You are the general counsel of BiggerCo, a publicly-held software and services company with annual revenues of $600 million based in the heart of California’s Silicon Valley. Almost three months ago, BiggerCo agreed to acquire SmallerCo, another publicly-held software and services company located in Raleigh, N.C., pursuant to an all-cash, one-step merger transaction that merges SmallerCo with, and into, BiggerCo. SmallerCo is relatively comparable in size to BiggerCo, having about the same revenues and an almost equal number of employees. While the transaction has been structured as a merger of equals, there is no doubt that BiggerCo is acquiring SmallerCo and that BiggerCo’s management team will be running the combined company. Among the many attractions in buying SmallerCo were its very significant international operations, as well as its large government business. SmallerCo’s largest customer is the US government. In contrast, BiggerCo has not, to date, been successful in expanding overseas or in selling to the US government.
When the acquisition of SmallerCo was first announced, many investors thought that BiggerCo had overpaid for SmallerCo. In response to that concern, BiggerCo’s stock got walloped. To address investor’s concerns, BiggerCo’s CEO has been spending a lot of time on the road touting the expected benefits of the acquisition. Nevertheless, investors remain skeptical and are particularly concerned with whether BiggerCo has the ability to successfully integrate the two companies.

With the closing of the acquisition of SmallerCo now visible on the horizon, BiggerCo’s CEO has asked each of his senior executives, including you, to be ready at the next meeting of the executive leadership team to present detailed plans for integrating the applicable operations of SmallerCo into their functional group, post-closing. Many of the functional groups at BiggerCo, including finance, accounting, marketing, product management, sales, IT and human resources, have been working on their M&A integration plans for months. Given that these other functional groups have not been consumed for the past three months with executing the acquisition of SmallerCo, they have had ample time to review the applicable functional group at SmallerCo, and contemplate and develop a detailed integration plan.

As your integration plan will be due shortly, you can’t put it off any longer. Where to start? You decide that to develop your integration plan you must first assess the situation. The majority of SmallerCo’s attorneys are based in Raleigh, with several attorneys based overseas to support SmallerCo’s international operations. BiggerCo has all of its attorneys based in Silicon Valley and has never had attorneys based overseas. SmallerCo’s GC will move into the organizational framework at BiggerCo, but an exact role has not been identified, though it most likely will be some type of corporate development or corporate affairs role.

While the BiggerCo legal department did not use such titles as “assistant general counsel” or “associate general counsel,” all of the attorneys at SmallerCo (other than the GC) had the title “assistant general counsel” or “associate general counsel.” In addition, there is significant pay disparity between attorneys in BiggerCo’s legal department compared to those in SmallerCo’s legal department, with the BiggerCo attorneys being paid almost 20 percent more than their SmallerCo counterparts, partly due to the increased cost of living in Silicon Valley. While BiggerCo requires all of its outside counsel to agree to its law firm retention agreement and related outside counsel policies, SmallerCo has no such process in place and generally just executes whatever engagement letter is sent to it by its law firm. Having just completed a lengthy “beauty contest” process to reduce the number of law firms it uses, BiggerCo now uses only a handful of law firms for most of its corporate, litigation and intellectual property work, and some of these firms were required to agree to either alternative fee arrangements or steep discounts off their standard billing rates, in exchange for being designated a “preferred firm.” In contrast, SmallerCo uses over a dozen law firms and has no discount or alternative fee arrangements in place with any of them. All of BiggerCo’s securities compliance and corporate governance work is done by outside counsel, and you had not previously contemplated bringing that work in-house due to the absence of appropriate in-house resources. As such, you are pleasantly surprised to learn that SmallerCo has been able to bring all this work in-house and you are very impressed with the in-house attorneys that service these areas. You are equally surprised to learn that, notwithstanding how much government contracts work is done by SmallerCo, it does not have any in-house government contract attorneys and that all of the government contracts work is serviced by outside counsel. With respect to technology, all of the attorneys at BiggerCo have company-paid Blackberries® or iPhones®. The attorneys at SmallerCo don’t have any such devices provided by the company. While BiggerCo uses a state-of-the-art document management system that allows all of the attorneys in the legal department to have access to each other’s documents, no such system has ever been deployed at SmallerCo.

