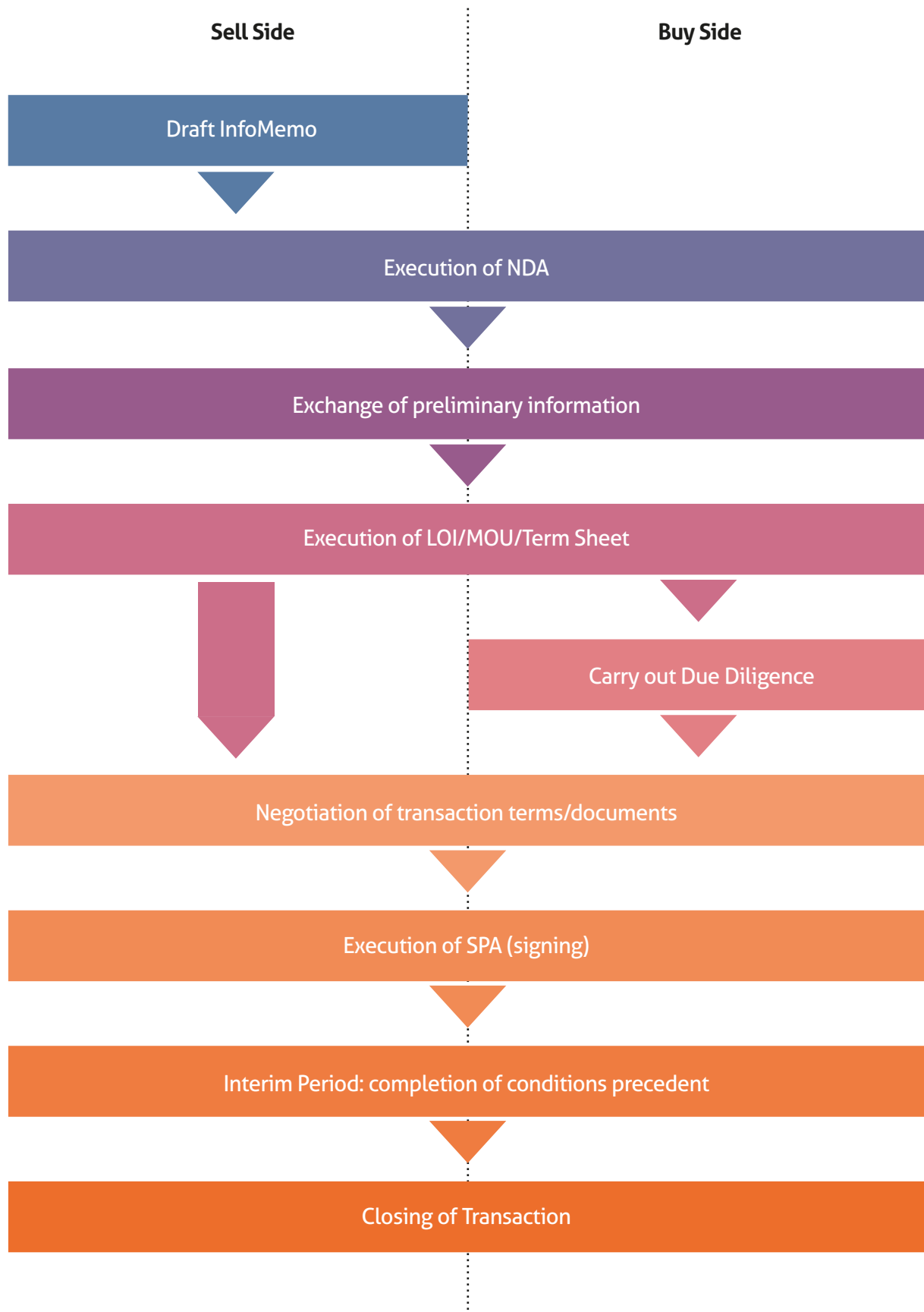


# Our guide to Small Market M&A

# Timeline of a standard M&A transaction



# Checklist to determine the content of a Shareholders' Agreement

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## ***General provisions: Regarding the shareholders, the company, the business and the group***

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- Signatories of the SHA: all of the shareholders? Only a part of them? The company itself? If the company is not a party, it will not be bound by its provisions, only those of the bylaws.
- Will anyone other than a shareholder need to sign the SHA? If any of the shareholders is a holding company for an individual or a family group, the individuals may need to sign to acknowledge certain obligations or guarantees.
- Description of the business of the company, important in defining certain management obligations or prohibitions, or other clauses such as non-compete.
- Will the SHA govern only the dealings with the company, or will it include other companies in the group (affiliates/subsidiaries)?
- Current shareholder structure. Will this change in the future? What will the effect be on the SHA?

