ARTICLE

June 2019

The Ultimate Merger and Acquisition Checklist

The road to a successful **merger and acquisition** process, for both sellers and buyers, is arduous and full of bumps, twists and unexpected hazards. It's all-hands-on-deck for both sides and their legal, HR, marketing/sales, and accounting departments, as well as key team leaders and management.

If you've never taken this road before, there's a number of steps and obstacles that need to be considered. This merger and acquisition checklist will act as your roadmap to navigating the complex process and steps yet to come.

1. DO YOUR HOMEWORK

Every merger and acquisition is unique and there's plenty of unexpected obstacles that can disrupt the process. Both sides should do a little bit of research ahead of time. This homework will form the basis of understanding how the process goes, what to expect and what to avoid, for both parties.

Acquirer: First, you should thoroughly research the company you're acquiring. You're going to dig deep in later stages of the checklist, but, for now, focus on what you can see at surface level. Does their voice, mission statement, and culture align with your own organization's?

Also, If you're acquiring a company, then you're going to need to make a valuation of the company that you're buying. Look at valuations for similar startup companies to get an idea of a fair, initial offer.

Seller: You're not the first company to be acquired; there's plenty of others to sell their companies or merge with larger organizations, before yours. Their stories, whether good or bad, provide useful examples of what to expect and how to avoid the mistakes of other startups.

If you want to do some extra-credit homework, consider contacting merger-acquisition managers at other companies that have handled these deals in your industry. They may be able to offer some good advice that can help you successfully complete your own acquisition-merger.

2. DON'T LOSE FOCUS

Acquisitions and mergers require a lot of time and effort. While larger companies feel it less, because they have more staff and resources to dispense and allocate, without feeling the stress, it's important for both organizations to focus on growth above all else.

Acquirer: It's easy to experience tunnel vision during an acquisition or merger. You have your eyes set on a specific company that you want to add to your enterprise. Unfortunately, there isn't a guarantee that you're going to walk away from the startup marketplace with your first choice.

Even if the deal appears to be done, there's still time for it to sour. Your desired startup may have other partners, or interested parties, that will make their own offer in the later stages of the negotiations. To ensure that you aren't blindsided by an unexpected declination, you should spend some of your attention on the next-best option, if there is one.

Seller: Having an acquisition or merger deal fall through in the end is not uncommon. Given how much time, effort and focus is required to effectively reach a deal, it can be difficult for startups to manage both the negotiations and the day-to-day operations of their business.

Some of the worst horror stories for startups involved in an acquisition or merger end with companies that focused too much on the deal at hand that they neglected their own growth. When the deal fell through, it was difficult to kick-start their business again and get back to growing.

Even if you're moments from selling or reaching the end of the deal, always keep growing your business. It will only help your valuation and, if a final agreement can't be made, you'll get right back on track.

3. IS THERE A CULTURE FIT?

Culture fit is one of the most important aspects of successful merger-acquisitions. Even if a deal is met, a bad culture fit will create friction in the post-acquisition process. If teams and cultures are too far off, the deal may not be worth it for either side.

Both: As you investigate the other party, spend some time exploring things like their mission statement, company initiatives, tone/voice in messaging and other items that share clues into the company culture. Don't forget to ask direct questions about the working environment, employee attitudes, and more.

Acquirer: As the buyer, you'll have a little more insight into the company culture of the other side. As you perform your due diligence into their records, don't neglect to look at employee benefits, HR policies, and other related documents. These will help support your understanding of the acquisition's company culture.

Again, if cultures are too far removed from one another, it may present a tough transition for both sides.

4. MAKE/RECEIVE AN INITIAL OFFER/VALUATION

The first major move in an acquisition is the initial offer and earliest valuation of the company. For a startup that is looking to get out of the seemingly-endless fundraising cycle, this can be immensely exciting. Unfortunately, this offer is rarely the right, final offering that seals the deal.

Seller: The first thing to consider is the differences between legitimate and non-legitimate offers. Some companies become misguided by proposals and pricings from "buyers" that have no real expectations of making a purchase. A legitimate offer will have an expiration date, come directly from an acquisition manager (or higher) and be followed quickly with a term sheet.

Next, the first offer or valuation you receive will likely be lower than expected, or at least lower than what your startup is actually worth. This is because most acquisitions are strategic,

which means the buyer is interested in a piece of your company. It may be the tactical location of your teams, your share in the market, technologies your business has developed, or otherwise.

Finally, when you do receive a legitimate, qualified offer, it's wise to notify your partners, investors, and even competitors. These are parties with a direct interest in your company. They may quickly come to the table with an alternative deal.

Acquirer: Your first offer needs to be strategic; it should deliver a clear understanding of where your interests are and what you hope to get from the acquisition. If your offer is too low, however, the other party may not be interested in entering any sort of negotiations.

When you make that first offer, it should have an expiration date. This puts pressure on the company to respond quickly. You don't want to create the opportunity for your offer to simply sit there in no man's land.

5: HIRE THE RIGHT OUTSIDE HELP

Acquisitions and mergers require a lot of work and preparation. Both parties are going to feel some pressure from this strain. Hiring some outside, dedicated, and expert help is a smart move. Not only will it alleviate some of this pressure, but it will also improve your chances of a successful merger and acquisition.

