International Deal Making: Assisting Acquirers

Key considerations when assessing a target company for acquisition, including the due diligence process and key sales contract clauses.

IR GLOBAL

IR Global - The Future of Professional Services

IR Global was founded in 2010 and has grown to become the largest practice area exclusive network of advisors in the world, in just a few years. This incredible success story has seen the network awarded Band 1 status by Chamber & Partners, featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system, which is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

Multi-Disciplinary

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

Niche Expertise

In today's marketplace, both local knowledge and specific practice area / sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

Vetting Process

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

Personal Contact

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

Co-Operative Leadership

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups who focus on network development, quality controls and increasing client value.

Ethical Approach

It is our responsibility to utilise our business network and influence to instigate positive social change. IR founded Sinchi a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities / tribes around the world.

Strategic Partners

Strength comes via our extended network, if we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR or someone else.

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FOREWORD BY EDITOR, NICK YATES

Tackling Uncertainty - International Assistance for Cross-Border Acquirers

Cross-border M&A slowed in the first half of 2019 as weak global growth and simmering trade tensions eroded economic confidence.

Major central banks are being forced to employ monetary easing in order to bolster their fragile economies, as the tariff war between China and the US builds. Significant political events such as Brexit in Europe and elections in Argentina have rocked financial markets, while escalating violence threatens to destabilise the Middle East.

It is no wonder then, that, in this environment of heightened volatility, cross-border M&A activity has suffered. As conditions deteriorate, acquirers must fully believe in the true value of a potential target before committing time, capital and resources to an acquisition.

Figures from Refinitiv, the financial data provider, back this up. Their figures show that global cross-border small-cap M&A activity (deals up to USD50 million in size) totalled just USD19.8 billion during the first half of 2019. This was a 12 per cent decrease compared to the first half of 2018 and the slowest first six months period for cross-border M&A since 2014.

The Refinitiv data also shows that total cross-border M&A activity (all deals) fell. A figure of USD509 billion during the first half of 2019, is a 45 per cent decrease compared to the first half of 2018 and the slowest opening six-month period for cross-border M&A since 2013.

M&A activity for European targets totalled USD305.6 billion during the first half of 2019, a decrease of 56 per cent compared to first half 2018 levels. Asia Pacific deal making totalled USD337.7 billion, a 27 per cent decline and a five-year low.

The upshot of this trend is an increased emphasis on the acquisition process, balancing the economic risk with thorough insight and research prior to a purchase. Creating a comprehensive plan for negotiation and post-completion is also advisable.

Target identification has always been important, but it is even more crucial in a difficult environment. Once a business has settled upon expansion into a particular jurisdiction, they will need to use experienced advisors for effective target identification. These are professionals who know the culture as well as the law and can offer insights that are not available in a set of accounts. They will identify industry segments that offer opportunities for profit and competitive advantages or synergies with existing products or services. Digging deeper, they can then assess a list of targets, refining it down using specific criteria.

Once a suitable acquisition target has been identified and contact established between buyer and seller, then due diligence is key. Significant amounts of research must be undertaken across legal, regulatory, financial and environmental areas, among others, before heads of terms can be agreed. The team employed to undertake due diligence is vital and the information they uncover will be critical in the decision-making and negotiation process.

The due diligence findings will have a significant bearing on the share purchase agreement (SPA) and inform the types of clauses contained within it. Warranties and indemnities cover many different eventualities, and an experienced legal advisor will ensure that any potential concerns flagged up by due diligence are addressed by the warranties and indemnities clauses within the SPA. These might range from intellectual property valuations, to financial record accuracy and regulatory compliance.

The following report contains submissions from IR Global members in 20 different jurisdictions across the world. They are all experienced in helping international clients to undertake acquisitions in their country, bringing their expertise to bear on a myriad of problems. In the pages that follow, they offer insight and advice on target identification, due diligence and negotiation of effective contracts. Their unique take on the opportunities and barriers surrounding M&A in their particular jurisdiction, should prove invaluable to potential acquirers.

We hope you find it useful.

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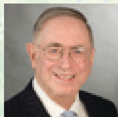
IR Global - Contributors by Region

IR Global's Dealmakers are highly valued members of the network. If you or your clients are looking for acquisition targets, partners or someone to purchase your business then we offer unrivaled access to a huge cross-border pool of global connections.



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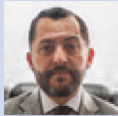

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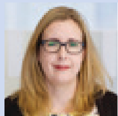

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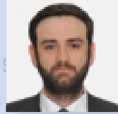

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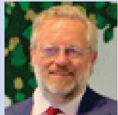

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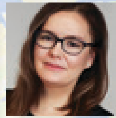

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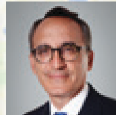

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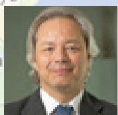

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Her practice involves the establishment and maintenance of investment holding structures. This incorporates a regulatory and funds practice where she specialises in the legal, regulatory and corporate governance aspects of investment funds, holding companies and managers. She particularly enjoys dealing with complex legal and regulatory issues and her banking and finance practice focusses on advising on large corporate borrowing transactions, predominantly relating to commercial real estate groups and investment vehicles.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

The primary consideration is whether the target company is carrying on a regulated activity in Jersey. This includes regulation under the Financial Services (Jersey) Law 1998 as amended, the Insurance Business (Jersey) Law 1991, as amended, or the Control of Borrowing Order, if the vehicle is established as a Jersey Private Fund (JPF).

Investors should also be aware that there may be restrictions on minimum shareholdings due to regulation. If, for example, the target is established as a professional investor regulated scheme or a JPF, the minimum holding will be £250,000.

If the entity is regulated, it may not add a significant amount of work to the acquisition, however there may be consents to be gained. It is certainly worth a discussion with your Jersey counsel as to any additional obligations which may be placed on shareholders and directors. This will then feed into the due diligence process, because you do not wish for your incoming directors to be subject to any regulatory issue as a result of the actions of the previous board.

Publicly available information is limited in Jersey. All companies file their memorandum and articles of association upon incorporation, and during their lifetime must file any special resolutions. They are also required to file an annual return by the end of February each year showing their shareholders as at 31st December. Public companies are required to file details of their directors and file accounts within seven months of their year-end.

Both English and Jersey law are used for sale and purchase agreements. Jersey contract law is similar to English law, but it is not the same, and therefore it is sometimes preferable to use English law if it is an appropriate forum. If English law is used, there are certain changes we recommend to the agreement such as removal of the power of attorney. It also often assists for the Jersey lawyers to have a quick review and amend before it is circulated. In addition, the vendor will prepare the Share Purchase Agreement (SPA) under Jersey law, not the purchaser.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

It must be clear whether we are being asked to carry out an exceptions due diligence report, or a full due diligence report. For sale pricing purposes an exceptions report is usually sufficient, as it highlights areas that need to be fixed. A full report is later required once the sale price is agreed in principal.

We usually ask that all information is available in a data room. If not we request access to the corporate books at the registered office (we would usually ask for 2- 3 days access). The information available is compared to that which is publicly available, to ensure that all resolutions are filed. Once we have carried out a review of statutory documents, we review the minute book to ensure that they contain the correct declarations of interests, the parties have then voted or abstained in accordance with the articles of association and that the resolutions correctly authorise the business of the meeting and that signatories are authorised correctly to execute any documents. Particular attention is paid to distributions, redemptions, share buy backs and share transfers, to ensure that they are carried out in accordance with the law. We then produce the due diligence report, listing the issues and the process(es) available to rectify the issues.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Clauses, warranties and indemnities in Jersey broadly follow those in England and Wales. However, specific to Jersey, we include provisions to transfer registered office (if required) and bank accounts.

It is worth noting that there is a notification of change in beneficial ownership which will need to be carried out within 21 days (if the company has its registered office at a regulated service provider), responsibility for this would usually be included as a term of the SPA.

Banking arrangements in Jersey are often related to the administrator not the company, so there may be an undertaking to close accounts. Provisions to require the release of any Jersey security over either the shares or the assets of the target will also need to be contained in the SPA (possibly appending an agreed form of release). Jersey does not need to follow UK GAAP, so the accountancy warranties are often a little different. Finally, if the entity is regulated, we include confirmations regarding the regulation and, if not, we would include a representation that it is not regulated.

VOISIN LAW

Voisin is one of Jersey's leading law firms, offering a comprehensive range of services to local and international clients. The firm's skilled and dedicated personnel advise on all aspects of Jersey law.

Areas of expertise include; banking and finance, corporate and commercial, employment, dispute resolution and capital markets. Voisin also offers fund services, notary services, property, trust and private wealth and estate planning.

Voisin is large enough to handle the most complex commercial transactions, yet small enough for staff to build relationships with clients. The firm prides itself on translating passion and knowledge into a responsive, dynamic and pragmatic service.

Tips for completing a successful cross-border acquisition

Introduce your advisors to each other early in the process. We sometimes see offshore advisors being brought in either after DD is complete or near completion. We understand that a client may wish to limit fees, but that initial conversation between the parties can serve to point out matters to watch out for and agree roles and involvement.

Consider who is to house the registered office and, if required, carry out the administration of the company. Even if the company remains where it is, the laws in Jersey are strict on client due diligence. It may seem like a minor consideration, but we have seen it delay transactions when a service provider has not completed its on-boarding process.

Keep all counsel appraised of the commercial terms of the deal and allow offshore counsel direct access to the client (the main counsel may be tied up on major matters and an unaddressed offshore point may prevent progress).

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Norman W. Bernstein ('Norm' to friends and clients) is a former United States Naval Officer, and former Associate Counsel Special Litigation at Ford Motor Company where he was responsible for all of Ford's US environmental litigation (except auto emissions). He is a former partner at several large US law firms and has run his own environmental law firm for decades. He is a Trustee at three hazardous waste sites. In September 2019, he will be leading a roundtable discussion at the General Counsel's conference in New York regarding two June 2019 landmark Supreme Court decisions that will likely restructure US environmental and administrative law. In 2016 he was a guest speaker at the International Green Bonds Conference at NY's Bloomberg Center. His 2013 win in a landmark hazardous waste site case in the US Court of Appeals for the Seventh Circuit against the US Department of Justice (Bernstein v. Bankert) has been cited more than eighty times in subsequent federal cases.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

An acquirer needs to know the legal and physical context of the business, not simply its current and projected economic conditions. In the US, businesses are subject to both Federal and State laws and regulations. Depending on the business, these regulations may be complex and affect the ability of the business to meet its projections. Therefore, it is important to identify early, the laws and regulations that impact the business, the company's regulatory history, and its relationships with the regulators and competitors.

For example, if the company has a history of strong growth and good management but potential environmental or other legal or regulatory risks, it may be better to acquire the key assets of the business - not its stock - assure a complete change in equity ownership, and, in some cases, move the location of operations in order to minimise the risks posed by historic liabilities. It is important to understand that the size of those liabilities may exceed the value of the deal. For example, in a case decided last year, a company acquired property it wanted that had been contaminated but had been cleaned by the State. It got the property for what it though was a good price. After it bought, the State sued to recover the cost of clean-up, which was far higher than the sales price. The Court ruled that the new owner was liable for 'all' of the costs of clean-up – no matter when they were incurred.

As to future liability risks, there may be ways of limiting investor liability by layering a limited partnership (or perhaps an LLC) on top of the company being acquired. For example, in a business having significant environmental risk, the investors could invest money in the limited partnership as limited partners and the partnership would acquire notes and warrants in the underlying company. Should the company do well, the warrants provide the upside potential, and the absence of direct stock ownership makes it hard for regulators to assert control liability. This structure may also have tax benefits since note repayments are generally deductible to the acquired corporation. Moreover, a limited partnership is transparent for tax purposes, so the note repayments should go to the limited partners without any entity tax.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

There is no 'one size fits all' answer to this question. The biggest mistake to avoid, is to put off the environmental issues until due diligence. I have seen situations where the environmental risks are discovered late in the process and, either potentially costly risks are accepted in the name of completing the deal, or the deal has to be fundamentally restructured (for example from a stock deal to an asset purchase deal). To put it another way, environmental evaluation should be viewed as similar to tax. The risks, opportunities, and structure of both need to be evaluated up front.