As you begin to tackle your legal department integration plan, you notice that, unlike many of the projects you take on, this one seems not to have any precedent or canned checklists to look to. You check with your outside counsel and none of them have any sample M&A integration plans for a legal department. It seems impossible to believe that, with all the M&A transactions that get done in Silicon Valley and beyond, nobody has ever sat down and prepared

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The lack of attention to developing effective strategies for integrating an acquired company’s legal department is extremely short-sighted and causes many companies to miss the numerous opportunities that may be presented by the acquired company.

A detailed plan for how to combine the legal departments of two public companies. The more you think about it, the more issues come to mind, and there will be no shortage of issues to consider and address in planning the integration. Clearly, having a detailed roadmap to guide you would have been extremely helpful.

This scenario may seem familiar to many of you. Like the fictional in-house counsel depicted above, we also believe that a detailed roadmap for planning and executing on the integration of an acquired company’s legal department would be very useful. In our experience, the integration of an acquired company’s legal department is rarely given the thought and attention it deserves. There are many reasons for this, including that a legal department is often viewed as a cost center, and the development of a well-executed integration plan could be expensive in the near-term. In addition, as noted above, a public company’s legal department is generally not lacking for projects to keep it busy, if not consumed, and there is little “down time” or even incentive to be strategic. How likely is a legal department to get approval for additional headcount, or a budget to plan and execute an M&A integration? We believe that the lack of attention to developing effective strategies for integrating an acquired company’s legal department is extremely short-sighted and causes many companies to miss the numerous opportunities that may be presented by the acquired company. For instance, a thoughtful integration plan may, with regards to the review of the acquired company’s intellectual property, uncover inventions that are still patentable. A thoughtful integration plan may also uncover unused trademarks that have been extremely well-protected — but are currently not being actively used — that can be potentially recycled for the acquired company’s products. There may also be numerous “leaky faucets” in the acquired company’s legal department that can be quickly turned off to produce significant cost savings. Obvious areas here would be franchise taxes for unused subsidiaries, trademark maintenance fees for marks that will never be used again, outside counsel who are being inefficiently managed and retained at much higher rates than what the acquirer typically pays, license fees for software that is not being used, retainers for consultants who are not being used, and fees for warehouse space to store files that is not being used. In addition, a thoughtful integration plan could uncover lawsuits and other claims where there is an opportunity — that theretofore had not been fully explored — to expedi-

ACC Extras on...
Integration of an Acquired Company’s Legal Department

ACC Docket

InfoPAK™
• Organizational Effectiveness: The New Imperative for Developing a World-Class Legal Department (July 2011). www.acc.com/infopaks/wcld_jul11

Top Tens

Presentation
• Adding Value: Strategic Planning and Demonstrating Success (May 2011). www.acc.com/strat-planning_may11

Article
• Mergers and Acquisitions (Fraser Milner Casgrain LLP) (June 2010). www.acc.com/m&a-fraser_jun10

ACC has more material on this subject on our website. Visit www.acc.com, where you can browse our resources by practice area or search by keyword.
tiously resolve the matter, which could result in a significant reduction in legal fees being paid to outside counsel. There may even be cases where the acquired company can reap a very attractive settlement payment from a defendant, but in the midst of the acquired company’s sales process, no one had been willing to engage with the defendant and its counsel to work out the mechanics of a settlement.

Based on our M&A experiences, and particularly, reflecting back on our past experiences in integrating an acquired company’s legal department and being integrated into a acquirer’s legal department, we have prepared an extensive list of issues that should be considered and addressed sooner rather than later (hopefully, prior to the closing of the acquisition), as you begin to plan the integration of an acquired company’s legal department with that of the acquirer, thus ensuring a smooth transition and a successful integration.

Gathering background

1. How do the legal needs of the acquired company compare to the legal needs of the acquirer?
2. How will the legal needs of the acquired company be satisfied moving forward?
3. Have you received feedback from your client groups regarding their anticipated post-closing legal support needs?
4. What are the expectations of the acquirer’s CEO in terms of headcount and post-acquisition budget for the legal department?

Integrating the GC of the acquired company

5. Can the acquired company’s GC be expected to accept a role reporting to the acquirer’s GC, or would the acquired company’s GC prefer operating in a different department such as Corporate Development or HR? Does the former GC have knowledge and skills necessary for such a transition?
6. Do you know what role the GC of the target envisions for himself at the merged company? Does the former GC expect a dual-GC type of role?
7. Does the former GC have job-title expectations (e.g., deputy GC, AGC or GC of subsidiary)?

