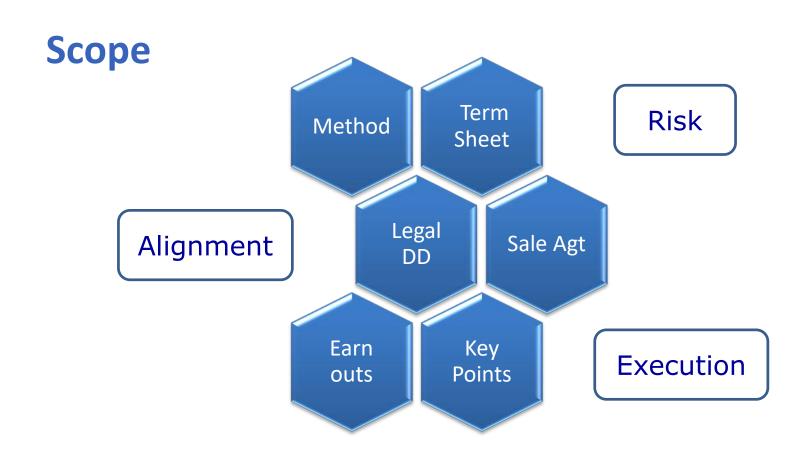




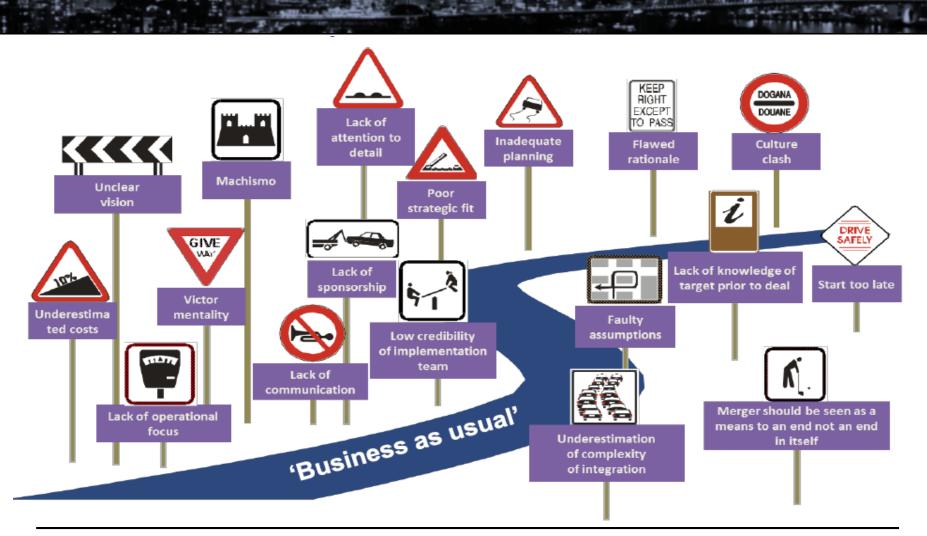


M&A "Buy Side" – Key Lessons





Why Do Mergers Fail?



Method









Due Diligence

Due Diligence

Legal

DD Request

- Due Diligence Request List
- Corporate, Compliance, Financing, Material Contracts, Assets, IP, Employees, Litigation & other
- Consider Materiality Quantitative/Qualitative Thresholds

Key Personnel

- Q&A Executives/Senior Management
- Request for Further Information
- Gap Analysis / Seller information > Buyer

DD Report

- Exceptions Based Due Diligence Report Material Issues
- Conditions Precedent change of control, consents, rectification
- Specific Indemnities identified matters



Sale Agreement

Asset v Share Sale Agreement

Asset

- Company is the Seller (retains liabilities)
- Specific Assets certain excluded
- Avoids legacy issues (tax, liabilities, contingent)
- Less attractive to Shareholders CGT

Risk Allocation

Shares

- Shareholder/s are the Seller/s (joint risk)
- DD & SPA terms are more robust
- Deferred consideration to fund warranties
- Risk is 'priced in' re: Tax, Litigation, Third Party Claims

