



TIMELINE OF AN ACQUISITION

Dean Street Law has experience negotiating thousands of transactions for hundreds of clients. This timeline is created with small business acquisitions in mind. However, the general structure applies for micro transactions and larger transactions as well.

In every transaction, Dean Street Law's number one goal is to be a seamless extension of the business team. By investing in your legal support early on in the acquisition process, you ensure that your legal support is in place when business needs arise, minimize your downside risk, and maximize your upside potential. Your legal team and business team are able to move forward as one cohesive unit and avoid delays and loss of momentum, all of which save time and money in the long run. This is key to creating an environment for success for your transaction.

The timeline below includes our highest level of support, and is recommended for first time acquirers. We would be happy to discuss how we can customize your level of legal support to suit your needs, budget and expectations. If you'd like to solidify your acquisition support, you can [schedule a complimentary consultation](#) so we can identify how we can best support you in your acquisition.

PHASE ONE – STRATEGY DEVELOPMENT

In pursuing an acquisition, it is important to identify your immediate, short-term and long-term goals. In addition, it is helpful to develop a guideline of parameters with respect to deal size, financing opportunities, the desired end business structure, and who will be involved in the transaction. This will help you to minimize costs and maximize efficiencies by having a consistent strategy and approach from start to finish. Dean Street Law will help you (i) understand deal structure and financing opportunities and (ii) develop the best strategy, corporate structure, and deal structure to meet your immediate, short-term and long-term goals. In addition, we provide insight into the legal deal costs for different deal sizes and structures. We can also help you develop your deal team by making introductions to other potential advisors for your deal team.

PHASE TWO – PRE-SEARCH AND SEARCH

PART ONE: FORMING A SEPARATE LEGAL ENTITY

We always recommend forming or incorporating an acquisition company or management company before entering into non-disclosure agreements, letters of intent, etc. This will protect the acquirer from personal liability as the entity will act as a shield to protect the acquirer's other assets, including personal assets such as their home, car, bank accounts, and other investments from any potential liability associated with the acquisition. The entity formation or incorporation process should be completed well in advance of entering into any agreements since it may take a few weeks if there are multiple investors that need to agree to terms, and certain states of formation take longer to process the formation filings. This should be completed prior to opening bank accounts, obtaining insurance, and entering into contracts to maintain the protection from liability, which we discuss further in our [Guide on Avoiding Piercing the Corporate Veil](#). So, entity formation should be your first priority so that it doesn't hinder your ability to move forward on a transaction. When the right deal comes through, you need to be able to act immediately.

For each client, we review their goals, needs and circumstances to determine the best entity type and corporate structure for their business. Our [Guide on Entity Types](#) outlines a few of the things that we discuss and consider. Please note this is a non-comprehensive list and will be updated to include series limited liability companies, which are a popular entity structure for investment funds.

CLIENT TYPE ONE - SELF FUNDED

For self-funded acquirers, we typically recommend organizing the acquisition company as a single-member limited liability company. We will run a name search to confirm you can legally use your desired name, draft a limited liability company agreement, file a certificate of formation in the selected state of formation, and draft and file qualifications to do business as necessary. We will also file for an EIN number to be used by the company and its employees for tax purposes. If you're fond of a DIY solution and would like guidance on how to form a *single member limited liability company*, you can purchase [The Startup Bundle](#) which includes your template operating agreement, how to file your certificate of formation, and many videos to walk you through the process of formation and beyond to set you up for success. Please email ldifrancesco@deanstreetlaw.com if you would like to purchase as we are currently in the process of updating all of the payment links.

CLIENT TYPE TWO - JOINT VENTURE

A joint venture is when an acquirer is collaborating with a few other parties to invest in an acquisition. Each person may have a different area of expertise, or they may be collaborating to aggregate funds and reach economies of scale. Either way, the acquirer is not generally soliciting investors, but is instead expecting to work with the same parties from the beginning stages of the transaction through closing. After a discussion with the parties involved, we select the best entity type for the joint venture based on some of the factors set forth in our [Guide on Legal Entities](#). The best entity structure for most of the joint ventures we've worked on has been a multi-member limited liability company, which provides the ability to customize the relationship of the parties through the flexibility of the entity while maintaining a low cost of formation and maintenance.

