Law&

Better M&A Outcomes in 2024

DLA Piper Business Advisory

DLA PIPER

Five tips for better M&A outcomes in 2024: Executing M&A from the inside

By Guy Fisher

At the time I started working within Corporate Development over a decade ago, M&A practitioners considered the role as a sidestep out of an investment banking career onto the corporate ladder to one day becoming a "c-suite" executive. Although I saw the role as a steppingstone, I quickly became enamoured with Corporate Development due to its diverse and challenging scope. However, I noticed there was minimal discussion relating to key skills and processes required inside corporates to execute M&A consistently well. I now enjoy seeing a growing community of inhouse M&A practitioners dissecting its challenges to better execution M&A and other corporate transactions. A successful inhouse Corporate Development executive needs to develop and be able to deploy a varied mix of critical skills. These include, leadership, developing and delivering strategy, program and change management, cross-functional technical knowledge, diplomacy, negotiation…the list goes on! While the requirement to be across significant detail whilst multi-tasking makes the role exhilarating, it can often be thankless and stressful. At the end of the day, you are accountable for delivering a successful inorganic strategy and consistently executing M&A (and other transactions) successfully over time.

So, I have spent time reflecting on my experiences as a Corporate Development executive at a leading Australian general insurer and bank with a current market capitalisation of ~AUD$18 billion. I have attempted to distil my learnings from both my mistakes and wins into my "top-five" practical tips to executing M&A from an inhouse perspective. I hope these tips are valuable to you and pique your curiosity as you seek to continuously improve performance and M&A outcomes for your organisation. Here is my top-five!

1. Well understood business rationale and clarity of deal thesis are critical.

Business rationale and deal thesis should be the organisations "north star" when executing M&A. While you may think this is obvious, from my experience, the business rationale for M&A typically lacks specificity leading to sub-optimal and ill-disciplined decision making. An organisation must expend appropriate time and effort to define in detail where and how the transaction will create value.

To understand value creation and protection, you need to define in detail a vision and hypothesis for the optimal end-state and look to substantiate this hypothesis through due diligence. Too often, organisations make high-level "rule of thumb" assumptions that embed themselves in models and left unchallenged by the deal team until the deal announcement verification process is underway or even post-completion. Ask yourself:

- How will the two operational platforms combine at a granular level to create value?
- If I divest this business, what impacts will that have on any remaining operations and how do I protect and enhance value?

The deal thesis should drive deal objectives and internal status reporting should track how you are performing against these objectives.

It also helps to have organisational clarity on how you measure success against your objectives. This may appear to be academic, but alignment of objectives, and how success will be determined, from the working group to key decision makers will result in greater clarity of purpose. In my experience, it is important to spend time at the outset with all stakeholders to lay the guiderails for success. An inhouse Corporate Development team may need to be agile in relation to how you achieve your objectives as this may change through time with a deeper understanding of the transaction, but the deal thesis and objectives should remain consistent.

Understanding at a granular level how a transaction will fundamentally create value for your organisation will result in a sharper focus on what really matters.

2. Preparation and readiness are key drivers of success.

Preparation and readiness activities when commenced early in a process enhance M&A outcomes. It is common for organisations to take the "just populate a data room" or "we'll find out in due diligence" approach. Before launching, it is important to invest resources to undertake the appropriate preparatory activities, acknowledging that sometimes this effort will be a sunk cost. Investment in preparation will always deliver value in terms of learnings, irrespective of whether a transaction progresses or not.

While you could face timing constraints, there are steps an organisation can take to prepare to effectively execute M&A. For example, if you are looking to sell an asset or business, take the time to deeply understand the asset's key value drivers and weaknesses, take a bidder's perspective, and pull the data to pieces, so that during due diligence, you can defend against weaknesses or validate value drivers. This exercise should be a key component of vendor due diligence and compliment external advisor vendor due diligence reports. If you are an acquirer, deeply understand the sources of value you expect to create and how you will most optimally combine the two platforms. If you do not have the depth of data, then create plausible hypothesis that will drive your key due diligence focus areas.

A "bee in my bonnet" over the years has been how late vendors and bidders leave transition planning. It often feels like a game of catchup and sometimes when teams get to execution, new teams enter the process and re-design the transition approach. Value extraction occurs post-signing, but the teams with the expertise and accountability for delivering synergies tend not to be associated with pre-execution due diligence. Involvement of transition specialists' pre-execution will link the target-end state to due diligence and negotiation. Transition specialists should be central in designing and executing both bidder and vendor due diligence, given they understand the nuances of value extraction, value protection and inhibitors. Our transition specialist is planning to go into more detail on this topic in a similar article, so be on the lookout in a month or so.

