OUTLINE OF MERGERS, ACQUISITIONS AND DIVESTITURES

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Introduction

The article is primarily intended to give the corporate executive a detailed understanding of why a merger may or may not be appropriate for his organization, and how such a transaction can be successfully concluded. It will also provide an introductory text for professionals, including lawyers and chartered accountants, who are becoming involved in merger transactions. It should also serve the needs of commerce or business students.

The types of transactions dealt with are the most common:

- Negotiated purchases of medium-sized manufacturing
- Retail and service businesses
- Divestitures
- Management buy-outs and take-over bids for public companies.

It does not cover megadeals, resource company transactions nor the purchases and sale of small (unincorporated) businesses.

The economic background to mergers in Canada has tended to be very similar to that of the U.S. Such historical similarities may lead to the mistaken assumption that the systems are parallel. To avoid this, great attention must be paid to the detailed differences; these occur in corporate and income tax law, competition policy, securities regulation, accounting principles and the banking and financial system.

Much of the imagery underlying the jargon of mergers stems from medieval warfare, particularly in take-over bids (e.g. white knight). The investment dealer when issuing a fairness opinion, can be compared to an ecclesiastic providing a blessing. A glossary will be included defining many of the commonly used terms.

PART 1 BACKGROUND TO MERGERS

Historical Perspective

Chapter one provides a brief history of how business developed, including two well-documented examples of early merger transactions. The first is a fifteenth century Italian management buy-out with a bank providing most of the capital and management sweat-equity. The second is the merger between Hudson's Bay Company and The Northwest Company between 1820 and 1824. Following this background, the four merger waves of the capitalistic era are discussed.

How Business Developed

a) growth of manufacturing enterprises
b) development of the corporation
c) separation of ownership and management
d) pressure by outside shareholders

As manufacturing enterprises grew in size, it became necessary to tap sources of capital beyond the people engaged in the business and their families. Therefore, the corporation which had originally been developed for international trade, began to be used for general business starting in the U.S. shortly after the revolution. With the adoption of the corporate form and the expansion of the trading markets for securities, ownership and management gradually drifted apart. In particular, management whose orientation would be to expand the existing business, was often under pressure from the owners to diversify and hence reduce risk.

Early Merger Transactions

Two illustrative examples: brief descriptions of the acquisition of a silk-weaving firm in 15th century Florence by two managers in partnership with the Medici Bank, and the Hudson's Bay Company merger with the Northwest Company between 1821 and 1824.

First Merger Wave

Between 1880 and 1902, to reduce competition there were consolidations throughout the world to form major national enterprises. In the U.S., as corporations prior to 1889 were not normally permitted to own shares, trusts were often used as legal alternatives. The era ended with anti-trust legislation (Sherman Act) and the splitting up of Standard Oil (the first multinational holding company). The mergers that took place during this period will be indicated mainly by statistics of the number of publicly owned corporations that "disappeared", either through merger into a "trust" or competition from one. In addition, the growth of the major U.S. Railroad systems is mentioned.

Second Merger Wave

During the twenties, industrialists attempted to by-pass the anti-trust laws by forming holding companies and investment trusts. Those financial organizations usually issued debt as well as shares to fund obtaining control of operating companies. The increased leverage meant that when the underlying profits declined and acquisitions ceased at the time of the depression, the income of the holding company was not sufficient to pay its interest. Many such enterprises became insolvent and had to be reorganized or liquidated.

Third Merger Wave

In the 1960s, the concept of the conglomerate was developed. Such companies were supposed to provide shareholders with reduced risk and more rapid growth through diversification. Most of them expanded by utilizing various forms of "funny money" to acquire companies which were then accounted for as "pooling of interests". As investors tended to give such companies above average multiples due to their growth potential, their acquisition techniques virtually guaranteed the necessary growth in earnings per share.

Fourth Merger Wave

In the late 1970s and 1980s, assets could be bought considerably cheaper through the stock market, than the cost of building from scratch. Therefore, many giant corporations attempted to acquire big ones. The major example was the competition in 1981 for Conoco, in which Dupont beat out Seagram's. The period ended with the run-up in interest rates. The stock market rise of 1982-83 removed the necessary basis for such megadeals.

Changes in Merger Techniques

a) Negotiation
b) Proxy fights
c) Take-over bids
d) Divestitures

The formation of the trusts usually involved a negotiated sale of assets or legal mergers of companies. In the 1930s, with the introduction of the SEC, proxy fights were added as a way of obtaining control of a corporation. In the 1970s take-over bids, which previously had been considered raids, and thus dubious, became acceptable. In the late 1970s, following the conglomerate era, divestitures started to form a major segment of merger activity.

Trends in Payments

a) Cash, including bank loans
b) Debt
c) Shares
d) Funny money

Depending upon the level of price/earnings ratios and the flexibility of accounting techniques, the fashion in merger currency has varied across a wide spectrum.

Mergers and Growth

In this chapter, we consider the question "Is a merger the appropriate method of obtaining corporate growth for you?" Following a look at the purpose of the business, the motives, measures and methods involved in growth, we consider the internal and external sources including the decision to build or buy (merge). The final section looks at the basic risks of mergers.

Purpose of Business

a) Strategy and plans
b) Establishment of corporate goals
c) Relationships with stakeholders

Internal

- Directors
- Executives
- Operating management Marketing organization, dealers and distributors R&D
- Employees Professional Advisors
- Communities

External

- Shareholders Lenders
- Suppliers
- Customers
- Competitors
- Union
- Taxing authorities, non-competitive regulators
- Environmentalists

The key to the development of corporate strategy and plans is an understanding of the role of the various stakeholders and their goals.

Background to Corporate Growth

Motives	• survival; risk reduction; standing + rewards of management; improved utilization of resources; creation of value; getting a bargain.
Measures	• share of market; sales; assets; net income; return on investment; earning per share; stock price.
Methods	• motivation; expansion; diversification; acquisition; divestiture.
Problems	• change; conflict; old facilities; inadequate finance; lack of courage.

The idea that a corporation will decline if it does not aim for growth has been disproved. Success in some measures of growth does not necessarily result in creation of value for the shareholders. The idea "small is beautiful" is now being reapplied to corporate activity.

Internal Sources of Growth

New products; new markets; new production methods; new plan and equipment; improved training and organization; franchising or licensing to others products or services; shut down loss-making plants.

External Sources of Growth

Acquisition of new products; acquisition of a supplier; acquisition of a customer; merger with a competitor; acquisition of an unrelated business; franchising or licensing of a product or service from others; divestiture of a money-losing operation; divestiture of an unrelated business.

