### Corporate Governance



Towards a more prominent role for the Supervisory Board



Mergers & Acquisitions



www.pwc.nl/corporategovernance



At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 276,000 people. At PwC in the Netherlands over 5,400 people work together. We're committed to delivering quality in assurance, tax and advisory services. Tell us what matters to you and find out more by visiting us at www.pwc.nl.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

### **Table of contents**

Introduction	3
Success and failure in M&A	5
M&A strategy	8
The acquisition process	11
Divestitures and carve-outs	15
The public offer	18
Post-deal integration	21
Developing M&A capabilities	24

### Introduction



Maarten van de Pol Partner Deals

Merger and acquisition activity (mergers, acquisitions, joint ventures, divestitures) is at an all-time high. M&A volumes are now higher than during the internet boom of 1999- 2001 and the M&A boom of 2004 – 2007 that was fuelled by cheap credit. Asian M&A activity, particularly in and out of China, has contributed to this growth, while European M&A is still below previous peak levels.

The current M&A cycle is driven by the search for growth in the post-crisis low growth world, exceptionally low interest rates and abundant liquidity. Economic growth rates around the world are now structurally lower than before the financial and economic crisis. As a result, organic revenue growth of many companies is in the low single digits and M&A has become an important instrument for growth. M&A is facilitated by exceptionally low costs of financing and abundant liquidity, which are the result of unorthodox measures central banks have taken to revive economic growth. In many of the world's major economies interest rates are now exceptionally low or, in some countries, even negative. In addition, many companies are sitting on record amounts of cash, as they have recovered from the economic and financial crisis. These cash balances can be either paid out to shareholders or used to revive growth through capital expenditure, R&D or M&A.

In the M&A market corporate acquirers are competing against private equity firms and sovereign wealth funds. In the search for yield, institutional investors are increasing their allocations to alternative investments of which private equity is a major category. Similar to corporates holding all-time high levels of cash, private equity firms have record amounts of funds available for investments ('dry powder').



This book is principally aimed at Non-executive directors of a corporate business, in particular Dutch listed corporates, but many areas are equally relevant for Nonexecutive directors of other organizations. It is a practical guide; it does not cover all the legal or regulatory aspects of an M&A process. M&A is an important strategic option that companies can leverage to make necessary leaps in the competitive marketplace. It can help companies to obtain a higher market share and a broader customer base, and gain access to new technology, products and distribution channels. Yet, at the same time, M&A is very risky and many deals fail, sometimes bringing companies to the brink of failure. Reasons for failure vary and range from opportunistic M&A and overpayment to poor integration. For many companies mergers and acquisitions are irregular events for which they lack capabilities and processes. This is compounded by biases in M&A that cloud M&A decision-making, such as deal fever, tunnel vision and strong incentives to complete a deal.

We are of the opinion that the M&A track record of many Dutch corporates, which consists of successes but also of many failures, demonstrates the need for a more prominent role of Supervisory Boards. Supervisory Boards are well positioned to take a long-term view of a deal, which can act as a counterbalance to the deal pressure that management may find itself in. The combined experience of the Non-executive directors, which covers a variety of industries, competitive environments and mergers and acquisitions, are invaluable to help management extract more value from M&A and reduce the risks involved.

### Success and failure in M&A

There are myriads of anecdotes of failed M&A deals. According to academic research, failure rates range from 50% to 80%. To be more precise, these failure rates apply to acquirers. Shareholders of target companies typically receive a large premium on the sale of their shares. And multi-business corporations that divest non-core activities typically achieve superior shareholder returns as they reverse the conglomerate discount embedded in their share prices.

