

Bulletproofing the International Deal



Presentation Focus:

1. Integration and conflict issues that may arise during and after the deal
2. Intellectual Property Issues

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Foundation Concepts to Keep in Mind:

Integrating different cultures necessarily brings about potential conflicts and potential gains independent of the economics of the deal.



There are four factors that determine conflicts or gains:

- ★ Effective Due Diligence
- ★ Carefully handled Communication
- ★ The expectations set during the deal process
- ★ Post deal close implementation

External Cultural Factors:

- ◆ Different countries and ethnic groups have unique cultural attributes.
- ◆ These attributes must be considered for any international deal to “get to close” and to be a post closing success.
- ◆ Different legal systems are a reflection of different countries and their cultures.
- ◆ Different legal systems lead to different expectations and create different results.



Internal Cultural Factors:

- ★ **Understanding the needs and interests of the M&A counter-party requires an understanding of the company's country and culture.**
- ★ This understanding is translated in legal expression in corporate governance, labor issues, and corporate commercial conduct.
- ★ Beyond these macro-cultural concepts, the way the company grew and the personality of its founder and officers creates expectations for continuity.
- ★ The acquiring company needs to analyze the following to determine a potential "fit": the risk and reward systems, the means to internal advancement, customer or client relations philosophy, practical ease of business system integration, and the management of human capital.
- ★ A review of the extent of truly legal, as opposed to commercial or cultural obligations to the company, is critical in order to build a realistic picture when determining how long the integration process can count on present suppliers, human capital, distributors, customers/clients, and management.

Running a Deal to Create a Working Team:

- ★ **A key goal of any successful M&A transaction must be human capital from both sides working together in an integrated fashion.**
- ★ The due diligence and negotiation process during the deal sets the tone for, and determines the likelihood of, such a post-closing goal.
- ★ Understanding these points, and the way in which communication requests are made, meetings are set and run, and how discussions on value are handled, all dictate post-closing success regarding the integration of human capital.
- ★ Sensitivity to both external and internal cultural issues, as well as building key relationships through consideration and professionalism, often lead to excellent results.
- ★ Taking the above steps will help you to analyze the likelihood of a successful integration post-closing, and will help you to know whether or not you should proceed with the deal at all.

**The best deals of your career may be the ones that never were,
because they never should have been!**

Intellectual Property Asset Categories:



- ★ **Trademarks:** Brand value through goodwill and consumer recognition;
- ★ **Patents:** Legal ability to exclude competitors from a material part of a market;
- ★ **Copyrights:** Legal ownership of creative works with material promotional value or revenue potential;
- ★ **Trade Secrets:** Legal ownership of valuable business information that provides commercial advantage;
- ★ **Domain Names:** The right to occupy certain areas of cyberspace through strong branding or key generic search terms.

Intellectual Property Due Diligence:

- **Trademarks:** All marks cleared with recent written opinions of independent counsel as to the strength and title in all countries where the mark is used. All marks registered or applied for and available for registration in such countries. System in place to police marks on an ongoing and systematic basis;
- **Patents:** All key company products covered by issued or pending patents owned by the company through proper work-for-hire/employee assignment agreements. These should take into account country legal issues, patent searches conducted prior to filing each patent application for clearance, systematic system to review patents being published to avoid inadvertent third party infringement;
- **Copyrights:** All important promotional material, software, manuals, and creative works covered by issued or pending copyrights filed with the applicable Government Registrar. These should be owned by the company through proper work-for-hire/employee assignment agreements that take into account country-specific legal issues and a systematic system to review copyrights being published to police third party infringement;
- **Trade Secrets:** Internal confidentiality agreements executed by all employees and service providers along with work-for-hire and assignments where applicable. Internal systems in place to ensure that confidential information is kept confidential;
- **Domain Names:** Major brands of the company reflected in domain name registrations on both high-level (.com, .net, .org) and country-level/region-level (.us, .eu, .jp) domains.

What You Do Not Know *Can* Hurt You

Intellectual Property provides a company with the legal right to carry out its business in certain countries where that Intellectual Property is registered or recognized.

If the Intellectual Property is:

Not registered;

Not properly cleared in advance;

Does not actually cover the products sold or services rendered;

Is not owned by the company;

Then ... products or services can be legally excluded from certain markets;

Significant damages may be owed to third-party rights holders;

Or significant regulatory and litigation costs may be incurred.

Intellectual Property Has Become A Material Portion Of Corporate Value

- As Intellectual Property is increasingly becoming the most critical aspect of global trade, understanding what is or is not protectable as I.P. in each jurisdiction where the country is doing business has become critical.
- Not completing adequate due diligence of intellectual property in a merger or acquisition, despite the complexity of doing so in modern society, is equivalent to not checking the company's balance sheet.
- In most cases Intellectual Property is straightforward: either a company owns it, has a legal license to use it, the I.P. is in the public domain, or the company is an infringer.
- “Sorting this out” prior to closing the transaction will go a long way towards arming your client with a bullet-proof vest for its deal.