Build or Buy

Objectives of stakeholders; stage-of-life of the company and key products; culture of company and candidates; cash consumption and generation of company and candidates; intensiveness: capital/knowledge/labour; other relationships; markets, customers, suppliers, products.

Risks of a Merger

a) Conflict with customers/suppliers
b) Leverage and gearing
c) Knowledge of product, market, technology
d) Compatibility of culture
e) Different intensity of capital/management/labour/information
f) Incompatible systems
g) Attitude of stock market

Implementing a Merger

The various merger activities are considered only in summary form and are cross-referenced to the later sections where the details can be found.

Planning Phase

a) Development of corporate strategy
b) Organizing the activities
c) Needs to be fulfilled by transaction
d) Criteria of target
e) Prospecting, screening and selection

Those steps have to be taken by any organization considering a merger, acquisition or divestiture, if such a transaction is to have reasonable odds of success. Based on U.S. studies, approximately 40% of all mergers were not considered successful five years later.

Action Phase

a) Evaluation of financials, products and people
b) Value, price and payment
c) Approach and courtship
d) Offer and acceptance
e) Financing
f) Investigation
g) Agreements

In this phase, the corporate executive must rely heavily upon his professionals. Much of this section is devoted to explaining what the professionals have to do and why.

After the Transaction

In merger negotiations many buyers promise the target an unrealistic amount of autonomy. The two key questions are how much integration and attendant cost saving will be acceptable, and how to avoid the common problem of the departure of the most able acquired management.

Key Factors

a) Assets/earnings/cash flow
b) Products/people/price/out

The key factors in a merger are as much non-financial as financial.
In considering any deal, it is essential to keep in mind what outs are available should the transaction not prove successful.

Problem Areas

a) Cash
b) Tax
c) Accounting
d) Securities regulation
e) Labour relations

PART II CORPORATE PLANNING

Background to Corporate Strategy

This section deals with planning the future of an organization, including corporate strategy. A plan is an explicit, documented understanding of the business as it is at present and its anticipated future goals. Strategy is the process to be utilized by each of the operational units comprising the business and the resource required to achieve its goals. Lack of planning makes it highly probable that any merger will be unsatisfactory. While a merger can accelerate the attainment of goals, what it can add to a company without an effective planning process is pure chance.

Planning and Strategy

a) Objectives and goals
b) Alternative courses of action
c) Resources and organization structure
d) Controls and contingencies

Levels of Strategy

a) Public strategy (demonstrated through available material)
b) Decisions by directors and senior management as to how and why each operational unit shall proceed
c) C.E.O.'s private vision

Stages of Growth

a) The corporation: incubation, development, growth, maturity, comfort, decline, turn-around
b) The product: position on growth curve/experience curve
c) Relationship with cash generation and consumption

Problems in Planning

a) Concentration on the short term
b) Lack of understanding of the business
c) Unwillingness to accept change
d) Lack of integration with the goals of operating management

Requirements of Corporate Strategy

a) Establishes priorities
b) Is oriented to action and initiates change
c) Internally consistent
d) Adapts to the context (external forces)
e) Balances resources and opportunities
f) Relates risk to return

g) Considers time
h) Is workable within culture and motivates management
i) Remembers the consumer, not only the purchaser
j) Emphasizes unique characteristics of organization

Failures of Corporate Strategy

a) Lack of management support
b) Not effectively communicated
c) Activity rather than goal-oriented
d) Continues yesterday's actions and attitudes
e) Responsibilities and rewards for attainment not clear
f) Does not provide for efficient monitoring and control

The Context of Corporate Strategy

In this chapter we discuss how various external factors can affect the desirability of a merger. No matter how well a company is run, if the industry is under pressure by external forces it will not be able to succeed. In planning its future, such a company should apply an acquisition strategy to transfer its resources into a more favoured industry.

Demographics

a) Long-term trends
b) Smaller postponed families
c) Position of baby boom bulge

Social Change

a) Reduction in the household size
b) Changes in public attitudes
c) Decrease in the respect for law
d) The changing position of women
e) Employment patterns

Environmentalism

a) Awareness of polluting emissions
b) Global warming
c) Differing regulations in various regions
d) Potential cap and trade

Political Attitudes

a) Public opinion cycles
b) Balkanization and provincial economic autonomy
c) Regulatory policies

Economic Outlook

a) GNP growth
b) Personal disposable income
c) Inflation

Financial Markets

a) Interest rates
b) Investor enthusiasm
c) Efficient markets

Competitive Position

a) Capacity utilization
b) Trends in costs and manning
c) Imports

Corporate Culture

Corporations acquire traditions and practices that make up a culture; in many organizations, people from outside are uncomfortable at anything but a very senior or shop-floor level. Similarly, a merger between organizations which behave differently in some of the aspects discussed in this chapter, could be uncomfortable with each other, leading to conflict and possible resignations.
In strong cultures, employees know what is expected of them, and they are made to feel their job is important. They may model themselves after larger-than-life, very accessible company presidents, and take a cue from the priorities of the company, be it engineering, R&D, the sales department, etc.

In a weak culture, much time is wasted by employees trying aimlessly to figure out what is expected of them. One must never overlook the Friday after• work beer-bash, where mingling across groups and layers occurs, and the use of the whisper network within a corporation.
Strong cultures also have pitfalls, and may become obsolete unless there is constant retuning.

Management Structure

a) Degree of centralization
b) Dominance by line or staff
c) Fast track
d) Background of the C.E.O.

Organizational Attitudes

a) Leadership
b) Motivation
c) Perception (how do you look at a problem?)
d) Communication
e) Team work

The Decision Process

a) Analytical
b) Intuitive
c) Inaction and procrastination
d) Consensual

Personality of Senior Management

a) Dominance
b) Inducement
c) Steadiness
d) Compliance

Management Succession and Remuneration

a) Promotion
b) Hiring
c) Incentive plans

Operating Approach

a) Improvement vs innovation
b) Complete construction in-house vs assembly
c) Driving force: market/production/technology

Self-Analysis for Planning

This section deals with planning as a process of self-analysis. Starting with the internal strengths and weaknesses, it considers the available resources, and to what extent they constrain the alternative courses of action. After having looked at a company internally, we turn to the external strengths and weaknesses as shown by the industry and the competition.

