MAKING THE BEST DEALS WITH PRIVATE EQUITY GROUPS

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At MergersCorp M&A International we help our clients confidentially buy and sell privately held businesses, aligning the interests of all parties for mutual success and satisfaction.

It is our goal to make the process of either buying a new business or selling your current business as smooth and efficient as possible. We know how important confidentiality is to our sellers and we treat it with the utmost importance.

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Making the best deals with Private Equity Groups

Once you have looked at all the options for the way forward for your business and you have decided that Private Equity is the route you should take, then it is time to make sure you get the right deal with the right investors.

Private Equity Groups (PEG's) and their investment into your business can be just what it needs to bring your business to new heights, but you need to be aware of what to watch out for when dealing with PEG's. PEG's have a lot of experience in buying and selling businesses and are looking to making deals that will be most beneficial to themselves. Even though you have chosen the equity route, there are PEG's that can include loans in the deal and their deals tend to be a lot more complicated than those that just involve an acquirer.

It is important, therefore, since deals with a PEG can be very complex and given the expertise of the PEG, that there is an experienced team that can work on the side of the business, to ensure they get a fair deal.

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Following are some of the areas that a business needs to be aware of when dealing with a PEG :

It is important to prepare

- Make sure all the bookkeeping is tidy and create projected finances that are realistic. It is better to be ahead of your predictions during the deal.

- Get ready for due diligence. Make sure any issues or problems are uncovered and dealt with early on and do not come as a surprise later on in the process. When issues come out later, they have a heavy impact on the deal and can create a lack of trust.

- Check out the PEG and past deals they have undertaken. See what sort of reputation they have and consider if they are suitable for your business. If the owner will stay on then speak with other businesses that have used this PEG to see how they have interacted.

- Make sure there is competition. Don't just pursue one option, as this will put you in a very poor negotiating position. The PEG can extend the deal making process and easily gain the upper hand.

▪ It is to the seller’s advantage to make sure that the Letter of Intent (LOI) is comprehensive. Whilst the LOI is not the final agreement, the agreement will be based on this. If the LOI is not detailed, much gain can be made by the PEG to get the deal they want after the LOI is signed. This can also draw out the negotiations.

▪ Watch out for anything binding in the LOI. You need to know what you are signing up to.

▪ Make sure there is clarity in the LOI. This is particularly helpful when there is competition in order to make the right choice about which to accept. When it is unclear what the LOI is saying, the final deal can end up being different from expectations.

▪ Beware of any financing conditions in the LOI. These can cause long delays in the final deal.

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The final deal

▪ Stock sale is the most beneficial in terms of tax advantages and it is even worth a lower evaluation.

▪ Whatever the deal is make sure it is as efficient as possible on tax. Taxes can make a huge difference to the amount of money gained in the sale.

▪ A cap and basket clause is necessary to avoid being obligated to pay out huge liabilities later. If this is not put in the LOI, it is very difficult to negotiate these terms to the advantage of the seller in the acquisition agreement.

▪ Remember you have chosen the equity route for a reason, so be very aware of any debt clauses within the agreement

▪ Make sure all statements in the final contract are true representations and that there is a non-reliance clause preventing future legal battles based on representations made orally.

▪ It is advisable that you make an agreement with the PEG for a fee, for if the deal doesn't work out except for on account of the fault of the seller.

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Negotiation Process

▪ Making the right deal can be very emotive when it is about your own business that you have worked hard to grow. It is much better have a team of experienced deal makers carry out the negotiations. It would be easy to play on the emotions of the seller and for them to lose clarity of thought.

▪ Make sure the negotiating doesn't get bogged down. Be objective and keep communication amongst the negotiating team active. Step back and be ready to think out of the box for ways to arrive at a suitable deal and don't allow emotions to take over.

▪ Negotiations by PEG's are a team effort, with each member taking a different approach. Be on your guard about the tactics being used and careful to not give more than you are getting back. Without experienced negotiators a professional M&A advisor is vital.

▪ Remember that each PEG is different. They will have different strategies, expertise and positions. Treat them as such and be specific in your plans for your dealings with each one.

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▪ Know your limitations. How much time and money have you got to spend on the process. Are there other limitations either personal or professional? Be clear what you want out of the deal and what the deal breakers are.

In summary, PEG’s can be the way forward to realize the potential of your business, but the seller needs to be aware that PEG’s are very experienced in their field. Good preparation is necessary. The business owner needs to take care that they have an expert team in place to carry out the negotiations and finalise the contract. Even a small clause can make a huge difference in the final deal. Therefore, the deal needs to be made in an objective and clear headed manner with attention to detail. To this end professional help is advisable, to get the optimum benefit that is fair to all concerned and leads to a desirable outcome.

Our M&A Process

TARGET APPRAISAL	APPROACH	DUE DILIGENCE	NEGOTIATION & CLOSE	POST MERGER INTEGRATION (PMI)
Key Areas				
▪ Target & market analysis; ▪ Initial assessment of synergies & value drivers; ▪ Indicative valuation; ▪ Go or No-Go decision; ▪ Preparation of transaction documents (NDA – Non-disclosure Agreement/LOI-Letter of Intent); ▪ Select Transaction team; ▪ Appoint advisors; ▪ Consider funding ability.	▪ Initial approach letter; ▪ Signing of NDA; ▪ Prepare & share initial information requests; ▪ Formulation of LOI (Letter of Intent) & possible negotiations; ▪ Initial meeting and Q&A; ▪ Circulate information on the Target to the Transaction team.	▪ Set scope of due diligence; ▪ Set up VDR (virtual data room); ▪ Coordinating of due diligence, further meetings and Q&A sessions; ▪ Consider points relevant to the Post-Merger (PMI) phase;	▪ Revisit indicative valuation & prepare detailed valuation based on due diligence findings; ▪ SPA negotiations with the seller; ▪ Development of final structure (share/asset deal) and final valuation; ▪ Approvals; ▪ Signing of SPA & Close.	▪ Consider the extent of integration; ▪ Development of 100 Day PMI Plan; ▪ Consider short & long term objectives; ▪ Estimate requirements to capture synergies; ▪ Determine resource needs & optimal allocation.
Parties Involved				
▪ CFO; ▪ Head of M&A; ▪ Accountants; ▪ Corporate finance advisors; ▪ Consultants.	▪ Senior management; ▪ CEO, CFO, CTO; ▪ Strategy director; ▪ Head of M&A; ▪ Head of Business Development; ▪ Consultants.		▪ Company general counsel; ▪ Lawyers; ▪ Senior management.	▪ Company general counsel; ▪ Lawyers; ▪ Senior management/HR.

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