

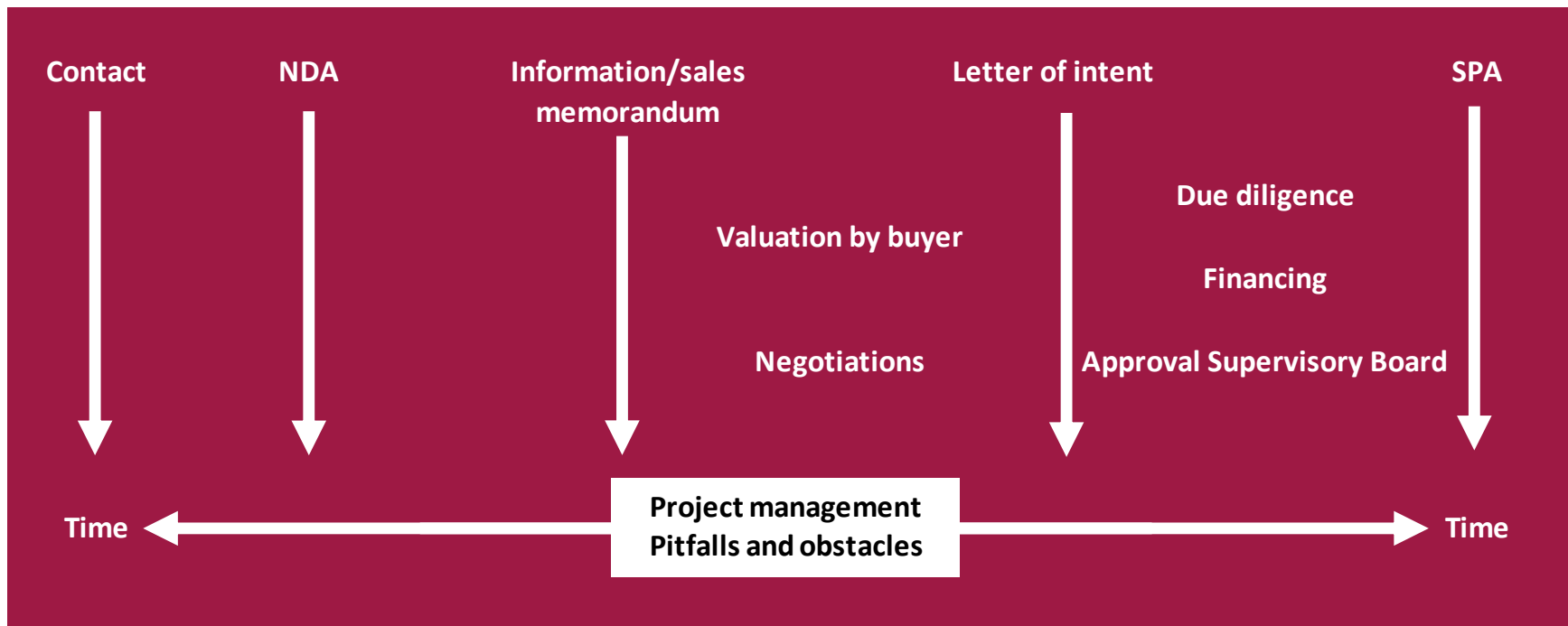
2 May 2019



# Legal documents in M&A transactions

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Milestone Advocaten

# Acquisition/sales process



# Movie: the anatomy of a deal



<https://www.youtube.com/watch?v=hK9UaRhsDPM>

# Introduction Milestone Advocaten





# Introduction Milestone Advocaten

- Dutch law firm with offices in the heart of the Netherlands (Utrecht and Amersfoort)
- Six partners: corporate/commercial law and employment law
- Highly qualified and experienced lawyers
- Cost efficient and hands on advice



# Introduction Frits Haas

- Born in 1968, studied law in Utrecht (NL); exchange program law in Regensburg (Germany)
- Legal Counsel as of 1995 (PwC)
- Attorney at law as of 2000 (CMS, Milestone)
- Strong focus on M&A, corporate & commercial law
- Former board member of the Dutch Corporate Finance Association
- Closely working together with CF specialists, accountants, civil law notaries and tax advisers
- Languages: English, German and Dutch



## Most common M&A documents

- NDA / confidentiality agreement
- Letter of intent / memorandum of understanding
- SPA / APA (if relating to assets)

# NDA



- Parties
- Mutual or one-sided?
- Exceptions to confidentiality
- Permitted use
- Permitted disclosure
- Term and termination
- Non solicitation
- No obligation to complete transaction
- Applicable law and jurisdiction



# LOI / MoU (memorandum of understanding)



- Parties
- Subject
- Character of the Letter of intent
- Purchase price (fixed, earn out, vendor loan, in shares / assets)
- Working capital ?



## LOI / MoU (II)

- Relevant dates (effective date, signing date, closing date)
- Conditions to transaction (conditions precedent and/or conditions subsequent), for example DD, financing, approvals/consents, permits and licenses
- Approvals/consents: both internal (group/parent company, supervisory board, works counsel etc.) and external (competition authority, central bank etc.), stock exchange regulations
- Exclusivity and confidentiality

# SPA (I)



- Parties
- Subject
- Purchase price / working capital
- If earn out: earn out protection clauses!
- Relevant dates (effective date, signing date, closing date); no leakage undertaking
- Check approvals/consents!



## SPA (II)

- Carve out matters (businesses, assets, liabilities, employees)?
- Closing (and what if one party fails to comply?)
- Warranties (if no risks, limited in time and amount)
- Indemnifications (if risks exist, not limited in time and amount)
- Post closing covenants
- Confidentiality
- Governing law and jurisdiction

## SPA (III)



- If APA, transfer of assets (and liabilities) according to local transfer requirements
- Most likely new permits and licenses required
- Further: EU transfer of undertakings directive (employees)

# Conclusion

- NL/case law
- International experiences



# FAQ



- What drives the need for companies to consider mergers and acquisitions?
- When is the best time to do a transaction?
- How long does an M&A process take on average?
- What are the most common mistakes during an M&A process?

# FAQ



- What is the role of a digital data room in an M&A process?
- What does an M&A lawyer do on a typical day?
- What is the importance of a legal due diligence?
- How are the due diligence results used in the contracts?
- What are the key differences in Governing Law?





*Any questions?*