While failed acquisitions understandably catch the public attention, many acquirers are actually very successful. Success and failure is therefore not something beyond the control of acquirers, but can be managed. For companies considering an acquisition it is crucial to have an understanding of the factors that contribute to the success or failure of a deal. The table on page 6 and 7 contains some key factors that according to academic research contribute to the success and failure of acquisitions. 'Relatedness' or strategic 'fit' appears to be of great relevance to M&A success. Recent comprehensive research by Strategy&, part of the PwC network, has shown that the degree to which a deal contributes to an acquirer's system of capabilities, either by leveraging the acquirer's current capability system or by enhancing that system with complementary capabilities, greatly enhances the acquirer's return.

This book will address the key attention points for Supervisory Boards in M&A matters, both relating to the opportunities for value creation and managing the substantial risks. We will do so by following the sequence of the M&A process: from strategy, to execution and post-deal integration. We will also pay attention to the capabilities and processes a company needs to successfully execute and implement a merger or an acquisition.





Raising t of succe	-	bability	/
Strategic deals	ally mot	tivated	
Acquisition business		elated	
Acquisition firms	ons of p	rivate	
Large rela	ated de	al	
Buyer ob	tains co	ontrol	
Buy durir M&A mar	-	3	
Synergies capex rel		st and	
Frequent	acquire	er	
Negotiate	ed deal		

# Factors that distinguish good acquisitions from bad ones: evidence from academic research

Raising the probability of failure	Explanation
Opportunistic deals	Opportunistic deals rarely have a strategic fit and acquirers are ill prepared to integrate these deals.
Acquisitions of unrelated businesses	Acquirers often lack a sufficiently deep understanding of unrelated businesses.
Acquisition of listed firms	Acquirers of listed companies have to pay a premium of typically 30% - 40% above the share price. This impedes the financial success of a deal.
Large 'transformational' deal	Although eye-catching, 'transformational' deals are very complex in many respects.
Merger of equals	Mergers of equals raises the probability of infighting and tends to slow down post-deal decision-making.
Buy during 'hot' M&A markets	In 'cold' M&A markets, prices are low and the most attractive targets are still up for sale. In 'hot' M&A market prices are high while the best targets are no longer available.
Synergies are revenue related	Revenue synergies often prove difficult to realise; acquirers have a higher degree of control over the realisation of cost and capex synergies.
Infrequent acquirer	Frequent acquirers can learn from previous deals and are able to develop internal M&A capabilities.
Auctioned deal	Auctions drive up acquisition prices and allow for less due diligence than negotiated deals.

# The M&A strategy

#### General

Mergers and acquisitions have increasingly become an important part of the corporate strategy of many companies. How M&A fits into a company's strategy and complements organic growth depends very much on the industry the company operates in, its market position and its strategy for value creation. Through M&A companies can make necessary leaps in the competitive marketplace. M&A can, for instance, help companies to take advantage of the benefits of scale that results from consolidation in mature markets and to gain access to new technology, markets, products and distribution channels. It can also help companies respond to unprecedented disruption in industries such as financial services, technology and energy.

In our opinion, an M&A strategy should:

- Be specific about how M&A complements organic growth, how it creates value and how it contributes to the objectives of the company.
- Include detailed information on M&A targets and criteria. On which countries and markets should M&A activities be focused? Which market positions are we aiming for? What is the minimum and maximum target size? What are the expected synergies?

• Provide details on the M&A budget and on financing possibilities for M&A.

Deal execution

M&A process / capabilities

M&A strategy

Post-deal

integration

- Contain specifics about potential targets, the way to develop a pipeline and a strategy to approach these targets.
- Flag potential antitrust issues in the acquisition of any of these targets.
- Have the 'end in mind', which means the integration strategy should be clearly linked to the deal strategy.
- Take into account the resources and management time required to execute and integrate deals. This should typically set a limit on the amount, size and nature of deals. Pursuing small targets may not be worth the management effort required to execute and integrate these deals. Large deals, particularly if they are outside the acquirer's current product markets, are more risky and consume significant resources and management attention.

