

# *Le share purchase agreement*

Questions choisies

Conférence du Jeune Barreau du  
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# Plan

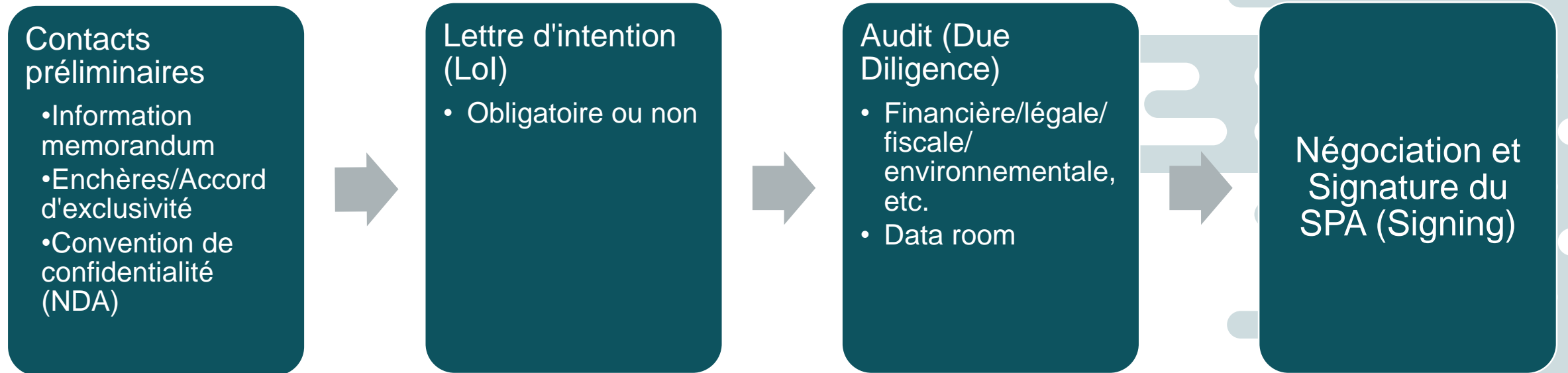
1. Les notions
2. La chronologie d'une transaction M&A
3. Clauses choisies
  - a. Le prix de vente
  - b. Les garanties

# 1. Les notions

- Transaction M&A
- *Asset deal vs. Share deal*
- Nature juridique

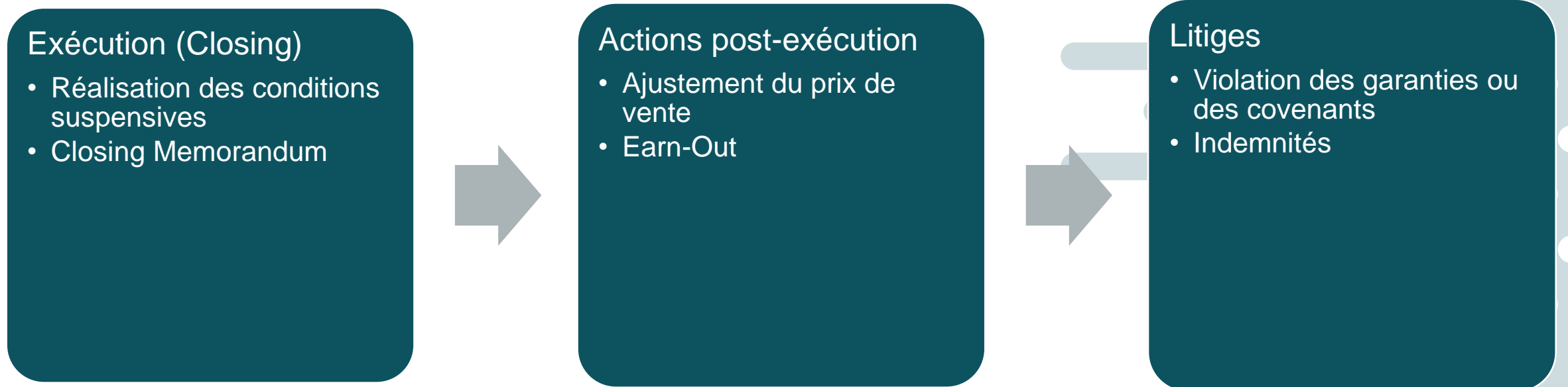
## 2. La chronologie d'une transaction M&A

