



Practice Tips for M&A Practitioners for 2014

Jan 23, 2014

Reading Time : **1 min**

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Based on a number of cases decided by the Delaware courts in 2013, we have summarized practice tips regarding careful drafting of contractual provisions and complying with technical and statutory requirements:

- Disclaimers of Reliance and Accuracy Clauses Likely Do Not Bar Fraud Claims
- Modification of Default Fiduciary Duties in Limited Liability Companies (LLCs) Versus the Covenant of Good Faith and Fair Dealing
- Attorney-Client Privilege Passes to the Surviving Corporation in a Merger
- No Assignment of Agreements in Reverse Triangular Mergers
- Survival Clauses Can Shorten Statute of Limitations
- Need for Provisions Regarding Status of Former Partners and Valuation of Capital Account
- Earn-Out and Indemnification Provisions Need to be Clear and Specific
- Strict Requirements for Valid Stock Issuance
- Technical Requirements for Valid Stockholder Consents

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