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VIRTUAL ROUND TABLE

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Introduction & Contents

In this roundtable, we focus on M&A opportunities in jurisdictions with high growth potential for foreign investors. Highlighted topics include a discussion on due diligence best practice in Bulgaria, the latest regulatory changes in Brazil, cross-border M&A considerations in India, and the changing perspective on hostile takeovers in Japan.

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Meet The Experts

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Shigeki Tatsuno is a partner at Anderson Mori & Tomotsune and specializes in the area of mergers and acquisitions, joint ventures, and cross-border investments in every field, including life-science sector. Mr. Tatsuno has extensive experience in advising venture companies and advising on PE funds. He also provides advice to foreign and domestic clients on intellectual property issues/transactions and general corporate matters. He has served as a member of the Human Research Ethics Review Committee of Graduate School of Pharmaceutical Sciences, Faculty of Pharmaceutical Sciences, the University of Tokyo since November 2014.

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Shabbir has over 30 years of wide and varied experience representing international clients, which include Fortune 500 companies, and international lawyers from many jurisdictions. With 20 years of professional practice with an American Lawyer magazine ranked law firm in New York and the next 10+ years growing a private practice, Shabbir advises clients in the United States, United Kingdom, Europe and Africa.

Shabbir specializes in being an outside general counsel to his clients. This allows him to see the big picture and provide his clients with holistic 360º advice across multiple business, legal and strategic issues more easily. Shabbir provides critical, strategic, and practical advice on commercial, legal, compliance and regulatory issues to boards of directors, and legal support at a granular level as well. He adds shareholder value. Shabbir also serves as General Counsel to Core Technologies Services, Inc., a US based international IT services company.

Shabbir generously volunteers time for community and social service, counselling individuals in family disputes and guiding potential litigants toward conciliation and settlement. Shabbir is also passionate about giving back to the legal profession through lectures, training programs and teaching programs.

As an ex-photographer, Shabbir still has a keen eye for detail and appreciates beautiful architecture and the play of light on structures. For leisure, Shabbir loves reading about technology, medicine and science, and follows the modern trends of NFTs and AI.

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Thiago Sandim, a partner in Demarest's Mergers & Acquisitions and Private Equity practice, holds a law degree from the Pontifical Catholic University of São Paulo (PUC-SP) and a Negotiation Mastery certificate from Harvard Business School Online. His clients include Brazilian and foreign conglomerates operating in a variety of industries, private equity funds, Asian sovereign wealth funds, Brazilian and foreign pension funds, and financial institutions. Sandim is a non-executive board member of listed Brazilian companies. He was a visiting professor at INSPER for ten years. Several transactions he has led have been recognized by respected global publications, and his work is recognized by leading Brazilian and international legal rankings.

Meet The Experts

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I am a Bulgarian corporate lawyer and the owner of a Bulgarian boutique law firm that provides legal services to international and national corporate clients. We successfully represent the interests of large, medium-sized and small companies from all sectors.

Our services are primarily aimed at the needs of German-speaking investors who want to expand to Bulgaria or are already active in Bulgaria. We are also happy to advise Bulgarian companies that want to expand their activities and enter the German-speaking market.

I completed my PhD studies and LL.M studies at the University of Vienna. The comparative analyzes carried out during the two studies between Bulgarian law on one hand and German and Austrian commercial law on the other hand helped me to further develop and expand my legal practice in Bulgaria. I managed not only to create a convincing bridge between the different legal systems in all areas of corporate life, but also between the different cultures and ways of doing business.

Our philosophy is to provide legal advice of the highest quality. We work passionately and attach great importance to a high level of professionalism and creativity, as well as maximum efficiency and security.

As a boutique law firm, we are particularly proud of having been able to support and represent the interests of a number of well-known European and international companies and corporations in their business activities in Bulgaria for many years. Our portfolio includes all services that are also provided by large law firms. Large companies choose us because our office structure and our hands-on mentality enable us to offer pragmatic, creative and customised solutions quickly and smoothly at competitive price. Long-term cooperation with our clients has the highest priority for us.

Q1. Have there been any regulatory changes or interesting developments in your jurisdiction?