CLIENT TYPE THREE - FUNDRAISING

For acquirers who will be fundraising, we discuss their fundraising goals, their business goals, and potential investors, as well as other components listed in our [Guide on Fundraising](#). From available fundraising sources, we determine the best opportunities for your needs and goals, which of those opportunities align with investor needs and expectations, and which align with the size of the fundraising and budget of the acquirer. Based on the fundraising strategy, we develop an action plan for what legal support and compliance is necessary. This is highly dependent on the fundraising method (debt or equity), the particulars of each fundraising vehicle, the amount to be raised, where fundraising will occur (compliance is required at the federal level and for each state in which funds are raised), the number of investors, and whether those investors are accredited or non-accredited. The legal support required for fundraising can be extensive when it involves both federal and state compliance. You can see an example of the legal support needed for a fund formation based on the assumptions set forth therein in our [Memorandum regarding Fund Formation](#).

PART TWO: CONTRACTS DURING THE SEARCH PHASE

There may be a number of contracts that you may enter into during the search phase depending on the nature of your search, your target industry, and preferences of target companies. Two of the most common contracts that you may encounter are an Indication of Interest and a Non-Disclosure Agreement (which goes by many names, including a Confidentiality Agreement). We've provided a bit more information on both of those below.

CONTRACT ONE - INDICATION OF INTEREST

An Indication of Interest is utilized by acquirers (i) who are interested in bringing on investors to evidence their interest in investing and/or (ii) who would like to indicate their interest in pursuing an acquisition before a letter of intent would be appropriate. The investor will typically sign an Indication of Interest to show that they are interested in investing with you for a specific set of parameters or with respect to a specific deal. This will provide confidence to purchasers, lenders, and the acquirer themselves. Alternatively, an Indication of Interest can be used by acquirers to provide preliminary interest in a target company, essentially serving as a non-binding and less formal version of a Letter of Intent. It establishes the strength of your interest so that the seller takes your interest in their business more seriously. It acts to incentivize the seller to provide more information than they might otherwise provide. The Indication of Interest will then be followed by a Letter of Intent if you're interested in pursuing the transaction, which will include material purchase terms as discussed below.

CONTRACT TWO - NON-DISCLOSURE AGREEMENT

A Non-Disclosure Agreement is required by most sellers before they provide information on their business. This is a necessary preliminary step to obtain the information needed for your preliminary due diligence (which will be followed by more thorough due diligence with your deal team during the due diligence phase), including the name of the business, general high-level financial information, a confidential information memorandum, etc. The Non-Disclosure Agreement needs to be customized to ensure that the information expected to be provided as confidential information is identified as confidential information and that there are certain exclusions from requirements not to disclose. If a Non-Disclosure Agreement is not properly customized, it is a potential for liability. If you sign a Non-Disclosure Agreement stating that you will not disclose any information and there are no exceptions, you cannot disclose that information to your advisors. However, you will need to disclose information to your advisors, such as your lenders, investors, lawyers, accountants and other advisors. We also recommend that they be mutually beneficial, so that the information provided by the acquirer is also protected.

PHASE THREE – IDENTIFICATION OF A POTENTIAL ACQUISITION

The Letter of Intent is an agreement that describes the acquirer's non-binding intent to purchase a business and sets forth the material terms of that proposed acquisition. Template letters of intent

may not be adequate to create a pathway of success leading to a smooth closing. Many deals fall through due to a failure to fully discuss material terms at the letter of intent phase of the transaction. A thorough Letter of Intent can solve this issue by aligning the parties on material terms that the Asset Purchase Agreement or Stock Purchase Agreement will need to include.

Dean Street Law will work with you to determine the characteristics of your target deals and can prepare a Letter of Intent in advance based on the types of deals you are reviewing. When you are ready to proceed with a transaction, we can customize your Letter of Intent quickly so that your legal support is on pace with your business decisions.

During this stage, we also discuss the deal structure – whether it is an asset purchase or a stock purchase, etc. – and identify particular deal terms that should be included in the Letter of Intent based on the specifics of the target company. We can also assist with the negotiation of the Letter of Intent if you desire.

Our flat fee payment plan includes revisions to the Letter of Intent until it is executed by all parties. If one deal falls through and another deal materializes, Dean Street law will charge a lower flat fee to redraft and repurpose the original Letter of Intent in order to minimize the cost of any deal fall-out.