Other legal department personnel

8. Will the legal department personnel of the acquired company be retained?
9. Will there be a need to relocate legal department personnel from the acquired company’s offices to the acquirer’s headquarters?
10. Is it necessary for the acquirer to have lawyers at multiple locations domestically? Overseas?
Have you **completed an assessment of the skill sets** for attorneys at each legal department **to determine which skill sets are in very short supply and which are redundant?**

11. What core competencies are required by the acquirer’s legal department, and do any of the acquired company’s legal department personnel fill a void in the acquirer’s legal department?

12. Is there a need to hire additional legal department personnel as a result of the acquisition? Have job descriptions been prepared and circulated to Human Resources for approval?

13. Is there any pay disparity between attorneys at the two companies that will need to be addressed?

14. Did there seem to be an inordinate number of promotions or raises prior to the closing of the transaction?

15. Do you have a current organizational chart for the acquired company’s legal department? Have you developed an organizational chart for the merged company?

16. Have you completed an assessment of the skill sets for attorneys at each legal department to determine which skill sets are in very short supply and which are redundant?

17. Have you identified any “superstar” attorneys on either side with skill sets you can’t afford to lose? Have you done anything to make sure you keep these individuals?

18. Are there any competencies in the target company’s legal department that are currently being underutilized (e.g., an ex-Big Law attorney currently doing licensing who could be supporting future M&A projects)?

19. Is the acquirer missing any core competencies in its legal department (e.g., open source, export compliance, FCPA, patents, etc.)?

20. Is there an attorney at the acquirer with a necessary core competency who is expected to leave the acquirer in the near future and who may be replaced with an attorney from the acquired company?

21. Have you obtained the bios for each attorney from the acquired company, including title and salary history?

22. Have you thought about an on-boarding process for the new attorneys? Will they all be brought to the parent HQ for this process? Or is an off-site for all attorneys warranted?

23. Is the integration an opportunity to upgrade the skills and competencies of your legal department with more qualified attorneys from the acquired company?

24. Are there any state bar issues? What is the state bar membership status of each new attorney being added to the team? Can each new attorney produce a certificate of good standing in every jurisdiction in which they are admitted?

25. If you are going to be relocating attorneys to California, can these attorneys obtain in-house counsel registration?

26. Have all legal department personnel from the acquired company been briefed on the policies and procedures of the acquirer’s legal department (i.e., outside counsel retention, issuance of legal opinions, bar admission requirements, attorney conduct rules, CLE policies, etc.)?

27. Do you have a standard email signature that you require your attorneys to use? Has this been communicated to the acquired company’s attorneys?

28. Have you completed an assessment of the skill sets for attorneys at each legal department to determine which skill sets are in very short supply and which are redundant?
Knowledge management
29. How do you assess and preserve the knowledge of the acquired company’s personnel, including those in the legal department, before they leave the company?

Budget and forecast
30. Has the legal department’s budget and forecast been revised to reflect the consolidation with the legal department of the acquired company and the resulting additional expenses, including, but not limited to, additional outside counsel fees, additional attorney and legal support personnel, additional costs for software licenses and technology support (Blackberries®, cell phones, computers, etc.), additional costs for malpractice insurance, additional overhead allocation, additional travel and related expenses, and additional bar and association dues?

Technology support
31. Does your IT department understand the needs of the merged legal department? Are any additional servers required?
32. Does either company’s legal department use matter management, document management and/or calendaring software that will need to be rolled out to the other? Do you need to purchase any additional software licenses or seats?
33. Does the acquired company have better software license terms that can be leveraged by the acquirer?
34. Should all the computers in the acquired company’s legal department be scanned for documents that can be imported into the acquirer’s legal department document management system?
35. Does each of the acquired company’s attorneys have a personal digital assistant or cell phone paid for by the company (e.g., Blackberry®, iPhone®, Android®, etc.)?