Thiago Barbosa Sandim

Sandim: Yes, there have been many. Over the past five years, Brazil has gradually implemented structural reforms. The most recent significant change was the tax reform, which aims to simplify Brazil's notoriously complex tax system over a decade by replacing several indirect taxes (ICMS, ISS, PIS/COFINS) with unified VAT-type taxes.

Though the tax reform still requires regulation – some aspects were introduced at the constitutional level but need further detailing through ordinary laws that require congressional negotiation – it is expected to boost industry and commerce. This reform draws comparisons to India's VAT reform in 2017 (the GST), which eased business operations and stimulated growth.

Prior to the tax reform, Brazil enacted other important structural changes. These include: (i) the 2019 pension reform, which alleviated fiscal pressure by raising the retirement age and increasing contribution requirements for both public and private sector workers; (ii) the Economic Freedom Law of 2019, designed to reduce bureaucracy, simplify business registration, and diminish government involvement in economic activities; (iii) the labour reform, aimed at promoting flexibility in the workplace; (iv) the fiscal framework, which replaced the debt ceiling with a system that limits public spending based on revenue growth; and (v) granting operational independence to the central bank in 2021, depoliticising monetary policy decisions and introducing greater predictability in public financial policies.

Unfortunately, the current central government, which leans toward populism, lacks economic acumen and has sought to balance the budget by increasing tax revenues rather than pursuing administrative reforms to reduce costs. This misguided approach risks squandering the potential benefits of the recent reforms and the soft landing of the U.S. economy. Nonetheless, I remain hopeful that the upcoming general elections in 2026 might bring about a governmental change, setting the stage for a sustainable growth cycle.

Shigeki Tatsuno

Tatsuno: There have been no major legislative changes in Japan over the past year. With that said, in August 2023 the Ministry and Economy, Trade and Industry ("METI") issued guidelines for the conduct of corporate takeovers (the "Guidelines"). The Guidelines, titled *Enhancing Corporate Value and Securing Shareholder Interests* is part of a series of guidelines issued by METI over the past decade or so to promote fairness in corporate M&A.

Long-time observers of Japan would know that the country has been resistant to hostile takeovers for both historical and cultural reasons. Accordingly, foreign funds that attempt hostile takeovers in Japan generally are not well-received.

From the angle of corporate value creation and enhancement of shareholder interests, however, hostile takeovers are not necessarily pernicious. There have been cases of hostile takeovers in Japan where acquirers have added considerable value to their targets. There have also been cases where the management of target companies are believed to have opposed prospective hostile takeovers principally for self-serving reasons, instead of assessing takeovers purely for their commercial merits.

To remove the negative connotations associated with "hostile takeovers", the Guidelines propose replacement of the term with "takeover without management consent". Among other things, the Guidelines also require assessment of prospective takeovers based on considerations of whether they would secure or enhance corporate value and shareholder interests.

Q1. Have there been any regulatory changes or interesting developments in your jurisdiction?

Shigeki Tatsuno

Although the Guidelines constitute only recommendations of best practices and have no legally binding effect, they are anticipated to have a significant impact on the manner in which takeovers will be conducted in Japan going forward. Indeed, the Japanese M&A market is already witnessing an increased number of "takeovers without management consent," not only by foreign funds and corporations but also by traditional Japanese corporations. Furthermore, it is expected that Japanese courts would take these "best practices" into account in M&A-related disputes going forward.

Shabbir Wakhariya

Wakhariya: Last year, India passed the Digital Person Data Protection Act, 2023, which regulates the processing of digital personal data. Depending on the approval of a court or other appropriate authority, certain M&A scenarios may be exempt from specific rights and duties. But this is still work in progress.

Particularly relevant will be the data transfer limits and processing of data outside of India, particularly data regarding vendors, employees, and customers during due diligence and post-closing integration.

The consent requirements may also require refined approaches, such as providing representations or revealing anonymised data. Processing of employee data for employment purposes is excluded from consent requirements and is recognised as "legitimate use", however, clarity is needed for subsidiary employee data. In certain situations, getting consent may be wise to ensure compliance and avoid monetary fines.