M&A is not only about acquisitions, but also about divestitures. Multi-business corporations should review their business portfolio on a regular basis for divestiture candidates. Divestitures should not only be considered for poorly performing activities, but also when new owners can add more value to a business. Divestments free up management time and capital that can then be reallocated to those divisions or activities where more value can be created.

8

Companies have a natural tendency to pursue growth, even when growth is not creating value. Typically a lot of emotion has to be overcome before a divestment decision can be made. It is therefore crucial that a review of the business portfolio to identify candidates for divestiture is performed in a structured and timely fashion. Preparing for divestitures can take from several months up to one or even two years.

We also advise managements of listed companies to review their strategy through the lens of investors and potential activist investors. An approach by activist investors typically sends shivers through corporate board rooms, but boards should be braced for more as institutional investors are significantly increasing asset allocations to activists.

Activist investors typically take a small stake in a company and then privately engage with its management to discuss their proposals to make strategic and operational changes to increase shareholder value. If a company's reaction is not satisfactory they may either sell their stakes or go public with their proposals. These proposals may include a sale of the company to a bidder, thus realising an acquisition premium or a restructuring of the business portfolio, breaking companies apart and reallocating capital. Activist investors do not obtain control to force their agenda on a company, their stakes are too small for that. Rather, they act as catalysts: when their involvement and intentions become public, other shareholders may join in and the Management Board might lose control over the direction their company in going. Ultimately this may lead to a hostile takeover.

Management should therefore assess whether or not the company is vulnerable to an approach by activist investors. Have the share price and operating performance been lagging peers? Is the industry going through rapid changes? Does the business portfolio contain unrelated or non-core assets? Management should consider which relevant issues activists bring to the table and address those issues before any approach. Which issues may activist investors bring forward with which management would rightfully disagree? This can be either because activists have only limited insight into the company's strategy and performance, or because their proposals sacrifice long-term value for short-term gains.



#### **Role of Supervisory Board**

In our opinion the Supervisory Board should hold regular discussions with the Management Board on the strategy of the company and the role of M&A. Typically the Supervisory Board attends annual strategy days, with the Management Board and other functions, such as staff in charge of M&A, business development and divisional management.

The Supervisory Board should oversee that:

- The M&A strategy is clearly embedded in the corporate strategy and is consistent with longterm value creation.
- The M&A strategy is translated in sufficiently detailed acquisition criteria and targets.
- The company applies sound financial return criteria for M&A that are consistent with long term value creation.

- ☑ A sound financing plan is in place.
- The company has sufficient resources and management time available to execute and digest deals.
- The corporate portfolio is being reviewed on a regular basis to identify possible candidates for divestment.

The M&A strategy will result in a pipeline of M&A targets. The development of the pipeline should be discussed in the regular Supervisory Board meetings. The Supervisory Board should verify if targets fit the criteria that have been set.

### The acquisition process



#### General

Growth through acquisitions is inherently more risky than organic growth. Organic growth allows for gradual investments which can be adjusted on the basis of learning and new information. In contrast an acquisition is an investment 'at once', typically fully paid for upfront, in a company of which the acquirer has less knowledge than its own business. Nowhere is this risk more apparent than in the deal phase. Acquisitions are frantic, involving many corporate functions, multiple business units and a myriad of advisers. Acquisitions are subject to time pressure, often compounded by competitive bidding situations, which forces acquirers to make decisions on the basis of limited information. And in the later stages of the deal 'tunnel vision' and 'deal fever' are likely to set in, creating biases in decision making. This is compounded by the high stakes involved in M&A and the potential conflicts of interest.