Environmental risks involve a blend of law and engineering. Therefore, in evaluating environmental risks, engineering due diligence should be managed by an experienced environmental lawyer so as (a) not to waive any legal privilege and (b) assure that not only current but future legal and business risks are evaluated.

Also, legal trends must be considered. For example, in June of 2019, the Supreme Court of the United States handed down two decisions which are likely, over time, to increase judicial scrutiny of federal agencies interpretations of their own regulations and of the laws they implement, and also potentially reopen the scope of constitutionally permissible delegation of law making decisions to federal agencies. This has far reaching implications for environmental regulation no matter which party is in power. (Those decisions will also impact other executive branch agencies such as the FDA, OSHA and the IRS.) We have published a White Paper on those decisions that is on the IR Global web site, and Norm Bernstein will be leading a roundtable discussion about them at the General Counsel conference in New York in September 2019.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Once again, it depends on the business and the deal. However, 'indemnities', no matter how worded, are only as good as the financial strength of the indemnitor. It is therefore better to minimise those risks, adjust price and other deal terms, or both, to realistically reflect the risks, rather than relying on indemnities that may have to be enforced in costly litigation or may be cut off entirely in a bankruptcy proceeding.

A key clause should address where and how disputes are to be resolved. We had a situation some years ago where Company B agreed to the jurisdiction of a federal court in Indiana (where the property was located) for the resolution of any disputes arising out of a contract. A dispute arose. Many of Company B's people were in Pennsylvania where the company was headquartered, and the damages to it allegedly occurred there. Notwithstanding the contract clause, Company B brought its suit in federal court in Pennsylvania. It argued that the contract did not say 'exclusively' in the Indiana court and that since the contract had been terminated, the consent to Indiana Court jurisdiction was void. We defeated both of those arguments, but in selecting a forum it is important to say 'exclusively' and important to have the choice of forum clause expressly survive the termination of the contract.

N.W. Bernstein & Associates, LLC., is an environmental law boutique that solves multi-disciplinary environmental problems, including structuring environmentally sensitive business transactions and litigating environmental liabilities. With two back-to-back wins in the Seventh Circuit and completion of two briefs in the Supreme Court of the United States within eleven months, we have the skills to protect clients. As a Trustee at three hazardous waste sites (two in Indiana and one in New Jersey) Norm Bernstein provides sophisticated insight as to likely (as opposed to simply engineered) costs of remediation where needed.

Tips for completing a successful cross-border acquisition

Environmental liability in the US for historic contamination of property is generally strict, joint and several, and not limited by the value of the deal. Penalties for environmental protection are harsh. Clean Air Act penalties, for example, are up to USD37,500 per day, per source. Enforcement is by the US Justice Department and States Attorneys General. Under many statutes, private parties, such as environmental groups and adjacent property owners, may bring 'citizens suits.' Therefore, evaluating environmental risk is central to the pricing and structuring of many US acquisitions.

If the 'we do everything' firm heading the deal claims it has an environmental department, ask its environmental lawyers. Have you successfully litigated environmental issues against the US Justice Department in federal appellate court? Are you a trustee at hazardous waste sites including at least one site on EPA's national priority list? Have you had 'first chair' responsibility for structuring deals around environmental problems?

If they can't answer 'yes' to all three questions, you need advice from a firm that specialises in environmental law and can answer 'yes' to those questions.

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He is recommended by reputable publications (Chambers Latin America, Leaders League, LACCA, Análise Advocacia), and is co-rapporteur of the task force on B2C General Conditions of the Brazilian Chapter of the Commission on Commercial Law and Practice (CLP) of ICC and a member of its Commission of Digital Economy.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

It is important to understand the local market practices and see if the planned business model will work in Brazil. It is usually necessary to adapt the business model, and the investor should check the feasibility of the changes and whether the target company is indeed a good fit for the strategic goals of the buyer.

In this assessment, the buyer should also consider the pros and cons of an ongoing concern, as compared with those of a greenfield project. Depending on the nature and size of the contingencies found in the due diligence, a greenfield approach may prove more sustainable.

Regulatory hurdles and the complex taxation in Brazil may require some structuring of the transaction. This should be studied and developed in advance, as it can be very expensive to fix mistakes in Brazil. For instance, Brazil has currency exchange controls which may limit the ability to structure certain deals.

It is important to check whether any prior approvals from the antitrust and other authorities (in the case of a regulated industry) are required. Generally speaking, the following thresholds trigger the need for merger clearance with antitrust authorities.

- Gross revenues in Brazil in excess of R$750 million (buyer or seller group)
- Gross revenues in Brazil in excess of R$75 million. (other parties)

Finally, in case of a partial acquisition or joint venture, at least three things are essential. These are a good understanding of the cultural differences to see if a joint venture is indeed possible, a well-balanced corporate governance structure, where the voting and veto rights reflect the contributions of each party, and good exit strategies, such as call and put options, drag along and tag along rights, etc.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Typically, indemnification provisions in Brazil are not limited to what is disclosed / represented by the seller, but actually cover all liabilities and contingencies prior to closing.

In any event, enforcing an indemnification obligation can be time-consuming and expensive. Therefore, the due diligence is an important exercise to understand what is being bought, and this should be reflected in the pricing.

Naturally, the due diligence should not be limited to legal matters, but should also cover operational, cybersecurity, real estate, technical environmental matters, etc.

Focus should be given to tax, employment, litigation, environmental and anticorruption matters. Data protection is a new focus, given the new legislation in Brazil.

In middle market deals, quality of information may be an issue. Many companies are not audited, and family businesses may have a level of informality that may not be acceptable for multinational companies. This scenario should be examined from the beginning to avoid unnecessary stress in the negotiations.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Typically, share purchase agreements (SPAs) in cross-border deals in Brazil follow the same structure as the United States of America (US) and United Kingdom (UK). However, the indemnification practices may differ.

In this context, it is common for SPAs in cross-border deals in Brazil to have extensive reps & warranties, even though the indemnification will cover all liabilities and contingencies arising from facts prior to closing (regardless of whether they were represented / disclosed or not).

We recommend the establishment of a holdback or escrow account to guarantee the payment of a portion of the indemnification by the seller. Normally, the release of the funds is spread across five years, but this term can vary depending on the profile of the liabilities found in the due diligence.

Such a profile will also affect the discussions about caps, baskets and 'de minimis' amounts applicable to the indemnification. The amounts can be quite different from those seen in the US.

Even though the indemnifying party usually maintains control of third-party claims affecting the target business, this may not occur when the seller is substantially smaller than the buyer.

We recommend establishing a price adjustment mechanism to address any variation in the working capital and indebtedness (and any other chosen variable) between the date of the last balance sheet and the closing date.

Simultaneous signing and closing is common when there is no need for prior approval by authorities. When they are not simultaneous, the parties need to agree on the limitations for the business of the target company between signing and closing.

Non-compete provisions are also very important. Differently from the US experience, it is common to see non-compete obligations that extend up to five years.

Finally, it is very important to have a good dispute resolution mechanism. Arbitration is becoming more and more the rule, given that it is faster, confidential and more technical than court proceedings. One cannot disregard, however, that arbitration is more expensive than a lawsuit and that the parties may not appeal against an arbitral award.

CGM is a full-service law firm in Brazil founded by an experienced group of partners who have worked together for more than two decades alongside other partners from reputable law firms. The firm enjoys strong client and market recognition and is acknowledged in important international publications and rankings.

CGM focuses on solving its clients' issues in a timely, efficient and business-oriented manner, with technical expertise and creativity. The firm's team eagerly pursues and develops tailor-made, practical and legally sound solutions to help clients do business and achieve their targets.

Tips for completing a successful cross-border acquisition

Learn about the local culture and business practices

The reality in Brazil can be quite different from the reality in other markets. Understanding the local business culture is key for a successful negotiation and operation. A common mistake is to look at Brazil with the eyes of a different culture. Another one is to simply apply in Brazil, without adaptation, a business model that is successful elsewhere.

Plan in advance

Brazil can be highly regulated. Investors should carefully plan their investments, considering local laws and taxation, before implementing them or even starting a negotiation. Planning in advance is of essence in order to avoid pitfalls and the high cost of fixing mistakes.

Do not underestimate the importance of due diligence

Performing a thorough due diligence investigation of the target business is key, particularly given the complexity of regulations regarding tax, employment, environmental and anti-corruption matters. Data protection is a new focus of due diligence.

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Oscar Conde Medina, has dedicated more than 20 years of experience to attracting, consulting and assisting direct foreign investment in Mexico. In 1996, he supported and participated, together with other experts, in the purchase of one of the most important financial institution in Mexico (Banca Confia) acquired by Citibank.

From 2000 to 2003, Oscar participated in high profile credit restructuring operations in the north of the country, including the restructure of Pyosa, Cydsa. He also worked on the merger and public stock sale of the Coca-Cola bottling company Arca (formerly Procor).

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I QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Due diligence around fiscal, labour, financial, environmental, administrative and anti-corruption is crucial.

This due diligence should help evaluate the best strategy regarding tax matters, considering, among others, annual income tax and amortisation of intangible assets. It should also allow buyers to fully understand the situation of the target company, in order to identify its assets. These might include agreements, profits, machinery, real estate, client and financial portfolio, reputation and intellectual property. It will also identify possible liabilities, such as union matters, pending or threatened claims, and social security issues.

Based on the information provided by the due diligence, a buyer should be able to identify the possible risks, determine if it's best to acquire the company or to enter an asset purchase agreement, and negotiate the purchase price.

I QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

A documentation system is important to record every step of the process. It will indicate responsible parties and, most importantly, establish the frequency of updates and reports on the advances of the process. This will give buyers quick access to the information that has been gathered.

After this system is established, it is also advisable to plan a visit to the target company in order to meet with the staff, gather information relevant to the operation and thus have an overview of the situation of the company.

In order to certify that the agreed price is appropriate for the operation, it is important to include the value of the intangible assets of the target company. The appraisal should be performed by an expert, which may be a business appraiser or an expert public broker. The referred evaluation must consider the possible change in the value of the assets or shares when the transfer takes place, as well as an investigation of the current or pending claims and possible contingencies including their costs.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

- Environmental matters: It is the obligation of the seller to include a phase one outline, as well as the environmental licenses and permits that may be applicable to the buyer.
- Data transfer: It is important to indicate the terms under which personal data transfer will take place, as well as the privacy notice that will regulate the use of the referred information.
- Confidentiality, non-disclosure and non-solicitation: It is important to make sure that the obligation of the parties to keep confidential information private survives the term of the agreement. A standard period of validity of this obligation is five years after the validity of the agreement. Accordingly, a non-solicitation clause is advisable in order to protect the commercial interests of the buyer.
- Anti-corruption: It is very important to include a clause regarding the fulfilment of anti-corruption regulations, especially considering that non-compliance with these obligations may result in costly fines, criminal liability and even the liquidation of the company via judicial order.
- Liabilities and claims: In order to ensure legal certainty for the buyer, one must always include the obligation of the seller to indemnify and hold the buyer harmless from any claim or liability derived from the operation of the target company prior to the sale. This is one of the most important clauses of the sales contract, given that it is common for the risks that are identified during the due diligence to become a liability or claim after the sale has taken place.
- Operational licenses and permits: The seller is obliged to ensure the legal existence or certainty of obtainment of the licenses and permits that may be required for the operation of the business.
- Required consents or authorisations: It is important to always establish the obligation to obtain the written consent of third parties, especially for the cases of assignment of contracts. You must also document the corporate authorisation of the operation from both companies through shareholders or partner resolutions, duly formalised before public notary.
- Misrepresentation: In order to have certainty regarding the representations of the parties, it is advisable to include misrepresentation as a cause for rescinding the agreement.

