

Marc Deschenaux, Founder and Managing Partner at Deschenaux Hornblower & Partners, LLP

## MERGERS & ACQUISITIONS

MAKING THE MOST OF INVESTMENT AND WHY LITIGATION IS RARELY THE ANSWER

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### MARC DESCHENAUX



Marc Deschenaux is the Founder and Managing Partner of Deschenaux Hornblower & Partners, LLP. His firm is a Non-bar law firm based in Geneva Switzerland and New York USA, specialising in corporate finance, all kinds of commercial contracts and financial agreements, intellectual property including licensing, franchising and securitization, as well as securities market transactions such as Private Equity and Initial Public Offerings.

They are pathfinders to financing for entrepreneurs and companies, so that they can realise their projects and ideas.

They are the world leading experts in financing law and in organisation of financings for start-ups, emerging and growing companies, as well as for institutions and governments.



Marc Deschenaux, Managing Partner and Founder of Deschenaux, Hornblower & Partners, LLP, says that: "As a company we firmly believe going into litigation is already a failure. We do not believe in solutions arising from the courts of law."

With his legal team having an entrepreneurial mindset, their aim is to avoid litigation as much as possible.

In regards to Marc's clients, he serves mainly famous entrepreneurs and corporations of all sizes: "We approach them through conferences, courses, public speeches, media interviews and articles. The philosophy in place here at Deschenaux, Hornblower & Partners, LLP evolves around teamwork and for us our staff actually makes the success of the firm."

In the modern legal environment, as change is everywhere in the world, the pressures on clients are ever growing. They generate new kinds of constraints to which legal experts must adapt in order to answer their needs. For example, Marc Deschenaux says: "Clients had been complaining about the predominance of the human factor in their investments and expressed a wish to invest into new ideas." As a consequence, Marc Deschenaux invented Intellectual Property Securitisation, allowing an investor to invest in a technology with limited human factor impact.

By having an impressive background and unique approach to the legal sphere, Marc Deschenaux speaks with Lawyer Monthly about how he achieves the best for his clients and how to take advantage of the investment market.

What was your main motivation into specialising in corporate finance and what challenges did you face trying to be at the top of the game?

Before becoming a Non-bar lawyer, I have been a software developer, a commodities and securities broker and trader as well as a serial entrepreneur. I came to the legal profession by my own needs because I have realised that there was a huge niche market to take. It was appealing due to its numerous flaws which struck me:

- Under most continental jurisdictions, there are rules preventing lawyers from accepting success fees!

- Lawyers handle both litigations and contracts, and what is worse, is that a known statement in the legal community is: the contract is the first act of the litigation!

- They pride themselves in thinking that they know the court opinion. I often used to ponder over the question: would you ask a demolition company to build your house?

- Generally, contrarily to what they pretend, some lawyers have little or no knowledge of the finance world.

- There is no limitation to the number of areas a lawyer may choose to practice. A lawyer can graduate in criminal law one day and hold himself on his business cards and website as a business lawyer the next day. No consumer or other authority, such as the Bar, ever



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controls that the studies or the background of the lawyer match his advertising.

- The whole legal knowledge from contract to litigation is based on facts and yet no law student who will later become a lawyer ever learns factuality.

As Founder and Managing Partner, what are the main pieces of advice you offer those on your team?

I have six keys to which I abide by and offer to my team:

1. Humility: No one can learn what someone thinks s/he already knows.

2. You are not your profession. You are not a lawyer, but a human being in the role of a lawyer.

3. There is no substitute to actually doing. Eat protein, dress in sportswear, go to the gym and yet nothing will change in your body until you actually do the exercise.

4. Any type of litigation is a fiasco. That is why our firm makes

no money from it. We adopted the Chinese MD philosophy: one pays a small periodical fee to the MD while in good health.

In case of disease or health problem, one stops to pay until full recovery. Thus, the MD has no interest in keeping anyone as a patient.

5. Listen and observe until it hurts. Get the facts and do not interpret anything when you collect them!

6. Be fascinated by your failures. As experience is what you get when you do not get what you want, success will not teach you anything.

What are the biggest challenges you face in the M&A sphere, when dealing with clients?

The biggest challenges we face in our activity, on the surface seem to be ridiculously simple, but they are not:

“ Just as a singer or music group is as good as his last song is, we are just as good as our last transaction is... ”

1. To make the client understand and accept that through the prospectus of the securities issue we elaborate an offer to the financial markets that they can accept or refuse through no fault of anybody.

Everyone remembers the internet bubble of the nineties, but most people have forgotten its most damaging consequence: thousands of scientific and medical start-ups went bankrupt. How can anyone convince an investor to invest over a 7 to 10 years period to hope for doubling or tripling their money, when s/he could do the same in a few months by investing in a 'dot com' IPO?

2. To make the client understand that investing 20,000 dollars in a contract, can save them several hundreds of thousands in litigation.

**What legislations would you like to see changed?**

- Generally speaking, a bank is an institution that loans money to people. If a bank stops to act as a bank and is just a money or wealth management operation, then it should not have the right to be called a bank. Wealth management and financial companies are not banks.

- Patent offices should cease to issue patents that do not

work. This simply occurs to just collect fees and out of laziness to simplify their work. It is unacceptable for an authority to act as a crook, issuing someone an official patent that is misleading investors and the general public.

I salute the European Patent Office that, to the best of my knowledge, is the only one who actually tests processes before issuing a patent.

- The government should be a model towards how people and companies deal with debts. Therefore, I think that budget deficits should be forbidden

and that financial markets should set indebtedness limits to governments by refusing to distribute their securities when they go above a defined level.

- Finally, I would like to use this opportunity to say that every jurisdiction should have a criminal law against the Parental Alienation Syndrome and that family courts should be made aware of this phenomenon.

I am currently working towards implementing or developing these changes through the Swiss federal popular initiatives that we are currently drafting.

**How does your previous experience in the entertainment and music industry enable you to be ahead of your game?**

By reminding me that just as a singer or music group is as good



as his last song is, we are just as good as our last transaction is...

**What are three things you would advise investors to take advantage of to ensure their investments collect the best financial gain?**

1. Pick a booming market.
2. Choose a leader in that market.
3. Get your tax scheme in order before investing, and not leaving it for after.

**What ways can clients avoid ruining investments, by grasping IP issues they may face?**

Take time and invest money in IP due diligence, not only with lawyers, but with IP marketing people and experts from the field.

**What has been your most challenging case yet and how did you overcome it?**

Getting my fellow litigation lawyers to see that:

- The whole field of law should not be driven by litigators, but by builders and entrepreneurs.

- By not being members of the Bar allows us to be free thinkers, to work at rates and on success fees whenever we want to.

- By not being involved in litigations, we have less enemies and thus, our clients do not inherit our enemies when they hire us...

**How are you hoping to see the corporate world in Switzerland evolve?**

The Swiss corporate world must reconcile with risk. They

must understand that risk and opportunity are intrinsically and mathematically bound. There is no opportunity without risk. Swiss people in general, especially investors and entrepreneurs, fear risk in a pathological manner. So just to avoid uncertainty, they are led to be conned by a number of institutions. I don't think they have yet realised that the companies who take risks, such

as insurances and commodities trading companies, are actually the most profitable.

**What are your next challenges for 2018?**

1. Give birth to the first Perpetual Company in the history of mankind.
2. Launch the first Charity Initial Public Offering in the history of mankind. **LM**

“ They must understand that risk and opportunity are intrinsically and mathematically bound. There is no opportunity without risk ”