

Transactional Task-Line

Buyout by a Private Equity Fund

Topics Covered:

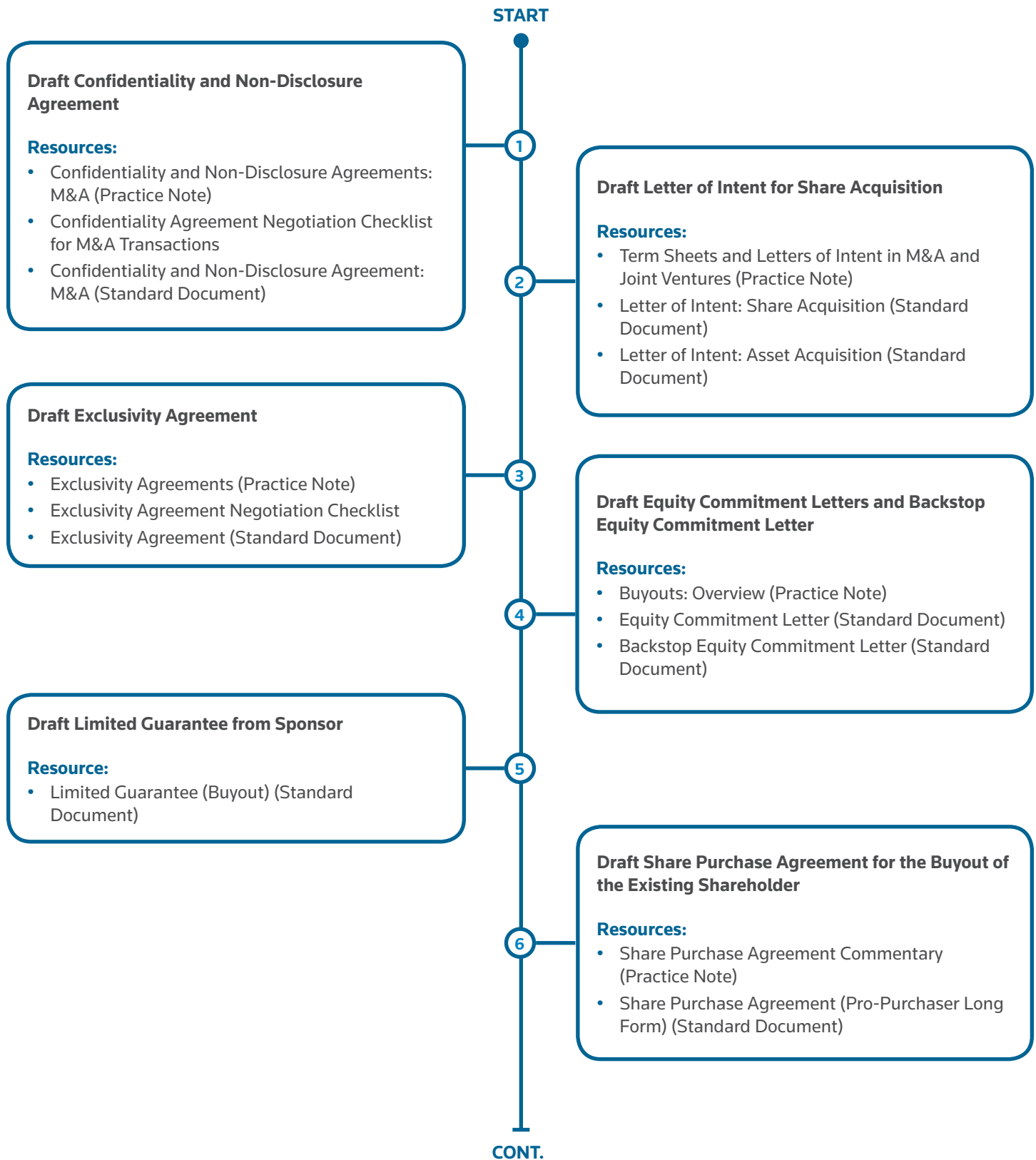
Capital Markets & Securities | Corporate and M&A