Legem Attorneys at Law, SC is a law firm comprised of professionals who specialise in a variety of legal disciplines. They have offices in the north, bajio and central Mexico, ensuring the highest ethical, professional and commercial standards are maintained. Their commitment is to help clients grow by providing them with opportune legal services, oriented towards protecting their personal, economic and commercial interests.

The firm's areas of practice include litigation in civil, commercial, criminal, family, administrative and tax law. This includes corporate, banking, immigration and real estate law, as well as compliance expertise covering topics such as money laundering prevention, protection of personal data, anticorruption, evaluation and management of legal and regulatory risks programs.

Tips for completing a successful cross-border acquisition

Seek the advice of certified experts for the valuation of the company to be acquired

Contemplate the pros and cons of acquiring shares vs. acquiring assets

Always include indemnity clauses.

IR GLOBAL

NEW ZEALAND

Mark Copeland

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Mark is a highly regarded senior commercial lawyer with an enviable track record of more than 25 years practicing across all areas of business and property law.

He and his team have a reputation as first rate legal advisors who are committed to maintaining the highest professional standards and acting in the best interests of all clients. After many years practicing as a Partner in prestigious commercial, boutique law firms in Auckland and Rotorua, Mark established MJC Legal in 2009.

During his career Mark has acted for private individuals, government entities and major international corporations, advising on all aspects of commercial, property and rural laws.

The firm's practice and interests are not limited to large companies or big deals. They are able to bring expertise and experience to an array of private and corporate clients both in New Zealand and overseas who are seeking high quality legal advice delivered with exceptional service.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Once a target company is identified, the key issues to consider for an acquisition in New Zealand are:

- The local statutory approvals required (if any) to greenlight the acquisition.
- Detailed consideration of the purchaser's proposed future tax and other treatments of the target company's profits.
- The need for careful due diligence on the target's key people.

Required statutory approvals in New Zealand may include, but are not limited to - Overseas investment controls, competition law regulations, the New Zealand Companies Takeovers Code and industry-specific rules (e.g. dairy industry regulations).

Under New Zealand's Overseas Investment laws an overseas person, as defined, must obtain consent from the New Zealand Government to acquire certain business or property assets, or take control of 25 per cent or more of the shares in a New Zealand company.

Notwithstanding the complexities of doing business in different jurisdictions, expert taxation due diligence is critical. This relates to both the target company and the purchaser's proposed future taxation and profits treatment of the target company (transfer pricing and foreign company investment issues). There is no point in acquiring an offshore business if any profits cannot be repatriated to the purchaser in a tax-efficient manner.

The other critical consideration is carrying out detailed due diligence on the target company's key people. The motivations and future goodwill of the target's key personnel must be clearly stated and understood by the purchaser of a business in a country it may know little about. Tying the key personnel to the business for a period, post-acquisition, is usually important. Post-settlement purchase price workout terms are also often used to ensure the key personnel stay in place and are motivated to make the acquisition a success.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

The acquirer's New Zealand lawyers will be expected to lead the due diligence team where a New Zealand domiciled company is the acquisition target.

Professional due diligence is central to any cross-border acquisition, and will involve a review of all the relevant target company information by a team of experienced advisors brought together by the local lawyers - including financial, tax and HR advisors, the purchasers' key executives and other experts.

The importance of proper, organised due diligence cannot be understated. The risks and benefits of the acquisition must be factored into a clear costs/benefits model, to first ascertain an appropriate purchase price, and then progress the proposed acquisition to the point of final commitment (or not).

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Key terms in any contract to acquire a New Zealand-based business include:

- Clear definitions of the assets or shares being acquired.
- The purchase price and how and when it is to be paid (including any workout and/or retention terms).
- Employment terms – covering the treatment of the target company's personnel post-settlement.
- Which law is to apply to the purchase agreement and any disputes.
- Good faith dealings terms binding all parties.
- Clear vendor and key vendor personnel warranties and Indemnities, including as standard:
    - Financial statements and prior turnover warranties
    - Material Adverse Change (MAC) warranties
    - Statutory approvals and consents warranties
    - Full and proper disclosure warranties and indemnities
    - Employment warranties
    - Appropriate taxation warranties and indemnities
    - IP ownership warranties.

MARK COPELAND LAWYERS

Relationship ■ Respect ■ Results

MJC Legal, trading as Mark Copeland Lawyers, is a boutique law firm based in Rotorua, with offices also in Auckland. The Firm was established in 2009 and was inspired by Mark Copeland's vision of providing specialist legal services with a central focus on meeting client needs.

The Firm understands that clients place their faith in it to reach a desired outcome. To achieve this Mark Copeland Lawyers develops long lasting relationships with clients based on trust, integrity and mutual respect.

Mark Copeland Lawyers partners with clients to determine the best possible result from each situation. Clients come from throughout New Zealand and internationally to work with Mark Copeland Lawyers for legal excellence and first-class service.

Tips for completing a successful cross-border acquisition

Get the right team of advisors in New Zealand and rely on them

Go into the acquisition with your eyes wide open, undertake thorough due diligence and understand exactly what you are buying

Know when to walk away.

IR GLOBAL

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Kaan Demir specialises mainly in merger and acquisitions, corporate governance and litigation. He actively advises foreign and local investors, assisting them in their transactions.

Kaan has experiences of advising clients on cross-border and local transactions, joint ventures, private equity investments and strategic investments on a wide range of sectors including, but not limited to, media, e-commerce, retail, manufacturing and energy.

His experience covers all aspects of the transactions starting from the due diligence phase to structuring, contract drafting, and negotiating the terms of the transaction documents, as well as rendering day-to-day advice on all types of corporate law-related matters. He has been involved in some significant merger and acquisition projects in Turkey in the above-listed sectors.

Kaan also acts as a litigator, representing clients in complex commercial disputes and provides assistance to his clients in all fields of dispute resolution.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Tax considerations affecting the transaction are very important.

The tax implications arising out of share purchase deals are different from a merger scenario or asset transfer, and each one may be more advantageous depending on the circumstances of the transaction. Therefore, parties should discuss possible acquisition scenarios in detail, in order to find the most beneficial tax structure.

The financing of the transaction always plays an important role on such deals. Buyers should always plan the financing of the acquisition and post-acquisition process by taking into consideration the debt-equity structure of the target company.

Parties are also highly recommended to execute a letter of intent or memorandum of understanding to set the framework of the current negotiations. Fully understanding the purchase price mechanics, before engaging in a costly due diligence processes, is crucial. Parties should also try to have binding confidentiality provisions and exclusivity provisions in such agreements to ensure the confidential information of the parties are not disclosed and to prevent the counterparty engaging in negotiations with third parties.

In Turkey, M&A deals are, not specifically subject to regulatory approvals, however the proposed transaction may be subject to the Turkish Competition Board's approval depending on the turnover of the buyer, the seller and the target company. M&A activity in some regulated sectors is also subject to approval by governmental authorities, such as energy, education, telecommunications, banking, financial services and insurance. Parties should carefully asses the requirements for such clearances and approvals.

In many cross-border acquisitions, the buyer may not be fully familiar with the local market and the corporate culture of the target company. Therefore, one of the other consideration points is that parties should plan the post-acquisition and harmonisation process and build up a management team that is also familiar with the local market and with the corporate culture of the target company. It is recommended to have a detailed and carefully structured post-acquisition transition plan regarding corporate culture.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Proper due diligence should determine all the risks of a proposed acquisition, by addressing the past, present and predictable future of the target company. Buyers should always conduct detailed financial, tax and commercial due diligence in addition to legal due diligence, in order to assess the exact value of the target company and the effects of the acquisition.

Having a detailed due diligence checklist and questions list which address all the legal risks is very important. While we are conducting due diligence, we are always trying to have regular meetings with the management of the target company and

do on-site visits (even if the documents are uploaded to a virtual data site) to get a sense of how things work in the target company. We also try to schedule face-to-face meetings with relevant departments in order to make sure we are receiving the right answers for our queries.

Some of our work includes the review of corporate records, including share ledgers and certificates and reports regarding share capital, employment agreements, litigation files, real estate, intellectual and industrial property and the relevant records of the target company.

Antitrust, environment or privacy law-related matters are generally overlooked during the due diligence process, but we are always trying to fully assess the target company's compliance with all applicable laws. We also review the financial statements and tax records of the company, and other due diligence reports, to assess the risks which may arise from there. We also determine all the regulatory approvals needed to be obtained for the closing of the transaction to prepare our clients for such processes.

Before circulating the Share Purchase Agreement (SPA) with the counterparty, we take comments from the other advisors of the acquirer, including commercial, financial and tax advisors.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

The transfer of shares does not automatically provide warranties in relation to a target company and the parties should insert a separate representation and warranties section in the acquisition documents. Representations and warranties are the centre of M&A deal negotiations.

Indemnity clauses in relation to the title/ownership of sale shares are recommended, alongside financial statements and taxes if possible. Such indemnity clauses should capture any possible breaches. Representations and warranties regarding the disputes/litigation, employment, taxes, compliance with laws (including environment and data protection legislation) and any undisclosed liabilities are also very important.

Sellers should always try insert knowledge and materiality qualifiers in the acquisition documents and use wording such as 'to the best knowledge of the seller' or 'ordinary course of business' or materiality threshold in the representations and warranties to decrease their exposure in a possible dispute.

Buyers should always try to remove such limitations from the representations and warranties.

The SPA should also include a non-competition and non-solicitation provision if the parties do not execute separate shareholders' agreement.

In many deals, buyer usually pays a fixed purchase price on the date of closing, however, this is quite risky from a buy side perspective. If the company to be acquired incurs losses after the signing of the SPA and before the closing, the buyers will bear such losses. Since the buyers are merely estimating the exact value of the company and entering the transaction by relying on the representation and warranties of the sellers, it is highly recommended to also include a purchase price adjustment clause in order to mitigate the risks.

Kayum & Demir Attorney Partnership is a full-service law firm located in Istanbul. The firm provides high-quality legal services to its clients and is committed to working with clients to help them achieve their business targets and overcome legal challenges by finding innovative solutions.

Sophisticated advice and practical solutions reflect the firm's deep understanding of legal issues and business objectives and a results-oriented approach.

Kayum & Demir specialises in the fields of mergers and acquisitions, strategic investments, corporate and corporate governance, energy, e-commerce, data protection, real estate, competition and litigation.

Tips for completing a successful cross-border acquisition

Applicable laws, regulatory approvals, export laws, industry specific regulations and accounting standards may be different in each country depending on the jurisdiction of the target company. Buyers should ensure they have full understanding of the local laws and accounting standards before proceeding to acquisition.

Small to medium-sized companies and their management may not be familiar with the global standards of M&A documentation. Assuming the role of 'drafting party' to control the drafting of the agreement is crucial for both sell side and buy side. Drafters can set the framework of discussions and discussion points.

Parties are recommended to structure the deal by considering the tax implications of the acquisition. Finding the most efficient structure from a tax perspective helps to avoid double or over taxation. After considering the tax scenarios, the parties may decide on the structure of the transaction, i.e. transfer of shares, asset transfer, merger or spin-off.

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Steven De Schrijver is a partner at Astrea, specialising in corporate/M&A and IT law.

He has assisted many large foreign technology and life sciences companies on their Belgian acquisitions, and closely follows new developments and innovations in the technology sector. He delivers benchmark advice with respect to new legal problems that arise as a result of these new developments and innovations. As a result of his sector-specific expertise, he advises some of the largest technology and life sciences companies in the world as well as innovative entrepreneurs on a day-to-day basis on a variety of commercial and information technology law matters.