Q2. Which industries or jurisdictions currently provide the best M&A opportunities?

Thiago Barbosa Sandim

Sandim: Unlike other continental countries, Brazil is culturally, legally, and geographically integrated, making it a single jurisdiction. This integration will further improve with the tax reform. Hence, there's no need to consider jurisdiction for transactions in Brazil, except for some issues related to indirect taxes which over time will be standardised.

M&A opportunities in Brazil, driven by interest rates and competitive advantages, are prominent in infrastructure and agriculture. Infrastructure benefits from subsidised interest rates – like those from the Brazilian Development Bank ("BNDES") – boosting activities in toll roads, ports, and renewable energy. Agriculture, where Brazil has a natural edge, will see increased M&A activity by 2025 due to crop losses from climatic events, particularly droughts affecting soybean regions. Crop failures, coupled with leverage in the industry, often lead to special situation M&A waves.

Shigeki Tatsuno

Tatsuno: AI applications have dramatically increased in recent years. As a result, the semiconductor industry, which produces chips that are essential for complex computations of AI algorithms, is also witnessing tremendous growth around the world, including Japan. To encourage growth in the domestic semiconductor industry, the Japanese government has provided significant subsidies to chip producers, such as the recent subsidies for the Taiwanese firm TSMC, to establish chip plants in Kumamoto, Japan. The prevalence of AI has in turn resulted in increased semiconductor M&A in Japan.

Q2. Which industries or jurisdictions currently provide the best M&A opportunities?

Shigeki Tatsuno

With the shrinking and ageing population in Japan, policymakers are also promoting greater interest in Japanese start-ups involving the latest technologies, such as the internet of things (IoT), artificial intelligence (AI) and financial technology (FinTech), in hopes of leveraging them to enhance productivity and economic growth in various industries. As the Japanese government is expected to introduce more initiatives in the coming years to incentivise investments in these areas, they present opportunities for foreign investors.

Furthermore, investors, both domestic and overseas, have been looking to the healthcare technology sector in recent years. Opportunities in this sector have been abundant, what with the continued rise in the number of local "med-tech" start-ups and the recent inclination of large domestic companies, such as Hitachi, to spin off some of their ancillary medical technology divisions to focus on their core businesses.

Beyond the domestic market, Japanese companies in recent years have been particularly focused on emerging markets, including Southeast Asia, where young, sizable demographics provide an attractive counterpoint to Japan's shrinking population. The flourishing tech ecosystem that is emerging from the Southeast Asian region is also drawing venture capital from Japan. With that said, legal, commercial and political systems differ significantly from country to country within Southeast Asia, and care needs to be taken in navigating the potential pitfalls presented by the diversity of systems.

Q3. What are the biggest regulatory challenges currently facing M&A deals and how can businesses effectively manage these risks?

Thiago Barbosa Sandim

Sandim: Locally, the primary regulatory challenges are related to how quickly regulatory agencies can respond to mergers and acquisitions, rather than regulations prohibiting foreign investment. While many Brazilian regulatory agencies have capable staff, they are often overwhelmed, leading to delays in response. Administrative reform could address this issue. The government is the largest economic entity in any economy and must function efficiently. This is a particular challenge for Brazil. Establishing a robust government relations structure could help mitigate this problem. Knowing potential obstacles ahead of time can prevent them, and having individuals within your organisation who understand the government facilitates this.

Considering the increasing regulation on foreign investment in key jurisdictions (such as the U.S.-China trade tensions) and the global geopolitical landscape (including the war in Ukraine, tensions in the Middle East and South China Sea), one might view investing in Brazil favourably. Brazil maintains good relations with all major powers and is unlikely to face sanctions, allowing business with everyone.

Overall, the combination of economic reforms and Brazil's favourable geopolitical position could provide a promising outlook for the country, despite the current lack of sophistication in the Brazilian political class, which is a concern, but will likely be resolved over time, as happens in democracies. Thus, significant regulatory challenges seem manageable, indicating a positive direction for the country.

Additionally, from a global perspective, the nearshoring phenomenon is worth noting. This trend benefits the Mexican economy and could also provide similar advantages for Brazil.

