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# iGaming Mergers & Acquisition

## Q&A with Nestor Nestor Diculescu

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**H**ow should the owner(s) of an iGaming business prepare for the sale of their company?

To put it in simple words, irrespective of what jurisdiction we talk about, or even industry, to make it saleable, the owners of a company should of course make it look attractive. In the end, however the potential buyer will look for *value for money*.

Now, when we apply this to the iGaming businesses operated in regulated markets, the minimum required would be for the company to be regulatory compliant, have a sizeable players data base, offer decent enough content, be in good terms with the regulators and, of course be profitable or have the potential to become profitable.

Having said that, when preparing for the sale, one may wish to clean the house before the beauty parade. Depending on the size of the target company, the number of jurisdictions it operates in, the content and products it offers, the cleaning due diligence may be more or less sophisticated.

Where the sale/merger might occur at the level of the mother company, implications on each and every territory should be looked at, as no *one hat fits all solution* can be found in this industry. Since, generally speaking iGaming licenses are issued conditional on the bona fide of the beneficial owners, any changes at that level may require pre or post approval or at least notification to the regulators in the relevant territory. Also when having a desired transactional structure in mind, one should not overlook the tax implications and the fact that, in general, licenses are nominal and thus cannot be transferred from one entity to another.

And, when we talk about listed companies one must never overlook the conditions and timing restrictions that a public company comes with.

Last but not least, or perhaps to start with, the iGaming business owners should have trusted and capable business advisors by their side. Again, depending on the size of the company, that may mean financial advisors, business advisors, investment bankers etc. and always, lawyers.

It may be difficult to compare between law firms when selecting the proper M&A exit legal advisor. From a seller's perspective, the iGaming owner should look at the willingness of the legal advisor to do the pre-sale work on consulting on the growth strategy, be actively involved in the exit planning. Where some firms have the capacity, industry know-how and willingness to work with the company CEO for many months, and sometimes years, to increase the intrinsic value of the business, other firms believe their job is just to sell the business. These firms don't include any significant work on helping the management team increase the value before the transaction.

**What due diligence issues should there be a focus on?**

In our view, focus should be on three aspects, in a random order: attractiveness of the business, regulatory compliance, transactional implications.

While it may look somewhat frivolous in nature, *the attractiveness*, as we chose to name it here, plays an important role in the existence and completion of an M&A iGaming transaction. By *attractiveness* we refer to the looks and feel of the

operation, how professional the domain names under which the iGaming company operates appear to be, how is it perceived by the players (what do they talk about on specialised blogs about the respective company and its offer), how is it viewed and talked about by the media, by their competitors, how is their relationship with the regulators, how active they are in/with the professional associations etc.

On the *compliance* side the due diligence process should have a granular approach, territory by territory whilst keeping a general oversight at group level. The seller due diligence would thus look at standard issues such as keeping the right licenses and approvals, checking that all renewal terms have not been missed, all taxes have been paid, advertising campaigns have been developed with care for both gambling legal provisions but also consumer, advertising and media laws etc.

Perhaps the most important part of the homework to be done in an iGaming M&A transaction – *the implications* on the target business or the so merged business born out of the transaction – should be looked at. As such, in many if not all European regulated jurisdictions, depending on the way it is structured, a change of ownership in an iGaming company will need to be at least notified to the relevant regulators, even when performed at group level, if not be subject to prior approval. Depending on the size of the parties involved, the transaction should be looked at and potentially cleared from an anti-trust perspective. Other restrictions on timing, prior notification, public notice and even restrictions on trading are imposed on listed companies. Should there be any change of control clauses in the material contracts to the business, prior approval from the said business partners should be negotiated and obtained. Not to be overlooked is the impact on the players, from both an operational perspective but also from a privacy point of view, where, as a result of the transaction/merger,

changes are envisaged on the gaming platform for example, or generally on the operating model.

### How do you ascertain the potential risks and rewards of acquiring an iGaming company?

As in any other industry, the choice is always between building one's own business and growing it organically, versus acquiring an already existing set-up with its own internal processes and design, an engine that be it better or worse than your own, it is always different.

It is a matter of how much time and effort you want to invest into an organic growth, in adding one territory after another, versus aggregating existing businesses and respectively eliminating competitors from the market.

Leaving that aside, the reward in acquiring an existing iGaming company would be that it gives you access to potentially new markets without the pain and effort of going through the licensing process. The risks will always be that, despite undergoing the due diligence process you may find skeletons in the closet.

This industry however, with more established regulated markets versus newly regulated markets and non-regulated or semi-regulated markets may lead to mismatches between the status of a certain global iGaming operator in a particular jurisdiction versus the opposite status that its transactional partner may have in that same jurisdiction. More precisely, it may be that where a market becomes regulated an operator may choose to acquire local licenses and generally become regulated locally, while another one may choose to leave the market and thus be blacklisted. When and if at a later stage, such operators take the commercial decision to merge or acquire each other, such transactions may have a direct impact on the license held in that particular jurisdiction. In this context, the envisaged structure should be assessed properly and carefully from the very beginning to overcome the legal restrictions.

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