Every attorney who handles an M&A transaction is engaged in project management. However, until recently, most business attorneys had not heard the words “project management” used in conjunction with deal lawyering. And there was no reason they should have.

All too often an attorney first learns of a transaction when a client calls and says, “I’m sending you a letter of intent that we just signed. When can you send me a draft of the purchase agreement?” There is little, if any, discussion of planning, business objectives, timetable, allocation of resources, range of outcomes, deal and operational risks, or budgeting. The deal process involves the usual whirlwind of e-mails, conference calls, and ping-ponging of multiple drafts of the operative documents.

If there is a budget for legal fees and expenses, it might consist of a quickly calculated rough estimate served up at the outset, which is not discussed again until the final bill is rendered. When the budget and billings dramatically diverge, neither the client nor the law firm has a precise sense of what caused the fees and expenses to exceed initial expectations. After the closing, there is no debriefing as to what was done well or might have been done differently. The parties simply move to the next transaction.

The Need for a Better Way
The foregoing might have been an accepted, even prevailing practice in the past, but a number of factors are converging in today’s legal market to warrant the active use of legal project management in handling M&A transactions. These factors include:

- increasingly sophisticated clients that demand more transparency, better communication, effective containment of risk, and greater predictability with fewer surprises;
- enormous pressures on in-house counsel to rein in legal spending;
- increasing use of alternative fee arrangements;
- an overabundance of lawyers relative to the volume of available legal work;
- the disaggregation of legal services;
- the proliferation of alternate service providers and legal and other project management vendors; and
- technological advances and tools that streamline legal processes and provide access to critical information.

Other professions have embraced project management techniques with highly positive results. In his 2009 bestselling book The Checklist Manifesto: How to Get Things Right, Dr. Atul Gawande promoted the use of checklists (such as those followed by pilots prior to takeoff) in hospital operating rooms. Initially, there was pushback from surgeons who felt such an approach was overly mechanical, impinged on their authority, and questioned their judgment. Nevertheless, hospitals that adopted the approach saw their “adverse event” rates plummet, and surgeons began to recognize and embrace the use of checklists.
When lawyers first hear of LPM, they react much like those skeptical surgeons. Increasingly, however, sophisticated general counsel and purchasers of legal services have become advocates when it comes to LPM and are insisting that firms adopt and adhere to LPM techniques and protocols. This is evidenced by their RFPs and outside counsel guidelines and their responses to client satisfaction surveys.

Benefits of the Better Way

So what is LPM when it comes to deal lawyering? LPM offers an organizational and communications framework that enables a law firm and in-house counsel to better plan, manage, and execute M&A transactions.

Among the potential benefits that LPM offers are the following:

• a roadmap for getting deals done with fewer unwelcome surprises along the way;
• clear communication channels that foster planning at the outset and more effective collaboration, monitoring, and coordination during the course of the transaction;
• fewer errors and improved efficiency;
• greater accountability, transparency, consistency, and predictability;
• improved allocation of resources and setting of timetables;
• more accurate budgeting and reporting at key intervals during the course of the deal to avoid surprises and promptly address changes in assumptions;
• a structure for institutionalizing knowledge management and associate training; and
• improved client service, satisfaction, and retention.

In sum, the effective use of LPM can contribute to enhancing the level of trust between a law firm and its clients and building an enduring relationship.

Contents of this Guidebook

The last several years have seen an explosion of programs and publications relating to LPM. It is clearly a hot and quickly evolving topic. Consequently, this Guidebook does not purport to be the last word on legal project management for deal lawyers, nor does it seek to impose a uniform set of practices that must be used in all circumstances. Instead, it presents practical tools and resources that attorneys can consult, customize, and adapt as they plan for and handle M&A transactions. Moreover, these tools are not intended only for the very large deals; they have much to offer for middle-market M&A transactions as well. These tools can also be used as resources in the training of younger lawyers.

The tools have been organized in the following table by three deal phases, namely, “Pre-Deal,” “Deal,” and “Post-Closing,” and by user, be it the client (Client), the law firm (Law Firm), or the opposing counsel (OpCounsel). In addition, four billing/budgeting tools are included. Each item is described in more detail in the text following the table.
Pre-Deal

- **Acquisition Task Checklist**: This tool is equivalent of a “pre-flight checklist” for an M&A deal. It is intended to help ensure that nothing falls through the cracks and that all the myriad tasks associated with a typical M&A transaction are covered and coordinated.

- **Initial Deal Scoping Discussion**: “Plans are worthless, but planning is everything,” is a famous quote ascribed to General Dwight D. Eisenhower. This tool builds on that notion. It provides a script for an early stage conversation between the client and law firm regarding important background information on the transaction (e.g., deal structure, industry, business objectives, and timing), key issues likely to arise, and the scope of work to be undertaken by the law firm. In addition to aiding the client and the law firm in organizing and coordinating their respective responsibilities, this up-front information provides a baseline for the law firm in preparing a budget or furnishing a fee estimate.

- **Confirmation of Deal Scope**: Law firms ask clients to sign engagement letters all the time. However, apart from some boilerplate, these letters focus principally on billing rates and fee arrangements and speak in only the most general terms about what is expected of the law firm or the client. This tool develops a formal scoping letter on a standalone basis or as an addendum to an engagement letter detailing what the law firm
is expected to do and, just as important, what the law firm is not expected to do. It also addresses the resources to be employed and how the client and law firm will collaborate.

- **Deal Management Discussion Outline:** This outline of a conversation between the client and the law firm addresses how the deal will be run (e.g., confidentiality concerns, communication protocols, other advisors who are involved, risk factors, closing mechanics, and post-closing integration issues). This discussion addresses some of the matters that can affect client satisfaction, the deal process, and quite possibly how efficiently it is conducted.