Seller: Hiring some outside professionals is going to be a necessary item on a smaller company's M&A checklist, especially if you want to be able to manage both the negotiations and your company's day-to-day.

Some professionals to consider hiring include:

- **Legal services:** the acquiring company has a deeper legal bench than your company, so hiring some additional legal professionals can help even the playing field.
- **Accounting services:** your financial records are a primary area of concern for the buyer, which means they have to be impeccable.
- **CPA:** offering the buyer some outside validation that your financial/accounting documents are accurate can really put them at ease.
- **Valuation firm:** another layer of outside validation is having your company valued by a third party, specialty firm.
- **M&A Broker:** while the above professionals are good at niche jobs, a merger-acquisition broker is a great addition to your squad because they oversee and handle a number of different tasks related to your deal, including the analysis and valuation of your business, assessing your objectives for the deal, pre-qualifying any incoming offers, coordinating the closing process and more.
- **M&A Advisor:** there's two distinct **differences between M&A advisors and brokers;** the first is that they work with both buyers and sellers, particularly for larger acquisition deals because their compensation is greater, and, secondly, they focus more on due diligence and the various departments involved in that process, which will be discussed in a later section.
- **Financial Printer:** works with your law firm to create, file and distribute the merger proxy statements and other SEC-required documents necessary for your M&A deal. Your merger proxy statement will go through many iterations (proof cycles) and often several filings with the SEC throughout the deal process. Your financial printer will process "Author's Alterations" and EDGAR Filings of your document until finalized, including style, formatting and printing.

Acquirer: Large enterprise companies will likely have all of the available professionals on hand to navigate a merger-acquisition. That said, you may want to dedicate a team to specifically handle all of the moving parts of the process. Appointing, or hiring, a merger-acquisition manager to head this team is also a strategically smart move.

6. NAVIGATE NEGOTIATIONS

An initial offer has been made and now there's a lengthy road of negotiations ahead. Each side is vying to get the better end of the deal. In the end, compromises will be made to (hopefully) reach a final agreement.

Seller: In a perfect scenario, you'll have more than one offer, which you can use as bargaining chips to improve your final sale price. Each time you receive a term sheet from a potential buyer, you want to take extra care before you sign since your ability to negotiate declines sharply once you've agreed to terms.

Since the buyer is going to be doing their diligence to ensure your company is as it appears, you should do the same. Are there any warning signs that detract from the expected success of the acquiring company? During negotiations, you may be able to use these insights to your advantage.

Acquirer: There are different rounds of negotiations when it comes to acquisitions and mergers. Your goal is to minimize the number of rounds, while still ensuring that the final purchase price isn't beyond what you're comfortable paying.

As you perform your due diligence, you'll find ways to push the deal in your favor. But, pushing too hard to get the absolute best deal may make life after the acquisition rocky. You don't want your newest company to feel that you've picked their pockets or devalued their worth.

Both: Negotiation fatigue is a real concern in acquisitions and mergers. Both sides need to be aware of this before they agree to a deal that they don't really want to make. To avoid negotiation fatigue, agree to short, but comfortable periods of negotiations and closing.

7. DILIGENCE

As negotiations become more serious, the buyer will do their due diligence to ensure that their soon-to-be acquisition checks out. This is an important stop on the merger-acquisition checklist for both sides.

Acquirer: You wouldn't buy a car before a test drive, right? The same goes for acquiring a company. You want to guarantee that there are no hidden surprises or "malfunctions" brewing beneath the surface.

The diligence process involves digging through the records of your potential acquisition and heavily scrutinizing each department, including:

- **Accounting:** Do the annual reports for the last few years reflect growth and positive performance?
- **Finances:** Are profits on an incline or decline? What are the financial forecasts for the next few years?

- **Legal:** Are there any current claims, complaints or other litigations going on? What about other regulatory, legal obstacles? Intellectual properties: Have all patents, trademarks and other intellectual properties been properly protected?HR: What is the organization's structure? How are employees compensated and are there any benefits?
- **Sales and customers:** Who are the top customers and how what percentage of the total sales do they make up? Will these customers stay loyal after the acquisition?

  These are just a choice selection of the hundreds of questions you'll be asking during the diligence process.

Seller: The diligence stage is nerve-racking for companies looking to be acquired. Deals can really be made or broken at this point. If there are any discrepancies or unexpected problems hidden in your records, it could hurt the valuation of your company. It may even cause the other party to walk away altogether.

The buyer is going to dig deep into your records, with the sole purpose of finding mistakes that lower the end price. A virtual data room is a very important tool at this juncture. With all of these different people accessing your data, you can ensure that your sensitive company information is secure, while still providing all of the documentation that the acquirer needs. Plus, you can see what documents are being access, when and by whom. This activity log may give you winning insight into the negotiations!

Each department needs to thoroughly scrub their records clean and make sure that there are no hidden errors that could cause problems during this step.

BUILDING A SUCCESSFUL FUTURE

Following this checklist will better guarantee that an acquisition-merger deal is not only successful and more painless, but it will also ensure that both parties enjoy life after the merger or acquisition. Remember, it isn't just about making a deal, but growing a future together as a strong, cohesive enterprise.

FOR MORE INFORMATION

Good due diligence and a successful transaction requires a secure data room solution for collaboration and efficiency. Visit broadridge.com/simplify-capital-markets-transactions and request a SmartRoom demo today.

CP_00054_AR_19