



WHAT AN ACQUIRER SHOULD CONSIDER IN A STOCK SALE?

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What an acquirer should consider in a stock sale?

In the context of the mid market business, an acquirer is better off with an asset sale structure, where they purchase individual assets and liabilities. There may, however, be some situations where a stock sale is the preferred option. There are many considerations to be taken into account, but the main ones are the tax advantages and the liabilities that are involved. There may also be contractual reasons to go the asset sale route.

Whatever the reason there needs to be special care taken in three particular areas :

- Make sure you get a comprehensive indemnification agreement for liabilities that occur before the deal was made, but which are only discovered afterwards. This ensures proper compensation. Without this agreement the acquirer is open to great risk.



- It is advisable to get a Seller's carry. This is where the Seller pays some proportion of the price, basically in the form of a loan, with an agreement made of how this will be paid back. This not only shows the confidence the seller has in the business, but also allows some much needed cash to keep the business going. It is good to have the pay back spread over a long period of time and gives the acquirer leverage in the case of a lawsuit or in the event of a claim that the seller wants to hold out on.

- Take a look at the corporate structure. This may change the tax status of the acquirer. It may be necessary to make some changes to this structure after it is acquired in order to optimize the benefits. These should be explored beforehand in order to make the most in negotiations of the deal.

In summary, whilst an asset sale is normally the preferred option for an acquirer, there may be circumstances that mean that a stock sale is the best option. If you are going down this route then carefully consider the areas of comprehensive indemnification agreement, Seller's carry and the corporate structure before making the final deal.



Our M&A Process

TARGET APPRAISAL	APPROACH	DUE DILIGENCE	NEGOTIATION & CLOSE	POST MERGER INTEGRATION (PMI)
Key Areas				
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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; 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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				
<ul style="list-style-type: none"> CFO; Head of M&A; Accountants; Corporate finance advisors; Consultants. 	<ul style="list-style-type: none"> Senior management; CEO, CFO, CTO; Strategy director; Head of M&A; Head of Business Development; Consultants. 		<ul style="list-style-type: none"> Company general counsel; Lawyers; Senior management. 	<ul style="list-style-type: none"> Company general counsel; Lawyers; Senior management/HR.

An overhead view of a business meeting around a wooden table. Several people in business attire have their hands stacked in the center of the table, symbolizing agreement or partnership. The table is cluttered with various items: a laptop, a calculator, a coffee cup, a glass of water, a pen, a notepad, and some documents. One document is titled 'INFORMATION'. The background is dark, making the wooden table and the white text stand out.

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