



Expansion through Acquisitions anno 2016

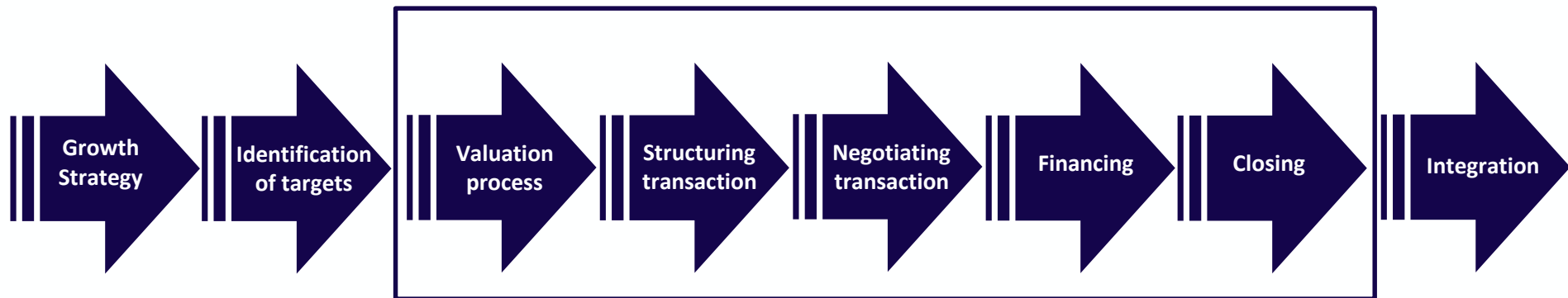
How to protect against transactional risks

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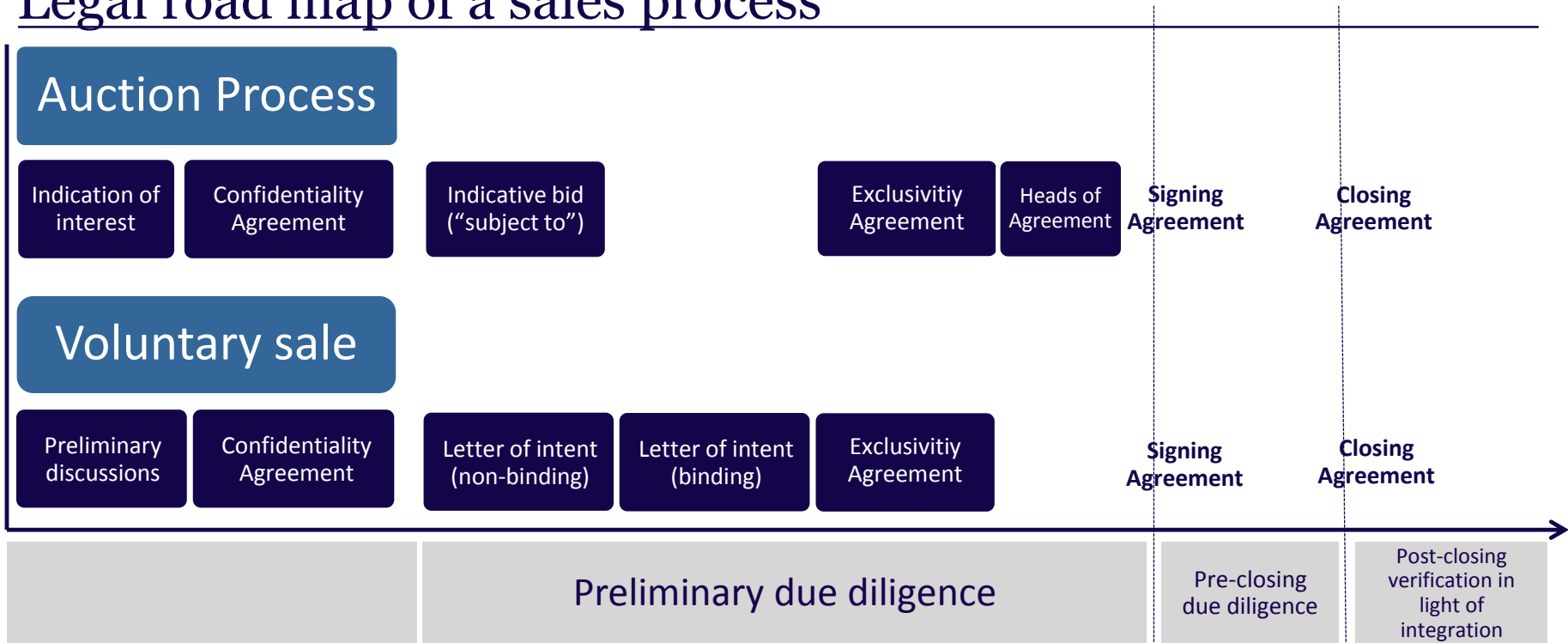