Steven's priority is to provide his clients with pragmatic solutions that enable them to achieve their strategic business goals. He provides legible and to-the-point, practical and business-oriented advice and takes clear positions.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Under Belgian law, there is a binding agreement as soon as there is consent between the parties regarding the object and the price of the sale. It's important as parties to the agreement to indicate in the letter of intent (LOI) which of its provisions are binding and which are non-binding. You can use the LOI to negotiate important deal points.

Convince your counterpart to hire a good lawyer, to start preparing the data room as soon as possible, to answer all questions and to start with the preparation of the disclosures. It's also important to start the preparation of the tax structure of the transaction (e.g., share deal v. asset deal) in a timely fashion. It makes no sense to prepare the acquisition documents if the tax structure is not yet in place.

When setting up a deal structure, be sure to consider Belgian rules on financial assistance, corporate interest and thin capitalisation etc. Involve your Belgian lawyers rather sooner than later. Make sure that you get the management of the target on board. Specify roles for the top executives that will remain with the target. Put the right executive compensation system and incentives in place.

The sellers will usually wish to maintain some form of legal status, control, or power of veto, in view of ensuring the 'earn-out' is successful for them. This may cause anxiety for the buyer as far as formulating long-term planning and integration. Make sure that all details are clearly outlined as far as both parties' interests are concerned before finalisation.

Employment law is strictly regulated in Belgium and is therefore one of the important issues which require specialised advice before as well as after the closing of a deal. This will include the language of employment agreements, re-qualification of self-employed agreements, the possibly illicit disposal of personnel and rules on overtime and part time work.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

In the context of M&A, the due diligence process plays an essential role in the valuation of the target by the buyer, and in the structuring of the transaction and the contractual protections needed by the buyer. It also enables the potential buyer to gain as much background information as possible about the business to be acquired.

In terms of substantiating the valuation, the due diligence exercise seeks to find and quantify (as the case may be) material facts, and potential contingencies and liabilities relating to the target company, as well as possible obstacles for the completion of the transaction. Therefore, its scope is usually comprehensive, involving different types of experts and, on the legal side, various areas of practice.

At the end of the process, buyers typically expect to receive comprehensive reports describing the target, identifying red flags and helping them to quantify liabilities (when possible) so that they may be able to confirm their interest in the target and properly negotiate the transaction documents with the seller. On the basis of the due diligence, it can be determined which pre-closing and past-closing actions must still be taken and which additional warranties, specific indemnities and closing conditions should be undertaken in the share purchase agreement.

Legal due diligence is typically conducted by law firms enabled to practice the law of the jurisdictions involved. They will coordinate with several other types of experts depending on the circumstances of each case. Typically, parties perform due diligence into both legal and financial (including tax) aspects of the target. In some cases, prospective buyers also prefer to conduct a commercial, environmental or IP/IT due diligence.

The following issues are always important when organising or conducting a due diligence:

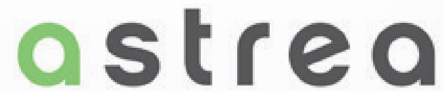
- Define the scope carefully, implement a realistic but strict timetable and make sure to carry out due diligence on the business culture of the target in order to examine organisational health, leadership talent and managerial abilities
- Strategic fit with buyer: the buyer is concerned not only with the likely future performance of the target company as a stand-alone business; it will also want to understand the extent to which the company will fit strategically within the larger buyer organisation
- Financial matters: the buyer will be concerned with all of the target company's historical financial statements and related financial metrics, as well as the reasonableness of the target's projections of its future performance
- The online data room is very important to the success of a due diligence investigation. It is vital that the target company assembles, maintains, and updates as a well-organised online data room to enable the buyer to conduct diligence in an orderly fashion.
- It is also important to work with a Q&A template, which allows to send back and forth questions and answers related to the due diligence results, or to e.g. missing documents.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

The following warranties and indemnities should be included in a sales contract: Power and Authority; No conflicts with the execution of the agreement; Corporate (Existence, Organization of the company and Capital of the company); Accuracy of annual account and management account; and Conduct of business since the accounts date.

Further, one can include warranties and indemnities for: Assets (Title to the assets and the inventory); Real property; Agreements and commitments; Full Disclosure; No Broker Fees; Intellectual property; Computer systems; Privacy and use of user data; Insurance; Regulatory; and Compliance (Authorizations, Permits, Compliance with law, and Proper business practice).



Astrea is an independent law firm based in Antwerp and Brussels. Established in 2006, the firm has experienced continued growth and advises a growing list of domestic and international clients in all major areas of business law, including corporate/M&A, finance, private equity, employment, commercial, IP, ICT, data protection and privacy, real estate and environment.

Astrea works closely with some of the finest law firms around the world, advising on complex, cross-border and domestic transactions and legal matters. Astrea's attorneys are multilingual and combine specific legal expertise with relevant industry knowledge and a pragmatic and solutions-oriented approach.

Tips for completing a successful cross-border acquisition

Doing your homework is very important

I learnt a great tip from a US lawyer whom I was working with in a large cross-border transaction. He used a small hardcover book for each important transaction and took note of everything that was said during the transaction in that little booklet. If you make a point, it is important that you are well-reasoned and can remind the other side or even your client what they have said before.

Humour

Humour is a very important way to break the ice at the beginning of a meeting, or after long hours of negotiation.

Hire the right advisors

The acquisition process will run more smoothly if you put the right deal team of experienced M&A advisors together to help you.

SPAIN

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José María Dutilh is Managing Partner at LeQuid, Social Enterprise and Business Law Firm. He specialises in social enterprises, restructuring and distressed M&A.

José is a law and economy graduate from ICADE (Universidad Pontificia de Comillas) and has an LLM in Business Law and Tax Law from the Instituto de Empresa and an MBA from Esden. He also has an LLM in Corporate Insolvency and Restructuring from CEU (Universidad San Pablo/CEU) and is a lecturer in distressed M&A on the Master of M&A Expert Course at ISDE.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

The use of heads of terms is crucial to layout the exact requirements on both buyside and sell side.

From a regulatory standpoint, legal advice should be obtained early in the process on the applicable laws and regulations guiding M&A activities, to determine whether regulatory filings and approvals are necessary. These include securities laws, tender offer rules, industry-specific regulations, foreign shareholding restrictions, and applicable labour and antitrust laws.

Even if the transaction is not subject to Spanish Law, there are certain mandatory legal provisions that will apply on any deal that takes place in Spain.

We would like to emphasise that a local comprehensive knowledge of corporate, labour, tax and financial law is required to profit the advantages of the legal system and to eliminate possible threats.

There are some sectors regulated by specific rules in addition to the general requirements. In such cases, an authorisation from the competent authority will be required. This includes acquisitions of significant stakes in companies that carry out activities in regulates sectors as energy industry, banking, telecommunications and insurance.

Additionally, for cross-border transactions, any antitrust issues should be cleared with the relevant authorities prior to the execution of any cross-border M&A transaction. Acquirers should also include in their due diligence process a review for any bribery or corruption issues.

Particular attention should be given to the nuances of existing local and international anti-corruption legislation. If any bribery or corruption issues are discovered, legal counsel should advise on the appropriate resolution with the appropriate authorities and on structuring the transaction.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Firstly, it is necessary to consider subscribing a Letter of Intent (LOI), Memorandum of Understanding (MoU) or Term Sheet between the parties to declare the intention to begin the negotiation of a sale transaction. The LOI is the guideline to the transaction. Among other matters, the LOI will include the purchase price for the subject business (and the associated payment terms) as well as the other key considerations and conditions to the transaction. By submitting a LOI the seller indicates the buyer's intentions for the deal. Unlike a typical contract, the terms of an LOI frequently are non-binding on the parties except as specifically called out in the LOI. With this document and the due diligence, we minimise the risks that the negotiating process may entail, so it is important that the terms are carefully set out to reach a satisfactory agreement.

Signing a Non- Disclosure Agreement (NDA) is a key element in every single M&A transaction. Some information should be made available to all bidding parties, but other documents containing internal and confidential information need to be reserved for more serious contenders and the final buyer. The failure of a seller

to segment this information as the M&A process moves forward, increases the likelihood that sensitive business documents may be released at an early and inappropriate stage, increasing the chances they will be distributed to competitors.

The next step would be to proceed with the due diligence process. This allows a potential buyer to learn the legal and technical details about a company they are about to invest in. It covers in detail the legal & financial matters of the company and its obligations, liabilities, existing contracts and the situation with the current employees.

It is very important that the due diligence addresses the specific areas and critical transaction factors, as to provide for the main risks, opportunities and threats to design an accurate timed and effective due diligence process.

In any M&A transaction, future performance and strategic fit can be just as important as any current profitability. As a potential buyer, a key business diligence point is exploring the extent to which company will fit strategically within your current business or how you will be able to work together in the future. This includes considerations of human resources, integration and transition, marginal costs, technology and general work culture.

The financial due diligence will resolve many doubts and will help understanding the business. It is important to learn the target company´s history, the current situation of the business, the market, the competitors, as well as the potential but realistic growth and profitability for the future. Once the financial due diligence is completed, there will be an appraisal value and solid arguments to use when negotiating the terms of the acquisition.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

With most M&A operations, there is a commercial risk that some negative aspects of the company might be uncovered after the deal has been closed. In order to solve those problems, an adequate scheme of warranties and representations, liabilities and remedies must be constructed.

A 'warranty' is a statement of fact made by one party to another. Including warranties in a sale and purchase contract is a way of guaranteeing the accuracy of the statement under the terms of the contract. Buyers need to have an assurance from the seller as to the condition of the business that is going to be purchased.

In order to have enough information about the target company, the representations and warranties must include the following subjects: who was the previous owner, organisation and good standing, financial accounts, inventory, domain name, dealers, distribution agreements, employees, taxes, litigation and absence of violations.

The main purposes of warranties are:

- Disclosing information about any known problems to which relate to all the subjects mentioned above.
- Allocating risk between the buyer and the seller, since they provide a remedy in case there is a breach of a warranty.

A breach of a warranty occurs when the statements made were untrue. That situation creates a breach of the contract, in which must be established the damages for the breach in order to return the injured party to the position they would have been in, if the facts assured by the warranty had been accurate.

LeQuid consists of a team of professionals with solid training and track records as well as extensive experience in the provision of legal advice to national and international clients. The team is made up of experts from diverse specialties and nationalities, making it possible to provide a truly comprehensive advisory service, responding to clients' needs quickly and effectively.

Tips for completing a successful cross-border acquisition

Confidentiality is a key

It's prudent for parties to enter into an M&A confidentiality agreement before exchanging any information during negotiations. If the other party has prepared the confidentiality agreement, you should ensure that you closely review the terms. A confidentiality agreement for an M&A transaction should be specifically tailored for the particular transaction, and it is important that you carefully review any terms before you enter into such agreements.

Understanding foreign markets and targets is fundamental

The buyer must have a clear vision and strategy around why it should expand globally. Foreign markets may use different strategies to reflect conditions in their own markets and regions, including cultural influences, language laws, buyer preferences, engineering standards or product regulations.

The company target must be chosen by the buyer carefully since it must match their growth goals. It is very important to have a meticulous strategy that's reinforced with thorough target screening, focused due diligence and detailed integration planning.

Plan the due diligence and use a data room

Maintaining a fluent dialogue with the target company speeds up the due diligence process and helps to identify any problems.

Data rooms have become an indispensable tool during mergers and acquisitions. Usually set by the sell-side, data rooms host all documentation related to the companies, its business units, assets being sold or otherwise involved in the process.

IR GLOBAL

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Nicholas is an English solicitor who has practised in Romania since 1990. He acts as principal of his own law firm, having provided consultation to several international law firms on doing business in Romania. He advises foreign clients on the best methods for acquiring and selling companies in Romania, as well as setting up new businesses in Romania. He has been involved in transactions in the fields of aviation, agriculture, IT, oil and gas, banking and finance as well as in the hospitality fields. He has acted for and advised both buyers and sellers.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

The keys considerations to be borne in mind are:

Why does the seller want to sell?