Strengths and Weaknesses

a) Productivity trends and factors
b) Time-horizons of decisions
c) Product positioning and life stages
d) Mainstream or niche markets (shares and growth rates)
e) Cash generation/consumption
f) Reactions to Regulations affecting the business

Available Resources

a) Internal (management/marketing/salesforce/manufacturing/distribution/ R &D)
b) Finance (cash/unused credit lines/long-term borrowing ability/ investor attitudes)
c) Facilities (plants/distribution/system/raw material)
d) Franchises (reputation/brand names/licenses)
e) Competence (organization/skilled labour/culture)
f) Courage (willingness to accept risk/change)

Structure of Present Industry

g) Concentration (share of market by four largest firms)
h) Competitiveness (price/service/comfort)
i) Customers (consumers/distributors/OEM/concentration)
j) Suppliers (concentration/manufacturing or assembly)
k) Ease of Entry and Exit (technology dependence/brand loyalty/ specialization of equipment)

Comparisons with Competition

a) Attainment of announced goals (publicly disclosed strategy)
b) Reaction to change (markets/technology)
c) Key industry issues (long and short-term)
d) Financial record

The Plan

This chapter deals with converting the self-analysis into a plan for the future. It starts by considering what course of action can be taken within the constraints, the setting of objectives and goals and the plans necessary to achieve the established goal.

Alternative Courses of Action

a) Continue as before
b) Introduce existing products into new markets
c) Develop line extensions (modifications) for existing markets
d) Introduce line extensions to new markets
e) Introduce new products to existing markets

f) Enter a new business (new products/new markets)
g) Withdraw existing products from existing markets
h) Redeploy resources into unrelated areas

Approaches to Alternatives

a) Internal development (increased R&D/new facilities/purchased technology)
b) Licensing of products from others
c) Sell license to others (markets or areas difficult to serve)
d) Joint ventures
e) Acquiring new business
f) Divesting an existing business
g) Shutting down a plan or segment of the business

Possible Futures of the Company

h) Where are we likely to go?
i) Where do we want to go?
j) Impact on the stakeholders
k) Initial objectives

Setting the Goals

a) Should we do everything we are doing? (Zero-based budgets/re-deployment of assets)
b) Means of filling gap between trends and initial objectives
c) Required vs available resources
d) Agreed goals

The Plans to Get There

a) Sales
e) Product development
f) Manpower
g) Operating budget and cash flow
h) Capital budget
i) Balance sheets and required financing
j) Past record of attainment

Merger Preliminaries

This chapter deals with preliminary steps required to minimize failure in any merger transaction. The form of organization developed by a company to manage its merger activity will vary with size and culture. The factors affecting the balance between in-house expertise and outside advisors are dealt with in this chapter. The final section on teams and players sets out in tabular form all those interested in the transaction and the areas of their possible concerns.

Commitments

a) C.E.O.
b) Lenders (banks and financial institutions)
c) Operating management
d) Owners (directors and shareholders)

Essential Skills

a) Planning
b) Business evaluation
c) Negotiation
d) Managing the target business
e) Integration/supervision of financial control systems

The wholehearted commitment of the C.E.O. is the most important single factor in completing a merger; without it, no deal is possible. The skills required to prepare and implement a merger should normally be developed in-house, though outside advisors are recommended in certain areas.

Organizing the Function

a) Corporate or division level (degree of decentralization)
b) Department or task force (small group)
c) Manager status and reporting (very senior/understands finance/ knows own company)
d) Relationship with C.E.O. (co-ordinating committee?)
e) Funding
f) Venture group (low cost route to look-sees)

Professional Advisors

a) Lawyers (corporate/securities/competition law/labour)
b) The auditor (accounting/tax planning/investigation)
c) The investment dealer (valuation of securities offered/financing/ stock market tactics)
d) Actuary (valuation of pension plan/cost of employee benefits)
e) Appraisers (resale/replacement values for land and buildings/ specialized plants/equipment)
f) Management consultants (market research/technology)
g) Public relations consultants (selling the deal to public/target's employees/shareholders)

Use of Intermediaries

a) Type (investment dealers/consultants/finders/business brokers)
b) Purpose (source of leads/information network)
c) Problems (whose agent?/no return favours/commission)
d) Contract of engagement

Teams and Players

a) Buyer (management)
b) Seller (stockholders/C.E.O./family)
c) Intermediaries (actual services)

The Merger Quest

Whatever purpose is selected for a contemplated merger, it must be developed out of the agreed corporate strategy. Form it and the inclination of the buyer's management will come the appropriate search approach. Whichever approach is adopted, every buyer will have, either explicitly or otherwise, a number of blocking criteria whose common characteristic is that they are expressed as Yes/No decisions. Actual examples of such criteria will be included.

The Purpose of the Transaction

a) Vertical integration (customers/suppliers)
b) Horizontal integration (competitors)
c) Expansion (new product/market)
d) Risk aversion (counter-cyclical)
e) Reduction of losses

Search Approaches

a) Opportunistic (what's available?)
b) Research (seeking the Holy Grail)
c) Filter (size/location/industry/culture)

Blocking Criteria (Yes/No)

a) Financial (size/profit margins/turnover)
b) Industry (primary/resource/secondary/service)
c) Markets (share/competitive with customers)
d) Locations
e) Operations (new technology/labour relations)
f) Culture

Prospecting

a) Sources of leads (staff/directors/publications/intermediaries/ trade shows)
b) Contacting (intermediaries/letter/personal approach)

The Fit-Chart Approach to Screening

This chapter deals with the use of fit-charts as a means of screening and partially evaluating acquisition candidates or divestiture potentials. Once it becomes known that a company wants to make acquisitions, it will be made aware of a large number of "opportunities". To select a reasonable number of candidates from those opportunities, and more attractive situations that are "not for sale", highly organized approaches are desirable. Such an approach involving fit-charts is set out in detail considering examples of various criteria and their weightings. This technique was developed in the late 1960s by Stanley Foster Read, a U.S. consultant. It has been refined and adopted by many others to become implicitly a standard approach.