- **Deal Counsel Compact:** This tool is a checklist of principles and guidelines that the parties may jointly adopt and customize at the outset of the transaction to promote a higher degree of collaboration among all parties. These suggested rules of engagement between opposing counsel are intended to avoid confusion, reduce friction, and streamline the deal-making process.

- **Deal Kickoff Meeting Checklist:** This tool provides a checklist for an initial all hands/all parties meeting to address communication and negotiation protocols. A staple used by investment bankers in initial public offerings and other financings, the kickoff meeting checklist provides an opportunity for key players and their legal counsel to set the agenda for the deal and discuss background, structure, deal documents, timetables, and communication protocols. A menu of items that may be addressed during the deal kickoff meeting is set forth in this checklist.

- **Early Due Diligence Assessment:** This tool can be used to prioritize the due diligence effort by initially focusing on matters of client concern with the objective of better managing the time and expense of the due diligence process. If the results of the early due diligence effort are satisfactory, the client and law firm can proceed to a more comprehensive due diligence review. This approach breaks down due diligence into stages and can streamline the overall due diligence process when an initial review identifies areas of serious concern that might result in abandoning the transaction.

- **Multi-Jurisdictional Transaction Checklist:** This tool is a checklist of issues to consider in an M&A transaction that is multi-jurisdictional in nature. For example, buyer and seller may be headquartered in different countries or seller may maintain operations in multiple jurisdictions. This tool is intended to be an internal document that will help counsel and client manage such a transaction.

- **Carveout Transaction Checklist:** A carveout transaction involves the sale of a subsidiary, division or business unit where the seller continues in existence as an operating entity following the closing. Carveout transactions are complex and raise their own unique set of issues. This internal tool is intended to assist counsel and client in planning and handling such a transaction.

**Deal Phase**

- **Deal Issues Drafting Guide:** This tool sets forth a list of issues that counsel and client may want to consider and address at an early stage in establishing negotiating positions and drafting a purchase agreement. It is intended to serve as an internal tool, not to be shared with opposing counsel. The issues are largely derived from the Private Target M&A Deal Points Studies described above.
• **Deal Issues Negotiating Tool:** This tool is intended to highlight and facilitate the negotiation of significant issues early in the process. Typically, many key issues such as baskets, caps, and other indemnification terms are not reflected in a letter of intent, but are instead negotiated piecemeal or through the exchange of multiple drafts of the deal documents. With the Deal Issues Negotiating Tool, counsel and client can exchange proposals with their counterparts and attempt to crystallize the more significant deal issues at an early stage.

• **Roles and Responsibilities Chart (Leading/Assisting/Consulted/Informed):** This chart assigns and tracks the specific roles and responsibilities of individual members of the deal team. The purpose of the chart is to designate those who will be accountable, ensure others are kept in the loop and positioned to provide useful input, and avoid duplication of work because of lack of clarity regarding roles.

• **Task Status Report:** This tool sets out a template of a report to communicate the current status of the various tasks that are necessary to close an M&A transaction. Sometimes called an “information radiator,” it is intended to provide progress updates on the status of various key tasks. The circulation of such reports on a periodic basis to all parties facilitates coordination and helps transactions proceed more smoothly.

### Post-Closing Phase

• **Post-Matter Assessment:** Post-matter debriefings have been common in other professional service firms and industries for a long time. Law firms are beginning to implement the practice more systematically. These reviews focus on lessons learned and enable the law firm and client to capture knowledge and improve processes by considering what went right, what went wrong, and what might be improved. The checklists guide the counsel and client through the assessment process and suggest questions that may be considered to elicit lessons learned in the deal process and what the team can do to improve the handling of future M&A transactions.

• **Post-Acquisition Transaction Checklist:** While deal making is hard, integration is even harder. Oftentimes, the projected values to be realized from M&A are lost on integration. One leading contributing factor may be buyer's failure to consider and plan how the acquired business is to be integrated into its own business after closing. This tool provides a list of questions and action items for a buyer to consider in developing and implementing a post-closing integration plan.

### Billing/Budgeting Tools

• **M&A Codes:** This tool provides a set of codes for budgeting purposes and reporting time incurred by law firms in M&A transactions. The codes reflect the phases of a transaction rather than deal tasks and report the involvement of subject matter experts who support the transaction.

• **Alternative M&A Fee Arrangements:** While alternative fee structures are often used in litigation matters, clients and law firms frequently struggle in attempting to adopt alternative fee structures for M&A deals to better align the interests of the client and law firm. This tool sets forth a menu of such alternative fee structures that can be used by clients and law firms for M&A transactional work.
• **Deal Magnitude and Complexity Tool**: This tool identifies certain elements of complexity that can consume resources, drive up legal costs and lengthen the duration in an M&A transaction. The elements appear in a matrix in which numerical points in increasing amounts are assigned as the magnitude and complexity of each element increases. Consideration of such elements is critical in gathering the resources, preparing a budget and setting expectations for a M&A deal.

• **M&A Budgeting Tool**: Many lawyers simply do not know where to begin when a client asks for a fee budget for a M&A transaction. Utilizing the M&A Codes found in Billing/Budgeting Document No. 1, this Excel-based tool sets out deal phases and allows counsel to insert tasks, estimated hours to complete the tasks, and timekeepers by seniority. With the estimated hours and billing rate inserted, counsel can calculate a budget with a reasonable degree of precision. This tool allows for contingencies to be included, enabling a range of fees based on the degree of certainty of completing a task.