As Romania has only been a market economy for approximately 20 years, many Romanian shareholders are reluctant to sell the business although, intellectually, they know they should. Romanian companies in many cases are family businesses and therefore there is a close bond between the seller and the business. The first thing to ascertain is there a real intention to sell.

Will the acquirer put in place its own management or will it continue to use the existing management?

Romanian owners in many cases have been bad at delegating, and therefore any middle management will be of an execution nature rather than a decision-making group. Many companies rely on the existing middle management who often do not have the necessary skills to run a business. Further, in many cases where Romanians are given authority, they do not understand the nature of their roll and can alienate other members of the management team. An investor should consider bringing in its own management for a period to run the company.

The internal management of the acquiring company will need to manage the investment. Just because their management will speak the language of the acquiring company it does not mean that they understand exactly what is being asked of them. Also care needs to be taken that they won't seek to promote their friends and family into positions of power and reward in the company.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

We have a full due diligence check list prepared in Romanian which we give to the management of the target company during the first meeting. We try and convey to them that we are not there to criticise them or the way the business is run, but to seek to help them sell the company. We know that we will find issues which can/will be resolved. The meeting with the existing management is very important as it will enable us to extract information which will not be disclosed in the answers to the questionnaires.

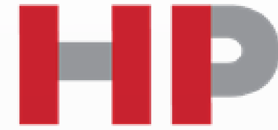
The due diligence team should consist of Romanian lawyers. This enables them to communicate with the management team and staff of the target company and understand what is really being said and divulged; and what is not.

We work closely with the other firms instructed by the client, carrying out any financial or commercial due diligence to ensure that we are looking at those items from the legal perspective that they considered necessary, and which affect the price.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

As Romania is a code law country, several representations and warranties are included by reference to the commercial and civil code. We would ask for warranties for taxation, both past and present, which could lead to requesting an escrow account to cover the taxation warranties until any prescription period has expired. If intellectual property is involved, there should also be clauses covering the usage and variation of such property. Property ownership and usage should also be covered to ensure that the business can continue to be operated. Finally, we would ask for non-compete and non-disclosure clauses from the seller.



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Hammond Partnership (Hammond & Associates) has been operating in Romania since 1990. The firm's predecessor was founded after the revolution in 1989 and was the first law firm in Romania. Hammond Partnership acts for foreigners and Romanians investing in Romania, either by acquisitions or starting new business, as well as Romanian companies. Its clients range from small businesses to major international companies and investment funds. It has an established network of other law firms and is therefore able to assist Romanian companies investing abroad. Hammond Partnership has been involved in corporate and M&A transactions, taxation, banking, insurance and financing as well as employment and commercial matters.

Tips for completing a successful cross-border acquisition

Take advice and consult with a non-Romanian local lawyer. They often can advise on the potential pitfalls in the acquisition, but also add perspective as a non-Romanian working in Romania.

Make sure your international advisors, if involved, listen to the local advisors who have the contacts and knowledge to know what is really being said. While the international advisor will normally drive the case, the local lawyers know what will work in accordance with local law. Any conflict should be resolved in favour of Romanian law. Common law documents often do not work and must be amended for local circumstances.

Just because someone speaks your language, it does not mean that they fully understand the nuances of any question or indeed understand any questions you may raise. Any replies need to be carefully analysed, as they may not be using the words in the usual context. A misunderstanding can occur which will destroy the transaction. Do not rely on local contacts supplied by the sellers, as their loyalty will not necessarily be to you.

CHINA

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Winston JIN Chunqing belongs to a generation of Chinese international business lawyers. His international lawyering practice started with well-known multi-national companies such as Philips, Siemens, L'Oréal and Xerox. He currently represents numerous US and European multinational enterprises, as well as numerous SMEs from Switzerland, the Netherlands and Belgium.

Winston JIN has been one of the most dynamic arbitrators in both CIETA and SHIAC, while he is one of the few arbitrators to sit in both arbitration institutions concurrently.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Foreign investors should bear mind that the Chinese national economic climate and political conditions are extremely complex. The 34 provincial administrative areas have totally different economic conditions, therefore investing in China should be evaluated comprehensively from that perspective. Any preferential policies from local government and the general health of the local economy should be considered. The overall economic climate should also be assessed, for example the current Sino-US trade war.

Foreign investors are advised to judge whether the profit model of the target company is sustainable or not. Although this is not a purely legal issue, it is the core for a successful acquisition. Expertise in terms of business and commerce is needed when analysing the profit model, while lawyers can render legal advice where needed.

If the target company is a state-owned enterprise (SOE), then the foreign investor must get themselves mentally prepared for a whole set of bureaucratic requirements which might not be easy to understand or accept, as well as the special way of handling matters within the SOE internally.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

A tailor-made due diligence list would be the first step for a successful due diligence process. The lawyer from the buyer side should conduct considerable work even before the process officially starts. Such work can be multi-dimensional, including, without limitation, the following;

An industry survey enabling comprehension of any special governmental license/qualification required for the target company

A public domain search in order to have a general picture of this company and to detect any issues around litigation status

An intellectual property (IP) background check to gather knowledge about the IP status of the company.

M&A lawyers should try to find as much information as possible before due diligence kick-off, as there is a great deal of information available in public domain.

During the due diligence process, there will usually be more than one team.

Apart from legal, there will be teams engaged in finance, tax, environmental health and safety (EHS), and commercial due diligence. Lawyers should communicate promptly and actively with other teams to ensure that they can align with each other on basic facts.

Lawyers should look into risks detected by other teams and see whether they have any implications for legal due diligence. In complicated M&A projects.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

The specific warranties and indemnities of an M&A project are differentiated based on the type of M&A project. In an equity deal or an asset deal, the focal point would likely be different.

When it comes to acquisition within the jurisdiction of China, we would like to stress the inclusion of clauses reflecting the rules of state-owned assets under the prefix Supervision and Administration Commission of the State Council (SASAC).

Those special mechanisms under SASAC rules shall be taken into consideration when designing the deal structure, the representation and warranty clauses and indemnity clauses. If the SOE is a listed company, then relevant laws and regulations regarding listed companies shall be considered as well.

We also recommend the inclusion of clauses relating to EHS, within the representation and warranty section and in the indemnity section. For the risks detected in EHS due diligence, the target company must take corresponding corrective measures. If the issues cannot be solved before the closing, such items should be subject to the agreed indemnity mechanism.

Fangben was founded in 1999 by several senior attorneys and law professors. The firm has now evolved into a medium-sized full-service law firm, operating from five offices in Shanghai, Suzhou, Wuxi, Lianyungang and Yancheng.

Fangben's mainstream clientele are European and US firms with operations across eleven practice areas. These include foreign direct investment, cross-border M&A and restructuring, IP, real estate and construction. The firm also specialises in anti-trust and declaration of undertaking, banking and financing, private equity & capital markets, franchising, dispute resolution, employment law and corporate governance and compliance.

Tips for completing a successful cross-border acquisition

It is crucial to acquire comprehensive knowledge of the relevant industry in which the target is engaged in. M&A can be highly demanding in terms of knowledge of the specific industry, so being full prepared in advance could serve to enhance your awareness of the core of the M&A project, including the bargaining power and any deal killers.

Pay attention to whether the target is state-owned or not. In China the 'identity' of state-owned enterprise implies many things, including bureaucratic examination and approval procedures, special laws and regulations. These may be related to special tendering, bidding and listing processes and evaluation of assets.

China has been attaching more and more importance to Environmental Health & Safety (EHS) recently. Incompliance with EHS creates hidden risks for the acquiring party, which could mean hefty fine. You can't be too cautious in checking the EHS status of the target, stipulating the representations and warranties clauses in this regard within transaction documents.

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GERMANY

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Christoph Just is active in litigation and regulatory work (energy, public procurement, environment). He advises international companies, the Federal Republic of Germany, municipalities and companies, especially in the automotive, banking, chemicals, energy and construction materials sectors. Christoph represents parties or acts as an arbitrator in arbitral proceedings.

He is listed by several relevant legal business journals, including JUVE (frequently recommended lawyer for public law and litigation, since 2004) and Chambers & Partners (notable practitioner for litigation.)

Christoph studied law in Saarbrücken and Exeter (England) and spent his legal clerkship inter alia in a major German law firm and in the Hong Kong office of a globally active company. He holds an LL.M. in European law and is a certified specialist tax lawyer since 2002 as well as a certified specialist in administrative law since 2003.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Analysing your target is crucial. Typical targets in Germany are so-called 'Mittelstand' companies, which may be described as mid-size, family-owned and family-directed companies with strong personalities derived from the owner-family's management.

Though often market leaders and/or innovative, the documentation can be individual and not necessarily compliant with international standards. The structure, culture and processes are idiosyncratic and may deviate from US/international standards. There is often a strong personal and emotional link to the employees.

You should assess whether the target is active in a firmly regulated market, and whether there are any strong regulatory restrictions. Antitrust thresholds should be considered, while the factbook must be read and interpreted and the due diligence question list designed.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Analysing the client is important, including his skills and experiences and weak points. We need to know if the client is open or adverse to taking risks and what their business goals are.

The peculiarities of German law and market practice are important. In Germany, share purchase agreements often require formal notarisation by a notary public, which triggers costs.

Structuring and securing the price is another area that deserves attention. This will include macs (material adverse clauses), drag-along necessities and earn-out options.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Representations and warranties are central to eliminate foreseeable risks. This can cover price securitisation or mechanisms on adjusting the purchase price.

The clauses can cover the pricing structure and trigger benefits after closing, earn-outs or drag-alongs. Never forget to fix a dispute resolution scheme, an applicable law and a place of jurisdiction.

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SCHULTE RIESENKAMPFF advises clients in all major areas of business law. The focus of the firm's consultancy is labour law, commercial and corporate law/M&A, IP/IT, antitrust law as well as public commercial law.

For more than 15 years, the firm has combined profound sector knowledge with excellent legal expertise. Experts in the Frankfurt office guarantee the highest level of personal advice, tailor-made solutions and responsiveness.

Tips for completing a successful cross-border acquisition

Cultural differences need to be taken into account. German negotiation participants are often straightforward and direct, which in other cultural traditions might be regarded to be rude. On the other hand, they expect that a word or decision once uttered, shall remain and not be questioned again. The negotiations – at least in the mid-cap sector - regularly take place with decision-makers, not intermediary personnel.

Consider different legal concepts and differences. There are often 'false friends', when applying terms or structures that seem familiar.

Consider whether 'neutral' concepts such as the United Nations Convention on Contracts of the International Sale of Goods may offer suitable solutions (e.g. in asset purchases) or whether arbitral institutions (e.g. the DIS Deutsche Institution für Schiedsgerichtsbarkeit (German Institution for Arbitration), could be useful.

IR GLOBAL

POLAND

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Joanna specialises in civil, commercial and business law. She provides comprehensive legal services to companies and other business entities in the field of ongoing corporate services, obtaining necessary permits and concessions, drawing up legal opinions, drafting contracts as well as negotiating them. Joanna participates in conducting audits and deals with the implementation of compliance procedures. She also advises in complex restructuring projects of companies and specialises in transaction advisory, with a particular focus on mergers and acquisitions. She also works in the field of public procurement law, offering legal assistance at every stage of the process of both granting and obtaining public procurement.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Check the history of the company since the beginning of operation, including who and what entities were involved in company. It is also important to verify whether the company's business profile has changed radically over the years. Changes may mean that the company has some 'interesting secrets.'

It is advantageous to carefully read financial statements for the company. It will provide a view on the financial condition of the company and the approach of its shareholders. A lack of regular reporting is generally a bad sign.

It's worth verifying any existing agreements and the status of their performance, while ensuring there are no civil or criminal proceeding pending towards the company or their management board.