Utilizing Fit-Charts

a) Characteristics (complements/supplements/financial/legal)
b) Weighting the criteria (percentage rankings)
c) Combination and revision
d) Delphi-technique (group consensus)

Examples of Complementary Criteria

a) Offsetting cyclicality (seasonal/business cycle/product life/random factors)
b) Ease of entry/cost of exit
c) Investor appeal (increasing PE/improved financing/smoothing earnings/tradeable stock)
d) Improving market position (increasing share/price independence/customer mix/shelf clout/diversified distribution/product range/alternative marketing methods/full lining/bundling)
e) Operations (unions/labour relations/experience curve/purchasing power/service efficiencies/inventory stabilization/equipment compatibility/cost reduction)

Examples of Supplementary Criteria

a) Human resources (officers and directors/staff and line management)
b) Facilities (production/administration/distribution)
c) Technology (R&D/design/engineering/automation/quality control)
d) Marketing (salesmen/dealers and distributors/customers/advertising)
e) Operations (suppliers/customers/labour relations)

Examples of Financial Criteria

a) Credit (financing costs)
b) Redundant assets
c) Cash generation (availability for purchase debt service)
d) Information system (accounting/reporting/inventory/budgeting/EDP)
e) Tax shelter
f) Growth rate

Examples of Legal Criteria

a) Government regulation (licenses/price control/competition policy/
b) potential for concentration/misleading advertising/foreign ownership/environmental protection)
c) Intellectual property (patents/trademarks/copyright/know-howl
d) technology transfer)
e) Ownership (structure/fiduciaries/institutions/speculators)

PART IV THE EVALUATION PROCESS

Financial Statement Analysis

Financial statements reflect over time all the transactions of a business. Their analysis gives a good idea of where the business is now and where it is likely to go. Therefore, it is the essential first step of the screening process. This chapter as well as discussing the techniques of statement analysis, will indicate its application in practise to provide leads and situations that should be considered in subsequent screening stages.

Purposes

a) Meaningful comparisons with the buyer over time
b) Ability to react to change (trends for target vs economic indicators)

Adjustment of Reported Figures

a) Sources of data (annual reports/Dunn and Bradstreet/consumer and commercial affairs)
b) Private company benefits (salary/relatives/prerequisites)
c) Buyer's accounting principles (inventories/depreciation/ capitalization policy/ extraordinary items)
d) Effect of inflation (constant dollar/CPI)
e) Cash generation and consumption (show how computed)

Ratio Analysis

a) Balance sheet (current/leverage/turnover/repayability/selection period/inventory utilization/depreciation life)
b) Income statement (gross margin/operating margin/leverage/fixed costs/gearing/value added)
c) Per share (sales/earnings/equity/cash generation/R&D/capital spending)
d) Industry comparisons (trade association/Dunn & Bradstreet)
e) Productivity (sales per square foot/value added per employee)

Trend Analysis

a) Graphing
b) Leased squares (variance/standard deviation)
c) Multiple correlation
d) Application to ratios as well as data
e) Interrelationship with economic factors (leads and lags/ commodity prices)
f) Cycle analysis

Projections

a) Trend and cycle (naive/avoid extrapolating history)
b) Economy and ratios
c) Company's best guess (reasonableness of assumptions/sensitivity/ impact of fixed costs)
d) Comparisons of key ratios (proof of changes in pattern)

Beneath the Surface

e) Internal controls
f) Planning/information system
g) Capital spending programme
h) Preliminary pro forma statements (ratios)

Evaluating Operations

Evaluating operations is the second stage of the screening process. It considers where the prospect is likely to go and how it will relate with the buyer. Evaluation is a repetitive process, using information from numerous sources. These include market research firms, credit organizations, intermediaries as well as direct contact. A mosaic is built to answer the question "where can we take the business?" After evaluating their operations, the prospects can be reduced to a preliminary list of candidates.

Is it a Business?

a) Products and life-stages (why do people buy them/changes in reputation)
b) Markets (geographical/sectorial)
c) Competition and shares of market
d) Marketing strategy (brand names/positioning/advertising/promotion)
e) Distribution (direct/dealers/wholesalers/alternatives)
f) Key customers (concentration/relationship/length of service)

Facilities

a) Locations and raw materials
b) Capacity and technology (own/licensed/suppliers)
c) Research and development (funding/results)

People

a) Organizational structure (degree of centralization/dominance)
b) Executives (qualifications/reputation/harmony)
c) Corporate culture (graphic indication of past and present)
d) Labour relations (union militancy/strike record)

Objectives

a) The candidate
b) Its C.E.O.
c) Its owners

Fit-Chart Rating

a) Complements
b) Supplements
c) Financial
d) Legal
e) Apparent risks

Valuation

This chapter sets out standard methods for the valuation of companies. These values will be used as guides for the initial offer and to prevent overpayment during the negotiation process.

Asset Values

a) Liquidation (scrap)
b) Replacement (same capacity/latest technology)
c) Intangibles (saleability/integration with business)
d) Liabilities (present value of favourable debt/taxes/costs)

Income Value-Normalized Earnings

a) Average (weighted/moving/over cycle)
b) Trend (growth rate)
c) Projections (use range/allow for risk)
d) Dealing with losses
e) Effect of interest rates on gearing

Income Value/Multiplier

a) Formula (growth rate/volatility)
b) Alternative investments (similar risk)
c) Public company comparisons (same industry/size adjusted)
d) Investor enthusiasm (stock market level/group relative strength/rate of change in P/E)
e) Systematic risk (beta/undiversifiable)
f) Cost of capital (weighted average)
g) Exit P/E (take-over bids)

Discounted Cash Flow Value

a) Rationale
b) Growth and cyclicality
c) Anticipated capital spending
d) Discount rate (risk adjusted/buyer's cost of capital)
e) Residual value
f) Potential dividends

Reconciliation of Values

a) Buyer (integration/ income value/ good will)
b) Seller (retention/ replacement/ DCF/ trend in value)
c) Investor (minority discount/ gain potential)
d) Control premium (sharing of synergy/ return on cash generation)
e) Special cases (revenue-based formula/ turn-arounds/ insolvencies)

Good Will

a) Accounting concept (recorded only on purchase/difference between cost and net asset value)
b) Understated assets (adjust to replacement value/attractive leases/tax loss)
c) Overstated liabilities (favourable debt/deferred taxes) of additional
d) Market share (cost of obtaining)
e) Intellectual property (capitalization of additional profits)
f) Rights and licenses (alternative buyers)
g) Organization (costs of creation)

Impact of Deal on Buyer

This chapter deals with the final stage of the screening process, the impact on the buyer. Since in many instances this is not properly considered and the buyer's case not effectively presented, 'the stock market often marks down the buyer's shares following the announcement. We will also refer to the role of public relations counsel in providing a dispassionate, independent perspective on the public's reactions to a contemplated transaction.

Organization

a) Desired integration/autonomy
b) Conflict of cultures
c) Role of acquired C.E.O.

