

Dot Bomb Dud Deals

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The bubble burst in 2000 for e-commerce dud deals. However, the level of Internet hype, and the speed and lack of caution it encourages in deal making, continues to expose participants to uncommercial levels of risk in e-commerce projects.

Yet there are ways to conduct business to protect both the upside and the downside without sacrificing exciting business opportunities available at this time of dramatic change.

To proactively reduce bad deal making, Dilanchian has prepared a Deal Making Process Improvement Guide. Contact us for a copy.

In 2000 Dilanchian Lawyers & Consultants were involved in numerous Internet business transactions. Reflecting on our experience, what stands out is a pattern of failure by buyers and sellers to apply best practice in deal making. Also poor deals arose from poor deal making project management.

We are talking here of the failure to recognise the importance of:

- **planning** before negotiation of deals;
- ordering finance raising projects into **managable** deal making stages;
- the need for sophisticated **negotiation skills**;
- acting on the basis of good **accounting and legal advice**;
- ensuring that the target's **accounts and documents** are complete and sound - these include the book values for asset types, shareholders agreements, employment agreements, trade mark registrations, copyright agreements etc; and
- understanding **valuation methodologies**.

The fundamentals of good deal making warn against:

- acting on a proposal when it lacks detail or you lack a fall back position;
- believing hype about promised future possibilities, unsupported by security;
- communication (verbal or in writing) with too little thought about its implications or misuse, eg in litigation; and
- leaving a lawyer to "look at things" at the end, *after* the deal is done can unavoidably lock the deal in with legal risks and problems.

Failure to observe the above fundamentals can quickly lead to poor outcomes or a dispute which escalates to commencement of litigation and court proceedings. If litigation is threatened or commenced, the assets targeted for potential sale or purchase are often then regarded as tainted assets. Not surprisingly, by that stage it becomes harder to sell or buy them without full and costly review of the facts of the related dispute.

Re-engineering a dud transaction is substantially more difficult, costly and risky than getting it right the first time.

Noric Dilanchian is a principal of Dilanchian Lawyers & Consultants. The firm acts for numerous participants in the dot coms, e-commerce, IT, publishing, entertainment, media and technology markets.

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