

Transaction Advisory: Who Usually Drafts the Agreement ?

BY CURTIS H.L. WONG CPA, LLB, PCLL



An acquisition agreement, unlike the typical letter of intent, is usually legally binding. Basically, it:

- Sets out the terms and mechanisms of the aimed transaction.
- Discloses all relevant and important legal and financial information of the company being acquired, where applicable, the information of the buyer and seller.
- Imposes obligations on the parties to the transaction to exert their best effort to proceed the transaction and avoid making substantial changes in the transitional period.
- Provides certain mechanisms in order to ensure potential problems and matters of contingency can be handled in ease way.

Generally, the buyer controls the drafting of an agreement as it is in the interest of him to safeguard this privilege. A buyer should not be surprised that the

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seller might try to wrest the control of the drafting by various reasons of technical complexity, mutual respects and etc. An agreement prepared by an opposite is more likely that some crucial provisions might be omitted or that it lacks the balance of interests.

The control of the drafting of the agreement is therefore an significant issue. The drafter may regulate and control the discussion framework and the pace of drafting as well as concluding the negotiation. However, he should express the terms as clear and explicit as possible and to take into account all reasonably foreseeable situations because any ambiguous term will be construed against the interests of the party that imposed its inclusion in the contract (i.e. In law, the "Contra Proferentem Rule").

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Matching Finance to Needs

BY ANNIE K.Y. CHEUNG ARA & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS

To obtain finance for acquiring new assets, a good financial management policy involves:

- ◆ Long-term assets should be financed with long-term funds.
- ◆ Short-term assets should be financed with short-term funds.



Match the loan repayment term with the asset funded by the loan proceeds is really important. Your borrowing should consider with the benefits derived from the use of an asset that create the cash flow necessary to finance the debt. Here are some tips:

1. Generally lenders are not interested to grant a secured loan with assets that devalued faster than the loan amortization. By offering other forms of security, one may obtain such type of loan.
2. It might appear that current cash flows are improved if an equipment

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having a five-year economic life is financed by a loan of ten-year term. However, at the end of the equipment's useful life, over half of the original loan amount would be outstanding. You need to continue the repayment for several years before replace the unit or pay for higher cost of repairs and maintenance in order to extend the useful life of the unit.

3. Business assets that produce a regular stream of benefits are more appropriately financed on an instalment loan basis. The new equipment or facilities used to increase operation efficiency and could bring in the same level of revenue under a lower cost framework.
4. Loan of long maturity period may be appropriate for assets which tend to appreciate in value over time or aim at resell, such as real estate investment.
5. Seasonal working capital requirement should be structured so that the business can meet its debt during every off season.
6. Leasing is an alternative funding. Operating leases are not reflected on the balance sheet. Therefore, the total debt of a company does not appear to increase when entering an operating lease. Finance leases, however, are reflected on the balance sheet as liabilities.

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Tax Practice: No Excuse on Carelessness

In D32/05, the taxpayer had declared in his tax return that he had income chargeable to salaries tax, but failed to declare the amount in it. He explained that the omission was due to an oversight and argued why a taxpayer could not be informed of his mistakes or omissions in the tax assessment.

The Board of Review held that every taxpayer has the duty to complete his tax return fully and carefully and to discharge his tax liability promptly. Or else, the task of the already over-burdened Inland Revenue Department will become impossible to perform. Carelessness is not a reasonable excuse which would exonerate a taxpayer from the penalty under section 82A of the IRO.

- ▶ Incorporation and company secretarial services
- ▶ Handling tax investigations and field audits
- ▶ Accounting & statutory audits
- ▶ Set up of family trusts
- ▶ Due diligence
- ▶ Re-invoicing arrangement



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Old Faithful Geyser of California

“Old Faithful Geyser” (the title is earned due to the regular eruptions) used to refer to the famous one located in Yellowstone National Park, Wyoming. Unless you plan a long trip to Wyoming, the Old Faithful Geyser of California is a wonderful place for short stay and where you just need spend a day for fun.

The Geyser is close to Calistoga, a city in Napa County, California. In about every 30 minutes, you will see an eruption of steam and scalding water spraying 60 to 100 feet in the air.

The Geyser has also proven to be a good predictor of earthquakes for the nearby area. When the eruption is delayed or diminished, an earthquake is likely within the next couple of weeks in the 500 miles surrounding area.

In the geyser's grounds, there is a picnic area and exhibit hall. Some sheep, goats and guard llamas are exhibited and cared as petting-zoo.

Calistoga is at the very top of the Napa Valley, and centrally located between Napa and Sonoma counties. You can access wineries, restaurants, and resorts easily. You may also enjoy for Calistoga’s famous hot springs spa and the “mud bath” with volcanic ash.



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