Invoice management
36. How does the acquired company’s legal department process and approve its invoices?
37. Have all outside counsel to the acquired company been advised that, going forward, all invoices for legal services should be sent to the attention of the acquirer’s legal department?
38. Have all outside counsel to the acquired company been requested to notify the acquirer’s legal department of all outstanding invoices as of a fixed date so that a proper accrual can be made of legal expenses payable?
39. Are any of the outstanding invoices items that are reimbursable pursuant to any indemnification or insurance arrangements?
40. What will be the approval process for paying the outstanding legal invoices of the acquired company?

Records retention
41. Will all of the acquired company’s files be kept in an existing location or moved to a new location?
42. Has the acquired company’s records retention policy been recently updated and distributed to the acquired company’s employees?
43. Are processes in place to ensure that, with respect to open litigation matters, relevant records are being preserved? Is there any need to issue a document preservation memo(s) in connection with acquired company litigation?
44. Is additional secure file storage capacity necessary?
45. Have all the acquired company’s files and records been scanned and backed up as part of the acquirer’s disaster recovery plans?
46. Do you know where all the acquired company’s files are?
47. Are there files in the possession of the acquired company’s outside counsel that should be retrieved?
48. What is the timetable for implementing the acquirer’s records retention policy at the acquired company?

Combining best practices
49. Does the acquired company’s legal department use some best practices that can be adopted by the acquirer?

Outside counsel management
50. Have you received a list of outside counsel employed by the acquired company, the tasks that they handle and the current billing rates?
51. Have you received copies of all outside counsel engagement letters for all active matters?
52. Have all outside counsel to the acquired company, domestic and foreign, been notified about the acquisition?
53. Have all outside counsel to the acquired company been provided with a copy of the acquirer’s outside counsel guidelines?
54. Has a decision been made as to which of the acquired company’s outside counsel will continue to be retained?
55. Have all outside counsel to the acquired company that will continue to be retained been asked to sign revised engagement letters with the acquirer that includes the acquirer’s standard engagement letter addendum and outside counsel guidelines?
56. With respect to outside counsel that will not be retained going forward, has the acquirer requested that all of the acquired company's files be delivered to the acquirer?

57. Have all outside counsel been asked to provide a list of all matters that they are currently working on for the acquired company?

58. Are there matters being handled by outside counsel that can be handled more efficiently and effectively by in-house counsel? Are those matters capable of being transitioned from a practical perspective? If it would be more effective to transition the matter to in-house counsel, are additional resources needed in-house prior to such transition?

59. In the acquisition, are you acquiring any new skill sets that would allow certain tasks previously performed for the acquirer by outside counsel to be brought in-house?

60. Have all outside counsel been asked to provide budgets for open litigation matters that they are working on for the acquired company?

61. Is there an opportunity to consolidate some of the matters being handled by outside counsel to a smaller number of firms? Does the acquirer need multiple firms to process trademark filing requests? Does the acquirer need multiple counsel in foreign jurisdictions? Does the acquirer need multiple counsel to support the human resources group?

62. Can the consolidation of outside counsel be leveraged to obtain cost savings?

**Litigation management**

63. Has a list of all outstanding litigation matters to which the acquired company is a party been prepared and compared with what was listed in the disclosure schedule?

64. Have all outside counsel representing the acquired company in litigation matters been notified of the acquisition, and the new protocols for consultation and approval of all actions in the litigation?

65. Has the estimate for the costs to resolve the pending matters changed since the transaction closed?

66. Are there litigation matters that can be easily settled or otherwise disposed of? Should settlement be considered? Are changes in litigation counsel necessary? Are changes in litigation strategy necessary?

67. Will any of the pending litigation matters need to be disclosed in either the acquirer's Quarterly Report on Form 10-Q or Annual Report on Form 10-K?

68. Have you received litigation budgets and forecasts for all ongoing matters involving the acquired company, including a calendar of court appearances, deposition schedules, etc.?

69. Are continuances or postponements necessary so that you can get your arms around the matters or make changes in assigned counsel?

70. Are all litigation matters appropriately described in the disclosure schedule to the acquisition agreement? Are there other claims or contingencies that have “come out of the woodwork” since closing that were not appropriately disclosed in the disclosure schedule to the acquisition agreement?

71. Have you requested of all court filings for ongoing litigation and other related materials for inclusion in the acquirer's legal department files and for distribution as required (insurance companies, outside counsel, experts, etc.)?

