SEA M&A Dictionary

Asset deal: an agreement in which the assets, not the shares of a company are sold.

Blind Offering Memorandum (BOM): the anonymous profile of the company that is sent to potential buyers. The aim is to determine whether such a purchase could interest them without the identity of the company being disclosed.

Binding / non-binding: binding character of clauses is set by the negotiating parties. Non-binding clauses are common in the early stages and often changed into binding clauses as the deal progresses.

Change of Control Clauses: clauses in agreements concluded by the company (e.g. for a loan from a bank), that stipulate that the contract will no longer be valid or will be dissolved if there is a change in control of the company. Identification of the Change of Control Clauses is an important part of the analysis of the legal continuity of the acquisition.

Clean team: a clean team exists when an advisor is asked by both the selling and the buying parties to review a very specific topic that contains sensitive information, such as the customer portfolio.

Closing accounts: when the agreement is recorded in a share purchase agreement, a future date on which a balance sheet is to be drawn up (the closing accounts) is agreed.

Closing agreement: the document setting out the final settlement of the agreement after the condition precedents have been met. This document results in the transfer of ownership and the payment taking place.

Comparable Transaction: if a comparable company has recently been sold, we can take the transaction price (if known) as a measure of the value.

Condition precedent (CP): a condition for concluding the agreement. A typical example of a condition precedent is obtaining approval for the acquisition from the competition authorities.

Confidential Information Memorandum (CIM): After signing a non-disclosure agreement, the potential buyer may be sent a confidential information memorandum and a process letter. The confidential information memorandum is a document that describes the company and, in addition to a good summary, includes the following information: history of the company, description of products and services, market position, management, financial information, etc.

Data room: the room or space in which specific data concerning the company are collected. By providing the buyer (and its advisors) with access to this space, the buyer will have the opportunity to read these documents and to form a picture of the company.

Data room rules: a set of rules that the visitor must first accept, laying down whether the visitor is to be given access to the data room, at what time, for how long, and what may happen to the information contained in it.

Discounted Cash Flow (DCF): a commonly used valuation method based on an actualization of future free cash flows. The future free cash flows are estimated on the basis of a forecast and then actualized to the current date by using an actualization rate or discount factor known as the WACC.

De minimis: a minimum amount for individual claims is often specified as a claim or a combination of claims. It only counts towards the threshold if it is equal to or greater than a specific amount.

Deal advisor: the advisor (often an investment bank or m&a firm), acting as a broker, which means that it looks for the parties and brings them together, conducts and organizes negotiations and draws up the various non-judicial sales documents.

Debt & cash free: the price assuming a situation without financial debts and without cash free.

Debt pushdown: an exercise in which the acquisition debt is pushed to the operating companies. Banks and other lenders prefer to provide funding to companies that generate the operating cash flow, particularly if the acquisition of shares is done through a holding company that has no operating activities itself. This is often the case in private equity deals.

Defined benefit pension plan: a pension plan in which the final amount to be obtained is contractually fixed. In an acquisition with this type of pension plan there is often discussion about the size of the existing pension debt.

Defined contribution plan: a pension plan in which the final amount is not fixed, but will be the sum of the contributions and the return achieved.

Disclosures: a list of elements that the seller discloses to the buyer with the aim of avoiding subsequent disagreement as to whether certain information has or has not been divulged during the negotiations.

Discount / Premium: adjustments are still applied to the value of shares if the transaction relates to a minority interest, a majority interest, a holding company through which ownership is acquired indirectly, or shares without voting rights, and so on.

Earn-out: if there is a major price discussion between the buyer and seller due to differing views on the future results of the company, an earn-out may provide a solution. It makes the final price partly dependent on the future achievement of certain objectives.

Earnings Before Interest and Tax (EBIT): the profit before interest and taxes. This is also called operating profit or operating profit before tax.

Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA): the profit before interest, taxes, depreciation and amortization. This is a gauge of the operating cash flow of a company.

Earnings Before Interest, Tax, Depreciation, Amortization and Rent (EBITDAR): the profit before interest, taxes, depreciation, amortization, and rent. This is a gauge of the operating cash flow of a company before the payment of rent.

Enterprise Value (EV): this is the debt and cash free value of a company. Both the DCF(F) method and many multiples initially result in an EV, which must be adjusted for the cash and debts.

Escrow: an amount deposited in a frozen bank account to guarantee that any losses will be compensated.

Exclusivity: a clause in an agreement in which the seller agrees not to enter or begin negotiations with any other parties. Exclusivity is for a limited time period.

Fees: the fee of the deal advisor generally consists of two parts, specifically the retainer and the success fee. The fees of other advisors are usually time and expense based.

Financial due diligence: the review of the historical and future figures of the company. The focus in this context is often on the quality of earnings (how robust are the historical results?), the quality of net debt (which items could all be taken into consideration in determining the net financial debt?), the forecast (analysis of the budgets and future projections) and the normalized working capital.

Free Cash Flow: deducting the tax on the operating profit, investments and growth in working capital from the EBITDA provides an indication of the free cash flow.

Generally Accepted Accounting Principles (GAAP): the generally accepted accounting principles in a given country. These can vary from country to country.

Goodwill: the difference between the price paid for the shares and the book value of the equity of the company.

Guarantees: in order to assure the buyer that the seller will fulfill its obligations, the seller may provide certain financial guarantees.

Health and safety: the investigation into working conditions with a focus on health and safety.