If managed incorrectly, acquisitions can expose a company to unwarranted risks: it may end up with a business it should not own, it may overpay, or it may not be able to manage and integrate the target company. If financed with too much debt a bad acquisition can even bring a company to the brink of disaster. In our opinion the following elements are crucial in the acquisition process:

- Throughout the acquisition process a company should stick to the criteria set out in its M&A strategy in a disciplined manner.
- Valuations of the target company are often outsourced to the financial advisers of the company. We are of the opinion that a company should assume responsibility for the valuation as it knows its own business better than its advisers. Financial forecasts, especially synergies, are prone to enthusiasm and over-optimism. Valuations should be fact-based, objective and consistent with industry benchmarks. Throughout the acquisition process, the valuation should be updated for the due diligence findings and the integration plan that is prepared in this phase.
- The due diligence should not only focus on risks, but also on identifying additional sources of value (upsides). This necessarily requires the involvement of many participants in a due diligence: both internal functions and business units as well as external advisers. The due diligence should also provide information for the proper structuring of the acquisition and information on areas where the acquirer should obtain contractual protection in the purchase agreement. If synergies between the acquirer and the target company form an important value driver, it is important that these synergies are quantified and also subject to due diligence.



- A detailed integration plan should be prepared, specifying how the target will be managed and integrated and how and when the value from the deal will be captured.
- A sound financing plan, specifying the impact on the financial solvency and credit rating of the company. The financing plan should also include scenario analyses to assess the impact of adverse developments.
- Management should firmly stay in control of the deal and the acquisition process. This is a challenge, especially for infrequent acquirers that lack experience and typically rely heavily on outside advisers. The acquisition process should also include checks and balances to contain deal fever and conflicts of interest that results in biased decision-making.

In case the target company is listed, the offer process has to comply with specific regulations, which aims to achieve an orderly and transparent process.

#### **Role of Supervisory Board**

In the acquisition phase, the involvement of the Supervisory Board increases. Supervisory Board meetings become more frequent. To facilitate swift decision-making it is advisable that a transaction committee be created, for instance consisting of two members of the Management Board and two members of the Supervisory Board. The transaction committee facilitates accelerated decision-making which is crucial in the acquisition phase. The committee is involved in the transaction on a dayto-day basis and in the preparation of the deal, but has no decision-making authority. The decisionmaking and approval remains in the domains of the Management Board and the Supervisory Board, respectively.

In our opinion, the following list contains the key attention points for Supervisory Board:

Targets should only be formally approached by management after approval by the Supervisory Board. Supervisory Boards should stay in control. Lower management levels and country managers should not be allowed to pursue deals in isolation and without consultation. As a general rule, Non-executive directors can give informal introductions, but should themselves not approach targets.

- The Management Board submits an acquisition proposal to the Supervisory Board, which includes:
  - The deal rationale
  - A valuation of the target and synergies
  - A summary of due diligence reports and due diligence findings. The transaction committee should get the full due diligence reports
  - A concrete and detailed integration plan
  - A sound financing plan
- In arriving at a decision to approve the deal and a mandate for further negotiations, the Supervisory Board should seek satisfactory answers to the following questions:
  - Why should we make this acquisition?
  - Do we have the right resources to integrate the target?
  - Has the Management Board hired the proper advisers, e.g. for valuation, due diligence and financing? Is the fee structure appropriate?
  - Are the financial forecasts and synergies based on management assumptions and know-how of the business rather than on the options of its advisers? Is the valuation based on realistic rather than stretched assumptions?

- How much of the synergies do we pay away and is the value creation substantial enough to warrant the effort and risks of the deal?
- Are the financing terms acceptable and will the company be exposed to unacceptable risks as a result of the financing structure?
- What are the key risk factors of the deal and how have these been addressed in a satisfactory manner?
- The integration plan should include a clear blueprint for the organisation in the post-deal phase, actions linked to priorities, and clear targets and milestones. The integration plan should also include a clear communication plan.
- Have adverse developments been factored in?
  For instance: what if the integration process takes longer than anticipated? Has the potential loss of key clients and personnel been considered?
- Have scenarios been prepared to ensure the company is still viable if the deal turns out poorly in combination with other adverse development like a recession?
- The Supervisory Board should ensure that the decision-making has been done in an unbiased and objective manner. The Supervisory Board should inquire about which discussion has taken place in the Management Board, particularly regarding opportunities and risks of the acquisition.

