

44TH UT LAW CORPORATE COUNSEL INSTITUTE

Beyond Contract Negotiation: Assessing Risk and Asking the Right Questions

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Top Five Considerations

- (1) What are the client's main objectives?
- (2) How will you work with the Business?
- (3) What are the key risks in the transaction?
- (4) What are the hidden risks?
- (5) What is the appropriate allocation of risk?

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(1) What are the client's main objectives?

What does success look like for the client in the transaction at hand?

- **IP Agreement:** Can the client use the subject IP for its intended purposes?
- **Commercial Agreement:** Can the client achieve the desired synergies or economics?
- **M&A Transaction:** Many of the same considerations as with a commercial agreement.
- **Joint Venture:** Can the client achieve the desired sharing of knowledge and costs with its JV partners?

Key Client Assumptions

- Affiliate transactions
- Calculation of the IRR for purposes of the FID decision
- Credit support of counterparty
- Non-competes/AMI agreements
- Transfer restrictions/Lock-ups
- Financial accounting
- Suing for breach
- Financial stabilization

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What is the legal consideration for this transaction?

- Cash payments?
- Goods or services provided?
- Non-competes?

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