



Insights: Perspectives

7 Key Takeaways | Corporate Transactions: Deal Structuring, Governance Documents, and the Impact of AI

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Written by Sarah Beth Barnes, Mikail O. Clark

Kilpatrick's [John Erwin](#), [Sara Beth Barnes](#), and [Mikail Clark](#) recently presented on the topic of “**Corporate Transactions: Deal Structuring, Governance Documents, and the Impact of AI**” at the firm’s annual Raleigh In-House Counsel Summit.

John, Sara Beth, and Mikail provide the following key takeaways from the discussion:

1. **Deal Structuring.** Selection of the transaction structure—merger, equity purchase, asset purchase, or joint venture—should be based on tax impacts, legal and contractual constraints (including anti-assignment and change of control clauses), and the allocation of liabilities and business risks. Each structure presents specific benefits and drawbacks: mergers and equity purchases offer clean title transfer but may involve assuming liabilities and require shareholder approvals, while asset purchases allow buyers to select specific assets and liabilities but frequently trigger anti-assignment issues. Joint ventures demand careful attention to governance and exit mechanisms.

2. **Coordination and Communication.** Effective deal execution relies on comprehensive initial planning and ongoing coordination among internal stakeholders (legal, HR, tax, finance, business teams) and external advisors (legal, brokers, financial, insurance, environmental). Regular communication through kick-off calls, roundtables, and timely updates supports alignment on transaction timelines, regulatory requirements, exclusivity, and the consents or approvals needed from boards and shareholders.

3. **Due Diligence.** The scope of due diligence is tailored to the transaction type, focusing on the target's business objectives, risk profile, and key value drivers. Reviews should encompass contracts, IP, customer and vendor relationships, real estate, workforce, benefits, and litigation. Deal breakers should be identified early, and risk mitigation strategies—such as representations and warranties or tax insurance—should be considered. Asset deals often prioritize contract assignability, while equity and merger transactions demand deeper diligence due to the assumption of liabilities.

4. **Third Party Matters.** Securing third-party consents is essential and may involve customer, supplier, license, and landlord agreements, as well as regulatory notifications and approvals. The process can include negotiating payoff letters, lien releases, waivers, subleases, and amended agreements to facilitate closing and ensure

seamless integration post-transaction.

5. Cybersecurity, Data Privacy, and AI in Transactions. Compliance with statutory and contractual obligations for data privacy and cybersecurity is crucial, especially when analyzing intellectual property and liability risks. Distinguishing between compliance and breach is important for risk assessment. AI tools, such as contract scanning software, are increasingly used to enhance diligence but are not fully automated and may be subject to confidentiality restrictions under NDAs. Parties should consider the need to disclose AI use and confirm it does not breach contractual terms.

6. Labor & Employment Considerations. Employment agreements must be reviewed for provisions triggered by the transaction, such as severance, change-in-control bonuses, and “Good Reason” clauses. Due diligence should address restrictive covenants (confidentiality, non-compete, non-solicitation), invention assignments, benefits, commissions, and retirement plans. Employee onboarding, integration, eligibility, and timing of benefits require careful planning.

7. Key Documents and Miscellaneous Provisions. Essential transaction documents include Letters of Intent (LOI), NDAs with negotiated confidentiality and representative provisions, Operating Agreements (especially for joint ventures and PE-backed deals), and Transition Services Agreements (TSA) for post-closing support. Ancillary documents cover leases, restrictive covenants, employment agreements, indemnification, escrow, and exclusivity provisions. Across all structures, attention to miscellaneous provisions is critical: “all assets” clauses in asset deals help confirm ownership and exclude unwanted assets; confidentiality carveouts and public announcement controls (consent, timing, third-party notifications) protect interests; and robust general provisions (notice, assignment, third-party beneficiaries, governing law) ensure clarity and proper risk management.

For more information, please contact:

John Erwin, jerwin@ktslaw.com

Sara Beth Barnes, sbarnes@ktslaw.com

Mikail Clark, moclark@ktslaw.com

Related People



Sarah Beth Barnes

t 919.420.1744

sbarnes@ktslaw.com



Mikail O. Clark

t 704.338.5286

moclark@ktslaw.com