

M&A Factsheet: Assembling Your M&A Team

Whether you are selling your business or buying another, one of the first steps is to assemble a professional team to assist you in completing a transaction. Like any team, there is potential for overlapping responsibilities and/or gaps that can dramatically impact the speed and ultimately the outcome of any transaction. Negotiating a deal with a counterparty is further complicated by the composition of the opposing party's team, and is often undertaken against a backdrop of distractions, competing motivations, and sometimes self-serving interests.

At the very least, every transaction requires a competent business lawyer to draw up the agreements, perform title searches, litigation searches, etc. The key, however, is to select an experienced M&A lawyer that understands the entire process and how to get deals done. Negotiating the Purchase and Sale Agreement (PSA); particularly the representations and warranties, and indemnity clauses requires compromises between the buyer and seller. When there is legal counsel on both sides with deep M&A experience, those negotiations often go well. When one, or worse, when both have little M&A experience, it often leads to the insistence by one or by both parties, of overly protective risk mitigation clauses resulting in a failed close, despite being a commercially feasible transaction for both parties.

There are also a host of tax-related issues that arise from an M&A transaction, and therefore getting a professional and experienced tax advisor is also critical. They need to be well versed in the latest tax issues and must be able to work closely with the legal team to structure the deal to minimize the tax implications for their client. As is the case with the negotiation of the legal terms in the PSA, what is good for the seller is often not good for the buyer, and vice versa, so they need to be able to understand "market norms" and find the best compromise for their client.

Besides a good lawyer and tax accountant, there are key members of the management team that will need to be

MERGERS AND ACQUISITIONS



involved. In some cases, your internal resources, tax accounting expertise, and experienced legal counsel will be all you need to close a deal. There are times, however, when the buyer and/or seller is well-advised to broaden the outside team further by hiring an M&A Advisor/Investment Bank and/or a Transaction Services Firm.

When a client hires an M&A Advisor/Investment Bank to help them sell their business, one of the most important areas in which they add value is by running a professional, competitive process, that often generates multiple offers, for which the seller might consider. More buyer competition can often lead to better terms and higher valuations for the seller, plus it creates the necessary competitive tension and urgency to push potential buyers to act. As a professional that is in the market daily, constantly talking to CEOs and investors, they use their industry and M&A experience to help formulate the go-to-market strategy that best meets their client's goals and objectives. With an intermediary, emotions are eliminated from preliminary discussions and important relationships are preserved.

The sell-side M&A Advisor works with management to prepare the marketing materials and handle the preliminary discussions with potential buyers to qualify them, so that management can stay focused on running the business. They help the management team prepare for the deep due diligence most buyers require by building and managing the data room and keeping the complex discussions with multiple parties organized so

that the best candidates are filtered through the process funnel during the initial bidding stages. They management meetings with select buyers and negotiate a Letter of Intent (LOI) with the best buyer.

Once an accepted LOI is in place, the M&A Advisor/Investment Banker's role tends to transition to "Project Manager". A good analogy might be is that they act as the general contractor for a complicated construction project. They make sure the plumber's work is coordinated with the electrician, for example. A good M&A Advisor knows the boundaries of where one professional's expertise ends and another's begins. They make sure the deal is moving forward, due diligence is completed, and are motivated to close the transaction, under terms and conditions that are in their client's best interests. They use their considerable experience in M&A to creatively solve problems during the complex negotiation process, and almost certainly increase the probability of a successful close.

On the buy-side, the M&A Advisor's role can range from simply supporting a deal by conducting a market and business valuation of the target to aid in the preparation of a competitive bid to a full search and buy-side role, whereby the M&A Advisor becomes an outsourced corporate development extension of the client.

Of course, the buyer's banker may or may not be an important member of the M&A team, depending on how the deal is financed. Even when no bank financing is needed, it is always best to keep your banker in the loop, as an acquisition will often mean a material change in the business and its operations.

Sometimes, it is advisable, for either the seller or the buyer to hire an independent Transaction Services Firm. The Transaction Services Firm (usually an accounting firm) is hired to conduct a Quality of Earnings (Q of E) Review. A Q of E analysis is a detailed review of the company's financial statements, its revenue, its expenses, etc. to determine the accuracy of its historical earnings and its sustainable cash flow. It is especially important in M&A transactions that have numerous EBITDA adjustments or related company transactions. It is becoming more common for buyers to routinely

hire a Transactions Service Firm as part of their financial due diligence process.

Some of the larger "full-service" Investment Banks insist that their sell-side clients use their internal Q of E team in advance of going to market. Like a buyer-sponsored Q of E, it sometimes has a place for the seller to initiate the review as it will build a credible story around any financial adjustments with buyers during the process. However, there is a strong case to be made that the Investment Bank and the Q of E service provider be independent. Q of E analysis fees are a billable service and just like legal and outside tax advisory services, they should have no incentives in place to close a deal.

Finally, sellers should seriously consider hiring a wealth manager to assist in making the best tax-effective use of the sale proceeds.

Whether you are a potential buyer or seller, M&A transactions can make or break companies. It is critical that business owners carefully consider all their options on who and how they assemble their M&A team.



B&A

Corporate Advisors

B&A Corporate Advisors is a Mergers and Acquisitions Advisory and consulting firm focused exclusively on the Canadian and U.S. food and agribusiness industries in the lower middle market. While we are small and nimble, we pride ourselves on producing outsized results for our clients, through a blend of industry experience, best practices know-how, negotiating skills and strategic outsourcing of back-office support services to keep our services lean and cost-effective.