

M&A AGREEMENTS

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20 March 2025

M&A Agreements

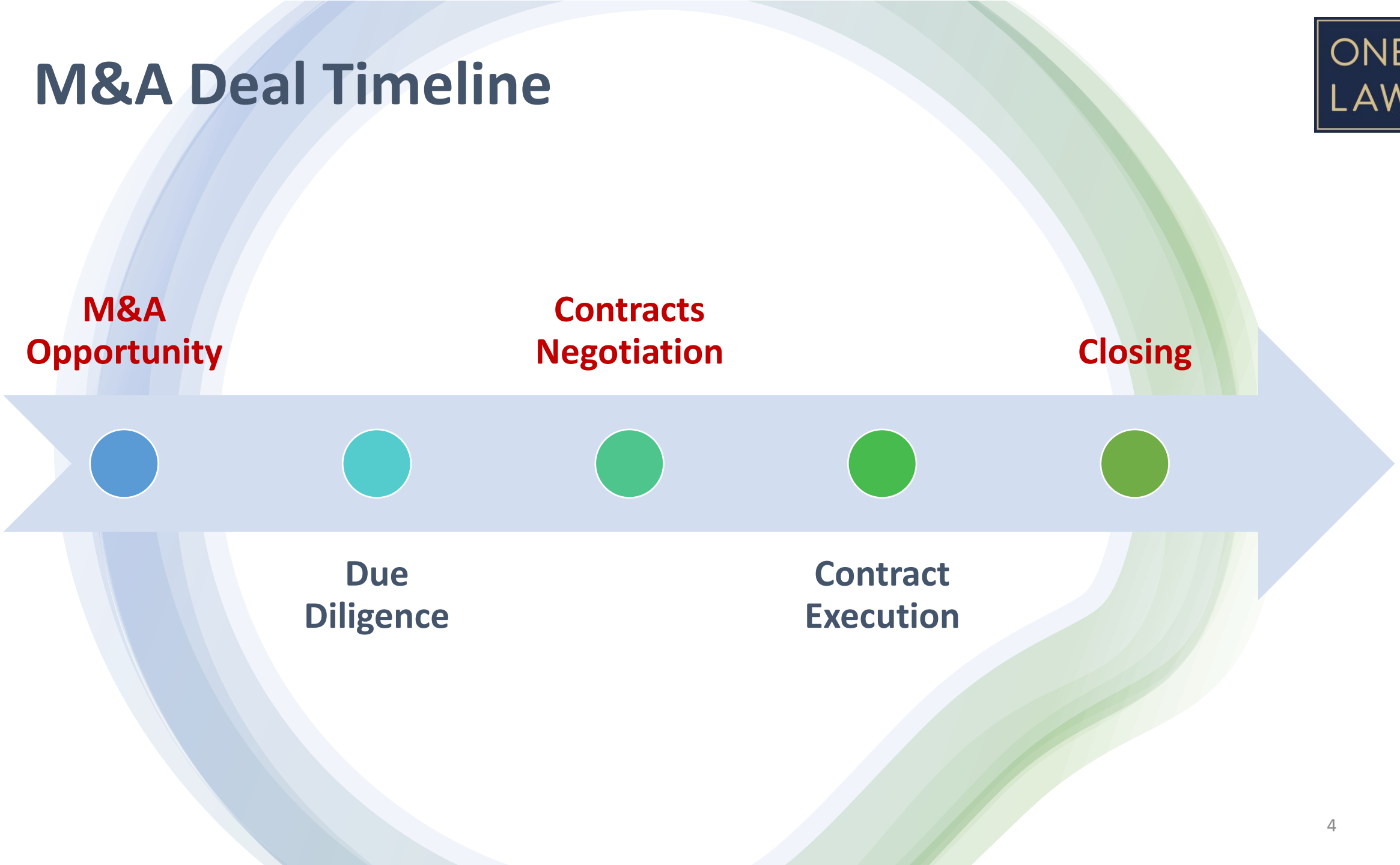
What is your
negotiation approach ?



Commercial Terms vs Legal Terms



M&A Deal Timeline



**M&A
Opportunity**

**Contracts
Negotiation**

Closing

**Due
Diligence**

**Contract
Execution**

M&A Documents

Opportunity



- Non-disclosure agreement
- LOI, EOI
- MOU, Term Sheet**

Contract



- Share Purchase Agreement**
- Share Subscription Agreement**
- Shareholders Agreement**
- Ancillary Agreements

Closing



- Share transfer document
- Share subscription form
- DBD application
- Meeting minutes
- Permit, consent, approval

MOU & Term Sheet

- Legal binding vs Non-legal binding
- Definitive agreement framework
 - Model, indicative price, key structure, etc.
- Exclusivity
- Expenses
- Termination and Expiration

Share Purchase & Share Subscription Agreement

- Seller entity
- Sale shares
 - Existing share or new share or both
- Purchase price
 - Price determination and adjustment
 - Payment term
 - Delay of payment
 - Exchange rate

Share Purchase Agreement (cont.)

- Pre-closing covenant
 - What generally are the provisions?
 - Non-compliance & Remedy
- Condition Precedent & Post-closing conditions
 - What generally are the conditions?
 - Non-compliance & Remedy
- Representation & Warranty
 - Rep & war to what extent?

Share Purchase Agreement (cont.)

Case study: *Condition precedent vs Post-closing conditions vs Rep & war*

- Lack of building permit and construction certificate
- Employment unfair dismissal
- Illegal possession of public land
- Unregistered lease contract
- Non-market price RPT agreement
- Non-operating assets (e.g., undeveloped land)
- Tax non-compliance
- Pending litigations
- Invalid share ownership

Share Purchase Agreement (cont.)