Scenario: Acquiring a Portfolio Company with Incentivized Management

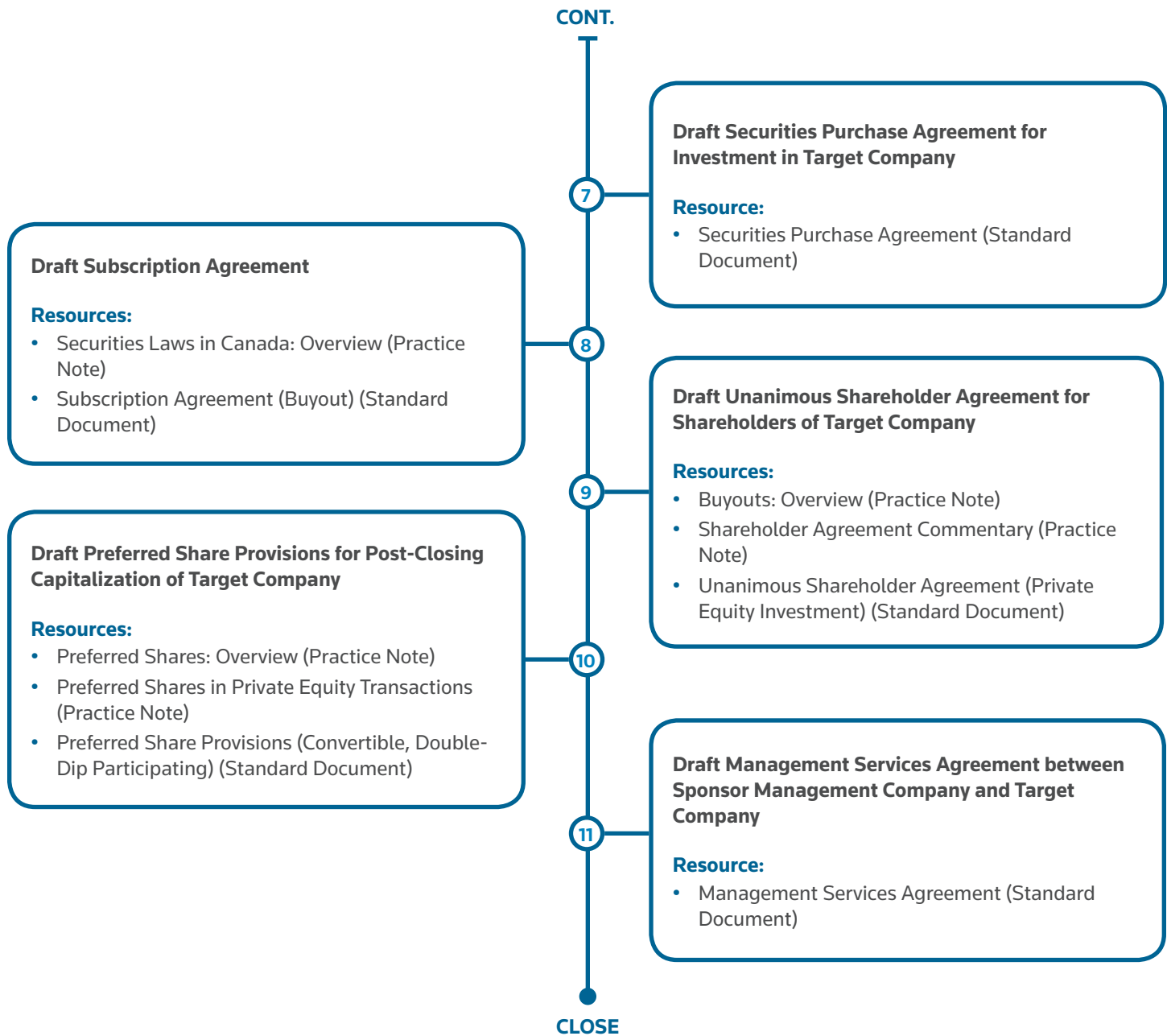
A private equity (PE) fund that you work with has approached you to act for it on a complex buyout of privately-held company. The existing management of the target will be kept on and some of the managers will be provided with incentives to grow the company organically or through strategic add-on acquisitions. The acquisition will be financed by way of secured loan from a financial institution and equity provided by capital call made on the investors in the PE fund. The acquisition will be sufficient to buy out the existing owner in full and provide funds for the anticipated expansion of the platform company.