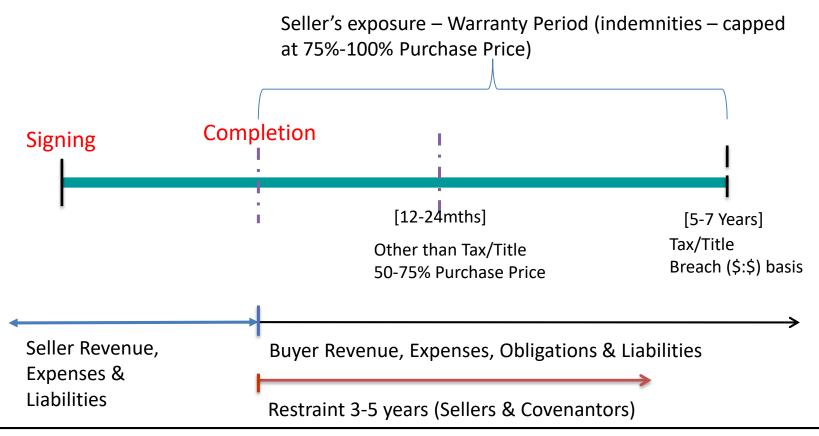
Threshold

- Warranty Threshold need to consider 'materiality/deal value'
- De minimus Amount per Claim and Aggregate Claim
- Seller liability for all or only above threshold level



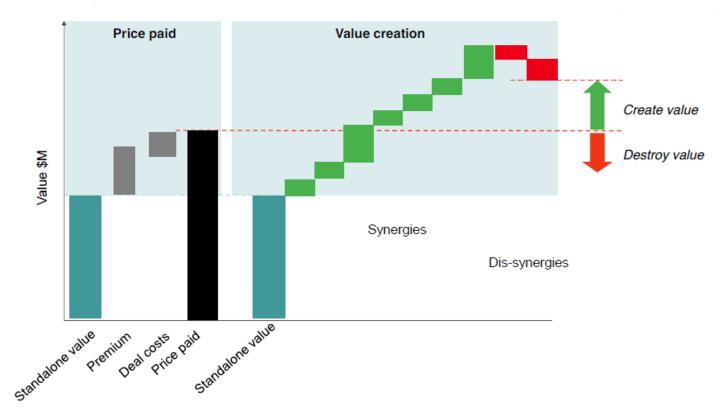
Sale Agreement

Seller's v Buyer's Exposure



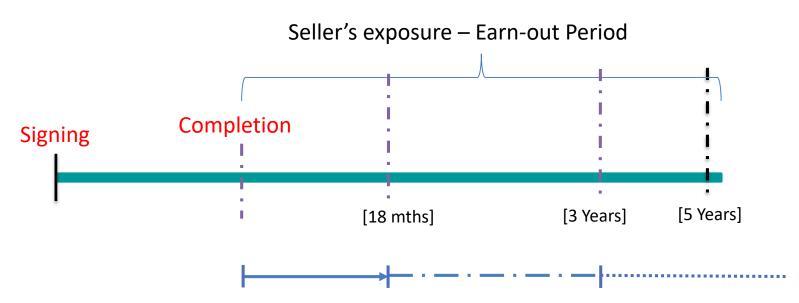


Retaining Standalone Value





Milestones



- Quantitative Measures (Revenue, EBIT, Margin) Apples & Apples
- Ability to Control Company post Completion Seller's Risk
- Gaming by Buyer (At risk limit exposure)
- Externalities v's Static Operations (BAU)



Key Lessons - Summary



Method – Align M&A Team & explain "Drivers"



Term Sheet - Sets key reference point & "Deal"



DD – Affirms Business Assets and exposes "Gaps"



Sale Agt – Allocates "Risk", Thresholds & Security



Earn Out – Need definition & clear milestones



M&A Trends - W&I Policy gives Sellers "clean exit"



Contact us



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Corporate & Commercial | Capital Markets | Private Equity | Mergers & Acquisitions



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Wayne has extensive international and domestic cross border M&A experience. He has been independently recognised as a 'Leading Lawyer' and 'Recommended Lawyer' by the Australasian Legal Business review panel – Mergers & Acquisitions Guide.

Wayne advises listed public companies, private companies, corporate advisory firms, private equity groups, consortiums, start-ups and NFPs on: mergers & acquisitions, equity and debt capital markets, initial public offerings, takeovers, private equity, joint ventures, company restructures, leveraged and management buy-outs, corporate finance, intellectual property and general commercial matters.







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