

# *Legal Integration*

## The legal function's role in enabling integration

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### ***At a glance***

The volume of legal work to be completed as part of a deal can be overwhelming.

The burden on the legal department is often exacerbated by the need to perform contract reviews before other functions can commence critical integration planning.

Prioritizing legal requirements and implementing disciplined project management are key success factors for the legal department in navigating transaction pitfalls.

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# *Introduction*

Transactions take a toll on legal departments. From initial due diligence to antitrust clearances, from intellectual property matters to employment law challenges, and from reviewing customer and vendor contracts and licensing agreements to preparing new ones, there is much to be done—many third parties and legal professionals are often involved.

The sheer volume of legal work that must be performed during M&A integration can be overwhelming. A legal department can find it challenging to organize and prioritize efforts, quickly becoming a bottleneck to critical integration activities across the company. Legal miscues and delays can cost both time and money, and in some cases, can even cost the deal itself.

Already understaffed legal teams are overwhelmed by the added workload associated with a transaction, often struggling to manage transaction-related responsibilities on top of normal day-to-day tasks. The burden is increased by the need to prioritize and perform legal reviews and approvals to support integration activities across the company. Even though legal departments typically have the freedom and the budget to engage outside counsel for help, in-house counsel is still ultimately responsible for the work of their advisors and the related outcomes.

While a consistent, top-down enterprise-wide integration process is a key success factor in any M&A integration, this is especially critical for the legal department's success.

# *The issues our clients face, the actions we help them take*

An effective integration process emphasizes the importance of getting the fundamentals of integration in place as quickly as possible during a deal to help minimize disruptions and achieve synergies. Rapidly launching integration efforts to Set the Course, Plan for and Execute Day One, and Design and Maximize Future-State Operations is a critical success factor. Figure 1 illustrates the integration process.

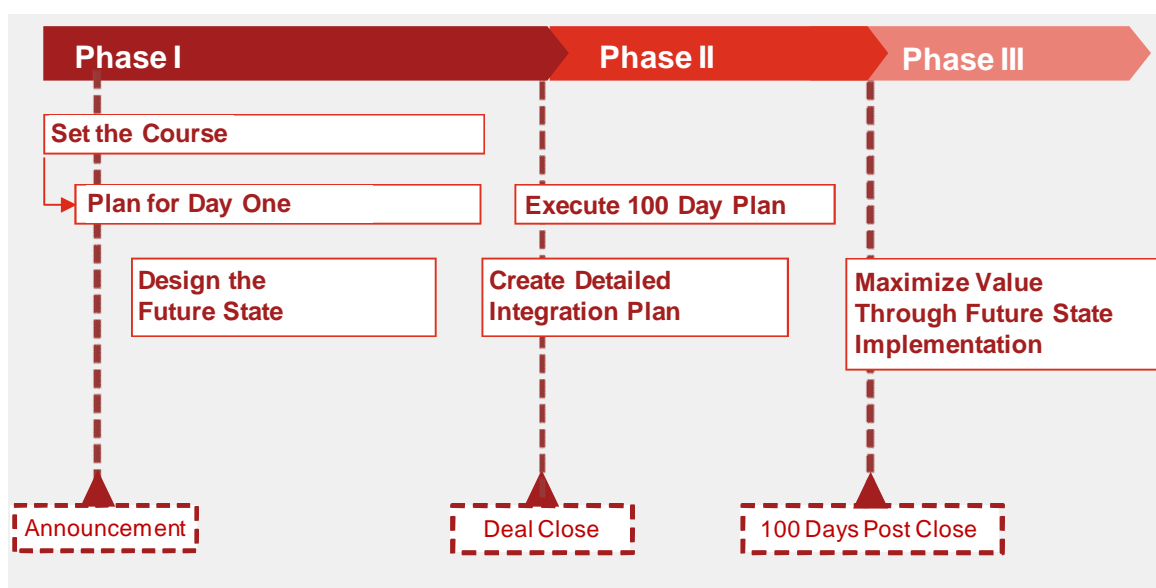


Figure 1 – The PwC integration process follows a sequence of coordinated steps to focus resources and capital on the right activities at the right times.

## *Set the course*

A merger or acquisition, like other large scale corporate change, is an excellent opportunity to set a new course, both operationally and across the various support functions of the newly combined business. Setting the course involves defining clear objectives and establishing clear leadership and role clarity during the transition. This empowers members of the integration team—including legal—to communicate effectively and take decisive action.

Essential legal tasks should be identified, planned, and prioritized before they can be executed in a coordinated manner. Setting the course for legal success requires a simultaneous effort on a number of fronts. One key item is the establishment of a legal integration lead, responsible for identifying sub-teams and leaders for each legal specialty, setting 'rules of engagement', determining escalation protocols for dealing with specific matters, and developing action plans for handling special issues such as on-going litigation and contract disputes. This structure forms the basis of the legal integration management office.

A legal integration management office should also be responsible for training others about information sharing protocols and the need for commercial confidentiality during the transition period. Allowed and disallowed activities, and procedures for handling proprietary information, should be identified and communicated to the various integration teams, both in the U.S. and internationally.

# *Plan for and execute Day One*

Even if the best decisions are made as you Set the Course, much can go wrong at close without proper planning and execution. While Day One is a milestone for celebration, it is also the time for smooth transition of mission critical operations.

Day One is about demonstrating the combined company's ability to achieve business as usual as quickly as possible—and those early operating successes (or failures) signal the likelihood of success, to both employees and other stakeholders.