72. Have you designated a point person for each litigation matter?

73. Have the insurers been appropriately notified of all pending litigation to the extent required by the relevant policies?

74. Have you reviewed all current insurance policies for applicable coverage?

75. Have you requested a letter from the insurance carrier delineating coverage terms and limits?

**SEC reporting**

76. Does the description of the business in the Annual Report on Form 10-K need to be revised to reflect the acquired business?

77. Do any changes need to be made to the risk factors or the forward-looking statement safe harbor factors?

78. Are there additional agreements that need to be included as exhibits to the Form 10-K (material contracts, employment agreements, leases, credit agreements, the acquisition agreement, new employee benefit plans, etc.)?

79. Will any of the officers or employees of the acquired company be deemed an executive officer of the acquirer for whom Section 16 filings will be necessary?

80. Are there any new directors of the acquirer as a result of the acquisition for whom Section 16 filings will be necessary?

81. Are there any Section 16 officers that will be departing from the acquirer or who will remain with the acquirer but will no longer be deemed Section 16 officers? If yes, have “Section 16 exit memos” been prepared and distributed to them?
82. Do the processes that have been implemented pursuant to Section 404 of the Sarbanes-Oxley Act need to be revised to address the acquired company?

83. Will there be any changes to the list of named officers in the acquirer’s annual meeting proxy statement?

84. Will additional sub-certifications be needed to ensure compliance with the Sarbanes-Oxley Act?

85. Are there any changes to any of the board committees?

86. Are there any changes to the schedule of board or committee meetings?

87. Are there any changes needed to either party’s transfer pricing policies?

88. Will there be any exchange control issues going forward?

89. Are there any additional permits or approvals to obtain?

90. Should a compliance audit be performed to assess any potential FCPA issues?

91. Are there opportunities to obtain any governmental subsidies or incentives from the host government?

92. Has a review been undertaken to determine whether any additional filings need to be done with the US Department of Commerce to export the products of the acquired company?

93. Are additional export licenses needed?

94. Has a review been prepared to change the officers and directors?

95. Has a review been undertaken to determine which subsidiaries to retain and which to eliminate?

96. Are any of the acquired subsidiaries “significant subsidiaries” for SEC reporting purposes?

97. Are any of the acquired subsidiaries subject to open federal, state, local or foreign tax audits?

98. Are any of the acquired subsidiaries parties to any debt instruments, or are any of their assets pledged?

99. Has the par value of the subsidiaries’ shares been reviewed to determine whether excessive franchise taxes are being incurred?

100. Have the corporate minute books been retrieved and are they all up to date?

101. Are all the acquired subsidiaries in good standing and are they qualified to do business in the jurisdictions where they need to be so qualified?

102. Has a patent audit been conducted of the acquired company to determine whether there are additional inventions to patent that are not time-barred?

103. Have your patent attorneys sat down with the key inventors at the acquired company and discussed the patent philosophy of your company?

104. Do you have a current list of patents for the acquired company?

105. How will the patents of the acquired company be docketed and maintained (i.e., by an existing patent service provider or moved to a new service provider)? In examining the preceding, do you recognize any tasks that can be brought in-house or consolidated for a third-party service provider, such as management of maintenance fees for patents?

106. Should a compliance audit be performed to assess any potential FCPA issues?

107. Are there any opportunities to obtain any governmental subsidies or incentives from the host government?

108. Have a list of corporate entities owned by the acquired company?

109. Do you have an up-to-date list of your own corporate entities?

110. Have all of the acquired subsidiaries been entered into the acquirer’s subsidiary tracking database?

111. Have you determined who will serve as the directors of the foreign subsidiaries? Have you checked residency/nationality requirements?
118. Is there any patented technology at the acquired company that might cause you to change a current IP litigation strategy, or vice versa, is there any patented technology at the acquirer that can be leveraged in any IP litigation that the acquired company is a party to?

119. Does the transaction have any effect on any patent license agreements that the acquired company is a party to?

120. Does the acquisition open the door to examining a patent licensing strategy?

121. Does the acquired company have procedures to examine patentable ideas prior to release of new products? Would this be a good opportunity to implement such procedures?

**Trademarks and other intellectual property**

122. Has the acquirer's list of trademarks and service marks been updated?

123. Has a decision been made as to which brand names, trademarks and service marks of the acquired company will continue to be used?