The Supervisory Board should also obtain information from managers outside the Management Board, such as the CFO and division management.

The Supervisory Board should consider whether it can make use of the same advisers as the Management Board or whether it should have its own advisers. The size of the target, the complexity of the acquisition and the financing of the deal are important considerations. In case the Supervisory Board relies on the same advisers as the Management Board, it should not only have access to their reports, but these advisers should also be available to the Supervisory Board for explanations and clarifications. Public companies (naamloze vennootschappen) require approval of the general meeting of shareholders for the acquisition of targets that exceed a certain value threshold (Section 2:107a (1)1/c of the Dutch Civil Code). If this requirement is met, the Supervisory Board should consider to hire independent advisers for the valuation and fairness opinion.

### **Divestitures and carve-outs**



#### General

Multi-business corporations should regularly review their business portfolio and assess if a division should be divested. The key criterion should be whether the business unit is non-core and another owner could add more value to the business.

Candidates for divestment should be identified at an early stage, because the process of separation is typically complex and time consuming. It is crucial that the separation is completed before the sales process starts, so as to avoid hick-ups and unpleasant surprises in the sales process. Over the years, most corporations have centralised a lot of their support functions and moved to ERP systems which are complex to unwind. Divestitures will also leave the company with 'stranded' overhead costs and it takes time to reduce these costs on a structural basis.

Proper preparation is essential for a company in order to remain in control of the sales process. A key risk in divestment processes is that the Management Board lacks detailed information about the division or business that is put up for divestment. In such a situation, a purchaser may at some point seize the initiative in the transaction process. Consequently, value is eroded in the sales process. These risks can be mitigated by commissioning vendor due diligence before the launch of the sales process and by implementing the right management incentive structures. A vendor due diligence helps to maintain control over the sales process and the issuing of information. It identifies the positive and negative points of the business in an early stage and avoids surprises later in the process.

The separation process should start with different buyer categories in mind and define deal packages for each of them. The consideration of different exit routes allows a dual track process (M&A transaction and IPO). which creates flexibility and competitive pressure in the sales process. Typical exit routes to consider are: strategic buyers which have local infrastructure, foreign strategic buyers, private equity and IPO. The latter two categories typically don't have an organisational infrastructure in place and for these buyers the divested business should be designed as a standalone company. An integral part of the preparation is the design of transitional services that the vendor may need to offer to potential buyers, for instance in IT, accounting and purchasing, in order to facilitate the sale and integration into the buyer.

Another important element is the communication of the separation and the decision about which employees will go with the divestiture and which will stay. The natural tendency once the plan for a divestiture has been communicated, is to give less attention to the divested business, while instead it should get more attention in order to maximise value. There will also be a period of uncertainty for employees that may either go with the divested business or stay with the selling company. In either case, it is important that employees are incentivised to stay so that the value of the divestment is maximised.

Corporate management needs to pay special attention to the risk that the loyalty of divisional management shifts to its new prospective owner. This will especially be the case in a sale to private equity. The divisional management is often crucial for the private equity firm to meet the objectives of the acquisition and this is reflected in the management incentive structure. Key managers of the business will be asked to invest in the new company. This, of course, puts the divisional management in a delicate position. Corporate management should pro-actively manage this conflict of interest. For example, they should approve the business plan that is submitted to the private equity buyer and make sure to be in control of the process of information exchange with the buyer. Corporate management should also lead the negotiations on price and the future position of divisional management.

### **Role of Supervisory Board**

In many respects, the sales process mirrors the frantic nature of the acquisition process, although there are some marked differences. The acquisition process is focussed on overcoming information asymmetries and obtain a detailed understanding of how the target will create value after the deal has been closed. In contrast, the divestment process is more focussed on optimisation of the disentanglement and the sales process. Also in the case of divestments we advise the formation of a transaction committee and we suggest that the Supervisory Board applies similar considerations to decide whether or not to hire its own independent advisers.