It should not be forgotten that, at the preliminary conclusion of the agreements, parties should clearly understand the confidentiality of information disclosed. They should also have expressed mutual interest in executing the deal and defining the most important items of the transaction. The rules of cooperation and the steps to be taken should also be set out, such as non-disclosure agreements and letters of intent.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

There are no specific rules for determining a price. It is set by the contracting parties in accordance with the principle of freedom of contract. However, the purchase price should correspond with the market price of the shares or assets being acquired, otherwise there is a risk of a potential dispute with the tax authorities.

The essence is to prepare the complete check list of documents and matters needed to be verified, taking into consideration the business environment the company is operating in.

Sometimes the sellers are not aware of the importance of providing complete information, so it is important to get to know the business environment in which the company operates, identify as many risks as possible and then strive to verify them. There is no such thing as too much knowledge.

It is essential that, in addition to the information provided by the company, you check all publicly available records. The due diligence process takes time, so we recommend double checking the publicly available records before a final decision is taken.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

The agreement should include the warranties on ownership of shares of the company and on the company conditions such as:

1. full title to the shares and capacity to sell them;
2. no encumbrances and no third parties' rights to the shares;
3. no infringement of any provisions of law, agreements or administrative decisions by which the seller is bound through the execution and performance of the transactional documentation;
4. fair presentation of the financial condition of the company and the results of its operations in such financial statements;
5. no material adverse change in the general affairs, management, financial site;
6. employment relations such as employee pension programs, collective bargaining agreements, payment of social security contributions;
7. taxes such as due payment of any taxes, timely submission of all tax notices; returns, computations, documentation, declarations and registrations.

In accordance with the above warranties, the parties should determine liability for any loss incurred by the buyer as a result of false representations and warranties. In transactional practice, there are situations when a party's liability for submitted representations and warranties is limited, for example up to price.

From the other side of the transaction, we recommend payment securities, such as obtaining bank guarantees, deposits or the use of an escrow account.

KW Kruk and Partners Law Firm LP is an independent law firm providing complex legal services to Polish and foreign corporate clients, financial institutions and public administration bodies (state and local government). They are a team of experienced lawyers with knowledge of the specificity of operations, problems and legal aspects of individual sectors of the economy. This enables the correct assessment of any business situation their clients are in and allows them to adjust legal solutions to attain the intended objectives.

KW Kruk and Partners has a global network of personally known and trusted high-level advisors, experts and business connections, which allows them to meet the most complex of challenges.

Tips for completing a successful cross-border acquisition

Preparation of solid and complete due diligence - the analysis of the company should be multi-levelled and take into account the specificity of the company's activity and local legal reality.

Getting to know the legal aspects of the business operation in the jurisdiction of the acquired company is important. It minimises the business risk and gives the buyer a wider perspective. They can then set realistic targets for the transaction.

Put together a team of people from the involved jurisdiction with skills and experience in cross-border transactions. The goal is to integrate the whole process and prepare companies to operate as one.

IR GLOBAL

ITALY

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Alessandro provides tax planning and assistance both domestically and internationally. He specialises in the field of business operations and has developed significant experience assisting clients in corporate matters and extraordinary transactions.

He is an expert practitioner in issues related to trusts and in the establishment of supranational bodies and institutions. As a receiver at the Tribunal of Milan, he is a member of the supervisory bodies and audit committees of leading industrial, commercial and financial companies. He is also active in assisting non-profit organisations and associations, serving as statutory auditors and board members for numerous institutions.

In 2000, he became one of the founders of GMMPAV Certified Public Accountants. He then founded MM & Associates in 2009, which became MM & Associates FinaRota.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

During the due diligence process, legal violations and tax shifts by a target person or company are shed. Furthermore, investigative institutes pay more and more attention to overall aspects, such as corporate culture, environmental standards and IT security.

Commercial due diligence and business due diligence are linked together, as they both focus on market analysis. In commercial due diligence, the company focuses on the marketability, therefore the company-related aspects play an important role: an analysis of the target company takes place and the focus is on purchasing and distribution. Who are the suppliers, what contracts have been concluded with them and how efficient is the distribution chain? Furthermore, it investigates the management of materials. Quality and quantity play an important role in this sector. Research and development are often interesting too: does the target company work to promote innovations in its field? This paves the way for future potential.

In order to assess the company and its position on the market, the next analysis step takes less account of the company itself and analyses the market sector in which it operates much more. Thus, it is possible to find out who the major competitors are, and which products and services contribute to their success. Which business model do the participants of a given market follow and what are the results obtained?

The business due diligence goes further, investigating how the market developed. To influence a buying decision considerably may be mergers, new competitors or market downturns. Each of these operations describes in which playing field your target company is located. Where possible, customer surveys are also used to find out more about the company's external effectiveness.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Planning and coordination are critical factors in due diligence. The extent and depth of the analysis to be implemented in order to balance the cognitive needs of the investor, must be agreed between the parties with some constraints:

- time (the deeper the due diligence, the more time required)
- confidentiality (the greater the level of detail, the higher the number of people involved in the process with a consequent increase in the risk of leaks)
- professional skills (as the thematic extent of the checks increases, so does the number of professional specialisations necessary to cover the areas of interest)
- the cost (the greater the involvement of expert third parties, the higher the cost of due diligence).

A clear definition of the objectives is fundamental for the success of the due diligence: unclear, non-shared or unrealistic goals limit the significance of the investigation work with respect to the cognitive needs of the investor.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Clauses concerning the guarantees are usually written in a particularly analytical way. This is the preferred contractual technique in Anglo-Saxon countries, where contracts are characterized by being particularly detailed.

The analytical list of the guarantees is generally accompanied or replaced by clauses of closure. These relate to disputes between the company and third parties; however, it appears more effective to limit this to a general clause attesting the absence of any dispute.

Turning to the content of the clauses, a common distinction is that between the guarantees pertaining to the 'title' of the participation and the guarantees relating to the 'content' of the participation.

The clauses on the 'title' are those that refer directly to the characteristics of the shareholding and of the target under the corporate profile. For example, the seller guarantees that he is the owner of the shares or quotas and that they are free from any right of third parties; or the seller guarantees that the company has been validly constituted and is validly existing according to the national law that regulates it.

The clauses on the title are usual in contracts for the sale of shareholdings, and the seller can hardly refuse to grant such guarantees to the buyer. Such clauses are generally not subject to quantitative limitations to compensation of the damage: even where there are thresholds responsibility of the seller, they do not apply to this type of guarantee, too basic to be the object of any limitation.

More important, in practice, and therefore the subject of major negotiations, are the guarantees relating to the 'content' of the investment (assets and liabilities of the company). They can relate to the most diverse topics and vary from case to case, depending on the sector in which the company is active.

The most common guarantees in contracts for the acquisition of shareholdings, include those concerning the budget. Related to the guarantees on the balance sheet, it is possible to mention those in tax matters, essentially proving the statement that the company has always respected all its tax obligations. From an economic point of view, the guarantees can be important for employment relations and social security and pension contributions.

MM&Associati FinaRota is a firm of lawyers and tax advisors united by a single goal. That is to help clients grow by offering integrated and quality assistance for all aspects of their business.

Founded in 2018 to help both domestic and international companies, the firm decided to combine its legal and tax expertise to create a unique service rooted in experience, trust and dedication. A dynamic team anchored by the guidance of senior professionals, offers the skills necessary to develop a range of corporate projects.

M&M Asociati are more than just advisors. The firm is a reference point for clients, sharing values and passionately tackling every challenge.

Tips for completing a successful cross-border acquisition

The agreement must be a good strategic agreement.

The objective must have a good strategic logic, such as access to a new market or technology or the recognition that a competitive advantage can be created through the inclusion of new skills linked to individual skills. The acquisition must make the purchasing company a stronger competitor on the market to make sense.

Financial strength is required to complete the deal.

This includes the ability to afford the purchase, but also to pay the interest on all the loans that the buyer contracts to make the purchase.

It is also necessary to make the necessary investments in the target or in the reality resulting from the merger, and to be able to manage company performance which may have slowed down in the short term, due to distractions linked to integration.

Your company must also have a culture that can work well with the target's corporate culture.

If the target of the acquisition is a company that has a savings approach and you instead have an innovative and revenue-oriented approach, it may be difficult to combine these different approaches. Indeed, cultural homogeneity is a major determinant of the success of post-acquisition integration.

If the operation you have in mind does not have at least these characteristics, I strongly suggest you avoid it. If all the aforementioned criteria are met (strategic, financial and cultural), it will be possible to proceed with the acquisition by entering into the merits of a more thorough evaluation.

UAE

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Thomas Paoletti is the founder and general manager of Paoletti Legal Consultants. He has more than 20 years of experience in sophisticated corporate, real estate, finance and technology related matters, on all sides of a transaction, be it the buyer, seller, lender, borrower, investor, or the director.

He has an active role in several organisations in the UAE, including President of the Italian Business Council and Vice President of the Italian Social Club of Dubai. He is also listed as a lawyer at the Italian Embassy in Abu Dhabi, Italian Consulate in Dubai and the Italian Trade Commission in Dubai. Before moving to Dubai, Thomas was partner at Studio Legale Paoletti in Rome for more than 10 years. Thomas received his Law degree from the University of Rome, after completing his graduation thesis as a visiting scholar at Yale.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

An in-depth check of the scope of the licence held by the United Arab Emirates (UAE) target company is key. The scope of the acquisition must be very carefully defined. Questions to be asked include 'What kind of activities the acquiring company will pursue through the target company?' The answer should include activities that may be only occasionally carried out.

Once this is clearly understood, the UAE licence of the target company must be carefully reviewed to make sure all the intended activities can be legally carried out post-completion. Omitting this review may put you in trouble as it is not always possible to expand the licence of the target company, post-completion, to include activities mistakenly left out of the review.

The review of financials is also key. At the end of the process, the financial situation of the target company should be crystal clear, with precise details regarding all the existing debts. A good understanding of the history of the target company is also important, to have at least an idea of when and how the outstanding debts will be repaid and what kind of financial dynamics to expect at the initial stage after the merger.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

It is important to have clear ideas and a plan at the outset. We should ask about the scope of due diligence, and define that in clear terms, making sure a financial due diligence is not delivered, when an IP one was expected.

It is also important to explore the rationale behind the due diligence, asking questions such as - Who are the stakeholders? Who will benefit from the due diligence? What is the purpose of the transaction?

Once you have a reasonable understating of this scenario, you are better positioned to define the scope and the outcome of the due diligence and this will give you focus, guidance and will save costs as well.

In practical terms, we have developed a very articulate and complete process, including checklists that we employ at the outset of our engagement.

Depending on the characteristics and the time frame of the case at hand, we pick the right checklist and stick to it. Of course, not all the items in the checklist will necessarily be useful to the process. For example, the section related to IPR and software may not be entirely relevant in the acquisition of a food and beverage business (although IP issues are relevant in virtually every M&A case). The importance of the checklist is to have a predefined process to follow. Since there are so many large and small details to take into account, it is safe to have a shared and reliable set of rules for the team to work together more effectively.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

In any due diligence exercise, extensive contractual statements in the form of warranties are essential. The scope and content of such clauses will vary depending on the case at hand, but, in general terms, common areas of warranty protection should include key aspects such as the employees' status, the value of the assets, or any pending or threated litigations.

With regard to the employees' status, for example, when assisting the buyer it is often desirable to include specific warranty clauses that will require the seller to warrant that during a specified period prior to the transaction there were no redundancies, or that there has been no change of employment terms in relation to remuneration. For a transaction in the technology sector, IP warranties are of primary importance.

Warranties in this domain are likely to require detailed disclosure of all the target's IT systems and IT relevant contracts such as software development or software maintenance agreement. Whatever the content of the specific clause, you will have to spend a lot of time just refining your drafting. For example, if you are assisting the seller, you will always want to soften the text of warranty clauses, so that you better protect your client. Another key point in negotiation is related to the time limit for the warranties.

Paoletti Law Group is a global legal and business services firm advising clients across the Middle East, EU countries and the rest of the world.