124. Are additional registrations required, domestically and/or overseas?

125. Are there opportunities to restructure the ownership of the acquired company's intellectual property to effect a more tax-efficient structure?

126. Are revisions to the acquirer's inter-company agreements required?

127. Are there older trademarks at either company that can be re-used or expanded such that prior-use or registration rights can be leveraged?

**Website**

128. If the acquired company is going to continue with its stand-alone website for a transitional period, have the copyright and trademark notices, privacy policy and terms of use been revised to be in accordance with the acquirer's approved template?

129. Have all the country-specific websites of the acquired company been reviewed to determine what changes will need to be made to the copyright and trademark notices, privacy policy and terms of use?

130. If the acquired company was a public company, have the investor relations and corporate governance links on the acquired company's website been re-linked to the acquirer's investor relations and corporate governance pages?

131. Are there web-linking agreements that need to be updated to reflect that the links will now be to the acquirer's website?

132. Have you applied for all potential “cybersquatting” domain names relating to the acquired company's products?

133. Have you coordinated on how you would like splash screens to appear on the acquired company's websites? Is there a click-through to the merged company's site?

**Labor and employment**

134. Should all of the acquired company's employees be required to execute new offer letters?

135. Do the employees of the acquired company need to sign new confidentiality and assignment of inventions agreements?

136. Have all of the acquired company's employees been advised of the acquirer's employee policies and procedures?

137. Have you coordinated with HR on any potential reductions in force (e.g., severance agreements, employment law compliance, collective bargaining issues)?

138. Have WARN Act notices been given?

139. Have severance agreements been drafted?

140. How can severance liabilities be minimized?

141. Have all employment agreements with severance provisions been reviewed?

142. Should the legal department plan an employment law compliance training session for the managers of the acquired company?

143. Are there any collective bargaining organizing initiatives currently underway?

144. Are the employees of the acquired company covered by any collective bargaining agreements? When are such agreements next up for renewal?

**Stock option and employee benefit plans**

145. Are any new stock option plans being implemented to rollover the stock options of the employees of the acquired company?

146. Are there any new incentive compensation plans (ICP) or management by objectives (MBO) plans that are being implemented for the new employees?

147. Have the appropriate Form S-8 and other filings been made with the SEC and the applicable stock exchanges?

148. Have the stock option plans been adapted, and the requisite approvals obtained, so that stock options can be issued to employees overseas?

**Use of forms and templates**

149. Have you reviewed the acquired company’s template agreements and attendant rules of use?
150. Have you reviewed the acquired company's
templates to determine if key provisions
(warranties, limitation of liability,
indemnification, rights in derivative IP, etc.)
comply with the policies of the acquirer?
151. Have you provided the acquired company's
attorneys with a copy of your standard
NDA(s) and the related rules of use?

Contract management
152. Have the disclosure schedules been reviewed for
any contracts with change in control provisions
that will be triggered by the transaction and
require that a consent be obtained (or a
notice be provided) by the acquirer for the
contract's assignment to be effective?
153. Has a form notice to customers and
request for consent been prepared by legal/
contract management and approved by
sales/marketing for distribution?
154. Are there contracts that require the acquirer
to procure consents that still need to be
obtained for assignment of contracts from
the acquired company to the acquirer?
155. Is someone charged with maintaining a
continuously updated list of contracts
that require consents to be obtained?
156. How will the contract management
process be merged?
157. Have the acquired company's contract
management personnel been trained on
the use of the acquirer's forms?
158. How will the acquired company's contract files be
maintained and where will they be maintained?
159. Are there customer contract forms used
by the acquired company that should
replace forms used by the acquirer?
160. Are there changes to the form customer contracts
that need to be made due to the acquirer now doing
business in additional states or foreign jurisdictions
where local law requires such changes?
161. Do you need to bring in a temp paralegal to
handle notices and assignments required under the
acquired company's agreements? Or is it realistic
to assign these tasks to current staff members?