- Indemnity & Claim
 - Scope & Limitation
 - Procedure
- Closing date & Closing obligations
 - Longstop date & Closing date
 - What would generally be done?
- Default & Termination
- Dispute resolution
- Closing documents

Shareholders Agreement

- BOD Meeting / Shareholders Meeting
 - Quorum & Resolution
 - Reserved matters
 - Casting vote
- Board composition & Management
- Future capital
 - Source of capital
 - Issue of new share
- Profit sharing to shareholders
 - Dividend
 - Interest
 - Service fee, license fee

Shareholders Agreement (cont.)

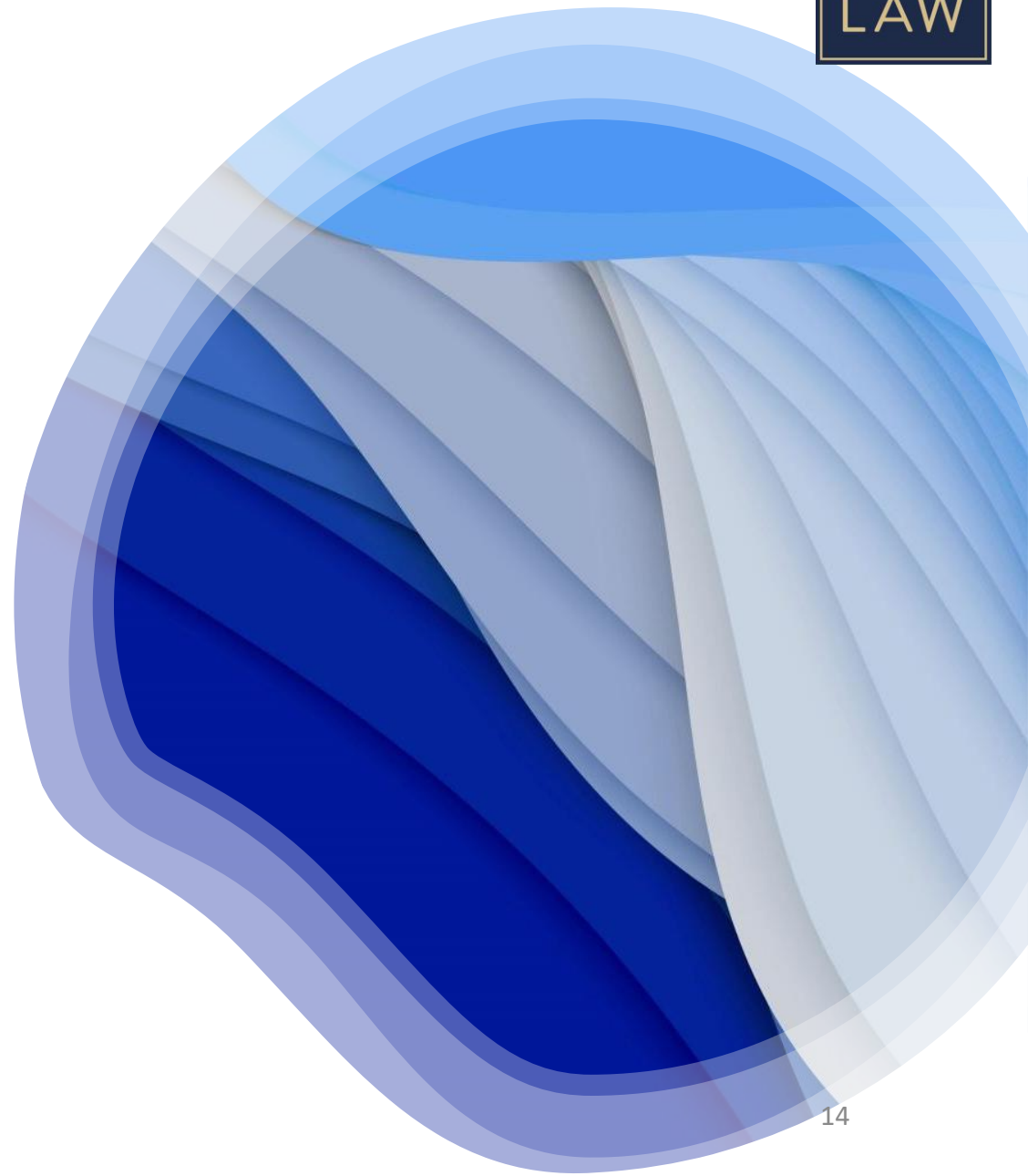
- Non-competition & Non-solicitation
 - Scope of business
 - Scope & Limitation
 - Non-compliance & Remedy
- Deadlock management
 - Deadlock event
 - Resolving options
 - Mediation
 - Expert decision
 - Buy-sell clause
 - Bidding
 - *Exercise: Preferred option for operator vs investor?*
 - Operation during deadlock

Shareholders Agreement (cont.)

- Share transfer procedure
 - Lock-in period
 - ROFR, ROFO
 - Drag-along, Tag-along
 - Accession agreement
- Event of default
 - Put option, Call option
- Articles of Association

Q & A

THANK YOU



Your Speaker



Apichon Sutthiphongkai **Partner** **One Law Office**

Apichon has been practicing law and providing legal services since 2011. He has experience in both private practice (law firm) and as a corporate lawyer (in-house lawyer) handling commercial and business legal works such as contracts, corporate and registration, legal compliance, mergers and acquisitions (M&A), labour, and real estate, personal data protection and data privacy, family law, and IPO preparation.

Apichon also has experience in providing in-house training and as a public speaker on commercial contract issues, joint venture transaction, and was also a visiting lecturer on unfair contract terms at the university.

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