If there are no live deals on the immediate horizon, review your team capabilities and the broader organisational "M&A muscle" to ensure you have the appropriate capability to successfully execute your Corporate Development strategy. Understand your capability requirements, identify deficiencies, and then source capability to close those gaps – M&A is a capability not an event!

Allocate time for continuous improvement activities including spending time to dispassionately review past performance and outcomes – leave your ego at the door. Given the number of variables that are present when executing M&A, mistakes occur. There are two crucial elements to continuous improvement. Firstly, owning mistakes and constructively critiquing how the mistake occurred and its impact. Do not blame someone else or casually dismiss it as occurring because of something that was "outside of your control" (although this can genuinely be the case). Be honest with yourself when diagnosing the root cause of the mistake and form a view on changes that you will make to reduce the likelihood of it happening again.

The second is to look-back on **ALL** processes, even those considered by your stakeholders as a success. Have the discipline to review the experience of participants in the process and challenge yourself as to whether you could have achieved better outcomes. When I was running a Corporate Development function, during a lull between executing deals, I engaged DLA Piper Business Advisory to conduct an independent review of two of my deals (my stakeholders considered both deals as successful) and make recommendations on how we could improve execution effectiveness. This process included interviewing key stakeholders, and reviewing internal artifacts (reporting documents, Board, and steering committee papers). While your ego can take a hit, and naturally you can get dismissive and defensive, once you put all that to one side, the lessons learnt were invaluable. Having independent M&A specialists review our deals from the outside, provided our business with perspectives that we would not have seen or noticed. From time to time, you need to step back from continuous execution and invest in your capability to improve performance.

Sensible investment in resource, and time to prepare your organisation for M&A success, will result in better M&A outcomes. Ensure you have the right capability to execute efficiently and effectively to your specific situation.

3. M&A is a people sport.

I am always telling my teammates that "M&A is a people sport"! The way a deal team engages with both internal and external participants throughout a process is important. M&A naturally introduces heightened anxiety levels in participants.
M&A anxiety can be a result of introducing more work on top of business-as-usual requirements, creating livelihood uncertainty or even the potential for a process to negatively impact someone's career. Leading and managing what can be large teams, who may not directly report into the Corporate Development team, requires an empathetic and deliberate approach. While you cannot remove this understandable anxiety, you can influence its impact by how you support participants through the process. Here are three practical tips for leading and managing people through an M&A process:

- **Consider personalities.** Take the time to assess your key stakeholders and other participants. Document and communicate clear roles and responsibilities and understand how best to engage each stakeholder. Be alive and respectful to anxieties and the demands you are placing on your organisation and other participants in the process. To most people outside of the deal team, M&A is usually an unfamiliar environment, coupled with added uncertainty (will this deal impact my ability to sustain my family budget? Why are people running the magnifying glass over my business in such detail? I am at 100% capacity with my business-as-usual role, and they are asking me to do what?).
- **You are an ambassador for your own and your organisation's values.** Counterparties and their advisers will be judging you and your organisation based on how you treat them and other people in the process (both internal and external to your organisation). Be mindful that your external advisers are also representatives for your organisation. Treat people with respect and empathy.
- **Build trust with fellow process participants.** The quickest way to build trust is to do what you say you are going to do, while being honest and as transparent as you can be about your requirements. Importantly, be mindful not to make open-ended promises and commitments that you cannot deliver (especially if you are a buyer trying to get a deal across the line!).

Always consider the motivations of all your stakeholders and the potential impacts that a transaction may have on them.

4. Effective governance NOT burdensome bureaucracy

I associate bureaucracy with unnecessary and often complicated administration procedures. In contrast, I associate governance with risk management, oversight, and stewardship. A fit-for-purpose governance framework is critical to executing M&A efficiently and effectively.

