

# Leveraging Legal Expertise in M&A Transactions to Drive Business Success

A Practical Guidance® Article by Russell Franklin and Jeanette Kernizan Adelson, Morgan, Lewis & Bockius LLP



Russell Franklin  
Morgan, Lewis & Bockius LLP



Jeanette Kernizan Adelson  
Morgan, Lewis & Bockius LLP

Given the significance of strategic transactions such as mergers, acquisitions, or dispositions, it is likely that in-house counsel has competent external counsel that it can leverage to do much of the heavy lifting regarding drafting and general project management. While external counsel may be more experienced from a procedural standpoint, and generally is more than capable of drafting, there are things that directly impact the transaction that external counsel cannot do at all, or cannot do as well as in-house counsel, given that external counsel is not integrated into the business.

This Insight highlights some of the ways in-house counsel can leverage their institutional knowledge to help everyone, including external counsel, ensure that the company is protected throughout the process, and that the business team achieves its stated goals for the transaction.

## Understand the ‘Why’ and the ‘What’ and Pass that Information on to External Counsel

Understanding what has already happened when a deal comes across the desk, and what the motivations are behind the deal, will be extremely helpful as the transaction advances. When it comes to the “what,” has a nondisclosure agreement been signed? Is there a term sheet? Is there exclusivity? Has the nature of the deal consideration, and the transaction structure, already been agreed?

When it comes to the “why,” why is the company interested in this deal and why now? What, if anything, could change that would meaningfully shift the strategic value of the deal? Are there bright lines where the company would walk away from the deal? Are there alternative options if this does not work out?

All of these are questions that are critical to protecting the company and ensuring that the general desire to get a deal done does not become more important than the fundamentals that made this particular deal attractive in the first place.

## Deciding Who Needs to Know What and When

There will always be a balancing act between keeping the circle of individuals who know about a strategic transaction small for the sake of confidentiality and ensuring that key stakeholders know what they need to know when they need to know it. This is an area where in-house lawyers are particularly well suited to help after they understand the “why” and the “what” regarding the transaction.

Oftentimes, the business team wants to keep the team that is “read in” as small as possible because, among other things, this results in fewer people who can say no or raise issues. However, reading in key team members too late often creates complications that could have been avoided if key stakeholders were involved earlier. It also makes it much more difficult to understand the real ramifications of the “gives and takes” that are traded as a transaction advances.

For example, it is easy to say, “we will just port all of the employees over to our benefit plans at closing,” but it is rarely that simple in practice. In an ideal world, the company’s benefits team would be involved before a decision about how to deal with benefits is cemented.

## Ensuring that the ‘Dollars and Cents’ Matters Work Properly

The business team traditionally negotiates headline price. However, there are a number of mechanics that are included in a purchase agreement that have an economic impact, including the structure of contingent consideration and the mechanics associated with purchase price adjustments. External counsel typically will ask for input on these items.

However, because external counsel did not negotiate the deal terms, and did not conduct financial due diligence, they are not in the best position to be the final arbiter of what accurately reflects the business deal.

In-house counsel can add real value by ensuring that the financial-based definitions, the accounting principles, and the triggers for any contingent consideration, by way of example, are accurately reflected and agreed early on, as opposed to at the last minute.

## Integration

No one knows better than in-house lawyers that integration is often an afterthought—even though it is critical to long-term success. Not only can this impact the value that can be extracted from a newly acquired asset, it also can create legal issues that could have been avoided with a bit of advanced planning. It isn’t uncommon for various things to be uncovered during due diligence that should be dealt with immediately after closing. However, it is rare that anyone keeps that “to-do” list and implements it post-closing. Doing so would make everyone’s life that much easier.

In-house lawyers work to support the business, and external counsel works to support in-house lawyers. In-house lawyers who leverage these simple strategies are likely to make it easier for external counsel to do their jobs and for the business team to increase the probability of a seamless closing and the realization of the strategic goals that underpinned the transaction in the first place.

## Related Content

### Resource Kits

- [In-House Compliance Resource Kit](#)
- [In-House Corporate Secretary Resource Kit](#)
- [In-House Legal Department Management Resource Kit](#)

---

### Russell Franklin, Partner, Morgan, Lewis & Bockius LLP

Russell Franklin counsels private and publicly held companies in connection with complex strategic transactions, including structuring and negotiating mergers and acquisitions (M&A), minority investments, and joint venture transactions for strategic and financial clients. His practice also includes general stock and asset transactions, and purchases and sales resulting from bankruptcy and out-of-court restructurings. Russell routinely partners with life sciences transactions (LST) lawyers on life sciences M&A and matters that include one or more equity components. Russell is a member of the firm’s SPAC Task Force and has counseled clients contemplating SPAC and de-SPAC transactions.

### Jeanette Kernizan Adelson, Associate, Morgan, Lewis & Bockius LLP

Jeanette Kernizan Adelson advises clients on a broad range of corporate and transactional matters, including US and cross-border asset purchases and mergers and acquisitions involving public and private companies, renewable energy, capital markets, debt and equity financings, and general corporate governance. Jeanette also maintains an active pro bono practice involving many areas of public interest law, including asylum, citizenship, and not-for-profit organizations. Jeanette is fluent in Haitian Creole.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.