Hold harmless letter / approved reader letter: letter of indemnity. A letter in which an adviser provides a party with access to a report or a file, in which this party agrees to indemnify the advisor from any liability that could arise from the access provided to files or reports.

Indemnities: compensation for damages. These are stipulated on top of the general safeguards for a number of additional elements. Indemnities are used if it is known that a particular problem exists or could occur.

Lawyer / M&A lawyer: the specialized lawyers or corporate lawyers who write the contracts and negotiate.

Legal continuity: this term refers to the question whether the company's existing contracts with customers, suppliers, staff, and authorities (including licenses), etc., are to be retained after the acquisition. In a share deal, the shares of the company are sold, which only rarely has an effect on the agreements.

Legal due diligence: the review of the legal situation of the company in the areas of company law, review of contracts, labor laws, intellectual property (IP), permits, etc.

Letter of intent (LOI): written document that details the intentions of the parties involved. Often, it is an intention to continue negotiating subject to the binding clauses of exclusivity and secrecy.

Leverage: the degree of debt financing used for an acquisition.

List of parties: a list of parties is drawn up in order to obtain a clear overview of the advisors and members of the management of the buying and selling parties. The list records the contact details of the various people involved in the transaction.

Locked box: a locked box mechanism is a price mechanism in which the price of the shares is determined on the basis of a historical accounting situation, rather than a future situation (closing accounts).

Long list: the initial long list of potential buyers for the company.

Management Presentation: an opportunity for the seller to present the Company in more detail to the buyer. This occurs after the buyer has seen the BOM and CIM, and is contemplating an offer (LOI). Management presentations are typically given out of the Company's office in a nice hotel room.

Material adverse change (MAC): a lack of any fundamental change (MAC) in the company is often a condition for moving forward in the deal. This can include maintaining profitability, not losing important customers, and maintaining licenses.

Memorandum of understanding (MOU): statement in principle, often used interchangeably with letter of intent (LOI).

Net debt: there is no official definition of net debt, which means it is important to define it properly in the LOI and SPA. The net debt generally comprises financial liabilities (in a broad sense) minus cash.

Non-disclosure agreement (NDA): an agreement by the parties to ensure secrecy and not misuse exchanged information during merger talks.

Normalized Operating Profit After Tax (NOPAT): the normalized operating profit after taxes. This is the operating profit after taxes, which is normalized by eliminating all extraordinary and non-recurring items.

Offer letter: indication of intent to purchase, often non-binding.

Profit After Tax (PAT): the profit after taxes.

Profit Before Tax (PBT): the profit before taxes, sometimes also described as EBT/earnings before tax.

Private Equity (PE) fund: an investment fund active in mature cash flow generating companies that also attracts debt financing for the acquisitions and actively involves management in the acquisition.

Process letter: the process letter contains information on how the seller wants to organize the sales process, by which date a bid is expected and what requirements it must meet and how the next phase will look after that bid.

Recurring Earnings Before Interest, Tax, Depreciation and Amortization (REBITDA): the recurring profit before interest, taxes, depreciation and amortization. This is a gauge of the recurring operating cash flow of a company, and is the EBITDA adjusted for non-recurring items.

Representations: statements. In the event that statements made by the seller about the company prove to be incorrect, these statements, either together with the warranties or otherwise, form the basis for subsequent indemnities.

Share deal: an agreement under which the shares of the company are sold.

Share purchase agreement (SPA): the final agreement between the buyer and the seller on the sale of the company, subject to a number of condition precedents.

Short list: the short list of companies that will be contacted in an initial phase to gauge their interest. The short list, culled from the long list, is further broken down into A, B, and C.

Spread payment / vendor note / vendor loan: if the seller allows spread payments, it implicitly grants a loan (vendor note or vendor loan) to the buyer.

Synergy: the term used to describe the value created by the merger of two companies. This value can be found both on the cost side and on the revenue side.

Tax due diligence: the investigation of the historical and future tax situation and exposure of the company or companies in the areas of both direct and indirect taxes.

Tax treatment: usually, gains on shares are taxable at long term capital gains rates, and the sale of shares (a share deal) may be preferred by the seller. On the other hand, the buyer may prefer an asset deal for tax purposes because the goodwill paid may be tax-deductible, which, in principle, is not the case with a share deal. Engaging a tax attorney is highly beneficial.

Threshold: frequently, parties agree only to submit claims if the total amount of the claims exceeds a specific minimum amount. Two systems can then be linked to this, specifically the basket and the threshold sum. Of course, hybrid systems may also be agreed on.

Tombstone: following the completion of the transaction, advisors or financiers often have a trophy made to commemorate the transaction. This tombstone is presented as a memento to the deal teams and other advisors.

Weighted Average Cost of Capital (WACC): the weighted average cost of capital. The WACC is calculated by taking the weighted average of the cost of the capital and the cost of the debt (cost of equity and cost of debt). The weighting factor is the ratio of financing from the company's own funds (capital) to financing from borrowed funds.

Warranties: guarantees or general safeguards. The seller not only provides statements, but also guarantees that these statements are correct. The warranties may be time-limited and limited up to a certain amount of money.

Working capital: the sum of the customers, suppliers, inventories and other current assets and liabilities necessary for the day-to-day operation of the company.

- **Normalized working capital:** an analysis of how the working capital would look in normal circumstances. This involves adjusting for all exceptional and non-recurring items, such as the collapse of a major customer, a major supplier position due to the purchase of a machine, or a large inventory position due to a machine breakdown.

- **Target Working Capital:** the state of the working capital to be used as a basis for settlement at the time of the closing.