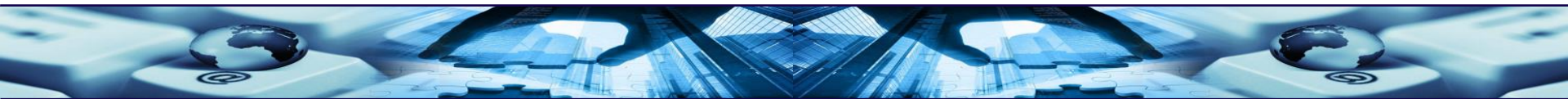
The acquisition process





Legal road map of a sales process

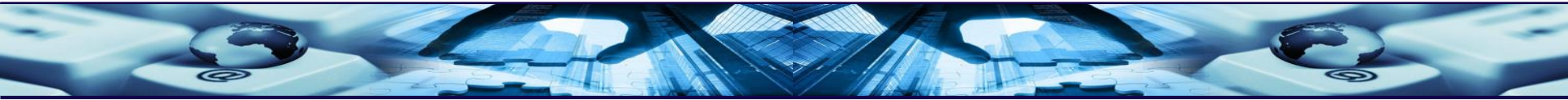




Risks inherent to a transaction

- > Leakage of acquisition discussions
- > Information gap as to target or assets/liabilities to be acquired
- > Not being used as a hare
- > Incorrect price (overpaying/price adjustments)
- > Non-fulfillment of conditions
- > Regulatory approval
- > Payment purchase price
- > Post-acquisition claims/indemnification
- > Competition – seller re-entering market
- > Poor transition integration
- > Management changes

➔ Legal answers to mitigate risks

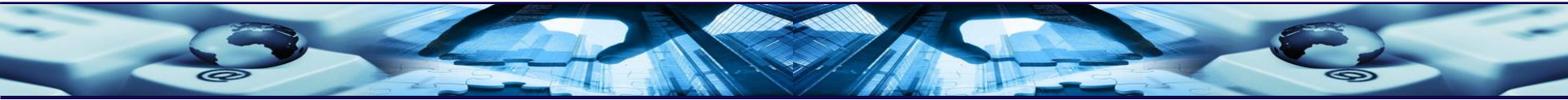


Dynamics of an acquisition process

M&A Process is a risk allocation process

- > Risk identification
- > Risk assessment
- > Risk remediation/containment
- > Risk allocation

➔ Importance of due diligence bridging the knowledge gap to come to a levelled playing field.



Levelled playing field key determining factors

- > Equality of information
- > Position with respect to risks
- > Type of sale process
- > Type of buyer (industrial vs financial)
- > Market conditions
- > Need for financing



What matters in the acquisition contract?

Seller's perspective

- > Deal certainty
- > Avoid price is reduced via price adjustments or indemnification

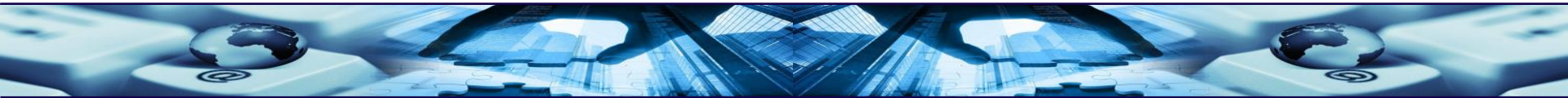
Buyer's perspective

- > Full information to assess and quantify risks
- > Pay right price (net debt or working capital adjustments or need for earn-out?)
- > Avoid to have to go through indemnifications to get money back
- > Importance of e.g. IPR, lawsuits, environmental or pension issues