A best practise governance structure will ensure discipline, stakeholder alignment, and deliver efficient decision making. The appropriate governance for your organisation should adhere to your organisation's policy requirements while being "right sized" in the context of the situation and the cross-functional engagement required to execute the transaction. When designing your governance structure, consider delegated authority limits and ensure there is clear senior executive sponsorship. Spend time with the transaction sponsor to understand and agree how best to engage your Board so that they are across the appropriate detail in advance of seeking any Board approvals. Pay attention to the number of steering committee members and the capability each brings to the transaction. Forward looking stakeholder management can be arduous, especially when a transaction is moving quickly, but it is necessary. Consider the benefits of a 'negotiation sub-group' of the steering committee who have the decision-making authority, capacity, and capability to provide guidance throughout negotiations. A common mistake is where the Corporate Development team "owns" the deal to execution, working in a vacuum, and once executed, "hand over" a suite of documents to another team who lack the context to of the negotiated positions. Effective deal governance should facilitate cross-functional alignment across key stakeholders throughout the entire process and ensure a consistent understating of the deal objectives.

To establish effective deal governance, you will need to invest time upfront to consider the situational requirements. This investment will result in efficiency benefits, especially when you get deep into the detail and closer to negotiating final binding terms. When designing your governance framework, draw on your existing systems and processes, however, spend time to consider the context of the specific situation and transaction. Ask yourself whether a certain element of your process adds value to this transaction, or by tweaking the process can you achieve greater efficiencies without losing effectiveness. Build in an ability to flex deliverables based on situational factors, including approval requirements.

Make sure you are clear on who needs to approve what elements of the transaction and add an allowance for briefings, incorporate feedback and internal paper reviews. Ensure the materials that you present to senior stakeholders are clear, ask yourself, who has the delegated authority to approve? Be clear on what you are asking of your decision makers, is it approval or guidance? Based on this, ensure you have the appropriate analysis to support decision making.

A well-considered and fit-for-purpose governance framework can be valuable to a deal team. Following a bureaucratic process blindly will create inefficiencies that elongate processes and detract from value. Given its importance, take the time to challenge yourself when establishing your transaction governance framework in the context of the specific transaction.

5. Dynamic and effective risk management enables you to look around corners.

When applied properly, risk management can add significant value to M&A outcomes. M&A risk management usually involves a deal team compiling a register of generic risks and equally generic mitigating actions. The deal team then file the risk register to gather dust. In contrast, effective risk management involves a deliberate mechanism to pull the team's focus out of the myriad of models, board and investment papers and force them to look ahead and scenario plan. I consider it a superpower to lead a team that can zoom in and out of the detail while "looking forward" to identify and plan how to avoid upcoming potholes. Dynamic risk management across the entire M&A lifecycle is central to how we execute M&A. The risk management process should be a commercial tool and not just a "tick-the-box" process.