They provide value adding and cost-effective solutions for national and multinational businesses in a wide range of sectors including corporate domestic and cross border transactions, finance, new technologies, construction, and oil & gas. Headquartered in UAE, the firm maintains offices in Rome and Shanghai, and grants its clients access to a worldwide network with operational desks in key jurisdictions around the world.

Tips for completing a successful cross-border acquisition

Find the right partner in the jurisdiction you want to operate in. Previous demonstrated experience with M&A is essential. Transactional lawyers, as such, are not necessarily the right advisor for a complex M&A case.

Have a post-closing plan in place. This is more for the client to prepare, but it is desirable that we as lawyers teach the client that the due diligence process and even the transaction itself are only the starting point. These are delicate negotiations that could take weeks or even months to complete after the deal is closed.

Don't lose sight of the resources and costs involved. Due diligence can easily become an endless process in complex projects. Costs should be carefully estimated and agreed before work starts.

IR GLOBAL

US - TEXAS

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Our M&A team is headed by four partners.

David Rae has been with the firm 30 years. He practices primarily in the M&A and transactional areas. Growing up in Mexico, and with a strong base of foreign clients, he can speak directly to many of the issues being faced by companies entering the US market.

Peter Marmo has been with the firm over 10 years. He practices M&A and tax law with a particular expertise in international tax matters. He is fluent in Portuguese and Spanish and frequently helps structure M&A deals with an international component.

Chris Goodrich has been with the firm over 16 years and practices primarily in the transactional, tax planning, and M&A areas. Chris has represented a number of service, manufacturing and real estate development companies which have grown organically and through targeted acquisitions.

Andrea Paisley has been with the firm nine years and has a broad-based corporate practice which focuses on M&A and entity structuring.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

Understanding the Federal and State tax implications of the acquisition is essential to determining the proper US acquisition structure which, if managed appropriately, can result in tax savings to the client of over 20 per cent. These tax considerations include, not only how the acquisition funds will be eventually repatriated to the country of origin, but also any US taxes the international buyer may be subject to following the acquisition.

Certain assets, such as real property, equipment, and inventory, are subject to special tax rules which can further complicate the analysis and impact the ultimate decision making. Clients may also need to understand and plan for both business income taxes and US inheritance taxes.

Confirming compliance with local and state employment laws is especially difficult for international clients. Common areas of complexity which impact international clients include whether an individual has been correctly classified as an employee or independent contractor, and appropriate handling of workers compensation and occupational safety claims. It also involves understanding mass-layoff regulations, and compliance with (or exemption from) federal employee benefits laws. These matters all have significant business and tax implications for international buyers.

The regulatory framework applicable to each transaction varies and often includes international, Federal, State and even local implications. Working with professionals with tailored experience to both the industry and the geographical area is key to adequately addressing and planning for these potential hurdles.

Blending international corporate cultures and practices with those of the acquired local business often complicates the transition process. In our experience, established international companies often acquire small US targets, many of which have informal corporate structures and working environments. The transition can be difficult for the buyer and the employees if not handled appropriately.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

In the US market, buyers and sellers customarily enter into a Letter of Intent (LOI) prior to conducting detailed due diligence. The LOI, which is typically non-binding, often contains the purchase price or an established metric for determining the purchase price. In the absence of due diligence results that are significantly inconsistent with the seller's initial representations, the purchase price is typically fairly static. We advocate for a mechanism to adjust the purchase price to the extent due diligence results materially impair the value of the US target.

To ensure a thorough and efficient due diligence process, there are a number of important considerations:

Identifying the right due diligence team is important in all transactions, but especially in cross-border acquisitions where the international buyer may not be familiar with local customs and operations. An experienced attorney and accountant are

key to addressing the legal, financial and accounting due diligence matters. If real estate is a material part of the transaction, it will also be important to engage an environmental engineer, title company, surveyor and real estate appraiser.

The due diligence team must have a strong understanding of the target US company, its structure and its operations in order to properly tailor due diligence requests. General requests may not identify material concerns that are specific to the target company's business, which could result in the inability to identify and address potential issues.

Before providing any confidential information, most US sellers require the buyer to execute a Non-Disclosure Agreement (NDA). Tailoring the terms of the NDA to the specific deal is key to avoiding an overbroad interpretation and the potential publication of private information, especially if the international buyer is considering a number of target companies within the same industry.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

In our experience, there is no one-size-fits-all acquisition agreement. The key provisions will vary based on the US target and the industry, but often include the following:

The proper structure of the acquisition is, in our opinion, the most important component of each transaction. While the majority of transactions we see in the middle-market are asset acquisitions, there may be a business (or financial) requirement that results in the purchase of stock or other equity. The ultimate decision will affect both parties' legal obligations as well as their resulting tax position. The international buyer should also consider whether certain assets, such as real estate, should be acquired separately from the operating business in order to isolate potential liabilities.

All buyers prefer 'security' for a seller's representations and obligations. Maintaining an escrow account for a period of time after closing or paying a portion of the purchase price through an earn-out provision (or other contingent consideration) are common mechanisms used to keep the seller 'honest' by ensuring that the seller continues to have a financial interest in the success of the business after closing. These mechanisms motivate the seller to make more accurate representations and create an incentive for a successful transition to the new owner. In the past 10 years, the US market has seen an increase in the number of deals that include a cap on the seller's post-closing liability, making these security mechanisms even more important for buyers.

Tailoring the representations and warranties to the seller's business is typically one of the most time consuming and important aspects of a transaction. Representations we see in almost every transaction include those addressing unencumbered ownership of the assets or equity to be purchased, compliance with laws and regulations including environmental laws, payment and filing of all federal and state taxes, the accuracy and completeness of financial statements, and employee benefits.

Crady Jewett McCulley & Houren LLP has been serving the Texas legal market for more than 70 years. The firm has built a diversified law practice with a concentration in the M&A, tax, and corporate areas. The firm's experienced attorneys provide the sophistication found in much larger firms, with personalised attention and a rapid turn-around. A breadth of experience in the M&A field, combined with deep relationships as trusted advisors to clients, allows the firm to provide both top legal advice and business insights into the local market.

Tips for completing a successful cross-border acquisition

Successful cross-border acquisitions require perseverance, a good understanding of the local business and legal environment, and an experienced team of professionals. This helps to navigate not only the legal aspects of the transaction, but also the financial, tax, real estate, intellectual property, engineering and other business aspects involved with operating in a new market.

Our most successful clients are those who have taken the time to find qualified local professionals who are a good fit with their business and those who are willing to invest in a long-term relationship in a new and potentially very different market.

IR GLOBAL

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Osama Rifai has around 30 years of experience in banking, industry. He started his banking career in Zurich (wealth management), followed by London (investment banking) and later Lugano (syndicated loans, risk management, corporate lending, project finance). He later joined an industrial group in Switzerland where he headed the financial services operations in Europe and then, after takeover by a German industrial group, he became responsible for corporate finance worldwide. Fifteen years ago, he set-up his own advisory company in Zug, Switzerland,

Osama's focus is on international corporate finance transactions and inbound strategy & business development projects. He acts as interim CFO for small and medium-sized companies in Switzerland, Germany and Austria and is a finance teacher at some reputable business schools in Switzerland and the USA.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

A special feature of the Swiss market is the fact that there is hardly any financial information available for small and medium sized or non-listed companies. Therefore, it solely depends on the 'goodwill' of the owner(s) or the board of said targets to disclose specific insights about the company.

Company owners in Switzerland value the preservation of workplaces and the continuity of the company, as well as money. This must be respected. That requires a well-tailored and well-communicated approach, as well as a confidence-building attitude from the potential buyer. The elements to be considered are:

- the first contact is very decisive, and, in this context, it is advisable to thoroughly evaluate whether it makes more sense to directly or indirectly approach the owner. Often there is only one chance to make sure that the door is opened for talks.
- the 'story' of the acquisition is also key. What is the buyer's intention once the target is acquired, what are the plans for future strategic development of sites and products, jobs and branding.
- a further ingredient for a successful acquisition is the attitude, making sure that one is the equal of each other and plausibly communicating a win-win philosophy. This not only includes the new buyer or owner of the target company, but the whole team he or she has appointed for the transaction.
- Should the target company be integrated, once acquired, the post-merger integration plan is paramount. The roadmap to success means that people must be included and taken on board. Skilled and experienced employees are really sought after 'assets' in Switzerland and they will make the difference between a successful or not so successful transaction. Communication, authenticity and credibility of management are drivers in this phase of the M&A process and should be prepared in advance. The labour market in Switzerland offers enough opportunities for good people and everything should be done to keep them.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

Due diligence is a very critical part of the transaction, especially for the seller. A lot is disclosed, more people may be involved, and it can be time-consuming and expensive. That means for a buyer entering the local market and wanting to buy a company, it is more than recommendable to structure the due diligence phase accordingly to reduce the risks as much as possible, for both seller and buyer.

The scope of due diligence must be clearly defined around such areas as customer or market due diligence, that may be carried out after signing or closing, or by third parties. This leads to two subsequent steps. What technical skills are required by the due diligence team, and which skills are insourced for that phase.

Depending on the buyer's experience with such transactions, it is recommended to appoint an external due diligence manager who will coach and monitor the whole process. This is not only a question of additional resources, but a way to better manage critical parts of the due diligence phase.

In Switzerland, the level of documentation is often high on the seller's side. Necessary documents are usually available, data rooms comprehensively documented and, in general, updated information available. This significantly reduces the risk for buyers. Nevertheless, enough time and money should be allocated.

QUESTION THREE

Once an acquisition is agreed, how would you structure the contractual phase and what is key about the post-merger-integration phase?

Depending on the level of planned integration, there are some key elements to be considered and proactively managed during a PMI phase.

It starts and ends with communication. An acquisition is normally a critical project for all parties involved, including employees and management, clients and suppliers of the acquired company, and even for the buyer and its staff. It is not only a question of providing ongoing information to all relevant internal and external addressees during the PMI phase, but also the credibility and relevance of the information provided. It makes sense to prepare the communication strategy during the acquisition phase and to have people involved from both sides. Communication in that part of a transaction has top priority and must be managed at the executive level.

Another important topic is the appointment of key people. Sometimes the buyer is happy to keep all people on board to guarantee a smooth transition and continuous operation. But, even in such an unproblematic context, it is key to confirm the people in charge.

It is a different story when the buyer already has an operation in Switzerland and intends to merge both entities. In this case the topic becomes a value driver or destroyer if not properly managed.

An excellent instrument to manage such a phase, is a slightly modified Balance Scorecard approach or, simply, an adequate dashboard. This allows data to be condensed for a top-level audience and as a decision base for management; it also allows the organisation to split the dashboard into functional and other goals and duties.

Rifai & Partners

Rifai & Partners (R&P) was founded about 15 years ago by Mr O. Rifai, managing partner of the firm.

The company has focused its activity on the fields of international corporate finance (M&A) and international strategy & business development (incl. profit management and value enhancement programs).

The consulting services of R&P include support for companies and entrepreneurs concerning conceptual issues, alongside operational responsibilities. All our partners boast abundant management experience, successfully acquired over decades in the manufacturing or services sector, and can thus provide excellent performance appraisals.

Rifai & Partners helps businesses through advice, including conceptual consulting and continuous support, alongside in-house seminars and workshops, primarily dedicated to knowledge transfer or to project development and implementation.

The firm also offers interim management services, if operational resources and know-how are required.

Tips for completing a successful cross-border acquisition

Make sure that enough resources are allocated to the cross-border transaction. Often, such projects are handled in parallel to daily duties. Cross-border transactions do absorb a lot in terms of management attention and financial resources and represent a major burden for both the buying and selling entity.

Attitude is a key ingredient for success in such deals. Showing a keen interest in a mutually beneficial outcome, win-win, to use another common term, is a decisive factor during negotiations, especially when negotiating with owners of small and medium-sized companies.

An efficient post-merger integration is paramount, as it means the buyer has to move people in the right direction and transform a business case into something real, that should be successful and rewarding.