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## ***Shares: rights and transfer regime***

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- Different voting rights.
- A payment waterfall for different types of distributions: dividends and liquidation rights.
- Transfer restrictions:
  - Lock up period;
  - Unrestricted transfers (intragroup/intrafamily transfers or transfers to attract future management);
  - Pre-emptive rights and other anti-dilution mechanisms;
  - Drag-along right;
  - Tag-along right;
  - Death of a shareholder.

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## ***Management of the company: general meetings and directors***

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### **Shareholders' meeting:**

- Quorum: percentage of share capital, number of shareholders, or presence of a particular shareholder.
- Majority needed for passing resolutions allowing special thresholds such as the need to obtain a favorable vote of a particular shareholder, or unanimity.

### **Management body:**

- Structure : sole director, joint directors, joint and several directors, board of directors.
- Composition , term of office and right to appoint directors.
- Authorities and obligations of CEO, Chairman and secretary to the board .
- Right to call or request a call to a shareholders meeting or meetings of the board of directors.
- Quorum and majority needed for passing resolutions .
- Shareholders' and directors' right to information, in general and upon calling of a general meetings.
- Deadlock clauses for management of the company at any level.

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## ***Other***

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- Budget and business plan: rights and obligations regarding its definition and control .
- Right to appoint company auditor
- Non-compete, with pre-approved exceptions for preexisting businesses .
- Non-solicitation.
- Good leaver and bad leaver provisions .
- Confidentiality and obligations to disclose by certain types of shareholders.
- Supremacy clause, and obligation/commitment to adapt bylaws to the content of the SHA.
- Applicable law and jurisdiction.

## FAQs

<p><b>Do I need to go through all steps of the standard M&amp;A timeline?</b></p>	<p>Each M&amp;A transaction is unique and develops based on the negotiations between the parties involved.</p> <p>While it's not mandatory to sign pre-transaction agreements like a Letter of Intent (LOI), Memorandum of Understanding (MOU), or term sheet, these documents can be beneficial to define terms, conduct the due diligence, and obtain financing.</p>
<p><b>What participants are involved in an M&amp;A deal?</b></p>	<ul style="list-style-type: none"> <li>• Buyer and seller (essential)</li> <li>• In Spain, a notary is required for transferring SL shares</li> <li>• Other participants: lawyers, M&amp;A advisors, banks for financing and insurance companies, if applicable.</li> </ul>
<p><b>Do I need to carry out due diligence when acquiring a business?</b></p>	<p>Yes, at least minimal . The scope depends on the target business, deal size, involved jurisdictions, and the parties' risk tolerance.</p>
<p><b>With a Spanish target, do I need to travel to Spain for signing/closing?</b></p>	<p>In Spain, the transfer of SL shares must be notarized in a public deed in Spain. However, representation can be granted to a third party to appear before the notary avoiding travel to Spain.</p>
<p><b>When is the ownership of the shares transferred?</b></p>	<p>At the closing . If there is an interim period between signing and closing, certain rights and risks may be allocated to the purchaser by agreement of the parties.</p>
<p><b>How do you ensure control over a company after acquiring a shareholding?</b></p>	<p>Control is ensured through the bylaws and shareholder agreements, granting decision-making or participation rights, setting quorum and majority requirements and rights to appoint directors .</p>
<p><b>Do I need to sign a shareholders' agreement? What advantages does a SHA have?</b></p>	<p>While there is no legal requirement to enter into a SHA, it offers several advantages:</p> <ol style="list-style-type: none"> <li><b>1. Flexibility:</b> It can cover more aspects than the bylaws, which have specific legal limits.</li> <li><b>2. Unanimity:</b> It can only be altered by unanimous consent of all signatories.</li> <li><b>3. Privacy:</b> Its terms are private, unlike the bylaws, which are publicly accessible through the Commercial Registry.</li> </ol> <p>In companies with multiple shareholders, having a SHA is beneficial.</p>





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