



## BASICS 101 – PART 2

*Business Law Institute – November 8, 2018*

### OVERVIEW

- GOAL OF THIS PROGRAM
- COMMON TYPES OF TRANSACTIONS
- GETTING STARTED
- DILIGENCE AND ORGANIZATION
- ANCILLARY DOCUMENTS
- SPECIALISTS

## MERGERS, ACQUISITIONS and FINANCINGS

- Mergers
- Acquisitions
- Financings



## ANATOMY OF A STOCK PURCHASE AGREEMENT

- Definitions
- Purchase and Sale of Shares
- Representation and Warranties of Stockholders
  - Authorization
  - Ownership/Title to Shares
  - Non-contravention
- Representations and Warranties of the Company
  - Due Organization
  - Tax Matters
  - Environmental
  - Customized

## ANATOMY OF A STOCK PURCHASE AGREEMENT

- Representations and Warranties of the Purchaser
  - Due Organization
  - Funds/Solvency
  - Litigation
- Covenants
  - Conduct of the Business
  - Confidentiality
  - Efforts to Consummate
- Conditions to Closing
- Termination
- Indemnification
- Miscellaneous

## GETTING STARTED

<b>Who is our client?</b>	<b>What is your responsibility?</b>	<b>Has an LOI/Term Sheet been negotiated?</b>
<b>What stage of the Transaction are we in?</b>	<b>What is the proposed transaction structure?</b>	<b>What other parties are involved and in what capacities?</b>
<b>What is the proposed timeline?</b>	<b>What resources are available to you?</b>	<b>What is motivating the client and what are its expectations?</b>

## RESOURCES

- Establish what you need both to get started and throughout the transaction
- Precedents
  - Colleagues/deal team members;
  - Paralegals;
  - Forms Database;
  - Deals Database;
  - Desk Site;
  - Library; and
  - .....



## DUE DILIGENCE

- **Due Diligence**
  - **What is due diligence?**
  - **Why is it important?**
    - *Volkswagen Example*
  - **What do we use diligence for?**
  - **What will your role in the diligence investigation be?**



## ORGANIZATION

### - Closing Checklists

- Cover Page describing the transactions and creating a legend for the parties

**CLOSING CHECKLIST TO  
MEMBERSHIP INTEREST PURCHASE AGREEMENT (THE "MIPA")**

BY AND BETWEEN

TARA, LLC ("TARA")

AND

LEARNING 101, LLC ("101")

AND

RELATED TRANSACTIONS

PROPOSED CLOSING DATE: NOVEMBER 8, 2018

The parties are contemplating a possible purchase of membership interests in Tara by 101 and the related transactions contemplated thereby. The chart contained herein is intended as a checklist to guide the parties toward the consummation of that closing. Unless otherwise defined herein, capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the MIPA.

## ORGANIZATION

#	Document and Cross-Reference	Responsible Party	Document Number	Executing Parties	Status
<b>PART A - TRANSACTION DOCUMENTS AND ACTION ITEMS RELATIVE TO ACQUISITION OF 40% INTEREST BY SOS IN CPR</b>					
1.	Non-Binding LOI	Parent/101	159322386	<input checked="" type="checkbox"/> Parent	Complete.
2.	Membership Interest Purchase Agreement	DLA	159321570	<input checked="" type="checkbox"/> Tara <input checked="" type="checkbox"/> 101 <input checked="" type="checkbox"/> Parent	In process.
a.	Disclosure Schedules	Tara	160360518	N/A	Complete.
b.	Domestic Good Standing Certificates of Company Group and Parent (MIPA Section 2.04(b)(i))	DLA	-	<input checked="" type="checkbox"/> Tara <input checked="" type="checkbox"/> 101 <input checked="" type="checkbox"/> Parent	Complete.
c.	Foreign Good Standing Certificates (MIPA Section 2.04(b)(ii))	DLA	-	<input checked="" type="checkbox"/> Tara <input checked="" type="checkbox"/> 101 <input type="checkbox"/> Parent	Complete.
d.	Lease Assignment (MIPA Section 2.04(b)(x))	DLA/Tara	-	<input checked="" type="checkbox"/> Tara <input checked="" type="checkbox"/> 101 <input checked="" type="checkbox"/> Landlord	In process. DLA sent draft to Landlord on 10/31.

## TRANSACTION TYPES

- LETTER OF INTENT/TERM SHEETS
- NDAS
- MERGERS
- ACQUISITIONS
- FINANCINGS

## EXAMPLES

- Let's Buy A Privately Held Ninja Monkey Farm (*business suggested by my five year old....for the avoidance of doubt, yes, these are Monkeys who are also Ninjas*)



## NINJA MONKEY FARM, LLC

- **Term Sheet:**

- Alternate Names
- What is a Term Sheet?
- When and Why are they used?
- Are they Binding?



## NINJA MONKEY FARM, LLC

- **NDA:**

- What do they do?
- How are they negotiated?
- Will the obligations be unilateral or mutual?
- Are the parties competitors?
- How is Confidential Information defined?
- What is the term?
- What other topics are covered?



## TIPS AND TRICKS

Put footers on all signature pages	<i>Inter Alios</i> <i>Inter Alias</i>	An Entity is an "It"	Foreign and Latin words In Italics
Within [ ] days "of"	Stockholder versus Shareholder	Jurisdictional Language Distinctions	Cash versus Accrual Accounting
Perfection	Financing Statements	Delaware Entities	Non-Profits
Term vs Revolving	Assets = Liabilities + Owner's Equity (difference between assets and liabilities)	Guaranty	Signature Packets
Professional Tone	Basic Tax Understanding	Partner and Client Preferences	Domestic vs Foreign Entities