People

a) Incentives to acquired management (in line with buyers)
b) Benefit plans (best of both is expensive)
c) Relationship with unions
d) Training programme (transferring skills both ways)
e) Closures and terminations (excess capacity/combined distribution/shared sales force)

Financial Impact

a) Per share dilution (earnings now/earnings in three years/tangible equity)
b) Balance sheet (asset mix/current ratio/leverage/turn-over)
c) Operating ratios (margin/gearing/ROI)
d) Cash generation (commitment to purchase/needs of buyer/candidates' plans/additional mergers)
e) Risks and out (variability of net income/shift in capital intensity/failure of technology transfer/resale value)

Public Perceptions

a) Investor sentiment
b) Lenders' attitudes
c) Key customers' reactions
d) Government responses (competition branch/regional policies/department of manpower/immigration)
e) Consumer groups
f) Communities (sale or closure of facilities/employee transfers/ integration of offices)

Targets and Offers

This chapter pulls together the evaluation techniques set out in the four preceding chapters in an integrated selection process.

Selecting the Industry

a) Desired diversification
b) Industry fit-chart ranking (consider out of favour)
c) Identifying Candidates
d) Review of offerings (from intermediaries and others)
e) Initial screening (financial analysis/product-market standing)
f) Preliminary evaluation
g) Intrinsic vs quoted values

Selecting Targets

a) Profit projection (as is/with buyer)
b) Financing requirements
c) Detailed evaluation
d) Current values (to buyer/seller)
e) Impact on buyer

Availability

a) Ownership (estate/retirees/heirs/family)
b) Management succession
c) "Reasons" for sale (don't believe what you're told)
d) Turn-around (insolvency)
e) Other purchasers (management/competitors)

Payment

a) Cash (borrowing terms)
b) Notes (rate/securities/prospectus requirements)
c) Common shares (ascribed value/resale rights)
d) Tailored securities (funny money/convertibles/warrants)
e) Earn-outs
f) Personal service (lease of facilities/consulting contracts/ pension plans)
g) Trade-offs (price/payment)

Computer Assistance

a) Applicability
b) Service bureau
c) Published programmes (packaged/free form/costs)
d) Data bases (S&P/value line)
e) Utilizing the micro (fit-charts/data retrieval)

PART V THE DEAL

Principles of Negotiation

The ability to recognize the needs of the seller and hence to negotiate a satisfactory deal is probably the single most important function in a merger. This chapter deals with the principals of negotiation, while the following one discusses the approaches that are used to achieve the intended objectives.

Purpose

a) Co-operative enterprise (deal with problems rather than demands)
b) Establishment of common interests (everybody gains something)
c) Satisfying needs (personal and organizational)

Motivations and Needs

a) Psychological
b) Safety and security
c) Love and belonging
d) Esteem and achievement
e) Knowledge and order

Objectives

a) Buyer (initial/final)
b) Seller (11.04)

Assumptions

a) Available facts
b) Necessary assumptions (beware of false assumptions)
c) Determining reality (exchange of data/plant visits/personal reactions)

Issues and Positions

a) Expected issues
b) Initial positions
c) Maximum give
d) Opposers' limit
e) Behavioural reactions

Map Combined Future

a) Buyers' contribution (reduce anxiety/sell your culture)
b) Need for winner (price/return/risk)
c) Retain uniqueness of target

Negotiating Approaches

The previous chapter dealt with the principles of negotiation. In this chapter, we turn to specific techniques that are used in buying or selling businesses.

Who? Where? and What?

a) Requirements of negotiators (quick mind/unlimited patience/ inspire trust/recognize signals)
b) Team or individual (staff vs specialists)
c) Role of intermediaries (introductions/participation)
d) Location (buyer/seller/neutral/lay-out)
e) When to get the professionals involved
f) Agendas (public/fall-back/postpone price discussion)

Participation of C.E.O.

a) Open door (planner not participant/social contact)
b) Discussions with other C.E.O. (break log-jam/finalize)
c) Establishes limits

Involvement of Operating Personnel

a) Develops trust (buyer's management/with seller/humanizes proceedings)
b) Reduces objections (gives everybody a stake in success)
c) Demonstrates cross-fertilization (picks up weaknesses that we can fill)
d) Provides devil's advocate (in training sessions only)

Techniques

a) Tell your story
b) Blanket subject
c) Select statistics (bull-shitting and flimflamming)
d) Salami - slice by slice
e) Split the difference
f) "Got to ask the boss"
g) Opposer's viewpoint (if I were in your position)
h) Hard man/soft man
i) Change players

Use of Questions

a) Classification (open-ended/leading/loaded/trick/impulse)
b) Functions (cause attention/get information/give information/ coerce)
c) Standard (what/why/when/how/where/who?)

Tactics

a) NO, not negotiable
b) Beat the offer
c) Settle your weak points first
d) Hit their weak points hard
e) Twist their position Deal with that later
f) Withdrawal
g) Time limit
h) Draft agreement immediately

Striking a Deal

a) His price/your payment
b) Blind them with science
c) Use of pro forma statements
d) Window dressing

Letter of Intent

The Letter of Intent (LoI) is a key document in all material transactions. It may be a single hand-written page signed by two principals or a 30 page legal document; in any case, it sets out the deal. The final agreement will merely expand and formalize this understanding.

Contents

The LoI should state all details of the activities each party will take and their responsibilities.

- What the LoI covers.
- The name and other contact information of the principles.
- Names of other important people involved.
- All entities that will be taking part in the transaction.
- The number and names of any funding sources.

If a deal does not go ahead, the LoI allows those involved to know what had been agreed on. They are similar to Heads of Agreement, Term Sheets or Memorandums of Understanding.

Sample

[Name of
Issuer]
[Street Address]
[City, Prov, Postal]
[Optional – Email Address]

[Date]

[Recipient]
[Title]
[Company]
[Address]
[City, St Zip]

Dear [Recipient]:

[Short introduction paragraph – indicate you are submitting this letter with the intent to do a specific action (purchase, partner, acquire, license, etc.). Indicate that the intent is based on the following conditions.]

[Define the specifics about the item behind the intent listing all pertinent variations of the item or supporting material. Provide indication or your intent with respects to the liabilities.]

[Considerations – Propose what you are willing to provide as compensation or other as consideration for the specifics listed above. Be sure to define amounts, timing.]

[Provide conditions for the transaction. This may include conditions on due diligence, limitations on further seeking other interested parties or confidentiality.]

[Indicate that this letter is not an official offer and that all details would need to be negotiated and executed through a formal Purchase (or other) Agreement.]