Q3. What are the biggest regulatory challenges currently facing M&A deals and how can businesses effectively manage these risks?

Shigeki Tatsuno

Tatsuno: The foreign direct investment ("FDI") regulations of Japan are relevant to overseas investors who are thinking of investing in certain sensitive industries in Japan.

Foreign investors that acquire or invest in Japanese companies that belong to "core business sectors" (that is, industries that are deemed critical to the national security, public safety and economy of Japan) are required to provide pre-closing notifications to the relevant governmental authorities. This typically involves a waiting period of 30 days during which the authorities will review a proposed transaction before providing clearance. In a straightforward case of FDI, clearance will typically be provided before the expiration of 30 days. In complex cases, however, the regulatory review period could take up to a few months or sometimes longer, thereby giving rise to significant deal uncertainty. Moreover, the scope of "core business sectors" has been significantly broadened, thereby increasing the chances of a foreign investor being subject to the pre-closing notification requirement.

A recent example is the designation of Seven & i Holdings as "core" to the national security of Japan by the Ministry of Finance (the "MOF"). The designation came in the wake of an offer from Canada's Couche-Tard to acquire the company. The designation by the MOF could be due to various reasons. Seven & i Holdings is a conglomerate with footprints in various industries, including the financial and security industries. This may account for its designation as a "core" business. Moreover, 7-Eleven – a retail subsidiary of Seven & i Holdings – have been deeply integrated into Japanese society over decades. These convenience stores can be found in virtually every town across the country and are deeply ingrained in the culture of Japan. This in turn may have given rise to concerns about Couche-Tard's ability to operate 7-Eleven stores in a manner that compliments Japanese society.

With the above in mind, in particularly complex cases it would be prudent for foreign investors to initiate prior consultations with experienced law firms (and, if appropriate, with the relevant authorities) in Japan before committing too much time and resources to a proposed transaction, and before filing a prior notification, to iron out potential issues that the authorities may find problematic.

Shabbir Wakhariya

Wakhariya: Regulatory hurdles of course remain the most difficult barrier to M&As. Cross border transactions involving foreign exchange trigger reporting obligations under the Foreign Exchange Management Act, adherence to which is important to avoid legal repercussions for non-compliance. Under the deferred payment system, reporting needs to be done carefully with respect to the date of remittance of funds, when funds are received on more than occasion in multiple tranches.

Q4. What are the key steps in the due diligence process?

Thiago Barbosa
Sandim

Sandim: Firstly, companies need to understand the importance of due diligence in adding value to M&As. Over the past two decades, firms began treating it as a quick, low-cost formality to confirm the buyer's assumptions, overlooking its true worth. Effective due diligence can even advise against deals when necessary. Post-pandemic, with lowered liquidity, clients now demand higher quality and more careful handling of fewer deals.

Q4. What are the key steps in the due diligence process?

Thiago Barbosa Sandim

Secondly, I strongly advocate for collaboration among all parties involved in due diligence – legal, financial, accounting, and industry specialists. At our firm, we encourage a collaborative approach to address issues more quickly and effectively.

Lastly, the mechanics are crucial. Routine tasks should be smoothly managed in appropriate forums, with weekly calls and specialist sessions being vital.

Shigeki Tatsuno

Tatsuno: Japanese labour laws are considerably pro-employees, which makes it difficult for companies to conduct retrenchment exercises or to change the working conditions, including wage levels, of employees following an acquisition or merger. Accordingly, inbound investors should pay careful attention to labour-related matters when conducting due diligence on a Japanese company.

Very often, due diligence will turn up issues relating to unpaid overtime. Issues with unpaid overtime could arise due to the target's failure to properly keep track of employees' hours, misclassification of employees' statuses (managerial-level employees are not entitled to overtime pay in general), the absence of a labour-management agreement under Article 36 of the Labour Standards Act (without which an employer is prohibited from requiring its workers to put in overtime work), or other reasons.

