Undertaking M&A Transactions, Pre-Deal Agreements and Documents

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Steps involved in M& A Transactions

- Develop and Acquisition Strategy
- Identifying the cost benefit Analysis
- Set the M& A Criteria
- Search for Potential Acquisition Target
- Kick-Off Meeting
- Begin Acquisition Plan
- Perform Valuation Analysis
- Identifying the other party and Preliminary Evaluation

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- M& A Due Diligence
  - Cash Flow Projection
  - Revenue and Sales Data
  - Expense Analysis
  - Accounts Receivable and Payable
  - Inventory
  - Debt and Liabilities
  - Taxation
  - Legal and Regulatory
  - Customer and Supplier Contracts
  - Financial Controls and Accounting Systems

Negotiations

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- Negotiation
- Purchase and Sale Contract
- Structuring the transaction
- Structuring consideration of the parties
- Stock v/s Asset Purchase Considerations
- Financing Strategy for the Acquisition
- Signing the agreement and other formalities
- Closing and Integration of the Acquisition

Pre-Deal Agreements

- Confidentiality Agreement/NDA
  - A non-disclosure agreement (NDA) is a legally binding contract that establishes a confidential relationship between two parties: one that holds sensitive information and the other that will receive that sensitive information
  - Definition of Confidential Information
  - Exclusion of Confidentiality
    - Is or subsequently becomes publicly available without receiving party's breach of any obligation owed Disclosing party
    - Became known to receiving party prior to disclosure
    - Became known to receiving party from a source other than disclosing party
    - Independently developed by receiving party
  - Time Period
- Enforcement of Confidentiality Agreement

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- Standstill agreements
  - A standstill agreement is a contract that contains provisions that govern how a bidder of a company can purchase, dispose of, or vote stock of the target company. A standstill agreement can effectively stall or stop the process of a hostile takeover if the parties cannot negotiate a friendly deal.
- Exclusive Agreements
  - This agreement ensure that the target company refrains from negotiating with other potential buyers during a specified period
  - This allows the buyer to invest time and resources into conducting due diligence and drafting
- No-shop Provisions
- Fiduciary Out
  - A fiduciary out permits the board to change its recommendation for the signed deal and terminate the merger agreement if failing to do so would breach its fiduciary duties.
- Inter-Play between Exclusivity, no-shop and Fiduciary-outs Agreements
- Letter of Intent or MOU or Term Sheets

Thank you