[Indicate your expected timing for the transaction to take place assuming you were selected.]

Regards,

(Signature)

[Name]

Takeover Bids

There are two approaches to acquire a target; a negotiated transaction or, if it is a public company, a takeover bid. In some respects, they can be compared to seduction vs rape. A takeover bid usually is only launched when negotiations fail or are not possible, and can be a traumatic experience for everyone concerned.

Corporate Warfare

a) Why? (negotiating with others/outstanding bid/rejection of approaches/introduced as White Knight)
b) Defensive tactics (white knight/staggered board/golden parachutes/amended articles/limited voting rights/profit forecasts)
c) Publicity (means to dispose of substantial block)
d) Peach (minimize trauma/co-opt CEO/extend offer to all shareholders)

Legal Requirements

a) Disclosure (Ontario Securities Commission/bid circulars/ directors' circular/prospectus)
b) Terms (cash/shares/lender commitments)
c) Partial bids
d) Counter-bids (timing)
e) Follow up requirements (full ownership/top-up)

Determination of Premium

a) Recent record (successful and failed bids)
b) Historic level for industry
c) Ownership (institutions/arbitrageurs/individuals)
d) Past price levels
e) Integration value
f) Personal feelings

Tactics

a) Market purchases
b) Extra payment for board concurrence
c) Offer to negotiate
d) Two-stage transaction
e) Bidding for the bidder

Reverse Takeovers

a) Purpose (revitalization of dormant company/back door listings/access to finance)
b) Structure (amalgamation/share/exchange/donation of escrowed shares)
c) Accounting (purchase by new subsidiary)

Divestitures

Experience has demonstrated that a company with a high market share has lower unit costs than its competitors, due to economics of scale. Therefore, in many cases, low shares result in losses or inadequate returns on the invested funds. Often, corporation executives spend an inordinate amount of time plus other resources in attempts to "fix it", rather than considering getting rid of it under the most advantageous circumstances.

However, the shock of 1980/1982 high interest rates introduced a more rational attitude, and most diversified corporations have recently disposed of or shut down some operations.

Portfolio of Businesses

a) Classification by market growth and business share (cow/dog/ star/egg)
b) Corporate orphans (unrelated/distant location/by-product of past decisions)
c) Loss operations (sick/cyclical)
d) Alternative uses for invested resources
e) Value of business to others (high-tech subsidiaries)

Impact of Sick Operations

a) Management retention
b) Employee morale
c) Customer confidence
d) Supplier suspicion

Possible Treatments

a) Cure (substantial executive involvement/adequate return?)
b) Milk (obtaining cash and tax benefits)
c) Divest (management buyout/competitor/customer)
d) Joint venture with customer/competitor
e) Spinoff (to shareholders)

Advantages of Divestiture

a) Reduction in wasted effort
b) Avoiding unnecessary obsolescence
c) Providing funds for growing segments

Suitable Companies for Management Buyouts

a) Strong asset base (low pie/price below replacement cost/fully-funded pension plan)
b) Stable cash flow (limited required capital expenditures/low volatility/minimum fixed costs/opportunity to revise work rules)
c) Low technology content

Participants in Management Buyouts

a) Management
b) Lenders (debt with equity kicker)
c) Investors (mezzanine financing/high risk/reward)
d) Sponsors (find finance/monitor performance/reward equity)

Risks in Management Buyouts

a) Leverage (including convertibles/often 30% debt)
b) Interest rates (over half debt usually from banks at floating rates)
c) Conflict (between lenders and investors if venture does not boom)
d) Management's investment (mainly sweat equity/reduced salaries and benefits)

Outs

a) Public offering
b) Resale (customers/competitors)
c) Insolvency

PART VI PUTTING IT TOGETHER

Once the deal has been agreed, the fine-tuning begins. The first two chapters in this part deal with the financial carpentry undertaken with the help of an investment dealer. The next two chapters relate to the tax considerations where both auditors will have significant contributions.

Financial Structure

Pro forma Balance Sheet

a) Current ratios
b) Goodwill

Combined Income

a) Projections
b) Cash generation/consumption
c) Interest coverage
d) Financial ratios
e) Return on equity
f) Impact on earnings per share

Financial Markets

a) Bond rating
b) Stock multiple
c) Investor reaction
d) Available borrowing window (institutional money availability/ new issues calendar)
e) Prospectus status
f) Restrictive covenants (assets pledges/additional debt)

Bankers' Reaction

a) Loan conditions
b) Term
c) Equity requirements

Disposals

a) Redundant assets
b) Sale/lease back
c) Incompatible operations

Underpinning the Risks in Divestitures

a) Interest rate (minimum floating rate debt)
b) Financial risk (vendor take-back debt/preferred shares/earn outs)
c) Customers (confirm continuation)
d) Agency arrangements
e) Suppliers (contracts)
f) Pension relationships

Sources of Funds

Term Debt

a) Banks
b) Trust companies
c) Insurance companies
d) Pension funds

Long-term Bonds

a) Public underwriting (private investors)
b) Institutional private placements (pension funds)
c) Kickers

Mezzanine Financing

a) Seller
b) Venture funds
c) Specialist lenders

Equity

a) Underwriting (preferred' shares/convertibles/common)
b) Purchase consideration (resale rights)
c) Rights offering
d) Private placements (common)

Tailored Securities

a) Market vs face value
b) Unsecured debentures vs preferred shares (payment from cash flow)
c) Rights to common (Options/warrants/future values)
d) Collateral
e) Income requirements

Alternatives to Securities

a) Royalties
b) Earn outs
c) Franchising
d) Licensing of intellectual property (sales royalty/share of profits)
e) Leasing of fixed assets
f) Consulting contracts

Tax Consequences to Sellers

The final form of any merger transaction will usually be determined so as to minimize the amount of tax payable in aggregate. Although various complexities are introduced by this approach, the cash savings are normally considered sufficient to justify them. The two preceding sections look at the various approaches from the viewpoints of the seller and the buyer. At one time the buyers wanted to purchase assets and the sellers wanted to sell shares. This is still true in principle, but many sellers are finding they can obtain a higher after- tax price for assets while buyers are learning to bump up asset values even though they purchase shares.

