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What You Need to Know About M&As and Business Transitions

An M&A deal is a big part of a company's progression.



Whether they are selling or buying, it is important for the parties involved to have a strong team behind them to ensure the right decisions are being made. Recently, we spoke with Jacko Law Group, P.C.'s Managing Partner [Michelle Jacko](#), and she shared some of the top considerations companies should be making when involved in an M&A transaction.

Understanding that firms plan in advance (sometimes years) towards their own growth objectives, what are some key considerations for a Merger and/or Acquisition?

There are numerous factors and components to a successful M&A deal for firms to consider. One of the most critical onset steps, is to establish the right team of strategic advisers, who will advance your business goals. Your curated professional advisory team will not only protect your business interests, but aim to achieve your desired results. Some of the most common types of professional advisers include the following:

- **M&A Counsel**

Hiring an experienced attorney who specialises in Mergers and Acquisitions will help the deal process go as smoothly and as quickly as possible. The right attorney can help manage negotiations, navigate common pitfalls, avoid closing delays, and provide ongoing counsel as challenges arise.

- **Valuation Company**

A valuation company can help to establish “fair market value” for the company’s assets and/or securities. They can also help prepare and decipher financial models relating to the business. Common methodologies include discount cash flow models, comparable company analysis and earnings multiplier.

- **Investment Banker**

An investment banker provides financing to enable a company to raise money to acquire a new business or to perhaps expand or take on a new project. Commonly, investment bankers act as intermediaries and can introduce buyers to sellers and help match compatible parties and strategic partners. They often charge a percentage-based fee, so having your outside M&A Counsel review investment banking contracts prior to execution is critical.

- **Regulatory and Other Counsel**

If your company does not have General Counsel, your firm may need to consider outside regulatory counsel, employment and labour counsel, or intellectual property counsel to help with issues that are specific to the company’s industry, operations and contractual needs.

After building your team, what other components should firms focus on for a successful M&A?

A successful M&A deal happens in multiple phases. After assembling the strategic professional advisory team, one of the most important areas to focus on is due diligence. This is the discovery phase to learn about what you may not have known in relation to another party’s financials, contractual obligations, and potential liabilities. Often counsel can assist with this process and with other important facets related to due diligence, including the following:

- **Confidentiality Protections.** It is important to protect yourself and your business by entering into a Confidentiality or Non-Disclosure Agreement (“NDA”) prior to commencing business negotiations. Before providing data or document sharing, both parties should execute an NDA that protects the

company's trade secrets and confidential information, including pricing and customer lists, sale history, and financials.

- **Memorialise Key Deal Terms in a Letter of Intent.** A Letter of Intent ("LOI")^[1] helps to clarify and define key terms to help avoid disagreements during the transaction process. Typical deal points generally include the purchase price, the number of shares to be issued or exchanged, the method and manner of payment, and any contingencies that may exist after closing. The LOI is signed by both sides to memorialise the parties' initial agreement and to provide a basis for the transaction steps to move forward.
- **Employee Issues.** Often when a merger or acquisition occurs, respective employees may be impacted. Often "restructuring" results in multiple people having the same role, which is unnecessary. If terminations or lay-offs are to be considered, companies need to navigate complex state employment laws and key provisions contained in employment contracts. It is important to have a skilled employment lawyer to assist you through the process.

During the due diligence stage, the parties will need to gather all corporate formation documents, employment agreements, leases, license agreements, stock grants, stock option plans, warrants, copies of litigation files, tax records, securities offerings, and all other documents related to the company and its operations, and assets. It is important to analyse all documents as they can impact and influence deal terms and considerations.

Mergers and Acquisitions and new business ventures have been on the rise during the past year. What are some key considerations for those who are considering a transition?

With change comes opportunity. When evaluating potential M&A opportunities, it is important to focus on the details. Because transitions are part of every professional's journey, there are certain focus areas which should also be heavily considered.

Negotiation of a New Contract

In today's employment landscape no one is expected to change jobs or start work without a detailed understanding of his or her new compensation and employment arrangement. These initial and ongoing discussions are a natural part of the process, but they often lose their momentum at the "Letter of Intent" phase. This stage of the transition is where major terms are written down, but no binding contract is prepared or signed by the parties. Moreover, to add complication to an already complex process, legal departments usually review a new employee's contract after the business-side details are agreed upon. This extra step of analysis can take time and may result in additional due diligence, during which new issues can be identified. To avoid surprises or an unanticipated delay, both parties benefit from defining business relationship terms and having a final contract in-hand before formal transition steps (such as giving resignation notice) commence.

Timing of Resignation and Onboarding

Transition and/or recruitment teams that enlist specific talent are critical to many large company operations and are typically enthusiastic to complete the onboarding process as quickly as possible. However, moving too fast can create issues for both the onboarding firm and the prospective talent. Privacy issues, client sensitive information, and trade secrets need to be navigated thoughtfully and deliberately at this stage of a transition to avoid potential liability.

In addition, numerous functional areas within a firm need to authorise/approve the hiring of a new employee. Intra-department due diligence and approvals should be verified to ensure that both the onboarding organisation and prospective candidate have the same understanding about whether open issues exist or whether parties are ready to move forward. Prospective candidates should also consider how to communicate with the functional areas of the new company to verify that all are comfortable with the new relationship and are synchronized regarding transition steps.

