Preface

Step-by-Step Guidance
Organization
Planning
Investigation
Execution

About the Authors

PART_ONE

Planning

CHAPTER 1

Introduction

Overview
Mergers and Acquisitions: A Way of Corporate Life
Mixed Results
Acquisition Risk and Due Diligence
Preventable Causes of Failure
Myopic Approach to Due Diligence
Reacting to Deals
Compartmentalized Behavior
Inactionable Findings
Exclusive Focus on Risk Mitigation
Key Success Factors
Holistic View of Due Diligence
Growth Strategy
Integrated Management
Purposeful Action
Value Orientation
Contents

Due Diligence and Value Creation 16
Plan to Create Value 16
Strategic Purpose 17
Value Drivers 20
Key Risks 23
Purposeful Behavior 24
Key Points 25

CHAPTER 2
Planning for Value Creation: Growth Strategy 27
Introduction 27
Central Role of Strategic Planning 27
Chapter Focus 28
The Strategic Planning Process 29
Managing the Process 30
Characteristics of an Effective Planning Process 31
Process Overview 32
Strategic Assessment 32
Market Targeting Process 33
Investment Objectives 34
Market Expansion 35
Vertical Integration 37
Infrastructure Improvement 38
Investment Alternatives 38
Characteristics of Investment Types 39
Backup Planning 45
Plan Outputs 46
Conclusion 51
Key Points 51

CHAPTER 3
Implementing the Growth Strategy 53
From Identification to Pursuit 53
Choosing an Acquisition Strategy 53
Winnowing Process 54
Identification 58
Marketplace for Acquisitions 58
Identifying Prospects 59
Qualification 64
Strategic Fit 64
Availability 66
U.S. Antitrust Considerations 66
Engagement
  Proactive Engagement  67
  Role of Management versus Intermediaries  68
  Confidentiality of Information: Nondisclosure Agreement (NDA)  70
  Reactive Engagement  71
Assessment
  Notification/Approval Document  73
  Plan to Create Value  76
Pursuit
  Transaction Framework: Sellers’ and Acquirers’ Different Perspectives  79
  Taking Action: Assembling the Core Acquisition Team  81
Key Points  83

PART TWO

Investigation  85

CHAPTER 4
Preparing for Due Diligence  87
  Introduction  87
  Due Diligence Reviews  88
  Chapter Focus  89
Environmental Factors
  External Constraints of the Sale Process  90
  Internal Limitations of the Acquirer  92
  Nature of the Target Company  92
  Impact of Environmental Factors on the Review  93
Creation of the Due Diligence Team
  Introduction  93
  Composition of the Due Diligence Team  94
  A Caveat  97
  Other Considerations  97
  Initial Preparation Measures  98
Development of the Due Diligence Program
  Program Development Process  99
  Key Aspects of the Due Diligence Program  100
  Objectives, Procedures and Findings, and Recommendations Illustrated  103
  A Due Diligence Mind-Set  105
<table>
<thead>
<tr>
<th>Planning Due Diligence</th>
<th>106</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalize the Program</td>
<td>106</td>
</tr>
<tr>
<td>Mechanisms for Team Coordination</td>
<td>107</td>
</tr>
<tr>
<td>Resolve Issues of Overlap</td>
<td>107</td>
</tr>
<tr>
<td>Maintain an Aggressive Posture</td>
<td>107</td>
</tr>
<tr>
<td>Communicate Logistical Information</td>
<td>108</td>
</tr>
<tr>
<td>Communicate Responsibility and Timing of Report Submissions</td>
<td>108</td>
</tr>
<tr>
<td>Key Points</td>
<td>108</td>
</tr>
<tr>
<td>Appendix 4A: Due Diligence Checklist</td>
<td>109</td>
</tr>
<tr>
<td>I. Review Company Background and Organization and Proposed Transaction</td>
<td>109</td>
</tr>
<tr>
<td>II. Financial</td>
<td>112</td>
</tr>
<tr>
<td>III. Technology</td>
<td>114</td>
</tr>
<tr>
<td>IV. Products</td>
<td>115</td>
</tr>
<tr>
<td>V. Marketing and Sales</td>
<td>116</td>
</tr>
<tr>
<td>VI. Legal</td>
<td>116</td>
</tr>
<tr>
<td>VII. Insurance</td>
<td>119</td>
</tr>
<tr>
<td>VIII. Human Resources</td>
<td>119</td>
</tr>
</tbody>
</table>