Asset Sale - The Company

a) Allocation of proceeds (Sec. 68/liabilities assumed/must be reflected in agreement)
b) Receivables (Sec. 22/election)
c) Inventory (Sec. 23)
d) Recapture of capital cost allowances (ordinary income/regulation 1103/revision prior years CCA/rollovers/Class 29)
e) Goodwill (eligible capital receipts)
f) Capital gain (tax-free zone/installment sale/life insurance proceeds/resource assets/foreign exchange/settlement of debt)
g) Sale-lease back (recapture/capital gain/rent/Sec.88 liquidation)
h) Rollover to subsidiary (Sec. 85/Sec. 85.1)

Asset Sale - Shareholders

a) Liquidation (capital dividend account)
b) Operation as investment company
c) Holding companies (intercorporate dividends/Sec. 88)

Sale of Shares - Cash and Debt

a) V-day value
b) Minority discount
c) Installment sale (Sec. 40)
d) Earn outs
e) Rollover to children

Share Exchange

a) Controlling shareholders
b) Characteristics of shares
c) Previous reorganizations
d) Tax-free rollover (sec. 85/Sec. 85.1)
e) Amalgamation (Sec. 87)

Tax Position of Buyer

Asset Purchase

a) Obverse of seller's position
b) Depreciation (higher base/half rate in initial year/eligible capital expenditure)
c) Sales tax (license/capital equipment)

Share Acquisition

a) Timing (small business deduction
b) Holding companies (interest deductibility/reduced future capital gains)
c) Payment (ACB of shares acquired)
d) Financing costs (interest/commissions/legal/accounting/Sec. 20)
e) Second stage (operate subsidiary/liquidate/amalgamate)
f) Loss carry forward (change of control/same business)
g) R & D allowances

Amalgamation

a) Inventory
b) Receivables
c) Fixed assets
d) Goodwill
e) Liabilities
f) Cross-holdings
g) Surplus

Non-Residents

a) Buyer (NRO)
b) Seller (Sec. 116/ U.S. tax treaty)
c) Target (Netherlands holding company)

Checklists

d) Liquidation (Sec. 88)
E) Amalgamation (Sec. 87)

PART VII INVESTIGATION

The Investigation Process

The investigation of a target is an extension of the evaluation process. Many of the same factors are reviewed from a different perspective, from inside the company, with the assistance of its management. In some mergers, each party investigates the other. The four chapters of part four deal with the investment process, followed by outlines of the work programmes used in financial, operational and legal investigation. Although the work programme for financial investigations is more detailed, it is no more important than that for operational investigations, which by its nature will vary much more with the circumstances.

Purpose is Determination of:

a) Economic risk
b) Quality of earnings
c) Value differences (real estate/contingent liabilities/intellectual property)
d) Fairness of proposed price
e) Materiality of unusual items
f) Problem areas in human resources (employee attitudes/labour relations/culture)

Some Investigative Reasons for Termination

a) Un-auditable records
b) Unrealistic projections
c) Adverse trends in ratios
d) Impact of pending legislation
e) Overstated assets
f) Understated liabilities

Scope

a) Review (highlight/in-depth)
b) Audit (balance sheet/operational)
c) Scope determined by buyer
d) Timing (during negotiations/prior to closing/after closing)

Roles

a) Staff (buyer's/seller's)
b) Auditors (seller's/buyer's/tax advisors)
c) Management consultants (industry specialists/research organizations)
d) Appraisers (real estate/equipment)
e) Actuaries
f) Legal counsel

Engagement Letter

a) Nature and times of reports (responsibility/projections/pro
b) forma statements)
c) Extent of independent confirmation (reliance on others)
d) Fee arrangements
e) Buyer and seller contacts

Financial Investigation

Organizational Structure

a) Divisions, subsidiaries, affiliates (names/locations/functions)
b) Principal officers
c) Reporting relationships
d) Training and organization programmes
e) Management turnover, succession and recruitment

Accounting Policies

a) Changes in past five years
b) Differences from buyer/industry
c) Alternative income timing
d) Year-end adjustments
e) Sources of goodwill

Internal Control

a) Cash
b) Sales
c) Purchase orders
d) Disbursements
e) Securities
f) Payroll
g) Adjustments
h) Budgets and comparisons (operating/capital)
i) Financial statements (monthly/quarterly/annual)
j) Housekeeping
k) Conflict of interest

Pro forma Statements and Projections

a) Balance sheets
b) Operating results
c) Cash generation

d) Per share data (earnings/book value/sales)
e) Dividend requirements and interest coverage
f) Standard ratios
g) Exposure in five years (reasonableness of projections)
h) Variations of projection assumptions from buyers/effect of operational changes

Statement Analysis

a) Line of business (profit before allocation/return on assets/ margin/explain variation from budget)
b) Sources of growth (sales and operating profit/inflation/volume/new products/acquisitions/new markets/divestitures)
c) Cyclicality (seasonal/periodic fluctuations in sales/ volume/ prices/ gross margin/direct selling cost)
d) Cost of sales (changes in mix/material/labour/overhead/likely future trends)
e) Sales (trends in backlog/ranking of major customers/importance of affiliates/return rates/warranty costs)
f) Purchases (major suppliers/alternative sources/price trends/ transactions with affiliates/competitors/foreign exchange exposure/ financial stability of suppliers)
g) Administration (trends in costs/employment/discretionary reductions)
h) Interest (sensitivity to changes in prime rate (i) extraordinary items (reported items/unrealized losses on foreign currency debt/unfavourable leases/distribution contracts, etc.)
i) Productivity (trend in ratios such as value added per employee, operating profit per ton/sales per employee/sales per square foot)
j) Forecasts (reasonableness of assumptions/look at past record/ risk of changes in foreign operations/fixed and variable cost structure)
k) Cash generation (cash generation and consumption by product line/probability of turnaround)
l) Loss operations (probability of turnaround/realizable value)
m) R & D (new products/improved products/production efficiencies/ government grants/customer sponsorship)
n) Quotations (method/comparison with actual cost)

Receivables

a) Warranty and representations
b) Credit procedures
c) Major customers
d) Installment sales (security)
e) Bad debt (aging/turnover rate)

Inventories

a) Locations
b) Physical quantities
c) Pricing methods (cost/market)
d) Line of business differences
e) Utilization rates

Facilities

a) Nature (location/class/leased/owned/economic life)
b) Replacement (purchases and sales last two years/policy)
c) Expenditure approvals (planning/overruns/post review)
d) Values (appraisal/disposal/replacement/obsolescence)
e) Unrecorded assets (tools/dyes, etc.)-
f) Accountability
g) Current value (impact on: turnover, leverage, ROA, ROE/ restatement to current values)
h) Planned additions
i) Redundant assets