# In our opinion, the key attention points of the Supervisory Board are:

- Approval of the decision to divest a business unit or division, ensure it is in line with corporate strategy, and based on a separation analysis and vendor due diligence.
- Oversee that the company properly addresses the high degree of uncertainty to which employees are exposed during the separation and sales process by properly incentivising staff that may either go with the divested business or stay with the selling company.

- Ensure that the corporate management has established procedures to deal with the shift of the division's management allegiance to the buyer's side. This is likely to be the case in any deal, but particularly in a sale to private equity.
- Approval of the start of the sales process, possibly following multiple tracks and buyer categories.
   Relevant criteria for each alternative to consider are: deal value, stranded overhead costs, carveout complexities, required transitory agreements, deal certainty, competitive pressure and flexibility if market conditions change.
- The Supervisory Board should ensure that in the sales process the interests of the stakeholders involved in the company are properly weighed. Besides price, also non-financial criteria need to be considered, for example the reputation of the buyer, the position of the divested company in the organisational structure of the buyer, and the future location of the divisional head office and R&D centres. Another important aspect is the capital structure of the divestment in the post-deal phase. The latter is of particular relevance in case of a sale to a private equity party. The Supervisory Board should ensure itself, preferably with the help of external advisers, that the degree of leverage the private equity buyer is planning to put in the divestment is acceptable.



Further the Supervisory Board has the responsibility to make sure that non-financial criteria do not remain on the level of good intentions but get real contractual teeth.

# The public offer



#### General

An actual or proposed public offer for the shares of a listed company marks the beginning of a stressful period for the target company. A successful public offer means the end of a company's independence, an outcome which in most cases is not part of the deliberate strategy of a company. The management of a target company involved in the negotiations of a friendly public offer runs a large risk of losing control in the process and become a plaything of anyone with an interest in the outcome of the offer. This can be caused by, for instance, a leakage of information and by competing bidders. Management loses more control if the offer process turns hostile and management is side-lined in the deal.

In the case of a public offer, the Management Board and the Supervisory Board are responsible for a careful weighing of the interests of all the stakeholders involved in the company. This includes the analysis of alternative options, such as a continuation of a stand-alone future, possibly combined with a change in strategy, and the consideration of the pros and cons of alternative buyer categories and different buyers from the perspective of the different shareholders.



#### **Role of Supervisory Board**

The Supervisory Board should be closely involved because of the pressures inherent in the public offer process. Another reason for close involvement is that the position of the members of the Management Board is at stake, which may prevent them from making an objective assessment of the offer and any alternatives. This is especially relevant in the case of a public offer by private equity which typically includes the condition that management stays on and co-invests in the company.

The Proposal for revision of the Dutch Corporate Governance Code<sup>1</sup> stresses the importance of close involvement of the Supervisory Board by proposing a special committee (transaction committee) consisting of members of the Management Board and the Supervisory Board. This committee should be installed in the event of a takeover bid or a proposed takeover bid for the shares of a company and in the event of a public offer for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107 a (1) (c) of the Dutch Civil Code.

<sup>1</sup> Dated 11 February 2016

Establishing a special committee as mentioned in the Proposal is a codification of common practice in public offers. The main advantage of a committee, according to the Proposal, is the acceleration of decision-making, as the Management Board and the Supervisory Board are working together more closely. However this should not reduce the responsibilities of the individual members of the Management Board and the Supervisory Board under the articles of association. According to the Proposal, the chairman of the Supervisory Board should chair the special committee. The Proposal also addresses the situation that a member of the Supervisory Board or special committee may not be independent, for instance when having a shareholding in the company. According to the Proposal, the chairman should carefully weigh the involvement of dependent Non-executive directors in the decision making concerning the offer.

