# INSIGHT

**Liebet Grobler**
Senior Associate
Stein Scop Attorneys

## The human side of deals

**Transactions are built on numbers, but completed by people. What has your career taught you about the human side of dealmaking?**

Anyone who has worked on, or been part of, a merger and acquisition deal knows that a lot of personalities are involved, and each personality has his/her own agenda or goal. Each person is looking at the deal through their own lens and, on the one hand, your job as the attorney is to apply the lens of sound and fair legal practice and advice, while always protecting your client's interests. Your client's goal, on the other hand, is often simply to *'get the deal over the line'* as quickly and easily as possible (and sometimes impossible!).

You need to consider your client's goal of efficiency, without forgetting your own of managing legal risks and ensuring compliance. This is especially challenging when it always feels like you are racing against the clock. In a client's mind, the deal is done when there is a shaking of hands, but you know that this is far from the case. The deal is only done once the last resolution is signed, the final approval is obtained, and the closing documents are lodged. Your responsibility as an attorney is to see the deal through from start to finish and ensure that every box is ticked, despite the time pressures and your client's emotional highs and lows.

Clients can easily get annoyed and frustrated when legal technicalities and processes delay the conclusion of deals required for the operation and growth of their businesses. Deadlocks, constant back and forth on legal drafting and other stumbling blocks are inevitable when negotiating and concluding complex transactions. It becomes difficult to deliver on your client's expectation of 'getting it done' when the metaphorical finish line is pushed further and further out.

So-called *'deal fatigue'* is a common experience for both clients and attorneys: the mental and emotional exhaustion that occurs when transactional negotiations drag on for too long. It is the stage in the process where one more meeting to reconsider a point, or one more amendment to a clause which has been redrafted in every round of review, feels like the last straw. *'Deal fatigue'* kills the momentum and increases the chances of your client wanting to throw in the towel. In those circumstances, your client's frustrations become your own, and you may be tempted to rush to closing. However, in this state of mind, critical issues can be overlooked, and mistakes can be made which may expose your client to costly surprises down the line.

You must be able to balance your client's need for a speedy deal conclusion with your professional responsibility to ensure that such deals are concluded diligently and in a manner which allows you to give your client complete and accurate legal advice. Unfortunately, this isn't something that can happen overnight – it requires a balancing act.

It is important to respect deadlines and appreciate your client's sense of urgency. *'Time is money'*, and their ultimate concern is to preserve and grow the value of their business or investment. Taking this into account, it is necessary to **manage your client's expectations** from the get-go, and to communicate the realities of dealmaking. Setting your client up to agree to realistic timelines and anticipate unforeseen delays will curb any frustration or weariness without losing momentum. Clients are also more likely to accept delays when they are made aware that they are, in fact, not delays, but necessary steps to protect their interests. For example, you must explain to your client that merger closing may be postponed by six weeks, but this is necessary to obtain approval from the competition authorities, failing which may result in severe penalties, or the merger being unwound.

You must **pick your battles**. Not every comment is a deal point, and it may be more valuable to spend time and effort on what matters, rather than pushing back simply for the sake of it. You need to learn to discern when a point is material to your client's interests and when it is not. For instance, when you push back on the seller's definitions of 'Material Adverse Change' and 'Disclosure' in the transaction agreement, it is because it matters, but when you let the seat of arbitration or the governing law slide, it is because you have prioritised.

**Staying motivated** (and keeping your client motivated), especially when the *'deal fatigue'* hits, is crucial. It is so easy to run out of steam when it feels like you are running in circles. At that stage, reminding yourself of the deal's objectives and your client's goals can help you refocus efforts and persevere through the rollercoaster of emotions and mounting pressure. The value of doing it properly outweighs the value of doing it quickly, especially when you are responsible for managing your client's exposure to risk, even long after the ink dries. Remember that deals are marathons, not sprints – but with more tracked changes.

STEIN SCOP ATTORNEYS