



## In-house Counsel Vital to M&A ...an Investment Banker's Perspective

The day-to-day role and responsibilities of in-house counsels are well known. What is less known is the essential role counsels play in M&A transactions. In our experience, an in-house counsel can make or break a deal.

This newsletter outlines the key role in-house counsels play in an M&A transaction and, most importantly, we suggest how they can help the investment banker negotiate, structure and conclude transactions both in sell and buy side mandates.

### **The role of in-house counsel in M&A transactions**

M&A transactions are the result of team work. By team, we are not only referring to the external resources hired to conclude the transaction, but all inside employees involved in the transaction such as operations, finance, HR, legal, environmental, etc.

While the obvious role of in-house counsel is to review, comment and assist in negotiating the various agreements pertaining to a transaction, their involvement, however, should begin well before the start of negotiations and extend beyond closing of the deal.

Whether a company has a formal M&A group or simply a small ad hoc team, the in-house counsel should be part of the group from the very moment a conscious acquisition or disposition decision or strategy is born. Counsel's role should include helping define the strategy and once a transaction is in sight, he or she should actively participate in the process. The reasoning is two-fold: first, in-house counsel can help better define an M&A strategy from a legal perspective; this will avoid last-minute surprises. Secondly, by being fully aware of both the strategy and being involved in a transaction from its very beginnings, counsel will be better equipped to ensure that all legal documentation accurately anticipates and reflects a wide array of potential issues.

The following outlines some of the work an in-house counsel would be expected to perform before, during and after a transaction is undertaken:

### **Preparation**

- Negotiate the investment banking engagement letter as well as others for related due diligence services
- Selection of outside counsel
- Review of the teaser, confidential information memorandum and other marketing materials
- Preparation or review of nondisclosure agreement
- Perform sale side due diligence i.e. review of all existing contracts and agreements to be supplied to buyer
- Preparation and review of virtual data room material
- Participate at meetings and visits, either with potential buyers or with seller in the case of an acquisition.

### **Execution**

- Coordination and analysis of due diligence
- Review and negotiation of all agreements necessary to conclude the transaction
- Preparation of board presentation
- Addressing all governance issues
- Filing with security exchange and other regulatory authorities
- Press releases and public disclosures.

### **Post-Closing**

- Monitoring representations and warranties
- Purchase price adjustments settlement (working capital, escrow, earn-out adjustments)

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In our experience, there is always a deal sponsor or promoter in a transaction. This person is the one in the trenches who acts as the interface with the other side. The best in-house counsel is the one who has the skill to mentor that person as objectively as possible. By mentoring, we don't mean to let go of the safeguarding fundamentals but rather help and educate the M&A team leader and members as to the fundamental issues to focus on and where to stand firm on the non-negotiable points.

In our opinion, the best in-house counsel in M&A transaction is the one who can:

- Translate legal concepts in layman's terms for all the parties involved, and likewise, ensure that the business terms are accurately reflected in the legal documents;
- Bridge the corporate culture between various outside stakeholders (banking and financial partners, outside advisors such as legal, tax, auditors, environmental) and the company;
- Act as a mentor to the deal sponsor;
- Guide outside counsel who are drafting contracts on the key business issue around the industry or the company;
- Help to keep the deal momentum going, especially with outside advisors, and
- Help identify the major topics that should be covered extensively by the representations and warranties.

No matter the size of the company, M&A transactions are emotional roller coasters for the sponsors. A well-informed in-house counsel can play a vital role in filtering out the emotions, keeping everyone on track and ensuring that the legal aspect of the deal works.

### Recent Transaction Related to Legal Tech:



**The Canadian Legal Information Institute (CanLII)**  
has acquired  
**Lexum Informatique Juridique Inc.**

The undersigned acted as financial advisor to CanLII and The Federation of Law Societies of Canada for this acquisition and its financing



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