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SUBJECT: M&A - BEING PREPARED FOR THE ROLLER COASTER

As the world economy will continue to have its roller coaster rides -- where some people spiral into a state of frenzy and others thrill in ecstasy -- similarly, one finds the same sort of turbulent experiences when discussing mergers and acquisitions (M&A). For some, the M&A 'ride' can be opportunistic -- even fantastic -- whilst the same may not necessarily be true for the other parties on the same roller coaster ride.

There are many complexities involved when a bidding company is interested in another, be this friendly, or hostile. However there are very clear rules found within our legislation, namely those of the Companies Act of 1973, the Securities Services Act of 2004, the Competitions Act of 1998 and its amendments as well as the JSE Listing Requirements; all of which must be diligently followed in order to protect **all** the parties affected by such a transaction. Moreover, changes in the legal and regulatory framework have added significantly to the legal complexities of M&As. Merger law continually evolves in line with changing economic and industry cycles, as well as legislative developments in areas such as taxation, competition law, environmental compliance and black economic empowerment.

M&A is the most common way to obtain control over a company and as expected, it offers the successful bidding company the opportunity to rapidly enter a particular market with their intended competitive advantages. Many terms are associated with this type of transaction, seemingly as a guise to make what is usually a pretty aggressive, painful and dominant action, attractive to the receiving party. And so the terms; 'corporate restructure' and 'joint venture' all appear -- at the face of it -- very good and strategically viable for the engaging parties. However, the same action, particularly when the bidder's agenda may not be so open and forth-coming, may also be called 'hostile take-overs', 'equity carve-outs' and 'targets'; all of which signifies somewhat different intentions, not least a somewhat somber mood for the party being targeted (not so pretty).

Clearly then, it is imperative that companies being exposed to the potential merger or acquisition situation are fully prepared and equipped to deal with the eventualities that will arrive through what is normally a very complex business and legal process.

In his book -- Mergers, Acquisitions, and Other Restructuring Activities -- Donald M. DePamphilis is quoted, saying "successfully integrated M&As are those that demonstrate leadership by candidly and continuously communicating a clear vision, a set of values, and clear priorities to all employees. Successful integration efforts are those that are well planned, that appoint an integration manager and a team with clearly defined lines of authority, and that make the tough decisions early in the process. These decisions include organizational structure, reporting relationships, spans of control, people selection, roles and responsibilities, and workforce reduction."

Of course it's not entirely true that mergers or acquisitions don't suffer casualties of some sort – and it's totally naive to believe that even when two willing companies engaged in an M&A transaction, that they will not experience some sort of pain, even loss. Professor Robert F Bruner, author of the book DEALS FROM HELL, points out that the thinking around M&A failures can be badly flawed. Like any deal; good planning, research, evaluation and integration of strategies are essential components to the due diligence processes to make the deal a more "smoother transition". Clearly then, companies engaged

or about to embark on this normally exhilarating M&A journey should be thoroughly prepared and failing to do so, could cost one or even both companies dearly. Typical areas that go wrong when proper diligence processes are ignored may include the loss of key talent from either company, particularly when individuals don't agree with the opposite company's corporate culture or business ethos. And whilst it may be extremely difficult to find an objective price for the company in approach -- which could lead to 'buyer's remorse' -- bidders will barter to such an extent that one party may feel robbed, particularly when they are enticed and cannot walk away from the transaction. Of course the devil lies in the detail, and whilst the top negotiators will hopefully settle a deal, the reality of the "success" of such a transaction will always be found within the companies' ability to harmoniously integrate, amongst other, their brands and operations. Of course, if one or both of the companies are listed entities, the respective share price will also quickly show whether the market is satisfied with the deal or not.

So as a company consider either a *friendly* or *hostile* bid within another company, it remains critical that such a deal is clearly thought through. Whilst the due diligence is an intrusive, expensive and often exhaustive process, it's well advised in order to uncover any warts, prior to entering the deal. Expectedly, an early detection and discovery of the so-called warts may be yet another factor for driving a tougher deal.

CGF Research Institute is a member and strategic partner of the Proudly South African Campaign.

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