A critical Day One requirement for the legal department typically involves contract reviews. The volume of contract reviews requested by virtually every function prior to transaction close can be overwhelming. Common ones include sales requests for customer contract review of pricing, volume, expiration, and other key terms necessary for evaluating cross-selling and other revenue generating synergy opportunities. Operations, R&D, and business unit requests for key vendor and partner contract review of product development commitment, intellectual property ownership and licensing, supply purchase commitments, and title ownership over goods, facilities and equipment for the evaluation of future product development and manufacturing roadmap plans. Facilities requests for lease contract reviews, information technology requests for software license contract reviews, and finance requests for other vendor contract reviews—all necessary for evaluating procurement and cost saving opportunities. And human resources requests for employment contract reviews to identify change of control and other key provisions required to ensure smooth employee transition and to evaluate stock option and other compensation requirements.

While most in-house counsel is utilized for day-to-day tasks, contract reviews can become overwhelming. If this process does not start early, and in a coordinated fashion, contract review and associated tasks can quickly become too great for the organization to handle.

Another area that often takes precedence for the legal department is compliance with U.S. and foreign antitrust laws. Notification and waiting period requirements in the U.S. under Hart Scott Rodino (HSR) serve to limit the sharing of commercial information during the transition period. And, with more and more deals involving an international component, the rules and regulations of the European Union and other government bodies require local country pre-notification and prohibit circumstances that may give rise to implied mergers, with some countries imposing civil—and criminal—penalties for violators.

## *Some things to remember when integrating legal functions*

- **Proactively manage cross-functional dependencies between legal and other functions.**  
Legal must strike a balance between establishing control to prevent inadvertent legal, tax, and employment law exposure and providing timely guidance across the enterprise to allow for rapid execution of integration activities. Be sure there is a clear process for identifying and escalating legal review of cross-enterprise integration activities and communications.
- **Understand what's in and what's out.**  
It is critical to identify which tasks are owned by Legal versus Human Resources (e.g. managing employee severance and transitions), versus Communications (e.g. employee and external communications) versus Tax (e.g. legal input on the entity structuring and potential impacts).
- **Examine legal agreements and contracts early.**  
Immediately inventory all agreements and contracts and focus on those with Change in Control (CIC) provisions, intellectual property (IP) ownership issues, or other priority contractual obligations. Thoughtful planning, review, renegotiation, termination, and execution of new agreements could save millions.
- **Work with resources in your local markets.**  
The more globally dispersed your operations, the more you will need to depend on local legal and regulatory advisors to deliver on your plans.

# *Design and maximize future state operations*

In addition to managing the integration of the buyer and target legal functions, legal plays an important role in defining the pace and course of integration activities across the enterprise. Legal must monitor and execute the appropriate legal tasks to consummate the transaction, including drafting agreements, preparing Board reviews and approvals, gaining internal consents, and preparing for shareholder approvals. Concurrently, legal must partner closely with leaders across the organization to ensure tax benefits are preserved, legal exposures are minimized, and clear communications around what, where, and when certain activities can be executed across the enterprise and across multiple jurisdictions.

*Proper planning for legal integration should address each of the following matters, and more*

<p><b>Legal entity consolidation</b></p> <ul style="list-style-type: none"><li>• Identify post-merger legal entities</li><li>• Develop entity consolidation plan, clarify timing of integration activities</li><li>• Determine regulatory and anti-trust impacts</li><li>• Determine cross-functional legal requirements (Facilities, Finance, HR, Marketing, Sales, etc.)</li></ul> <p><b>Intellectual property</b></p> <ul style="list-style-type: none"><li>• Develop plan for cross license agreements</li><li>• Define process for handling patents, copyrights, and trademark agreements</li><li>• Segregate files consistent with the sale of intellectual property</li></ul> <p><b>Reduction in force and employee reviews</b></p> <ul style="list-style-type: none"><li>• Research employment law considerations</li><li>• Comply with works council, notification rules, and other country-specific guidelines</li><li>• Review employment contracts for change-in-control and other triggers</li><li>• Review employee handbooks and ethics policies</li></ul>	<p><b>Import/Export requirements</b></p> <ul style="list-style-type: none"><li>• Reconcile differences in planned distribution models</li><li>• Ensure all import processes are in place</li></ul> <p><b>Vendor, supplier, and licensing agreements</b></p> <ul style="list-style-type: none"><li>• Resolve conflicts in confidentiality and teaming agreements</li><li>• Secure third party license consents needed to cross sell</li><li>• Determine material change-in-control impacts</li></ul> <p><b>Customer contracts and leases</b></p> <ul style="list-style-type: none"><li>• Reconcile differences in future pricing models</li><li>• Review contracts and leases for change-in-control impacts</li><li>• Prepare new joint sales contracts and lease agreements</li></ul> <p><b>Systems and processes</b></p> <ul style="list-style-type: none"><li>• Develop plan for migrating contract management systems</li><li>• Define contract authorization thresholds and protocols</li><li>• Determine document retention policy and archiving</li></ul>
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## ***Conclusion***

The legal department plays a critical role in getting the deal done while mitigating risks and exposures of the newly combined company. The legal department is also instrumental in enabling the rest of the organization to operate efficiently in pursuit of realizing synergies and sustaining daily operations.

M&A transactions place a significant burden on corporate legal teams due to the volume of deal related activity occurring from diligence through post transaction close. As a result, the legal department should plan early for the myriad of activities across the enterprise requiring legal input and review. The legal team should be prepared to staff appropriately for managing the volume of work.

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For a deeper discussion on the content of this paper or other deal considerations, please contact one of our practice leaders or your local PwC partner.

Gregg Nahass, Partner  
US and Global Leader,  
M&A Integration  
213 356 6245  
gnahass@us.pwc.com

Jim Smith, Principal  
US Leader,  
Delivering Deal Value  
646 471 5720  
jim.smith@us.pwc.com

Martyn Curragh, Principal  
US Deals Leader,  
646 471 2622  
martyn.curragh@us.pwc.com

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