**CHAPTER 5**

**Conducting the Due Diligence Review**

<table>
<thead>
<tr>
<th>Introduction</th>
<th>125</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overview of Transaction Types</td>
<td>125</td>
</tr>
<tr>
<td>Auctions</td>
<td>126</td>
</tr>
<tr>
<td>Auctions: The Buyer's Perspective</td>
<td>127</td>
</tr>
<tr>
<td>Preemptive Bids</td>
<td>128</td>
</tr>
<tr>
<td>Purchase Premium Preemption</td>
<td>129</td>
</tr>
<tr>
<td>Price Preemption: The Buyer's Perspective</td>
<td>129</td>
</tr>
<tr>
<td>Relationship-Based Preemption</td>
<td>130</td>
</tr>
<tr>
<td>Relationship-Based Preemption: The Buyer's Perspective</td>
<td>130</td>
</tr>
<tr>
<td>Summary of Transaction Characteristics</td>
<td>131</td>
</tr>
<tr>
<td>Components of the Due Diligence Review</td>
<td>131</td>
</tr>
<tr>
<td>Management Presentations</td>
<td>132</td>
</tr>
<tr>
<td>Management Team Interviews</td>
<td>134</td>
</tr>
<tr>
<td>Document Review</td>
<td>135</td>
</tr>
<tr>
<td>Tour of the Facilities</td>
<td>136</td>
</tr>
<tr>
<td>Technology Trade-Offs</td>
<td>137</td>
</tr>
<tr>
<td>Due Diligence Reviews: An Objectives-Driven Approach</td>
<td>138</td>
</tr>
</tbody>
</table>
Overview | 138  
Due Diligence Objectives | 139  
Integration | 140  
Assessment by Function | 141  
  Finance and Accounting | 142  
  Human Resources | 145  
  Sales and Marketing | 148  
  Research and Development | 150  
  Information Technology Review | 151  
  Operations/Production Review | 152  
  Legal and Insurance Review | 153  
Cross-Functional Coordination and Analysis | 154  
Conclusion | 159  
Key Points | 159  
Appendix 5A: Illustrative Final Process Letter Outline | 160  
  Invitation | 160  
  Description of Transaction Process | 160  
  Guidelines for Final Offers | 161  
Appendix 5B: Illustrative Data Room Information | 161  
  Listing | 161

CHAPTER 6

Reporting on Due Diligence: Deliverables and Decisions | 165  
Introduction | 165  
  Outcomes of the Due Diligence Review | 165  
  The Importance of Backup Planning | 166  
Elimination in the Auction Process | 167  
  Outputs/Reports | 168  
The No-Go Decision | 170  
  No-Go Discoveries | 171  
  Strategic Issues | 171  
  Valuation Issues | 172  
  Risk Issues | 173  
  Outputs/Reports | 175  
Renegotiations of Major Terms | 175  
  Outputs/Reports | 178  
Decision to Proceed | 179  
  Outputs/Reports | 179  
  Comprehensive Due Diligence Report | 180  
  Summary Due Diligence Report | 180  
  Corporate Approval Document | 182
Integration Plan 186
Contingency Plan 188
Key Points 188

PART THREE

Execution 191

CHAPTER 7

Optimizing Value: Translating Due Diligence Findings into Action 193
Acting on Due Diligence Findings 193
Preacquisition vs. Postacquisition Issues 193
Revisiting the Valuation and Purchase Price 195
Reviewing the Acquisition Transaction Structure 199
Contingent Purchase Price 199
Acquiring Assets vs. Stock 200
Sharing Risk: Contractual Terms and Conditions 202
Marking Up the Draft Purchase Agreement 202
Contract Drafting and Revision 202
Key Sections of the Purchase Agreement 203
Purchase and Sale 203
Closing 205
Representations and Warranties of the Seller 206
Representations and Warranties of the Buyer 208
Covenants 208
Employment Matters 209
Conditions to Close 210
Termination 211
Indemnification 211
Tax Matters 212
General Provisions 212
Disclosure Schedules 213
Transition Services Agreement 213
Managing Contract Negotiations 215
Effective and Efficient Negotiations 215
Empowered Leadership 215
Support of Legal Counsel 216
Support by Experts 217
Review and Feedback 218
Commitment to Getting the Deal Done 220