Investors should also look out for ongoing or threatened disputes between a target company and its employees, particularly disputes relating to work harassment. Due to global cultural developments and the increasing adoption of harassment awareness programmes by companies around the world, including Japan, there is now greater awareness of the scope and nature or work harassment. Consequently, there is also greater likelihood of harassment-related disputes.

Furthermore, investors should consider the views of stakeholders, such as labour unions (if any), and determine whether there is any way to accommodate such views, due to the potential of some stakeholders to delay or even derail a transaction. For example, when it was announced that Fortress Investment Group would acquire Sogo & Seibu Co. from Seven & i Holdings in September 2023, employees at the Seibu Ikebukuro store in Tokyo (operated by Sogo & Seibu Co.), staged a walkout over concerns about their jobs post-acquisition. Although the acquisition was eventually consummated, investor should keep in mind the potential ability of labour unions to disrupt transaction schedules or even obstruct a transaction altogether.

Shabbir Wakhariya

Wakhariya: Due diligence is a transactional challenge in Indian M&As. Deals falter due to inadequate scrutiny or the lack of reliable publicly available records or databases. Often due diligence teams rely on seller representations to give due diligence opinions. In India, this is significantly more complex than other countries due to applicable regulatory approvals and diverse legal interpretations. In line with current international focus on environmental, social and governance (ESG) issues, ESG due diligence has also become increasingly important when embarking on M&A transactions. The company's stance and impact on ESG issues such as child labour, carbon emissions, fair tax and corruption can often stymie or frustrate an otherwise smooth M&A deal.

Q4. What are the key steps in the due diligence process?

Dr. Miroslava Hristova

Hristova: The typical due diligence process of a Bulgarian company comprises many steps:

Assignment of a due diligence team: To ensure that the process is carried out correctly, first and foremost the buyer will need a team of legal and financial experts with specialised knowledge of M&A and the legal and economic framework in Bulgaria. The experience of the experts and their ability to correctly interpret and evaluate the information gathered within the international and local context of the transaction plays a crucial role in the success of due diligence.

Collection of information: Next is the collection of documents, where compliance with the national legislature, documents and information provided by official national registers and institutions, plays a key role. Drawing up a well-thought-out list of information and documents greatly helps to structure the process. It is the detailed local knowledge of the due diligence team that is important for tailoring the areas for verification and what documents are to be requested from the seller and verified.

For example, the verification of real estate in Bulgaria cannot and should never be done only based on official reports issued by the Property Register. Ownership verifications must be made by personal account also, not just the property one. When registering deeds for transferring property in the Bulgarian notarial registers, the transferor gets a personal account, where the particulars of the transfer, claims on the property, restraining orders, etc. are entered. Even though a "per property" system of registration (known mainly in the countries of the German legal circle) has already been introduced by law, whereby the registration is carried out based on accounts created for each individual property, this has not been done in its entirety to date, and very often the property excerpts are unclear, incomplete and with errors. Therefore, information from both the persons' and the estate's accounts must be collated. However, this also does not guarantee completeness and accuracy. The Property Register excerpts only serve as a reference point as to what documents of title and land charges the experts should seek, and then, based on what is described in the official documents themselves, additional documents are requested of the grantors further back in the chain. Thus, the experts' detailed local knowledge when inspecting the company's properties is crucial for detecting potential problems.

Organisation of regular meetings: To speed up the process, the due diligence team should hold regular meetings with the target company. The intensive exchange between the parties aims to dispel problems and doubts so that the overall picture is as clear as possible. Once again, the local knowledge of the due diligence team comes to the forefront. Of utmost importance is the possibility to communicate with the target company in the local language. This increases the sense of security in both parties that they will not be misunderstood.

Final assessment: The potential buyer discloses the results of their evaluation to the seller. It has a significant impact on further negotiations, the purchase price, and the drafting of the purchase contract. In some cases, it is based on the results of the report that the buyer will request an adjustment of the price or the transaction mechanism, the provision of additional guarantees, etc., which are also subject to negotiation. On the other hand, if based on the opinion of the experts, the open issues and problems prove to be too insurmountable or high-risk, the buyer may abandon the deal altogether.

Q5. What are the main challenges and considerations that need to be factored into cross-border M&A deals?