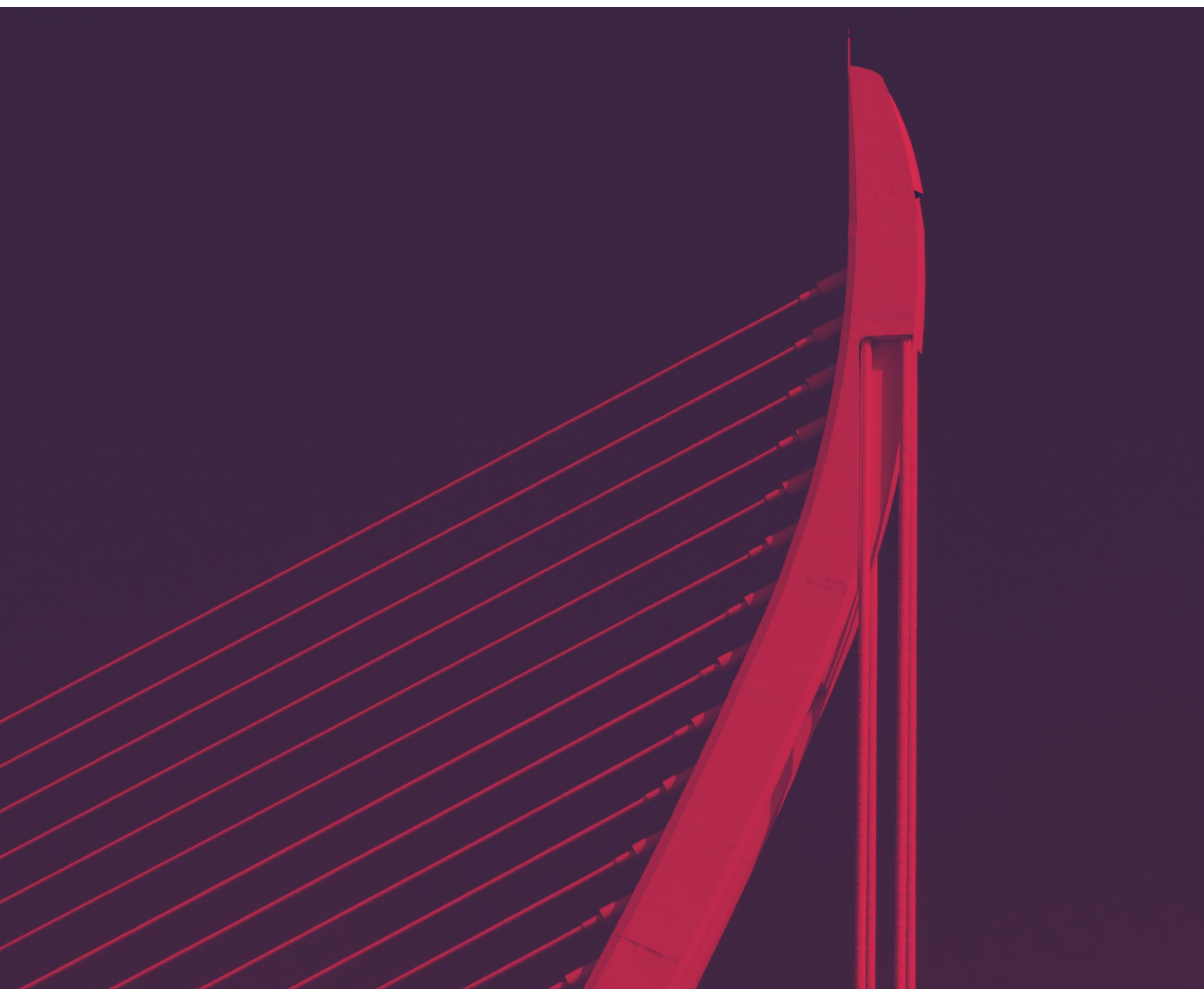
From a high-level, our process looks like a typical M&A risk register approach, however the special sauce is how we engage with the risk register. We construct our initial risk register with input from a handful of stakeholders with diverse skill sets and perspectives. Unique insights help mitigate against the urge to reuse generic risks. The risk register, amongst other things, includes well-defined risks and their expected impact, an "owner" is allocated to each risk and its associated control (mitigating action(s)). Importantly, if the controls put in place do not fully mitigate the risk, the risk register includes the expected residual risk that needs to be either assumed by the organisation or not (walk-away). The risk register should consider risks across the entire deal lifecycle including post-execution

value protection and realisation, not just risks inhibiting contract execution. “Moderating” the risk register is where it gets interesting. The risk moderation team meets to workshop and challenge the status and rankings of each risk, and importantly, looking forward to additional emerging risks and challenge the effectiveness of existing controls. When done well, these sessions are more like mini scenario planning discussions. This approach helps you stay two steps ahead of most risks and when there are surprises (which invariably there will be) they tend to be variants of a risk that you already have discussed. A useful tip for these moderation sessions is to “be critical until proven innocent.” Be curious and ask yourself, and your team, “where could this go wrong?”

This may sound like more work but forcing the team to think outside of the models and hypothesise will only enhance your ability to successfully achieve your deal objectives.

There we have it, my top-five practical tips for executing M&A from an inhouse perspective. While I have other tips relating to such topics as value versus price, negotiation, transaction document review, in my view, the tips I have highlighted in this article are those which have delivered the most material benefits over my career. I hope they have piqued your curiosity and provided areas to reflect on in the context of your team’s performance. I have found that minor changes can have big positive impacts on M&A outcomes!

Feel free to get in contact if you have any questions or perspectives, I would love to hear from you. Also look out for our follow-up article on transition planning and execution.



About

Guy Fisher

Head of Integrated M&A Australia and New Zealand

DLA Piper Business Advisory

Guy specialises in delivering comprehensive M&A solutions that support his clients to achieve better deal outcomes. He is well known for his "in-house" M&A experience, ensuring clients are well prepared and organised in advance of executing their ambitions.

Guy's experience spans both investment banking advisory roles and "in-house" M&A ownership. Most recently, he was the head of M&A at one of Australia's largest financial institutions. There, he led a multi-year divestment program, handling the sale of non-core assets and businesses.

Leveraging his extensive experience, Guy now guides clients through the complex M&A ecosystem, ensuring they are well prepared and ready to execute on their M&A ambitions.

For more advice reach out to guy.fisher@dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at dlapiper.com.
This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome. Copyright © 2024 DLA Piper. All rights reserved. | FEB24 | A21711-3