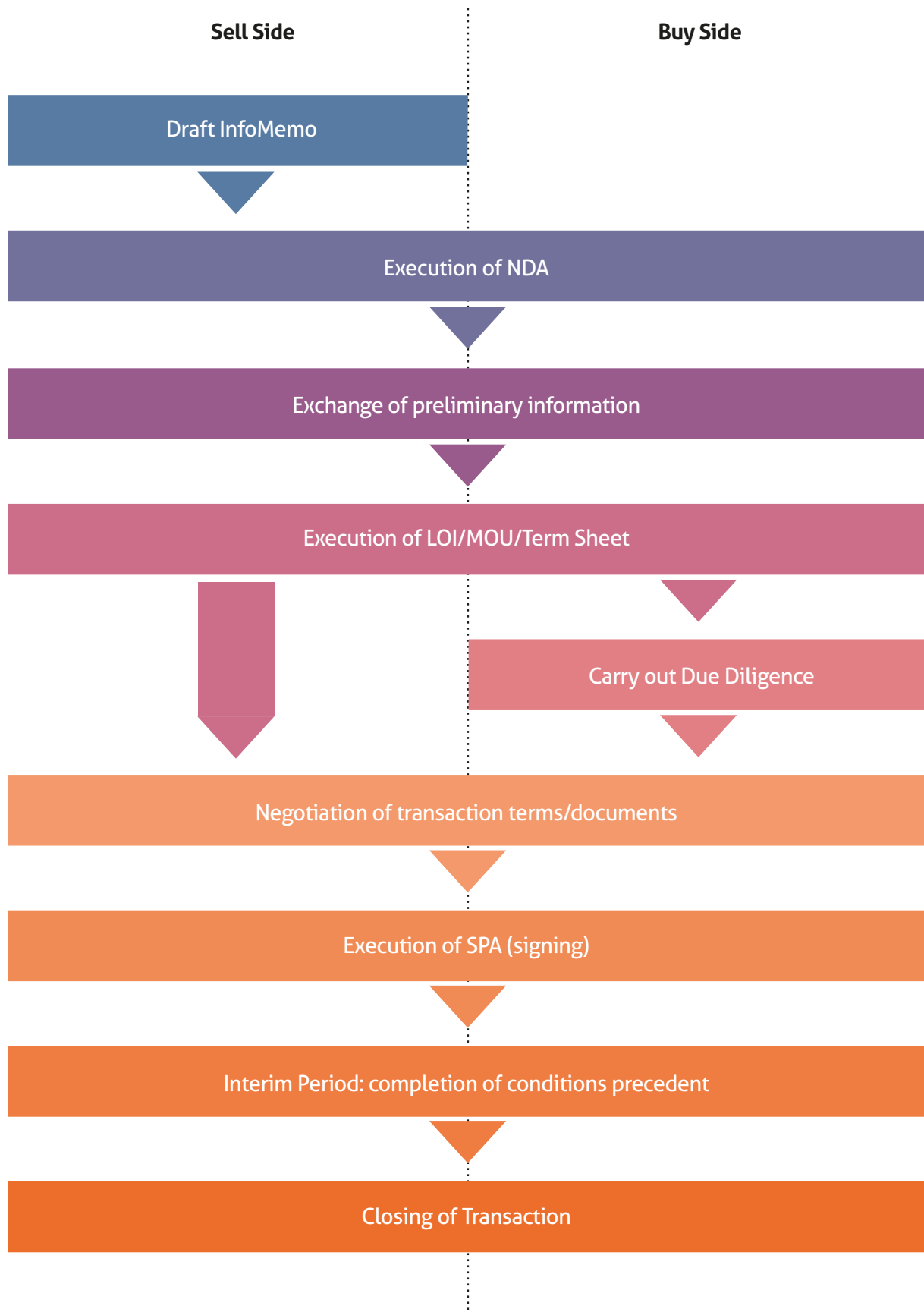


Our guide to Small Market M&A

Timeline of a standard M&A transaction



Checklist to determine the content of a Shareholders' Agreement

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

- 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. This can be important in defining certain management obligations or prohibitions, as well as other shareholder obligations such as non-compete.
- Will the SHA govern only the dealings with the company, or will it include other companies in the group? Subsidiaries? Affiliates? If the business will potentially grow inorganically, the SHA may include a catch-all provision for future group companies.
- Current shareholder structure. Will this change in the future? What will the effect be on the SHA?

Shares: rights and transfer regime

- Different voting rights.
- A payment waterfall for different types of distributions: dividends and liquidation rights.
- Transfer restrictions:
- Lock up period;
- Unrestricted transfers (such as 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.