Thiago Barbosa Sandim

Sandim: Brazil lacks notable specifics in cross-border M&A, with few foreign investment restrictions and strong international relations. However, cultural considerations are crucial. Relationships are more significant here, so partnering with a local is beneficial for first-time business dealings. Choose a local partner whose organizational culture aligns with yours to better navigate challenges and enhance venture success.

Shigeki Tatsuno

Tatsuno: As noted above, the FDI regulations of Japan are relevant to overseas investors thinking to invest in certain sensitive industries in Japan. More specifically, foreign investors that acquire or invest in Japanese companies that belong to "core business sectors" are required to provide pre-closing notifications to the relevant governmental authorities. Although this typically involves a waiting period of 30 days, such waiting period could extend to a few months or even longer. As a practical matter, therefore, foreign investors in potentially complex cases should initiate prior consultations with the relevant authorities in Japan before committing too much time and resources to a proposed transaction, and before filing a prior notification.

Additionally, investors should give attention to integration of corporate cultures post-acquisition or merger. This is because many M&A transactions do not close or, even if closed, ultimately fail for unsuccessful integration of the target into the acquirer group, due to failure to recognise and address differences in corporate culture.

Shabbir Wakhariya

Wakhariya: The presence of a complex tax structure in India makes M&As equally challenging. The issue of double taxation arises when two jurisdictions tax the same income or entity. Nations have addressed this through Double Taxation Avoidance Agreements (DTAAs), which limit taxing rights. However, claiming these benefits is a tedious task because the criteria to claim these benefits requires a non-resident to be a separate legal person under the laws of its country of residence, furnish a tax residency certificate, furnish an income tax return in India, etc. All these conditions create a bottleneck in timely completion of cross border M&As.

Matters get further complicated by Base Erosion and Profit Shifting (BEPS) project. The multilateral instrument under BEPS project allowing DTAAs to integrate anti-abuse measures like the principal purpose test, denies treaty benefits if obtaining them was one of the principal purposes of the arrangement. Proving or disproving this takes time.

The introduction of General Anti-Avoidance Rules (GAAR) under Indian tax laws has taken a substance over form approach. Under GAAR, Indian tax authorities the substantial powers to disregard or recharacterise transactions and redetermine the resultant tax consequences, if such transactions are designed with the main purpose of availing tax benefits or if they lack commercial substance.

Additionally, the Most Favoured Nation (MFN) clause in Indian tax treaties adds another layer of complexity. The interpretation and application of MFN clauses have been subject to debate and interpreted differently by Indian tax authorities.

Q5. What are the main challenges and considerations that need to be factored into cross-border M&A deals?

Dr. Miroslava Hristova

Hristova: When it comes to cross-border transactions of a Bulgarian seller company, special challenges arise for the foreign investor, as follows:

- The need to be familiar with the national regulatory framework and the institutions' operation;
- Necessity to know country-specific legal risks and risk factors;
- An understanding of the local market and local economy;
- The Bulgarian language is often a major challenge;
- Cultural differences, such as means of communication and negotiation.

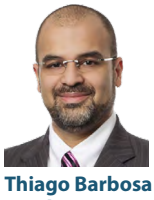
The Bulgarian legal system is part of the continental legal system, and a large part of the civil legislation is adopted from traditionally developed legal systems such as in Germany, France and Italy. Nevertheless, in view of the long period of communist rule, during which private initiative was prohibited, the main development of civil and commercial law began after 1990. A significant part of the civil and commercial laws contain the basic postulates familiar to the continental legal system, but the level of detail in Bulgarian law is reduced to a minimum, with numerous legal gaps. Many of the gaps still exist. Often there is only contradictory case law or no case law at all, leading to legal uncertainty. So, many commercial relations can be subject to being contracted away, which also often leads to contradictory case law. Therefore, it has become necessary in practice to detail commercial contracts with:

- numerous definitions, detailing specific areas of application and exceptions;
- detailing all the rights and obligations of the parties, with mechanisms for action and limitation of liability.

As a result, to achieve legal certainty in the construction of commercial relations, the Anglo-American style of drafting private law documents dominates.

