Due diligence and post-acquisition planning

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Planning the merger and acquisition of a business is a critical time for any company. It must be planned meticulously and carried out with direction to achieve its potential. Detailed planning, not just of the pre-acquisition process but critically of post-acquisition implementation, is vital to the success of the transaction.

Due diligence in context

Due diligence is just one part of an acquisition or investment exercise. Though a critical part of the process, it is important to see due diligence in context. Figure 1 illustrates where due diligence should sit in the acquisition process.

Stage 1 is about identifying a merger or acquisition target and making an approach. This can only sensibly be carried out following a proper strategic review where strategic options are considered.

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If the strategy moves forward to the second stage, the two parties can sketch out the broad terms of an agreement. This is best undertaken by the parties and *not* their respective lawyers. Once agreed, Heads of Terms can be agreed, which confirms that there is a deal underway. Due diligence therefore begins.

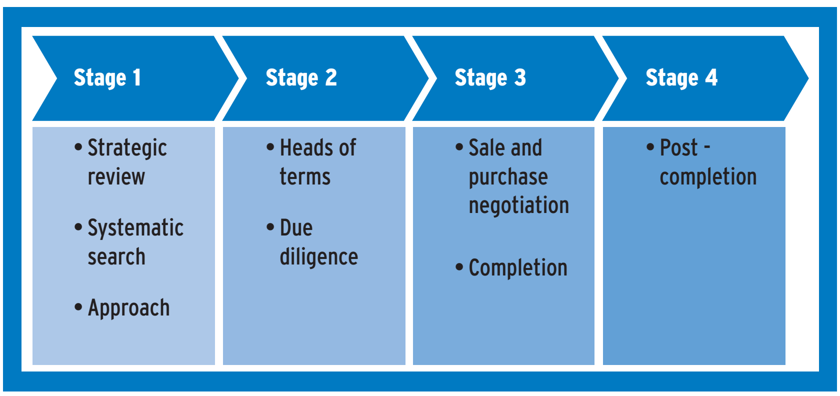

Figure 1. The acquisition process
Source: Peter Howson

What is due diligence?

There is no commonly held definition of due diligence, nor is there any standard legal definition. The following definition is useful in understanding the purpose of due diligence: "An investigation into the financial and/or operating activities of a business in connection with a proposed acquisition or disposal of an interest in that business" (source: KPMG).

The problem with due diligence

The main problem with traditional due diligence, which covers financial, legal and commercial aspects of the business, is that it suggests that, when completed, the deal will be solid. This can be misleading! Most acquisitions fail because of shortcomings at the *post*-acquisition implementation stage rather than those related to the pre-acquisition investigation stage.

According to KPMG there are three 'hard keys' and three 'soft keys' to acquisition success. Their research tries to pinpoint those factors which give deals a better chance of success than average.

In our experience we strongly advise our acquiring clients to remember two important rules. They are:

- Never use your M&A advisor for due diligence when they are on a 'success' fee for the deal. There is a clear conflict of interest that 'Chinese walls' can never overcome.
- Always engage an independent and