

Foley's M&A Briefing Series

A Quarterly Exchange to Power Your M&A Deals



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Going Global: Managing International M&A Transactions

March 27, 2008
12:00 p.m. – 1:30 p.m. EST

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Today's Presenters

• **Curt P. Creely**



• **Julie Lee**



• **Peter C. Linzmeyer**



• **Kevin D. Makowski**

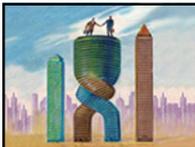




Polling Question

Which of the following best describes your level of involvement or participation with cross-border M&A transactions?

- (A) Regular involvement or participation
- (B) Occasional involvement or participation
- (C) I have been involved with one international M&A transaction
- (D) I anticipate that I may be involved in an international M&A transaction in the future



Polling Question

In what primary capacity have you participated, or expect to participate, in cross-border M&A transactions?

- (A) Legal
- (B) Finance
- (C) Operational
- (D) Business Development
- (E) Other





Local Advisors

What kind of local advisors do we need, and how do we select them?



Local Advisors

- Key Principles for Selecting and Managing Local Advisors
 - Use your U.S. outside legal and financial advisors to help you select local advisors
 - Be very clear about scope of engagement and your expectations
 - Local advisors must be closely managed!!!



Governmental and Regulatory Barriers

- Currency exchange regulations (i.e., Brazil)
- General restrictions on foreign ownership
- Multiple levels of government approvals (i.e., China)
- Specific restrictions in regulated industries (i.e., media or real estate)
- Competition and anti-trust laws



Competition and Anti-Trust Laws

- EU Merger Control
- Competition and merger control laws in individual countries
- Hart-Scott-Rodino requirements
- Overreaching filing requirements in other countries



Impact of Cultural Differences

- Never assume that language isn't a problem!
- In addition to language barriers, cultural differences will affect the deal process
- Understanding "deal culture" is critical
- What role will emotion play?
- Some cultures tend to expect a more protracted process than we often expect



Impact of Cultural Differences *(cont'd)*

Western Proverb:

The early bird catches the worm

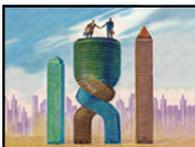
Chinese Proverb:

The first bird in the flock is the first one to be shot



Impact of Cultural Differences *(cont'd)*

- Confrontation– good or bad?
- Sometimes “yes” doesn’t mean “yes”
- Often there is confusion between understandings that are intended to be legally binding versus “gentlemen’s agreements”
- In some cultures, bias against “frank” speech or spirited negotiation often results in misunderstandings (and such negotiation style can be interpreted as a sign of mistrust)



Due Diligence of Foreign Targets

- Checklist and due diligence inquiry must be country-specific (not just industry specific)
- Depending on jurisdiction, special areas of inquiry may include:
 - labor laws
 - pension regulation
 - taxes (including social welfare taxes)
 - business licensing and registration
 - intellectual property registration, protection, and infringement
 - corruption





Due Diligence of Foreign Targets *(cont'd)*

**A key element of your due diligence
will be to get a “true” financial picture
of the target company!**



Corruption

- U.S. Foreign Corrupt Practices Act
- Other corruption issues





Labor & Employment Issues

Multiple bodies of laws and regulations!

- Employment laws
- Industrial relations
- Social security / social welfare
- Occupational, health & safety
- Consultation / approval rights of work councils
- EU Acquired Rights Directive



Pension/Employee Benefits Issues

- Pensions are generally a country-by-country issue
- Most issues arise out of company-specific plans
- Defined benefit plans are commonly under-accrued, if accrued at all, in many jurisdictions (even when consolidated into U.S. GAAP financials)
- Some governments are being pro-active on underfunded plans





Concerns Over Intellectual Property

- Tends to be less of a concern in westernized developed economies
- Much uncertainty and inconsistency in developing economies and Asian countries



Polling Question

Have concerns about the ability to protect or enforce intellectual property rights overseas ever impacted your company's (or a client's) decision to move forward with an acquisition?

- (A) No
- (B) The concern caused us to abandon a proposed acquisition
- (C) The concern made us hesitant to move forward with the transaction but didn't stop it
- (D) Both (B) and (C) above (in the case of multiple transactions)



Maximizing Intellectual Property Protection in China

- Obtain registered protection for intellectual property rights
- Control the production process
 - incorporate anti-counterfeiting elements into product and production process
 - divide the production process among different units
 - source key components from different countries



Maximizing Intellectual Property Protection in China *(cont'd)*

- Dealing with employees
 - require all employees to sign confidentiality agreements
 - require key employees to sign non-compete agreements
 - educate employees
 - disseminate confidential information on a need-to-know basis
 - separate engineers from sales people





Maximizing Intellectual Property Protection in China *(cont'd)*

- Other practical suggestions
 - Adequate contract protection
 - Retain ownership of tooling
 - Right to continuously monitor and control use of IP rights
 - Obligate Chinese business partner to assume responsibility of entering into, and enforcing, agreements with employees



Questions and Answers



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Mark Your Calendars

- 2008 M&A Briefing Series continues
 - Executive Compensation: Trends and Best Practices on June 24, 2008
 - Keeping Your Deal on Track: Antitrust Issues in Mergers and Acquisitions on September 25, 2008
 - Distressed M&A: Issues and Opportunities on November 13, 2008





Thank You

- A copy of the PowerPoint presentation and a multimedia recording will be available on our website within 24 to 48 hours:
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