5.1.6

MERGERS, ACQUISITIONS AND MAJOR TRANSACTIONS

Few decisions test a Board as severely as a merger, an acquisition, a disposal of a core business or another transformational transaction. The amounts at stake are large, the information is asymmetric, the timetable is compressed, and the atmosphere is often charged with ambition. Research consistently shows that a substantial share of acquisitions destroy value for the buyer – not because the idea was bad, but because the price was too high, the risks were underestimated or the integration failed. The Board's role is therefore not to run the deal, but to ensure that the company enters it for the right reasons, at a defensible price, with open eyes and with a credible plan for what happens after signing.

Major transactions also concentrate governance risks that are diffuse in ordinary business: conflicts of interest, related party transactions, insider information, disclosure obligations and shareholder rights all converge on a single decision. In smaller markets, where the counterparty may well be connected to a shareholder or a director, this convergence deserves particular attention.

The role of the Board

The Board owns three things in any major transaction: the strategic rationale, the approval decision and the oversight of execution. Management identifies opportunities, negotiates and integrates; advisers value, structure and document. The Board's distinct contribution is disciplined judgement – whether the transaction serves the company's strategy or merely someone's ambition, whether the price rests on realistic assumptions, and whether the organisation can absorb what it is buying. The Board must also safeguard process integrity: conflicts of interest, inside information, equal treatment of shareholders, and disclosure and merger control requirements.

What the Board should do

Board actions:

1. Anchor every transaction in strategy before discussing price. Require management to show how the deal fits the approved strategy and what the realistic alternatives are – including organic growth, partnership or doing nothing.
2. Establish the process at the outset: a clear mandate for management, approval thresholds, a timetable for Board involvement, and rules for confidentiality and

insider lists. For significant deals, consider a transaction committee of unconflicted Board members with relevant experience.

3. Identify and manage conflicts of interest immediately. Require every Board member and senior executive to declare any connection to the counterparty, its owners or its advisers. Conflicted Board members must be excluded from deliberation and decision, and related party transaction procedures must be applied where the law or the company's corporate governance code requires.
4. Commission genuinely independent advice. Ensure that financial, legal and tax due diligence is proportionate to the deal, and consider an independent fairness opinion on valuation – especially where a shareholder, a director or management has an interest in the outcome.
5. Interrogate the assumptions, not only the model. Ask which synergies are proven, which are hoped for, and what the deal looks like if revenue synergies are removed entirely. Require a downside case and a walk-away price, and hold the Board to it when negotiation pressure mounts.
6. Approve the integration plan together with the deal, not after it. Require named accountability for integration, a budget for one-off costs, retention plans for key people of the target, and milestones the Board will track.
7. Review the outcome. Twelve to twenty-four months after closing, compare actual performance against the investment case presented at approval, and record the lessons for the next transaction.

Warning signs

- Deal momentum: the transaction accelerates while scrutiny weakens, and the question shifts from "should we" to "how fast can we".
- A CEO personally invested in the deal as a legacy project, with the Board hearing only supporting evidence.
- Due diligence findings dismissed as "deal points" without analysis of their long-term cost.
- Advisers remunerated only on completion, with no one in the room paid to say no.
- Undeclared connections between the counterparty and shareholders, Board members or executives.
- No integration plan, budget or named owner at the moment of approval.

Common pitfalls and drawbacks

The most expensive pitfall is overpayment driven by momentum and optimism: once time, money and reputation have been invested in a deal, walking away feels

like failure, and Boards approve prices they would have rejected at the outset. The second is treating approval as the finish line – most value is won or lost in integration, which begins the day after closing and typically takes years. The third is process failure: a conflicted Board member who participated in the decision, a missed disclosure, a breach of insider rules or an overlooked merger control filing can invalidate the transaction and expose Board members to personal liability. Boards should also recognise the drawbacks of excessive caution: a Board that demands certainty on every point will lose good opportunities to faster competitors. The aim is disciplined speed – a well-designed process that allows the Board to decide quickly without skipping the questions that matter.

Guidance for other governance professionals

Company secretaries, general counsel, chief financial officers and internal auditors carry much of the practical burden of a clean transaction. The company secretary should design the decision trail: properly convened meetings, complete papers, minutes recording the alternatives considered and the reasons for the decision, declarations of interest, and insider lists maintained from the first confidential discussion. General counsel should map the approval requirements early – shareholder approvals, related party transaction procedures, merger control filings, disclosure obligations – and build them into the timetable. The chief financial officer should present the investment case with its assumptions visible and testable, including a downside scenario, and resist pressure to tune the model to a predetermined answer. Internal audit should review the process after closing. The guiding principle for all of these roles: the file should show that the Board decided carefully, on complete information and free of conflicts.

KEY TAKEAWAYS

A. Major transactions test a Board more severely than any other decision: large amounts, asymmetric information, compressed timetables and charged ambition. A substantial share of acquisitions destroy value because the price was too high, the risks underestimated or the integration failed.

B. The Board owns the strategic rationale, the approval decision and the oversight of execution. Management negotiates and integrates; advisers value and document. The Board's contribution is disciplined judgement and process integrity.

C. Every transaction should be anchored in strategy before price is discussed, run under a clear process with approval thresholds and insider rules, and protected against conflicts of interest through declarations and exclusion of conflicted Board members.

D. Independent advice, interrogated assumptions, a downside case and a walk-away price protect against deal momentum. The integration plan, with named accountability and a budget, is approved with the deal, not after it.

E. Outcomes should be reviewed twelve to twenty-four months after closing against the investment case, and the lessons recorded.

QUESTIONS FOR THE BOARD

1. *Do we have a defined process for major transactions: mandate for management, approval thresholds, Board timetable, confidentiality and insider lists?*
2. *Has every Board member and senior executive declared any connection to the counterparty, its owners or its advisers, and have conflicted Board members been excluded?*
3. *Is our due diligence and valuation advice genuinely independent, and have we seen a downside case and set a walk-away price?*
4. *Is there a named owner, a budget and milestones for integration at the moment of approval?*
5. *Are our advisers paid in a way that gives someone an incentive to say no?*
6. *When did we last compare a completed transaction against its investment case, and what did we learn?*
7. *Why this target, why now, and what happens to our strategy if we do not proceed?*
8. *What did due diligence find that we are choosing to accept, and why?*
9. *If this transaction appeared on the front page tomorrow, could we explain the process and the price with confidence?*