All of the above has an impact on the way due diligence is carried out for Bulgarian companies, as it requires a finest knowledge of the differences and specific local features of the economic environment in Bulgaria possessed by well-trained local experts (lawyers, auditors, tax experts, etc.) with international focus, serious experience, and solid language training (including in the country of the buyer). The latter can create a bridge not only between legal systems, but also between cultural specificities, the way of doing business, and will determine the necessary level of detail in due diligence and contracts.

Q6. What strategies can be implemented to maximise deal value?



Thiago Barbosa Sandim

Sandim: Throughout my career, I've learned that acquiring companies can lose significant value in M&A deals if they fail to retain key talent. Mergers often instil fear in employees, causing those with valuable skills to seek other jobs. My primary advice is for acquirers to focus on retaining talent. Additional strategies include thorough integration planning, aligning objectives and strategies, leveraging synergies, and maintaining clear communication with stakeholders. In Brazil, it's also crucial to design an optimal deal structure, especially regarding tax planning, such as amortisation of goodwill, which can provide competitive advantages over the business life cycle of a company.

Q6. What strategies can be implemented to maximise deal value?


Shigeki Tatsuno

Tatsuno: Generally, from a buyer's perspective, due diligence on the target of acquisition is crucial. Due diligence, when properly conducted, would enable the buyer to sift out important information regarding the target' business, identify significant red flags or even deal killers, or better understand how the target would fit into or complement the buyer's business. Senior executives with a deep understanding of the acquirer's culture should also be involved in the M&A process from the start, to familiarise themselves with the corporate culture of the target company, and to draw up pragmatic plans for the manner in which the acquirer's corporate philosophy can be introduced to the target to create synergistic outcomes.

Additionally, a buyer may sometimes consider the restructuring of the workforce in the businesses they have acquired, if cost cuts are necessary to achieve the turnaround of underperforming businesses, or if the acquired businesses have issues with overstaffing, due perhaps to the general aversion of Japanese companies to let go of employees. In such instances, the manner in which employees are laid off should be handled with care, so as to reduce the costs of layoffs to the businesses and to avoid disputes with employees.

From a seller's perspective, an auction process, where permitted by circumstances, would enable maximisation of price and also enhance the seller's ability to obtain the most advantageous transaction terms. A bidding situation would also open up a sale transaction to the greatest number of prospective buyers, through which the seller would be able to pick the most suitable buyer, whether in terms of price, employee protection, commitment to completion, financial resources or otherwise. Understanding that information on the target would be key to a buyer's assessment of a deal, sellers should also take the time to organise their data on the target in a way that is easy to access and understand.

Finally, parties to an M&A transaction should take care to select the right external legal and financial advisors. These advisors should have proven track records, the experience to identify with their clients' perspectives and objectives, and the ability to steer a transaction toward the desired terms and outcome.

Q7. What tactics and strategies should be implemented when negotiation purchase agreements?


Thiago Barbosa Sandim

Sandim: In Brazil, and generally in Latin countries, relationships are crucial for business. Ideally, an M&A transaction benefits both parties equally. Thus, in Brazil, focusing on friendly negotiations is key, typically taking more time as businesspeople often prioritise relationships over contracts.


Shigeki Tatsuno

Tatsuno: As a general matter, the involvement of personnel who are familiar with the business in question is crucial for better understanding and negotiation of a transaction. For example, in assessing the acceptability of specific representation requests of a prospective buyer, a seller should always involve people on its side who are familiar with the seller's business and are able to determine whether the requested representations can be given from a legal and financial standpoint.

Q7. What tactics and strategies should be implemented when negotiation purchase agreements?

Shigeki Tatsuno

Conversely, prospective buyers should have deal members on its side who are able to determine the representations that the buyer needs most. Moreover, from a buyer's perspective, due diligence on the target of acquisition is crucial for the buyer's understanding the value of the target business. Such understanding would provide the buyer with a clearer direction in its negotiations.

In terms of M&A in Japan, it may be useful to note that a number of Japanese companies are not averse to considering the reasonable requests of their counterparties, and to make compromises in order to reach a successful and mutually satisfactory conclusion of a deal. As a general matter, therefore, overseas investors should not feel inhibited in expressing any deal concerns they may have in negotiations.