### Phase pré-contractuelle



## 2. La chronologie d'une transaction M&A

### Phase post-contractuelle



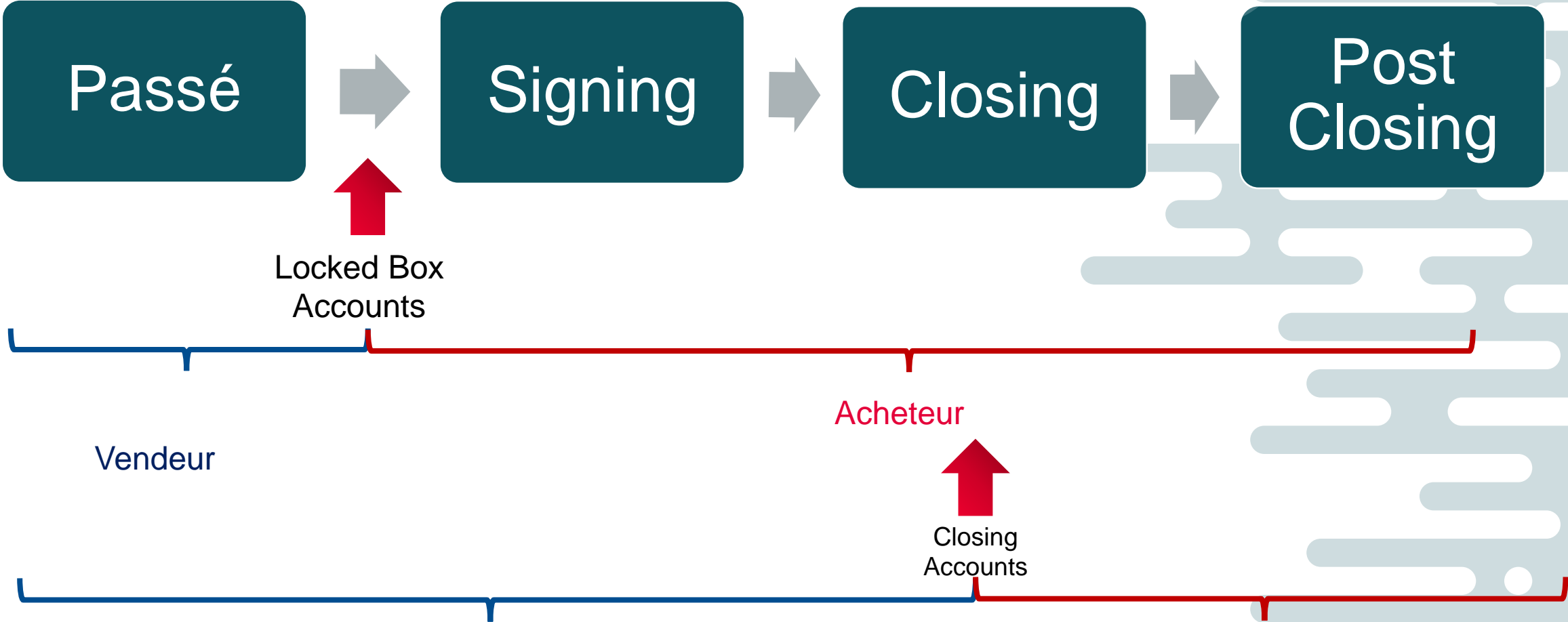
### 3. Clauses choisies

Prix de vente

	<b>Locked Box</b>	<b>Closing Accounts</b>
<b>Comptes</b>	Locked Box Date	Closing Date
<b>Transfert du risque économique</b>	Locked Box Date	Closing
<b>Ajustement de prix</b>	Non, sauf Leakages	Oui, sur la base de Closing Accounts
<b>Avantages</b>	Prix connu des parties Pas d'ajustements	Prix payé correspond à la situation effective au Closing
<b>Désavantages</b>	Transfert du risque économique	Prix connu après le Closing Ajustements

# 3. Clauses choisies

Prix de vente – Comparaison



### 3. Clauses choisies

#### Garanties – Généralités

- Inadéquation
- Exclusion des art. 197 à 210 CO
- Garanties données au Signing et Closing



### 3. Clauses choisies

Garanties – Qualifications et Limitations

- Réserves/Disclosure Letter
- "To the Seller's Best Knowledge"/ "In all material respects"
- Limitation des conséquences d'une violation:
  - Montant de minimis
  - Montant minimal (threshold)
  - Plafond (cap)

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