Corporative M&A is a very big deal. It is at the very core of a company’s strategy, and can result in great value. But M&A is hard to get right, and the risks associated with getting it wrong are enormous. Finding the right partner or acquisition; reaching consensus on strategy, social issues and operations going forward; working out all of the deal details; executing an agreement; obtaining financing, regulatory and shareholder approvals; successfully planning and integrating the businesses; maintaining morale in a changing work environment; executing the strategy and achieving the business objectives for the merger — all of this requires clarity of thought, alignment, focus, commitment, hard work and some luck.

If successful, the deal can be transformational for the company and its personnel. If unsuccessful, time, resources and opportunities will have been wasted, likely resulting in a tarnished reputation and a slumping stock price.

The general counsel is essential to a successful transaction. Together, the CEO, CFO and GC are strategic deal leaders and the “brains and heart” of the deal. As a strategic counsel, member of the senior leadership team, and the person primarily responsible for various aspects of the transaction, the GC is integral to the process. It is important for the GC to work hand-in-glove with the senior leadership team, establish a good working relationship with her counterparts, and surround herself with the best possible resources.

What this means for outside lawyers is that they must not only understand the GC’s role as quarterback, but be clear on their own roles as well. Working with scores of lawyers on multiple deals through the years, I understand the importance of what I call “finding the way to yes.” The client sets strategy, the GC is charged with protecting the client’s interests, drafting the documents, securing all necessary regulatory and governance approvals, and closing the transaction. Outside counsel’s highest and best use is to vigorously support the GC’s efforts, deploying peripheral vision to protect the client’s interests and achieve the client’s strategic objectives, while being careful not to go overboard. In any transaction, lawyers will run into obstacles. Clients hate it when their lawyers tell them “no.” A good lawyer will find a way, perhaps a way much different than originally envisioned, to achieve the desired outcome within the bounds of the law and ethics. By finding the way to yes, outside counsel will indeed add considerable value — not by changing the terms of the deal to favor his client, but by getting the deal over the finish line.

Here are some additional insights as to how GCs and their advisors can help deals get done.

Hire capable advisors who have done deals again and again, preferably as both inside and outside counsel. Deal negotiation and execution is not easy; these are not ordinary transactions like purchasing supplies or entering into routine contracts. One of the best things a GC can do is hire outside advisors who have significant merger experience, working both inside companies as well as in advisory capacities. Not everyone on the outside team needs this experience but the team’s strategic leaders do. More experienced advisors develop “peripheral deal vision,” which is the ability to see the expected and anticipate the unexpected. When vetting outside advisors, ask about the problems and challenges they experienced in their deals and how they solved those issues. If they haven’t seen them before, complicated problems, they won’t have the mettle to advise you.

People issues can be as important as deal issues. On my first day at a prior company, my first order of business was visiting a certain office where our personnel believed that they had just been “taken over.” Deals create fear within the ranks and, at this office, many folks were afraid they would lose their jobs. As a GC, your responsibilities in a deal are enormous — not only do you have to focus on every aspect from the initial idea through due diligence, shareholder/board approvals and the like, you must also watch for the people issues both in your organization and the merging entity. The post-merger integration of people and cultures is as critical. Everything can be lost if the integration fails, including your personal and professional credibility.

Find the way to “yes,” but be open to “no.” In the enthusiasm of the deal, getting to “yes” can be contagious. In that environment, it can be easy to miss problems. This is why I regularly created a “no” team in the deal process. The purpose of the team was to continuously question the assumptions and rationale for the deal. The “no” team helped us ensure that we weren’t missing critical information or aspects of a deal while keeping our eye on the strategic reasons for moving ahead at every juncture.

Learn from smart people. The longer you are in the deal business, the more you realize that there are always better ways to skin the proverbial cat. Over the years, I learned a lot from our successes, and more from our failures. Always be open to learning from your failures and your counterparts. Recognize and remember that you are not the only smart person in the room.

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