Product licensing and sales
162. Has a decision been made on which
company's product licensing forms and
templates will be used going forward?
163. Has a timeline been established for converting
all of the acquired company's product
license agreements and sales agreements
to the new forms and templates?
164. Have the forms been adapted for
use in new foreign locations?
165. Have the sales folks been briefed on the legal
terms that they are not to negotiate without the
approval of the acquirer's legal department?
166. Are new click-through agreements needed for
the merged company's software products?
167. With the acquisition, is it realistic to form
a group at the merged company to have
paralegals or contract managers handle
repetitive form agreements or processes, such
as NDAs, evaluation agreements or open source
reviews, or new product release approvals?

Real estate (owned and leased)
168. Are any leases being terminated?
169. Do any of the leases to which the acquired
company is a party to require notice or consent
to assignment or change of control?
170. Are any subleases being contemplated with respect
to redundant office space of the acquired company?
171. Are any leases being renegotiated?
172. Are facilities being consolidated,
domestically or overseas?
173. Are there “change of address” notices, which
are required to be sent to any governmental
authorities, domestically or overseas?
174. Are there opportunities to minimize
real estate or transfer taxes?
175. In reviewing the consolidated property
portfolio, are there opportunities to
sell or sublease properties?

Regulatory environment
176. Does the acquired company place the
acquirer in a new regulatory environment
where, for the first time, it is subject to
compliance with a statute or regulation that
heretofore it did not have to comply with?
177. Are there notices to be filed in order to
comply with new regulatory requirements?
178. Does the acquirer's legal department have
sufficient competency to ensure the acquirer's
compliance with the new regulatory regime?
179. Is the nature of the regulatory regime such that an
additional full-time in-house person is necessary,
or is it such that outside counsel is sufficient?
180. Has an in-house legal person been appointed as the point person for this new regulatory regime? Or has outside counsel been identified to handle this area?

Government sales and relations
181. Does the acquisition affect the acquirer’s government relations strategy?
182. Are additional state and/or federal lobbying resources needed?
183. Does the GSA schedule need to be amended to include the acquired company’s products and price schedules?
184. Do security clearances need to be obtained by any legal department personnel in connection with sales to governmental agencies and instrumentalities?
185. Are there government entities, domestic and overseas, where the relationship with the acquired company could be improved?

Public relations
186. Have the employees of the acquired company been advised of the acquirer’s communications policies and processes?
187. Has the press release boilerplate been updated to include, among other things, any additional forward-looking risk factors and trademark attribution language?

Marketing
188. Have the marketing personnel of the acquired company been briefed on the acquirer’s process for vetting and approving new brand names, trademarks and service marks, and approving all product packaging and the legal notices placed thereon?
189. Has the product packaging of the acquired company’s products been reviewed to determine changes that will need to be made?
190. Has the “style guide” been updated to incorporate the acquired company’s products and brands, and has the legal department approved the revised “style guide”?

Insurance
191. Has the acquirer’s insurance broker been brought up to date on the transaction, and provided with relevant information and required notices with respect to the transaction?
192. Have the insurance policies of the acquired company been converted to tail policies?
193. Is there additional insurance that needs to be procured as a result of the acquisition?
194. Do the limits and retention amounts of the acquirer’s insurance need to be revised?
195. Is there transaction-specific litigation that needs to be brought to the attention of the insurance broker and the insurer?
196. Has the acquirer’s legal malpractice insurance coverage been updated to include the additional legal department personnel from the acquired company?
197. Should any in-house counsel be covered under the acquirer’s D&O insurance policy (e.g., GC, deputy GC, corporate secretary, assistant corporate secretaries, etc.)?

Corporate policies
198. Have all of the acquired company employees been made aware of the acquirer’s policies? Have copies been distributed, either hard-copy or via email, of the acquirer’s policies to ensure compliance (e.g., code of conduct, Sarbanes-Oxley Act, policy against harassment in the workplace, insider trading, antitrust/competition, revenue recognition, whistleblower, records retention, foreign corrupt practices act, etc.)?
199. Is additional compliance training necessary for the employees of the acquired company?
200. Has a click-through acknowledgement been created for the website for the acquired company employees to acknowledge that they have read the acquirer’s policies?

Conclusion
The M&A world is littered with deals that have gone bad because folks paid scant attention to the heavy lifting that integration requires following the closing of any transaction. We hope the 200 items that we have listed above will provide in-house counsel with a useful roadmap for planning the integration of two legal departments post-acquisition, and will contribute to not only a smooth transition, but also an M&A transaction that has a better chance of being successful due to a thoughtful integration strategy.