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Challenges

Managing Client Expectations

- The client expects a smooth, orderly transaction flow from beginning to end and that the transaction will close within a tight timeline.

Client's Budget

- You may have to assemble a team and delegate the overall workload to keep time and costs to a minimum.

There may be a concern that the associates understand the myriad dimensions to a PE buyout, including the three-fold components of a purchase, equity financing and debt financing.

Expertise

- A team effort is required to pull together the disparate elements of the transactions into a well-managed whole.

Resources

Practice Notes:

- Acquisition Finance: Overview
- Buyouts: Overview
- Pre-Merger Notification: Overview
- Securities Laws in Canada: Overview
- Tax Factors in Asset vs. Share Deals: Overview
- Taxation of Corporations and Shareholders: Overview
- Anti-Dilution Provisions in Private Equity Transactions
- Auctions from the Bidder's Perspective
- Auctions from the Seller's Perspective
- Confidentiality and Non-Disclosure Agreements: M&A
- Distressed Asset Sales
- Earn-Out and Reverse Earn-Outs
- Exclusivity Agreements
- Growth Equity Investments
- Incorporating Representation and Warranty Insurance into M&A Transactions
- Interim Consortium Agreements in Private Equity Buyouts
- Management Equity Incentives in Buyouts
- Management Equity Incentives: Rights and Restrictions
- Preferred Shares in Private Equity Transactions
- Private Acquisition Structures
- Private Equity Co-Investments
- Private Equity Co-Investments: Structuring
- Representation and Warranty Insurance for M&A Transactions
- Shareholder Agreement Commentary
- Shareholder Protections
- Terms Sheets and Letters of Intent in M&A and Joint Ventures

Standard Documents:

- Backstop Equity Commitment Letter
- Confidentiality and Non-Disclosure Agreements: M&A
- Equity Commitment Letter
- Exclusivity Agreement
- Letter of Intent: Asset Acquisition
- Letter of Intent: Share Acquisition
- Limited Guarantee (Buyout)
- Management Services Agreement

- Preferred Share Provisions (Convertible, Double-Dip Participating)
- Securities Purchase Agreement
- Unanimous Shareholder Agreement (Private Equity Investment)
- Warrant (Fixed Percentage Form)
- Warrant (FMV Exercise Price Form)
- Warrant (Penny Warrant Form)

Standard Clauses:

- Purchase Agreement: Due Diligence Condition
- Purchase Agreement: Financing Condition
- Purchase Agreement: Private Equity Financing Provisions
- Purchase Agreement: Termination and Reverse Break Fee
- Registration Rights in Canadian Private Company
- Shareholder Agreement: Drag-along Rights
- Shareholder Agreement: Pre-Emptive Rights
- Shareholder Agreement: Right of First Offer
- Shareholder Agreement: Right of First Refusal
- Shareholder Agreement: Tag-along Rights
- Unanimous Shareholder Agreement: Management Shareholder Call Rights
- Unanimous Shareholder Agreement: Management Shareholder Put Rights

Checklists:

- Auction Timeline
- Confidentiality Agreement Negotiation Checklist for M&A Transactions
- Equity Commitment Letter Negotiation Checklist
- Exclusivity Agreement Negotiation Checklist
- Growth Equity Investments Checklist
- Negotiating Earn-Outs Chart
- Shareholder Agreement Checklist
- Warrant Anti-Dilution Negotiation Checklist

Toolkits:

- Private Equity Toolkit

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