# Key attention points for the Supervisory Board are the following:

- ✓ The Supervisory Board should make sure it remains in control of the process and the company does not let the company become a plaything. For this reason it must ensure that procedures against information leakage and insider trading are in place.
- In addition to a potential lack of independence of Non-executive directors, the Supervisory Board should also consider the independence issues of members of the Management Board

and the implications for their involvement in the decision-making in the public offer process. Lack of independence mainly relates to the position the members of the Management Board may be offered by the acquirer and is especially a factor of importance in a bid by a private equity party. In these circumstances it is important that the Supervisory Board is informed about and approves the information exchange between the company and the private equity bidder. It is important that the Supervisory Board approves the business plan that is submitted to the bidder.

✓ The Supervisory Board should oversee that all relevant strategic options are considered, including alternative buyers, divestment of non-core businesses and a continuation of the independence of the company if the potential for value creation is superior to the offer. The Management Board and its advisers may be inclined to overly focus on the offer at hand. It is the role of the Supervisory Board to challenge this. The Supervisory Board should oversee that the Management Board does not reject alternative offers without its approval.

The Proposal for revision of the Dutch Governance Codes stipulates that if the Management Board receives a request from a competing bidder to inspect the records of

the company, the Management Board should discuss this request with the Supervisory Board without delay.

- Non-financial criteria, such as head office location, anti-break-up clauses, the maximum amount of post-deal leverage, and their trade-off with the offer price should all be carefully considered as part of the weighing of interests of the different stakeholders of the company and should be included in the merger protocol.
- The Supervisory Board should have its own independent financial advisers for a review of alternative options, assessment of the offer at hand, including a valuation and fairness opinion.

# **Post-deal integration**



#### General

While the integration phase of a deal seldom grabs headlines, the successful integration of a target is the only way to evaluate the outcome of a deal. However many integrations are not successful. The seeds of failure may already have been sown in the strategy phase: a good integration cannot make up for a poor deal rationale. Integration failure is often related to the complex and demanding nature of post-deal integration. Lack of preparation, the absence of a detailed integration plan, insufficient staff and funds dedicated to integration and too little attention from senior executives are some major reasons for failure. Cultural incompatability is another major reason.



Poor deal integration may have disastrous results for a company. It may negatively impact the base business as clients and important staff may leave and weaken the competitive position of the company. Integration costs may exceed budget and the speed of integration, crucial for successful integration may miss targets. Also synergies may be realised much later, if at all, and poor integration of reporting and control systems can lead to a lack of control.

Managing the risks in post-deal integration requires detailed planning, sufficient resources dedicated to the integration process, and clear milestones. Procedures need to be in place to protect the base line and business continuity after day one and ensure the timely realisation of priority cost savings and operating synergies. Communication to all stakeholders (employees, customers and suppliers) is crucial and should cover the new organisational model going forward, the integration plan, milestones, and new leadership positions. Communication is important to reduce uncertainty and contribute to the ongoing commitment of stakeholders. Overcoming cultural incompatibilities is also crucial. Yet the difficulty with 'culture' is that it is hard to define, since it means different thing to different people. It is important to 'translate' culture in practical terms that can be managed during integration.

Post-deal integration should not only focus on managing risks. It should also allow for the discovery and capture of new sources of deal value that were not visible prior to the closing of the deal. In this respect, the distinction between deals focused on scale and cost synergies ('related' deals) and those focused on extending scope and the acquisition of new capabilities and technology ('unrelated' deals) is relevant. Integration of 'related' deals can be better planned and executed compared to 'unrelated' deals, which are more transformational in nature. Unrelated deals are more risky, because it may fundamentally change the way a company does business. Still, unrelated deals can also create a huge amount of value.



