

KPMG's M&A Legal – an integrated approach for a successful transaction



Every M&A project is unique and must be evaluated individually if it is to be beneficial to all parties. The motives that exist at the start of a transaction are as diverse as the forms of business organization. They may be strategic, financial, or even personal in nature. Thanks to its multidisciplinary involvement in KPMG's M&A Group and its wide-ranging experience gained from a large number of transactions in various industries, KPMG's M&A Legal Team can realize your M&A projects efficiently while adding value – always based on your personal motives.

In practice, there is usually a combination of strategic, financial, and personal interests that to a varying extent influence the decision to carry out any transaction. These have to be identified – and properly assessed. Our experience shows that the process needs to be tailored to the underlying motive in order to facilitate optimal handling of the transaction.

Motive 1: Strategic

If the decision to buy or sell is made on the basis of strategic considerations, then fundamental operational and strategic issues have already been discussed in advance. Examples of typical starting points are the planned expansion of the current product range by acquiring an additional producer or specialist, or the disposal of a less profitable unit outside the company's core business. If a company's own portfolio is already very highly diversified and the aim is to standardize it, the sale of a division or subsidiary is an obvious solution. A favorable or unfavorable market develop-

ment, or reaching or exceeding a critical size, may also lead to an acquisition or sale.

Approach: Foresighted

When making a strategic acquisition the purchaser is primarily interested in learning whether the target meets the criteria of the desired addition. In such cases, careful due diligence geared to these criteria – taking account of operational issues – is imperative and the advisor's industry knowledge is helpful. From a legal perspective the following issues are likely to be a priority: Are the contracts structured along the value chain? What are the deadlines? What happens to the existing contracts in the event of a change of ownership? Are there any purchase and/or preemption rights? With a strategic vendor there is generally great interest in being able to control the consequences of any potential breakdown in negotiations before execution. Such a vendor is keen to ensure that the confidentiality of both the negotiations and his business secrets is maintained.

Due diligence tailored to the purchaser's strategic interests and a process that protects the strategic vendor's interests help the transaction to succeed.

Motive 2: Financial

Financial motives for selling a company are often apparent when this company becomes particularly attractive, for example due to an intangible asset with potential or increased product demand. The sale can then be made at a premium. But poor performance, liquidity problems, risk of overindebtedness, or the need for funds to develop new business projects may also motivate owners to divest their companies.

Approach: Calculating

A financially motivated vendor is interested in obtaining the highest possible sales price. Priority issues for him therefore relate to the financing, payment, and collateralization of the purchase price. He will also be focused on receiving the full purchase price on completion – while avoiding escrow – as well as on limiting his liability. If the vendor is a natural person domiciled in Switzerland, incorporation of a partial liquidation provision into the sales contract will likely also be important to him. The purchaser, on the other hand, does not want to pay an excessive price for the target and so will only accommodate the vendor's needs – if at all – if he encounters full transparency in respect of the target.

The interests of the parties may be best addressed by means of detailed due diligence geared to potential risks and a carefully worded sales contract.


Motive 3: Personal

Personal reasons may also have a significant influence on the decision to transact. These include, for example, reaching retirement age or retiring early, as well as an attractive chance offer or even tax considerations – such as the imminent ending of holding periods or tax concessions. What all these cases have in common is a focus on the entrepreneur's personal circumstances.

Approach: Understanding

A careful analysis of personal circumstances is crucial, especially with classic succession planning, where the founder of a company or the family that owns it is handing it over to a new owner. Many people do not find it easy to relinquish and hand over their life's work. Account must be taken of the vendor's request that the new owner continue to run the company as the vendor would wish. The emotional bond means that often the role of the price should not be underestimated either. Sensitivity and the necessary experience, in addition to the time factor, help to make the right decision.

Professional support for the project provides information on the potential purchaser and facilitates successful succession management.



We support you with the following services:

Contract negotiation, structuring and integration

- Negotiation as well as drafting of sales and other contracts or other documents involved in a transaction (nondisclosure agreements, letters of intent, share purchase agreements, investment agreements, etc.)
- Development of structuring proposals for acquisitions and sales (carve outs)
- Support and advice in matters related to company and contract law after the transaction has been executed (general meetings, board of directors' meetings, liquidations, questions related to warranties and price adjustment mechanisms)
- Support during the integration process (service level or intercompany agreements, lease agreements, etc.)



Cycle of a transaction with an integrated approach within KPMG's M&A Group

Support for project management

Preparatory phase

Integrated approach to identifying the key value drivers and their basis

- Analysis of the types of transactions concerned
- Strategic advice
- Analysis of business plans
- Drafting and negotiation of letters of intent
- Analysis of tax issues

Preparation and assessment of transaction

Composition of the team and scope of the services on offer tailored to the identified value drivers and client needs

- Vendor and buyer due diligence
- Preparation of the data room
- Compilation of the data room index/request list
- Clarification of antitrust issues
- Evaluation of financial modeling and business plans
- Evaluation of synergies

Execution

Coordinated implementation

- Preparation and support for execution
- Coordination and cooperation in the context of examination and fulfillment of conditions precedent
- Coordination and monitoring of payment of the purchase price

Follow-up

Proactive follow-up

- Preparation and review of execution records
- Support for implementing price adjustment clauses
- Support during the integration process following execution

Legal due diligence

- Vendor due diligence with preparation of the report
- Buyer due diligence with preparation of the report
- Support with preparing the data room
- Coordination with other KPMG service areas (Tax, Transaction Services, etc.)

Public takeovers/IPOs

- Support for the bidder or the target company at all stages of a public bid
- Assumption of role as review body in public bids
- Support and representation of the issuer in listings of equities and bonds (KPMG has been authorized by the Six Swiss Exchange as a recognized representative for the submission of listing applications for equities and bonds)
- Advice on stock exchange rules

Private equity and venture capital

- Support and advice in private equity transactions and joint ventures
- Negotiation and drafting of contracts (investment agreements, shareholder agreements)

“ With our integrated approach we create added value at every stage of your M&A transaction. ”

KPMG's Legal – your partner for every occasion

Company acquisitions and disposals are often both international and regional. Even with a cross-border transaction, at least one of the companies involved may be domiciled in Switzerland and hence integrated into the regional market. With around 50 expert lawyers, KPMG is represented in every major city in Switzerland and has both a regional and a national presence.

As part of KPMG Europe LLP, KPMG Switzerland has direct access to KPMG's global network – and hence to one of the most comprehensive ranges of legal services in the world.

As a client you benefit from our multidisciplinary experience, enabling your M&A projects to be implemented with great efficiency. KPMG's M&A Group tackles complex economic matters in a swift, interdisciplinary, and highly co-

ordinated manner. Our in-depth knowledge of markets and industries stands us in good stead when handling your local transactions.

With cross-border transactions we assist foreign investors in the purchase of companies or parts of companies in Switzerland. Have you expanded abroad? Does your transaction have an international dimension? Then our international M&A team, comprising Swiss and foreign legal advisors and specialists from KPMG's network, is the right one for you.

Details of some of our successful transactions can be found online at www.kpmg.ch. Would you like KPMG's M&A Legal Team to be your partner for your next transaction or would you simply like to get to know us without any obligation? We look forward to hearing from you.

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