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ADVANCED CORPORATE AND M&A PRACTICE

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This publication provides a broad array of in-depth tools to address all matters needed by the practitioners of corporate and M&A law. It begins its coverage of corporate legal issues with the initial stages of starting a corporate or non-corporate organization, including shareholder rights and remedies, corporate governance, director liabilities, debt and equity financing to the ongoing challenges of a business such as fundamental changes, restructurings, audits and shareholder meetings, corporate records and mergers and acquisitions.

This release features a new chapter: Chapter 87A. Due Diligence & Closings.

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Highlights

Part XII. Mergers and Acquisitions – Chapter 87A. Due Diligence & Closings – I. Due Diligence Investigations – § 87A:1 Vendor Due Diligence – It is generally always wise for a commercial party to mentally put itself in the shoes of the counterparty and ask: “what would I do if I were buying this business we are planning to sell?” The answer to that question may result in an internal investigation that uncovers deficiencies and risks that can be resolved or mitigated before a purchaser is brought in to kick the tires. For example, there may be undischarged mortgages or other security registrations that can be removed before purchaser due diligence even begins. Licenses, leases and other important contracts for which fully executed copies are not in hand can be made whole or, if they have expired, or are about to expire, can be renewed so that the purchaser does not discount the price to reflect the status of these matters.

Part XII. Mergers and Acquisitions – Chapter 87A. Due Diligence & Closings – I. Due Diligence Investigations – § 87A:9 Closing – Closing Agenda or Checklist – An initial closing agenda or checklist is a joint organizational tool. It should be prepared early in the process and updated and redistributed as matters progress to closing. Typically, the agenda is prepared shortly after the definitive purchase agreement is executed (if there is a meaningful span of time between execution of the purchase agreement and closing) or largely settled (if the purchase agreement is concurrently executed at the time of closing). The closing agenda lists and defines the parties, their representatives and their respective counsel, accountants and others who have a role in the closing. The date of closing is, or will be, stated (sometimes the date is initially indicated with a bullet symbol). The closing agenda should specify that all documents delivered at closing are held in escrow and undelivered until the parties jointly agree that the transaction is closed. This escrow condition enables the parties to exchange executed signature pages before the closing date.