Management of the company: general meetings and directors

- Quorum for general shareholder meetings. It may include a percentage of capital, a number of shareholders, or even require the presence of a particular shareholder.
- Majority needed for passing resolutions in the general shareholder meeting. Different thresholds can be established for different issues, including the need to obtain a favorable vote of a particular shareholder, or unanimity.
- Direction of company vote at shareholder meetings of subsidiaries and affiliates.
- Structure of management body of the company: sole director, joint directors, joint and several directors, board of directors.
- Structure of the management body of subsidiaries and affiliates.
- Composition of the management body, term of office and right to appoint directors.
- Remuneration of directors.
- Authorities and obligations of CEO, Chairman and secretary to the board of directors, and right to appoint them.
- Existence and composition of committees such as management committee.
- Right to call or request a call to a shareholders meeting.
- Regularity of meetings of the board of directors. Right to call or request a call to a meeting of the board of directors.
- Quorum for meetings of the board of directors.
- Majority needed for passing resolutions in the board of directors. Casting vote of the chairman.
- Shareholders' right to information, upon calling of a general meeting and in general.
- Directors' right to information, upon calling of a directors' meeting and in general.
- Reporting obligations to majority shareholder/financial investor.
- Deadlock clauses for management of the company at any level.

Other

- Budget and business plan. Rights and obligations of the parties regarding the definition and control of both aspects.
- Right to appoint company auditor. It can be from a group of predetermined companies (such as Big Four), or from a proposed group by another party to the agreement.
- Non-compete. Pre-approved exceptions for preexisting businesses or positions held by managers.
- Non-solicitation.
- Good leaver and bad leaver provisions for manager shareholders.
- Confidentiality. Provisions regarding obligations to disclose by certain types of shareholders.
- Supremacy clause, and obligation/commitment to amend bylaws to reflect the content of the SHA.
- Applicable law and jurisdiction.

FAQs

<p>Do I need to go through all steps of the standard M&A timeline?</p>	<p>Each M&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. They provide time for negotiating detailed terms, conducting due diligence, and obtaining financing, offering some assurance about the final terms of the transaction.</p> <p>The due diligence process can vary in length depending on the complexity of the business and the information available, ranging from days to months.</p> <p>Some transactions might not require conditions precedent (CPs) to close, allowing for simultaneous signing and closing with no interim period.</p>
<p>What participants are involved in an M&A deal?</p>	<p>The essential participants in an M&A deal are the buyer and the seller. In Spain, a notary is required for transferring SL shares. Other participants can include:</p> <ul style="list-style-type: none"> • Lawyers for both parties to protect interests and ensure legal compliance. • M&A advisors for financial and strategic guidance. • Banks for transaction financing. • Insurance companies, if applicable.
<p>Do I need to carry out due diligence when acquiring a business?</p>	<p>Yes, at least minimal due diligence should be conducted, such as verifying ownership and the basic existence of the business. The scope of the due diligence review depends on factors like the target business, deal size, involved jurisdictions, and the parties' risk tolerance. Under common law, the principle of "buyer beware" (<i>caveat emptor</i>) applies, meaning a buyer who fails to perform due diligence may not be entitled to remedies later.</p>
<p>With a Spanish target, do I need to travel to Spain for signing/closing?</p>	<p>In Spain, the transfer of SL shares must be notarized in a public deed, and any corporate amendments to the target company need to be included in a public deed as well. Therefore, visiting a notary in Spain is required for these steps. However, representation can be granted to a third party to appear before the notary through a notarized and apostilled Power of Attorney (PoA) from your country of residence. This means you likely won't necessarily be required to travel to Spain for signing and closing.</p>
<p>When is the ownership of the shares transferred?</p>	<p>Ownership of the shares is transferred at the closing of the deal. 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>How do you ensure control over a company after acquiring a shareholding?</p>	<p>Simply acquiring a shareholding doesn't guarantee control over the company. Control is ensured through the bylaws and shareholder agreements, which should grant decision-making or participation rights. This can be achieved, for example, by setting quorum and majority requirements in shareholder meetings and negotiating the right to appoint directors and their authorities.</p>
<p>Do I need to sign a shareholders' agreement? What advantages does a SHA have?</p>	<p>While there is no legal requirement to enter into a SHA, it offers several advantages:</p> <ol style="list-style-type: none"> 1. Flexibility: A SHA can cover more aspects of the shareholder relationship than the bylaws, which have specific legal limits. 2. Unanimity: A SHA can only be altered by unanimous consent of all signatories, whereas the bylaws can be amended by the majority established in them, which may not require unanimity. 3. Privacy: The terms of the SHA are private, unlike the bylaws, which are publicly accessible through the Commercial Registry. <p>In most cases, in companies with multiple shareholders, having a SHA is beneficial.</p>



The information highlighted is not exhaustive and corresponds to the general incorporation and maintenance of a generic company and, thus, do not include details of all requirements, content of obligations and particularities that may arise from certain specific transactions. The steps and obligations included are only those deriving from corporate regulations and do not include tax or administrative obligations that may arise in certain circumstances or industries. This work is for information purposes only and does not constitute legal advice. This guide is made in April 2024 and, to the best of our knowledge, is correct at the moment drafted. It is, however, written as a general guide so it is necessary that specific professional advice be sought before any action is taken.

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