Q8. What implications will the impending retirement of the baby boomer generation likely have on M&A activity and business succession planning?

Thiago Barbosa Sandim

Sandim: Though I'm not a psychologist, I believe the western baby boomer generation is naturally optimistic and resilient. They experienced post-WWII recovery, the Cold War, and now witness a world that, despite conflicts in Ukraine and the Middle East, is more peaceful compared to their youth. From an anthropological view, succeeding generations face the challenge of living up to their standard.

In business, the generational shift appears smooth. Businesspeople are highly rational, and the transition has been gradual over the last decade or so. I don't see a significant trend from baby boomers retiring but note the high standard set for newer generations.

Shigeki Tatsuno

Tatsuno: There are many privately and/or family-owned businesses, including mid-cap and occasionally relatively large-cap companies, in Japan. Many of these businesses are now confronting the urgent need to transition out of their current leadership from the baby boomer generation. One way of resolving the issue of leadership succession is through utilisation of M&A. Many of these companies possess high or unique technologies, manufacturing capabilities and other know-how, and their liquidation or cessation of business would present a loss to the Japanese economy and Japanese society as a whole. Sensing the opportunity, many larger companies and investment funds, both foreign and domestic, have been making strategic investments in these companies. This trend is expected to continue as privately and/or family-owned businesses with successions issues continue to look for appropriate buyers of their businesses.

Q9. What steps should be taken to ensure cultural alignment and enhance post-transactional success?

Shigeki Tatsuno

Tatsuno: As noted above, investors should give attention to integration of corporate cultures post-acquisition or merger, since many M&A transactions do not close or, even if closed, ultimately fail to achieve successful integration of the target into the acquirer group, due to failure to recognise and address differences in corporate culture. Therefore, senior executives with a deep understanding of the acquirer's culture should ideally be involved in the M&A process from the start, to familiarise themselves with the corporate culture of the target company, and to draw up pragmatic plans for the manner in which the acquirer's corporate philosophy can be introduced to the target to create synergistic outcomes.

Q9. What steps should be taken to ensure cultural alignment and enhance post-transactional success?

Shigeki Tatsuno

A successful and efficient integration process is also often dependent on key persons at the target company. It is therefore important, even as early as at the due diligence stage, for the acquirer to identify personnel capable of contributing to a smooth integration and successful future operations. The acquirer should as soon as practicable after identifying such personnel, induce them to stay with the target company through reassurance or discussion of future incentives. Placing key persons from the acquirer within the target company would also enable the acquirer to win over the target's employees through the establishment of rapport between the acquirer and the management team of the Japanese target. Respect towards the target's employees is also essential.

Q10. With more than 80 countries and over half of the world's total population going to the polls this year, what do you envisage the mergers & acquisition landscape will look like post-election year?

Thiago Barbosa Sandim

Sandim: This is a very interesting question, with a very simple answer. M&A relies on clear rules. Consequently, I believe M&A will perform better in 2025 than in 2023 and 2024 due to improved market clarity. The U.S. election is crucial here, given the differing international relations perspectives of the candidates and the effect of improved sanctions and trade wars that the election of one candidate or another may have.

Shigeki Tatsuno

Tatsuno: M&A activity may heighten or stall in an election year, depending on the issues at stake. For example, M&A activity may experience an uptick before an election as businesses seek to take advantage of favourable prevailing market conditions before they are changed following an election.

On the other hand, market players may choose to wait for more clarity on the policies of a newly elected government or administration before undertaking any large transaction if there is uncertainty on the stance of the new government on trade, interest rate and foreign policy, amongst other matters, all of which could significantly affect the viability of an M&A deal.

With the above said, changes in society, policies and the business landscape often follow an election, and a post-election environment could sometimes give rise to general or industry-specific opportunities for investors.

"Market players may choose to wait for more clarity on the policies of a newly elected government or administration before undertaking any large transaction if there is uncertainty on the stance of the new government on trade, interest rate and foreign policy"

- Shigeki Tatsuno -

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