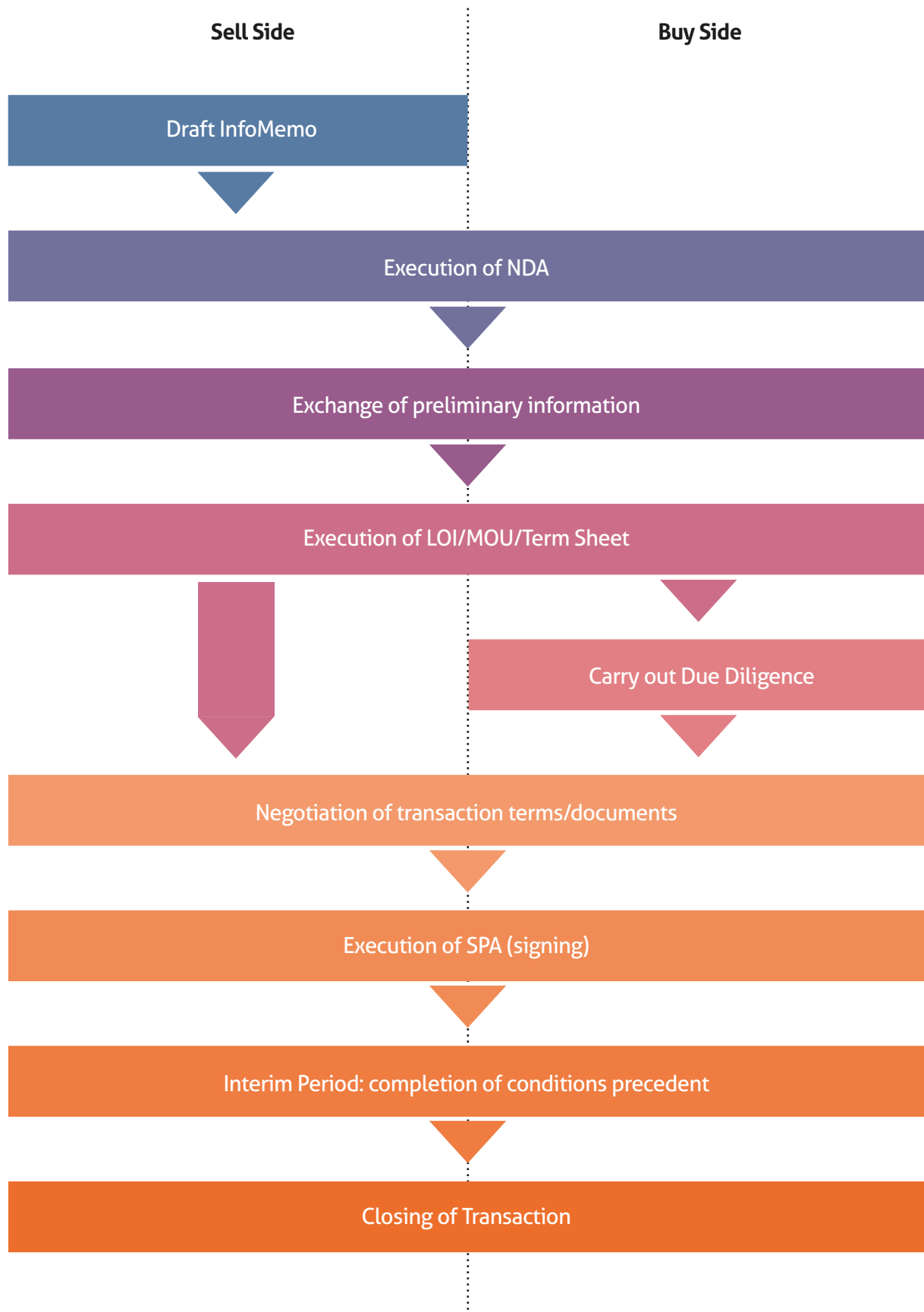


# Our guide to Small Market M&A

# 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>

## What our clients say

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"Seegman's Corporate/M&A team is recognised in Spain for its expertise in commercial mandates, including sales and share purchase agreements. The team is also active assisting clients with corporate governance and reorganisations mandates, as well as showcasing notable capabilities advising on cross-border transactions."

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"Seegman demonstrates a solid and well-structured ability to handle complex and sophisticated matters in the commercial field, combining experience, specialization and strategic vision."

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"The firm's service is of the highest quality, with an agile response to the needs of its clients. The department does a great job of determining and aligning with the client's business goals."

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"Leonardo Britto joins the rankings due to strong market support. He is active on corporate matters, including joint venture agreements and corporate reorganisations, as well as on transactions. He is adept at advising on transactions with cross-border elements, including those involving Latin American jurisdictions."

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