IR GLOBAL

FRANCE

Christian Roth

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Christian Roth has 40 years of experience in corporate law and business litigation. He has developed a particular knowledge based on a multicultural approach.

After practicing for 25 years as senior lawyer and managing partner in two French-German and European practices, he founded rothpartners in Paris in 2012. Christian is the managing partner of the firm, which became a leading law firm in its area of practice in a very short time.

Christian Roth is a member of the Paris and Brussels Bar and the President of the Franco-German committee of the Paris Bar.

Alexander Roth joined the law firm rothpartners as a lawyer in 2013. He specialises in contract law, commercial law, civil and commercial litigation and business law.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

When contemplating a cross-border acquisition, the main question for a potential buyer is whether the company considered for acquisition fits the buyer's development strategy.

A buyer interested in a potential foreign target may have various reasons and strategies for such an acquisition. This may also be the case in the event the target is placed under receivership or restructuring measures.

When considering France, information on the legal environment should not be biased by former images of a non-competitive country. According to the latest Ernst & Young activity report on France (Baromètre de l'attractivité de la France 2019), the country is ranked before Germany in competitiveness in the fields of industry and research and development.

The same report indicates the year 2018 saw a historical 85 per cent increase in R&D projects, bringing to 144 the number of new or extended projects in this field. That is twice as many projects as Great Britain and Germany combined. In addition, foreign industrial investments have seen a 5 per cent increase in the same period, reaching 339 projects. This sets France at the top of the European podium.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

A due diligence process is a series of verifications meant to provide an investor or buyer contemplating a potential investment transaction with an idea of the precise situation of a company before expressing his intent to acquire or invest.

This process generally requires verifying a target's strategy, fiscal situation, bookkeeping, workforce and environmental constraints. The extent of the due-diligence process depends on the size of the contemplated target as well as on the identity and experience of the buyer.

Two methods may be pursued, mostly depending on the identity of the buyer. On the one hand, when dealing with 'seasoned' clients, accustomed to similar operations, only red flag items are of interest. This is also true when dealing with bigger corporations or structures, such as private equity funds, which are staffed with numerous in-house advisors.

When dealing with clients that are less commercially-oriented the due diligence process must be more comprehensive.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

Most transactions contain standard clauses for reps and warranties. However, these are to be tailored according to the nature of the activity carried out by the target and the spirit in which negotiations are undertaken.

As literature indicates and experience shows, reps and warranties are used to describe the assertions that a buyer and/or seller makes in a purchase and sale agreement. Both parties are relying on each other to provide a true account of all information and supporting documents.

The seller's representations usually relate to the information that the buyer is relying on to value the company. Therefore, the seller ends up not only stating that all financial information provided is true and accurate, but also delivering information to support this statement, such as financial statements, customer and supplier listings, copies of all major contracts and equipment listings.

This information all forms part of the schedules to the purchase and sales agreement and may be referred back to post-transaction to ensure that what was effectively purchased truly does exist.

The buyer's representations usually relate to the form of consideration being used to complete the transaction. If the buyer's stock is part of the transaction consideration, then the buyer must represent that it is legally able to offer this stock. In addition, the buyer must provide a shareholder agreement for the seller to review and state that the stock is being offered free and clear of any encumbrances.

Reps and warranties form the basis of due diligence for buyers. Essentially, they provide an opportunity for the seller to disclose any potential issues with the company prior to completing the transaction. For example, if a contract with a significant customer that has been included in the valuation is about to expire, the seller is obligated to disclose this expiry as part of its reps and warranties.

Purchase and sale agreements usually contain an indemnification clause, to mitigate the risk of financial loss from either party not representing something significant. This clause protects the other party from an omitted or missed representation, which may lead to a post-transaction financial loss. Therefore, it is important that both parties provide all information up front in their reps and warranties, to avoid costly legal disputes trying to enforce indemnification clauses. This is to show that, although you can work on the most comprehensive reps and warranties clauses, it will all really depend on the method used for determination of the purchase price.

In our experience, most difficulties arise in the presence of earn-out clauses. An earn-out clause is a contractual provision stating that the seller of a business is to obtain additional compensation in the future if the business achieves certain financial goals, which are usually stated as a percentage of gross sales or earnings.

In order to avoid lengthy discussions and potential disputes, these clauses are to be crafted meticulously and must rely on indisputable calculation methods. Associating such clauses to the setting up of an escrow account is to be privileged. The essential issue remaining will then be that of knowing how much cash is paid up front.

Essentially oriented towards the world of business deals, companies and their executives, rothpartners offers consulting, arbitration and litigation for companies whose markets are Europe and the world.

rothpartners operates in four different practice areas: corporate law, intellectual property, commercial law and public law.

The law firm has offices in Paris and Brussels and comprises four attorneys, two consultants, two paralegals and an office manager. Biculturalism or multiculturalism surrounds each member of rothpartners. The heart of their know-how is the knowledge of others.

Tips for completing a successful cross-border acquisition

A good understanding and good line of communication with the referring party.

Master the language and culture or find an advisor that masters both, in respect of the legal matter at hand.

Provide services of high international business standards.

IR GLOBAL

AUSTRALIA

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Geoffrey Shiff is a highly experienced lawyer who has acted as a founder, principal and partner of law firms in Melbourne for many years. He, along with his partners and team at Shiff & Company, provides a range of high-quality commercial law services at reasonable cost to local and international businesses and private clients.

Geoffrey places a great deal of emphasis on building and maintaining long-term trusted personal relationships with clients and referrers.

In addition to day-to-day involvement across a wide range of client legal matters, Geoffrey is a board member of Melbourne cultural, educational and business and other not-for-profit organisations. He is an experienced mentor and advisor and has taken a leading role in organisations and programs fostering entrepreneurship and start-up enterprises.

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QUESTION ONE

In your experience, what are the key considerations that international clients should have front of mind when assessing a target company for acquisition in your jurisdiction?

It is imperative that international purchasers who have identified a potential target entity in Australia, familiarise themselves with the Australian legal and regulatory framework as early as possible in their assessment of the acquisition.

Shiff & Company Lawyers provides legal advice on cross-border transactions and Australian law, to offshore clients considering the acquisition of equity in Australian entities and the purchase of businesses.

The following are the most common legal and regulatory considerations for international purchasers:

- Applying for and obtaining government approval for international acquisitions as required pursuant to the Foreign Acquisitions and Takeovers Act 1975 and guiding clients through the Australian Foreign Investment Review Board (FIRB) application process.
- Antitrust regulation, specifically the Competition and Consumer Act 2010 and Australian Competition and Consumer Commission (ACCC) merger authorisations process.
- Company law practices in Australia including the Corporations Act 2001 and Australian Security and Investments Commission (ASIC) reporting, residency and regulatory requirement.
- For target companies listed on the Australian Stock Exchange, the Australian Stock Exchange ASX Listing Rules.
- The Modern Slavery Act 2019 which regulates foreign sourcing of materials, components and goods and other supply chain reporting requirements.
- The Personal Property Securities Register (PPSR) regime established under the Personal Property Securities Act 2009 which regulates and maintains the database of security interests registered over target entities.
- Australia's federal and state employment law systems and, in particular, employee entitlements as established under the Fair Work Act 2009 National Employment Standards, various Awards, Enterprise Bargaining Arrangements (EBAs) and State or Territory Long Service Leave (LSL) legislation.
- Franchise compliance considerations and compliance with the ACCC Franchising Code of Conduct.
- The impact of intellectual property laws and registrations, including the Patents Act 1990 and in particular the Trade Marks Act 1995 and brand protection generally.
- The Australian taxation system including Income Tax, Capital Gains Tax (CGT) and Goods and Services Tax (GST).
- Real estate considerations such as the interpretation of leases and investigation of title to business premises.
- Banking and finance considerations, having regard to sources of offshore and local funding.

QUESTION TWO

How would you, as a professional advisor, approach the due diligence process to ensure all bases are covered prior to a sale price being agreed?

- Collaboration and communication are the key to a successful due diligence operation. It is important for each specialist advisor to be aware of what each is reviewing to avoid duplication of advice and to maintain a co-ordinated and consistent approach to the assessment of key issues and considerations. This also assists the parties to maintain the agreed due diligence deadlines.
- Implement a staged approach to due diligence, allowing for multiple rounds of questions and answers and at least one interim due diligence report. This will ensure that the client has relevant information and receives advice in a timely manner.
- Ensure that the client has time to reassess the purchase opportunity and to reconsider any critical issues if needed.
- We recommend that where there is a larger acquisition team advising the purchaser, a key point of contact with the vendor be established early. We prefer to take on the role of due diligence co-ordinator in Australia for our overseas M&A clients.

QUESTION THREE

Once an acquisition is agreed, what are the key clauses or warranties and indemnities you would recommend for inclusion in the sales contract?

At Shiff & Company, we do not subscribe to a 'one size fits all' method of acquisitions. We believe in working with our clients to tailor a sales contract that:

- reflects our client's commercial requirements;
- minimises risk exposure; and
- addresses all issues raised in due diligence.

Depending on those considerations, we may recommend preconditions to completing a sale such as obtaining statutory authority for the acquisition. If, in the process of due diligence, potential material threats to the target entity are identified (such as threatened litigation) we would be likely to recommend rigorous indemnities to protect the buyer, post-completion.

Shiff & Company Lawyers is a well-established commercial law practice in Melbourne, Australia with particular expertise in M&A, real estate, technology, intellectual property and media and entertainment law as well as general business transactions.

The firm also advises private clients on a wide range of business and wealth-related matters. Private clients are mainly local and offshore business owners and professionals.

Partners Geoffrey Shiff, Julia Adams and Michael Levy, together with a loyal and highly skilled team of lawyers and paralegals, have developed a reputation for providing prompt, innovative and highly personalised legal services at a reasonable cost in the firm's practice areas.

The firm has a culture of working closely alongside its clients and other professional advisors as a team, bringing complementary skills to problem solving and transaction work. This supportive approach has led to steady practice growth and long-term relationships with clients and advisors.

The firm has developed a wide-ranging pro bono legal practice advising not-for-profit organisations in the cultural, environmental, educational and business sectors. The partners and lawyers of the firm are all very committed to this work.

Tips for completing a successful cross-border acquisition

Engage subject matter experts

As lawyers, we provide legal advice on the Australian requirements for the acquisition. We find that engaging accounting advisors with particular industry experience in Australia is invaluable in foreign acquisitions. There may also be roles to be played by technical and other industry advisors. Australia's regulatory framework in certain industries, such as manufacturing, vary state to state and experts with applicable jurisdictional experience in the field will have the best knowledge of the regulatory frameworks specific to target entities.

Be flexible

In our experience, a deal can change overnight and both buyers and sellers should be flexible and adjust timeframes to meet such changes. Where information is provided in due diligence which materially changes the value of the target entity, the parties may still be able to reach a deal albeit on different terms than originally envisaged. At Shiff & Company we take a commercial view of all transactions and are happy to work with clients to look at all options available to a purchaser.

Plan for post-completion

There are many matters to be attended to post-completion. Be it the registering of business-related interests, passing of resolutions to appoint new directors, establishing new subsidiary companies, complying with statutory obligations under the Corporations Act, or updating employment agreements and trade terms. The work undertaken post-completion can be as vital as the acquisition itself. By working with company secretaries, accountants and managers, Shiff & Company can make the process proceed smoothly, providing ongoing necessary advice to buyers long after an acquisition completes.

IR GLOBAL

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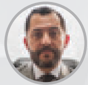
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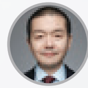
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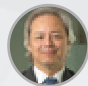
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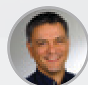
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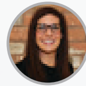

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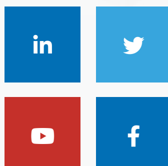

Members share ideas at the 2017 IR Annual Conference in Berlin

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