Legal issues

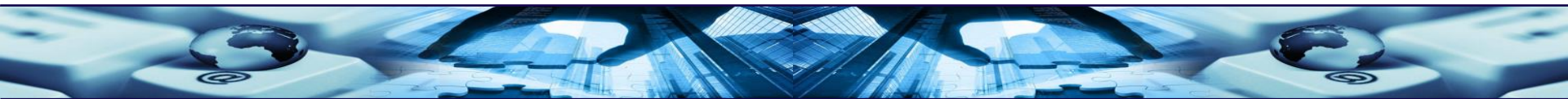
- > Representations and warranties
- > Disclosure
- > Indemnification clause
- > Specific indemnity
- > Deal protection
- > Escrow agreements or guarantees
- > Regulatory approval
- > Non-compete
- > Confidentiality



From signing to closing

Satisfying closing conditions (conditions precedent)

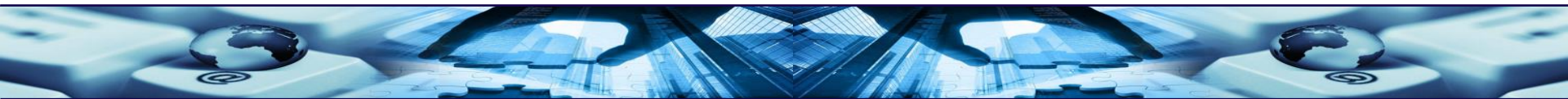
- > Consents
 - From whom? Competition or Regulatory authorities, shareholders, contract parties, etc.
 - Who must obtain consent?
 - Can it be waived?
 - Be careful it is not a “pure potestative” condition
- > Execution/delivery of certain contracts/permits/authorizations
- > Risk allocation for new matters in interim period
 - Bring down of reps
 - Additional disclosure
 - Walk-out right versus price reduction
- > Drop dead date
- > Termination fee



From signing to closing

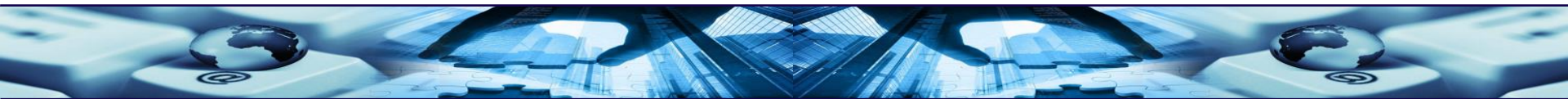
Covenants

- > Risk of deterioration of the business
- > Access and due diligence
- > Right to already intervene in management of target
- > Operational covenants
 - Affirmative covenants
 - Negative covenants
 - Notification of certain events happening



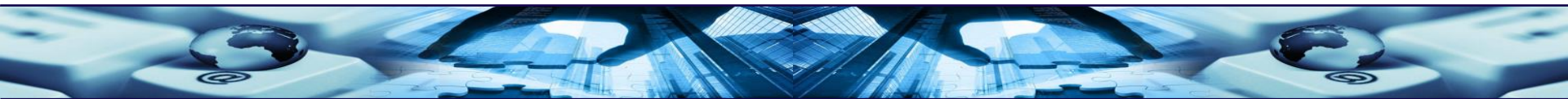
Post-closing matters

- > Final price determination
- > Post-closing filings
- > Expiration of claims periods
- > Release of escrows/bank guarantees
- > Management retention



Troubled deal – No closing

- > Asserting alternatives when a deal is failing
- > Termination fees
- > Walk-out rights and limitations
 - Negotiated termination right
 - Mutual consent
 - In case of material breach by other party
 - In case certain conditions have not been satisfied
 - If closing has not occurred by a certain date



Troubled deal – No closing

- > Liability claims limited by contract
- > Judicial/legal limitations/extension of contractual remedies
- > Failed deal clean-up
 - Communication
 - Return/destruction of documents
 - Break-up fee