Buyers Approach to a Stock Sale

Steps that acquirers need to take in a stock sale

In most small to mid market situations, it is advantageous for acquirers to structure the business acquisition transaction as an Asset sale. However, in some cases there may be significant advantage to going the Stock sale route. Also, asset sales may not be practical in some cases for contractual or other reasons. In such cases, acquirers need to pay special attention to three key factors:

- Indemnification Agreement: Acquirer should get a bulletproof indemnification from the seller for any potential liabilities that may have occurred before the transaction closes but only surface after you close the deal. A stock sale without a proper indemnification agreement exposes buyers to potentially damaging legal and financial risk.
- Seller Carry: Acquirer should get a significant amount of financing from seller as part of the deal. It is best to have this spread out over a period of few years so that you will have leverage in the event a claim materializes. The seller carry can come in handy if there is a lawsuit and the seller balks at keeping his end of the bargain.
- Corporate Structure: The structure of the corporation being acquired may have significant impact on the tax status of the acquirer. If the acquirer owns one or more corporations prior to the sale, some post acquisition structural alternatives could significantly enhance the acquisition benefits. These alternatives need to be reviewed carefully before the close for maximum leverage.

It is essential for acquirers to incorporate these key factors in any stock sale.

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