Buyer's Internal Team

The work of your legal counsel, financial advisors, and accountants generally ends at the closing of the acquisition. The buyer, on the other hand, must now manage the new business, integrate it into existing businesses, and find synergies to justify the deal price. The first six months after an acquisition may be the most critical in making a deal a success. One key to getting the integration right is to engage buyer's operational management team early in the process.

The buyer's IT, legal, human resources, and finance departments will be critical for ensuring that the business will run effectively after closing. However, much of the work after closing will be done by the buyer's operational departments, who will likely be managing the new business. Upon receiving a potential M&A opportunity, the buyer should assemble a broad team of executives to review the target company, approve the transaction, and take responsibility for managing the business after the acquisition is complete.

Seller's Internal Team

The seller will want an efficient team working to sell its business. A professional team will make the deal go faster and will impress the buyer. If the seller's management is being transferred with the business, the deal negotiations may also be their first opportunity to impress their future bosses.

Because the sale of a business can be disruptive, key executives may decide to leave the company in order to find a new job. But the departure of a key executive in the middle of a transaction could reduce the value of the business and the purchase price the buyer is willing to pay. It is therefore common to offer key executives a retention bonus to stay through the completion of a deal.

Conclusion

A well-prepared and managed deal will reduce the risk of problems before and after deal closes. Involve your outside advisors and specialists as early as possible in order to address potential issues and map out your transaction strategy. Make sure you have the right internal team to assess the deal and to lead the business after the deal is complete. Proper preparation will clear the path for a successful transaction.

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