

**PLAN YOUR SUCCESS:
TOP CORPORATE CONSIDERATIONS
FOR BUSINESS OWNERS**



A PilieroMazza Webinar
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ABOUT PILIEROMAZZA

PilieroMazza PLLC is a full-service law firm located in Washington, D.C. We are most well known as a government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services, including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

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CHOOSING THE RIGHT TEAM: THE IMPORTANCE OF COUNSEL AND OTHER BUSINESS ADVISORS

- Webinar – hot issues we encounter
- What expertise do you need on your team?



FINANCING AND LEGAL ISSUES

Retain effective counsel

- Retain your own counsel for the lender's underwriting processes
- Your counsel reviews all loan documents and acts as your advocate
- Save on transaction expenses by keeping counsel involved at all times

Know your lender

- Compare lenders to assure you receive economic and commercial terms that make sense for you
- Complete your due diligence to compare lender offers

Use an LOI

- Generally, negotiate a letter of intent, an effective way of avoiding unnecessary deal expenses before they are incurred
- Sets out major deal terms that both sides must agree to before proceeding to sign definitive documentation

Know yourself

- Take all steps to know yourself in order to avoid any deal-killing surprises
- Such details can often be dealt with easily during the LOI stage



STRUCTURE OF THE DEAL – ASSET, STOCK/INTERESTS, OR MERGER

- Asset Purchase/Stock Purchase/Merger
- JVs: Why current environment is more attractive for M&A transactions
- Availability of funds
- Advisory Services



STAGES OF A STRATEGIC TRANSACTION

- What are your short term goals and long term goals?
- What agreements are in place that may inform the way forward?
- Market trends through 1st quarter 2017: M&A generally and more favorable lending environment



RECOMMENDED STRATEGIES FOR BUYERS AND SELLERS

- **3 Guiding Words for a Successful Transaction**
 - **Transparency** – be straightforward
 - **Credibility** – avoid re-trading, but if you do it, admit it
 - **Reasonableness** – have a good reason and logic to support your positions
- **Success is in the Planning**
 - **Assemble the right “internal” team and “external” team of advisors**
 - **Do your advisors know small business government contracting?**



CHRONOLOGY/SEQUENCE OF STEPS IN AN M&A TRANSACTION

1. Confidentiality Agreement

- Exchange of confidential and proprietary information to evaluate the possibility or viability of a transaction

2. Letter of Intent

- A roadmap for and the material terms of a transaction
- Generally non-binding except for certain key terms (exclusivity and confidentiality)



IMPLICATIONS FOR GOVERNMENT CONTRACTORS

- **Present Effect Rule: 13 C.F.R. § 121.103(d)**
 - Agreements to merge (including agreements in principle) have a present effect on the power to control a concern
 - SBA treats such agreements as though the rights granted have been exercised
 - Agreements to open or continue negotiations are not agreements in principle
- SBA has treated LOI as an “agreement in principle” and found buyer and seller affiliated, despite express language regarding nonbinding nature of LOI



CHRONOLOGY/SEQUENCE OF STEPS IN AN M&A TRANSACTION

3. Due Diligence

- Buyer's intensive study period
- Buyer's pre-acquisition review of company to identify the legal and business risks

4. Definitive Agreement (Stock, Asset, or Merger Agreement)

- Contains the binding deal terms
- What's within the 4 corners of the pages is the deal

5. Signing of Definitive Agreement

- Seller and buyer sign the agreement under which the sale will be made
- BUT, conditions still need to be satisfied in order to obligate the parties to close



CHRONOLOGY/SEQUENCE OF STEPS IN AN M&A TRANSACTION

6. Closing Conditions to Be Satisfied (or Waived)
 - Obtaining of financing needed by buyer to purchase the seller
 - Obtaining 3rd party consents
 - Remaking representations and warranties at closing, same as done at signing
7. Closing
 - Seller and buyer “consummate” the deal
 - Money is paid and title to stock or assets is transferred



CHRONOLOGY/SEQUENCE OF STEPS IN AN M&A TRANSACTION

8. Post-Closing Performance

- The closing does not typically spell a clean break between the parties
- Post-closing the parties may still have some continuing connections
 - If an asset sale, cooperate on novation of prime contracts
 - Post-closing true-up of purchase price (reconciliation of seller working capital)
 - Post-sale employment by buyer of seller's owner(s)
 - Transition services



THINGS A SELLER SHOULD DO PRIOR TO SALE

- **Plan Ahead**
 - Seller-side due diligence
 - Get organized – complete and accurate corporate/business and ownership records
 - Proactively fix issues and problems before putting company in play for sale
- **Manage Expectations**
 - What's your company worth? Put emotion aside
 - Engage in an honest self-evaluation (know your strengths and weaknesses)
- **Make the Commitment – Got to Be “All In”**
 - It's a journey and process, not a sprint
 - A sale/purchase transaction can take up to 6 months or more from start to finish
 - Owners have 2 full-time jobs
 - Run the company as if not selling, but instead continuing to build it
 - Commit all resources necessary to negotiate and execute on the sale



THINGS A BUYER SHOULD DO PRIOR TO AN ACQUISITION

- Know what your strengths and weaknesses are
- Know what you want to buy and why you want to buy it
- Execution based on a defined corporate strategy
- Make the commitment – have to be “all in”
- Commit the necessary time and resources



CHOICE OF LAW: WHY IT IS IMPORTANT?

- **Choice of law in M&A transitions**
 - Delaware, New York, California, Maryland/Virginia
 - Increases marketability, particularly with respect to future investors
 - Creates predictability of outcomes



NOVATION

- After closing of transaction
 - Condition subsequent
 - If not approved
 - Rescind transaction
 - Reduce purchase price



Questions?

Thank you for joining us today.

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