#### **Role of Supervisory Board**

The Supervisory Board should oversee that the integration is progressing according to plan, based on predefined milestones and targets and that proper actions are taken when targets are not met. In particular, the Supervisory Board should oversee that:

- The integration plan, which has been prepared in the deal phase, is being updated in a timely fashion now that the company has full access to information of the target and to its management.
- The integration plan contains the right balance between speed and process on the one hand, and on the other hand the flexibility to capture additional benefits that have become visible after closing.
- Reporting & control systems are quickly implemented.
- Action is undertaken when there are indications that the core of the business is negatively affected, e.g. loss of key customers and staff.
- Progress of the integration process is tracked, based on predefined targets for synergies and financial and non-financial metrics for each milestone.

# **Developing M&A capabilities**

#### General

Frequent acquirers on average create more value from acquisitions than infrequent acquirers because they are better able to avoid pitfalls and capture more value from deals than infrequent acquirers. Companies can learn how to become successful in mergers and acquisitions and turn their M&A capabilities into a competitive advantage.

Developing M&A capabilities requires the development of skills, organisational structures - i.e. the departments and functions involved - roles, processes, procedures and templates throughout all the phases of a transaction, coupled with structures to institutionalise learning from prior transactions. This includes, among other things, the following topics:

- How M&A is organised: the size and composition of the M&A team, the way it cooperates with the business development and strategy departments and with the business units. Multi-business corporations need to decide to what extent M&A capabilities need to be decentralised.
- The way relationships are built with potential targets in order to reduce reliance on the introduction of targets by advisers and reduce competition with other bidders.

• The organisation of the deal phase: this requires the involvement of numerous business units and internal and external advisers. It is crucial that companies organise the deal phase in such a way that:

M&A strategy

- The company stays in control of the deal instead of its advisers.

Deal execution

M&A process / capabilities

Post-deal

integration

- Checks and balances are in place to reduce tunnel vision and biased decision-making.
- Deals can be executed at high speed if deal dynamics so require.
- Procedures and templates, for instance for integration and divestiture processes. These procedures and templates specify what needs to be done, which organizational functions should be involved, and how information will be shared at every stage of the integration or divestiture process. They can be used to serve as a central repository of information that can help all team members.
- Formal procedures exist for learning from M&A experience. A 'post mortem' should be made of each deal with implications for the M&A strategy, the deal process and the integration/divestment process.

### **Role of Supervisory Board**

The Supervisory Board has the responsibility to oversee that a company has the capability to execute and integrate deals. For less frequent acquirers it may not be efficient to develop all these capabilities in-house and such companies need to rely on external advisers.

The Supervisory Board should oversee that:

- The company has the M&A capabilities to deliver on its M&A strategy: the right resources, skills, organisational structure and procedures and methodology;
- Learning from M&A experience is institutionalised, and the Supervisory Board should receive 'post mortem' assessments from prior deals.





### Waarde toevoegen in tijden van verandering, een digitaal kompas voor auditcommissies

Governance is sterk in beweging, continue verandering lijkt soms de enige constante in organisaties. Dit vraagt niet alleen om een andere aansturing maar ook om een andere houding van de raad van commissarissen. De publicatie '*Waarde toevoegen in tijden van verandering*' fungeert als een digitaal kompas dat voorzitters en leden van auditcommissies richting geeft om waarde toe te voegen in deze roerige tijden.



PwC

# **Commissarissen-toolbox**

Deze publicatie is onderdeel van de commissarissentoolbox. Deze toolbox is door PwC ontwikkeld voor commissarissen en toezichthouders en bestaat uit verschillende pocketboekjes waarin wordt ingezoomd op relevante corporate governance-onderwerpen. Naast theoretische achtergrond en trends bieden de boekjes vooral praktische aanwijzingen voor uw toezichtrol.

Hier kunt u de boekjes van uw interesse downloaden.





Grip op cultuur en gedrag



De commissaris in de publieke sector



Merg



Mergers & Acquisitions





27

### Contact



Maarten van de Pol Partner Deals T: +31 (0)88 792 72 96 E: maarten.van.de.pol@pwc.com

© 2020 PricewaterhouseCoopers B.V. (KvK 34180289). All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.