Other Assets

a) Valuation
b) Importance to income
c) Amortization

Payables

a) Credit terms
b) Accruals
c) Contingent liabilities

Term Debt

a) Lenders
b) Conditions
c) Restrictions
d) Collateral
e) Unused lines of credit

Taxes

a) Apparent rate
b) Liability for deferred items
c) Available carry-overs (operating losses/investment credits/ foreign credits/refundable tax)
d) Pending assessments

e) Sales tax and customs duties
f) Rulings obtained
g) Property taxes
h) Liabilities for the transaction

Commitments

a) Guarantees
b) Warranties
c) Leases
d) Forward Purchases
e) Royalty obligations

Risks

a) Financial
b) Supply
c) Product
d) Market share
e) Customer concentration
f) R&D
g) Management attitudes
h) Employee reactions

Operational Investigation

Industry Trends

a) Sales growth (cycles)
b) Profitability (margin/turnover/ROA/ROE)
c) Stability (fluctuations in sales and profits/causes of failures
d) Government action
e) New entrants (recent/potential)

Competition

a) Share of market
b) Mode (marketing/price)
c) Technology
d) Product life
e) Imports

Customers' View of the Products

a) Usefulness
b) Compatibility
c) Price (value)
d) Safety
e) Reliability
f) Esthetics

Production

a) Scheduling procedures
b) Quality control
c) Preventative maintenance
d) Contingency planning
e) State of the art (material handling)
f) Commitments

Employees

a) Union contracts (strike record of industry/company experience)
b) Training programmes (available skills/technical resources)
c) Hiring procedures (turnover)
d) Pension plans (actuarial valuation)
e) Staff support
f) Superior -subordinate relationships
g) Shop floor attitudes
h) Continuity (redundancies/job security/severance programme/who pays/how much)
i) Future benefits
j) Employee communications
k) Promotion opportunities

Marketing

a) Strategy (compare with competition)
b) Share (changes over last five years)
c) Distribution (wholesale/jobber/reps/sales force/dealers
d) Markets (effectively served vs intended to be served)
e) Selling (territories/number of sales staff/revenue per employee compared with industry)
f) Concentration (dependence on top five customers/relationships
g) Positioning (comparison of advertising image sought for major brands with actual image held by customers/effect of shifts in media)
h) Delivery (alternative systems/changes in lead times)

Planning

a) Goals
b) Strategies (in force/contemplated)
c) Required resources (as identified by them)
d) Opportunities and risks (identified by them)
e) Key external influences (technological/economic/social/political)
f) Impact of C.E.O.
g) Control system (adequate?)

Social Responsibilities

a) Pollution (environmental impact)
b) Plant safety
c) Community support
d) Product recall (impact of liability suits)
e) Charitable activities
f) Minority group treatment

Integration Benefits

a) Cash sharing (bank relationships)
b) Common accounting systems (EDP/integrated staff/consolidated statements)
c) Exchange of know-how
d) Consolidation of facilities

e) Purchasing efficiencies
f) Intercompany sales
g) Management cross postings
h) Combination of support services (staff functions/offices/service
i) facilities)
j) Integration of distribution and warehousing
k) Exchange of sales territories

Potential Problems

a) Motivating acquired managers (degree of autonomy/role of C.E.O.
b) Required approvals of budgets (operating capital)
c) Differing employment policies (salary scales/employee benefits)
d) Union relationships

Legal Investigation

Corporate Status

a) Jurisdictions (incorporation and qualification of company, all subsidiaries and affiliates/certificates of good standing)
b) Notice and voting requirements (directors/shareholders/amalgamation/ liquidation/scheme of arrangement/other)
c) Asset sale procedures (bulk sales act/union contracts/assumption of liabilities, etc.)
d) Dissenters' rights (notice/appraisal/remedy)

Corporate Records

a) Articles (review of original articles and all amendments/ satisfaction of all requirements and restrictions)
b) Capitalization (authorized and issued shares/share transfers/ funded debt)
c) Shareholders' agreements
d) By-laws
e) Minute books (all corporate actions properly approved)

Asset Title

a) Real property
b) Personal property
c) Leased property
d) Intellectual property

Contracts and Contingencies

a) Categories (sales/supply/employment/intermediaries)
b) Characteristics

Security for Liabilities

a) Loan agreements
b) Indentures
c) Pledged assets (mortgages)

Competition Act

a) Concentration of industry (share of four leaders)
b) Possible objections
c) Burden of proof/penalties

Securities Issued as Payment

a) Prospectus requirements (OSC approval)
b) Resale rights
c) Stock exchange rules

Pending Legislation

a) Nature
b) Remedies

Acquisition Contract

Responsibility

a) Lawyers (buyer/seller)
b) Auditors (buyer's/seller's)

Purpose

a) Rights and obligations of each party
b) Confirmation of information about seller

Time Parameters

a) Date of financials
b) Signing of agreement
c) Closing date

Outline of Contract

a) General statement of agreement
b) Representations and warranties of seller
c) Representations and warranties of buyer
d) Asset to be acquired (shares of a company/land and buildings/ inventories and receivables/intangibles, etc.)
e) Purchase price (cash/shares/notes/earn outs, etc.)
f) Liabilities assumed
g) Relationships with seller (non-competition/employment contract/resale rights of securities issued)
h) Seller's indemnification of buyer
i) Conduct of business until closing (run by seller/both/role of buyer)
j) Conditions precedent to closing (approvals/financing, etc.)
k) Other provisions (brokerage/cost allocation for tax purposes)

Representations and Warranties of Buyer

a) Ability to undertake deal
b) Proper authorization of securities involved

Representations and Warranties of Seller

a) Existence of assets
b) Realization of inventory and receivables
c) Full disclosure of liabilities (holdback)

Amalgamation Agreements

a) Form varies with jurisdiction
b) Import/export of corporate identity
c) Share exchange terms
d) Treatment of liabilities

Approvals and Closing

a) Internal
b) The directors
c) Creditors re loan agreements
d) Workers (union contracts)

Shareholders

a) Notice
b) Information circular
c) Proxy rules

Tax Rulings

a) Requirements
b) Alternatives

Government Regulators

a) License transfers
b) Environmental permits
c) Labour codes
d) Securities commission (prospectus/information circulars/takeover bids)

FIRA

a) Applicability (non-eligible persons/definition of control)
b) Procedure (filing requirements)
c) Undertakings
d) Political climate

Courts

a) Scheme of arrangements
b) Insolvency
c) Bulk sales
d) Caveats on title

Closing

a) Documents
b) Rehearsal
c) Ceremony