PHASE FOUR – DUE DILIGENCE

Based on the particulars of the target company, Dean Street law will draft a comprehensive due diligence request list for legal, financial and business due diligence. We coordinate with any other due diligence providers involved in the transaction to drive the due diligence process forward. We also determine which due diligence items should be reviewed by the legal, financial and business counterparts involved in the transaction. Once the requested due diligence items have been received, we review them on a rolling basis for legal compliance, red flags, the strength of their legal foundation, and any potential impacts to the value of the target company. We then analyze the due diligence materials and provide you with our findings. Our legal team will work to identify any potential threats or issues that were not previously clear and verify information relevant to the deal.

The areas of due diligence we review include, at a high level, the following information:

1. The organizational structure of the target company.
2. The ownership and control of the target company.
3. The assets and operations of the target company.
4. Intellectual property owned by the target company.
5. The target company's compliance with laws and regulations.
6. Environmental matters the target company is involved in.

7. Litigation the target company is involved in.
8. Significant contracts and commitments of the target company.
9. The target company's employees, and related employment and benefit contracts.
10. Open tax matters and obligations of the target company.
11. Bankruptcy filings of the target company.

PHASE FIVE – NEGOTIATION AND DRAFTING OF PRINCIPAL AND ANCILLARY DOCUMENTS

Based on the nature of the target company and the transaction, we identify the appropriate principal and ancillary transaction documents that need to be prepared for the transaction. We recommend our clients offer to provide initial drafts so that we know the initial drafts will be fair and represent our clients well. This is very important to maintain momentum in the transaction and to achieve the best possible outcome.

We negotiate and draft the following documents on behalf of the acquiring company, among others:

1. Asset Purchase Agreement or Stock Purchase Agreement (depending on the deal structure).
2. Bill of Sale.
3. Assignment and Assumption of Contracts Agreement.
4. Employment Agreements.
5. Seller's Note.
6. Real Estate Agreements (either Purchase or Acquisition of Lease).

Typically, this phase begins within two to three weeks after due diligence to stay on track with anticipated closing timelines. Thus, it's after we have completed high level due diligence to identify significant red flag issues and any matters that may need to be addressed in the acquisition documents and may run concurrently with the remainder of the due diligence phase.

PHASE SIX – PREPARATION FOR CLOSING

In preparation for closing and after drafting the asset purchase agreement or stock purchase agreement, Dean Street Law will provide a comprehensive closing checklist based on the target company and the specific transaction. We can lead weekly or biweekly status calls to progress the deal forward in a meaningful way. We follow up with all parties to ensure that the requisite actions necessary to proceed with closing have occurred. We prepare execution versions of all transaction documents. We prepare and review the Funds Flow Memorandum, a memorandum that sets forth the account information and amounts of all wire transfers that need to be made at

closing. We also draft the buyer and third-party consents and officers' certificates that are needed to approve the transaction. If necessary, we seek any relevant regulatory approvals.

PHASE SEVEN – CLOSING

During the closing process, Dean Street Law will prepare all closing documents, obtain executed documents to be held in escrow until the release of such during closing, and review all final and executed documents against their last-approved version. We also coordinate the closing process with all parties.

PHASE EIGHT – POST-CLOSING

During the post-closing phase, Dean Street Law attends to any post-closing matters identified in the closing checklist after the transaction has closed. For example, we prepare a closing binder, make any necessary filings, and we complete post-closing legal integration, as necessary.

PHASE NINE – OPERATIONS

In addition to mergers and acquisitions, we also support our clients with day to day business needs that may arise as they are operating their business. We can serve as outside counsel on a project by project or retainer basis or act as a fractional Chief Legal Officer or General Counsel with respect to corporate, contract and non-litigation business matters. We support our clients in finance, real estate, commercial transactions, contracts, compliance, intellectual property, corporate governance, and similar corporate law matters.

PHASE TEN – EXPANSION

Many of our clients pursue additional acquisitions after completing their initial transaction with us. They may be a private equity fund, strategic acquirer, angel investor or institutional investor that may be interested in adding additional investments to their portfolio or seeking bolt-on acquisitions to scale their current platform companies. We work collaboratively with our clients to support them in future acquisitions and expansion strategies. To the extent we can utilize our work together on prior transactions to obtain efficiencies in future transactions, we pass those cost savings on to our clients.

–

If you have any questions or are interested in working together on your next transaction, please [schedule a complimentary consultation](#). We look forward to working together to make your dreams a reality!