Notice Provisions

Generally, transitions occur quickly after resignation, but each firm has its own unique protocols and procedures that apply to this situation. In many cases, an employee's contract with their prior organisation requires a certain amount of notice before resignation or termination of an employment relationship becomes effective (e.g., a 14- or 30-day period is common). Logically, parties wonder whether the prior firm will actually require the stated amount of time or allow the termination to proceed more rapidly. Understanding your firm's practices and historical approach will assist in setting expectations for the adviser and the onboarding firm on this material point.

Mitigating Transition Risks

Dependent upon the jurisdiction and governing contracts, the rules and regulations that apply to transitions are complex and nuanced. It is strongly recommended for recruits to obtain legal counsel about how to properly leave one organisation and join another; the engagement also may serve to significantly lower the risks to the onboarding firm through the transition process. If a prospective candidate breaches a contract or an applicable statute, the onboarding firm and talent should expect a "cease and desist" communication from the prior company, especially if the prospective candidate is too aggressive or uninformed about what can and cannot be done during a transition and how they are permitted to contact former clients. Working with an experienced attorney in the business transitions space should help to inform and protect the adviser and the onboarding firm.

About Michelle

Please share your journey into law – when did you know you wanted to be a lawyer?

There are two memories that I recall that helped guide me to my path in becoming a lawyer. The first was in grade school. I was 12 years old and debated, on behalf of my classmates, that my teacher's social studies answer key for a recent test was clearly wrong. After making my case, the teacher acquiesced and stated, "You must become a lawyer. Anything short of that and you are not using your talent."

The other moment was late in my high school years, when I was trying to decipher my career path and debating between becoming a doctor or a lawyer. Chemistry made up my mind; I just did not enjoy it, whereas I found myself always reading more and more about the law. I knew in my heart that I wanted to become an attorney, and I have never regretted that decision.

What challenges have you faced as a female corporate and securities lawyer?

When I began my career in securities in 1996, it was a male-dominated industry. To be respected, you had to become 'one of the boys' and have tough skin. To overcome these challenges, I worked twice as hard to earn my seat at the table to earn the respect so that my voice could be heard. To be effective, I constantly thought of ways to advance the business or to help others, and shared those ideas every opportunity I had. I also made sure to connect with my colleagues and to network within the industry.

Throughout my career, what I have valued most are the connections I've made with clients and my network – that's what has motivated me over the years. I love helping others succeed and working together to achieve their end objective. Encountering these challenges only empowered me; collaborating and helping clients changed me, and I credit those moments to making me into the legal professional that I am today.

How did you overcome them?

As a woman in today's industry, it is difficult to find the appropriate amount of balance when communicating. You need the right amount of poise, respect, intellect, power, and energy to finesse it into the right message. It took finding power in knowledge, aligning myself with strong women, and leaning on the limitless support of my family and loved ones to get past my obstacles and to where I am today.

When did you know you were ready to start your firm? Did you face any challenges here?

After years of working in the corporate world surrounded by entrepreneurs, at age 35, I knew it was time to take the plunge. I was fortunate to have established a solid network throughout the years which helped me to source my first clients. Supported by an amazing team of professionals, Jacko Law Group was created. My biggest challenge at the beginning was to try to figure out how could I compete with the largest firms. Quickly I discovered the benefit of being who we are – a corporate and securities law firm, which is focused on being experienced counsel that gets results. That is what allows us to grow year after year – by supporting our clients and delivering to them results which enables them to also grow. Being part of that strategic team is what drives me and our dedicated team of attorneys to work the long hours that we do to achieve results for our clients.

You have been recognised with several awards over your career – what do you think accounts towards your success? Do you have any tips?

Hard work and surrounding myself with an amazing team of professionals. I could not do what I do every day without their drive, talent and support. My awards are just as much of a reflection of their efforts as they are mine. The support of my family has been the rock that has forever enabled me to do what I do. Having a positive attitude and outlook in life also has made a tremendous difference, as has giving back to the community. I am blessed to wake up each morning surrounded by people who care, which enables me to say, “What are we going to conquer today?” and I recognise that not everyone has that.

My tips for success: find strong mentors; surround yourself with the best talent you can, and if you own your own practice, make sure that you have the right people in the right seats on the bus to move it forward, and find the best implementor you can to help advance the practice. Embrace who you are, and do not try to be something you are not. And all along, have fun while you are doing it.

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Michelle L. Jacko, Esq. is the Managing Partner and CEO of Jacko Law Group, PC, which offers securities, corporate, real estate and employment law counsel to broker-dealers, investment advisers, investment companies, hedge/private funds and financial industry professionals. In addition, Ms Jacko is the Founder and CEO of Core Compliance & Legal Services, Inc., a compliance consulting firm.

Ms Jacko specialises in investment adviser, broker-dealer and fund regulatory compliance matters, internal control development, regulatory examinations, transition services and operational risk management. Her consultation practice is focused on the areas of regulatory exams and formal inquiries, mergers and acquisitions, annual reviews, policies and procedures development, testing of compliance programs (including evaluation of internal controls and supervision), mock exams, senior client issues, cybersecurity, Regulation S-P and much more.

[1] An LOI may take other forms, such as a Term Sheet or Memorandum of Understanding.