

CorporateLiveWire

CROSS BORDER MERGERS & ACQUISITIONS 2016

VIRTUAL ROUND TABLE

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Introduction & Contents

Global cross-border mergers & acquisitions are on target to reach record levels of deal value in 2016 which is why this special edition roundtable has been arranged to focus on this growing trend. Featuring seven experts from around the world, this roundtable outlines the latest developments surrounding cross-border M&A transactions with particular reference to the banking, technology, and health sectors; analyses

the impact of Brexit and the Brazilian economic crisis on both inbound and outbound M&A activity in their respective jurisdictions; it also includes an interesting case study example considered to be a 'warning' to companies conducting an offshore transaction involving a Vietnamese company. Featured countries are: Brazil, Israel, Japan, United Kingdom, United States and Vietnam.

James Drakeford
Editor In Chief



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MEET THE EXPERTS



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Lisa has been working in the information industry for over twenty years and has a detailed knowledge of both company financial information and M&A data. She holds a post graduate qualification in Business and Management from Salford University and in 2013 also sat and passed the Certified Merger & Acquisition Advisor (CM&AA) certification programme in the US.

Lisa is Bureau van Dijk's managing director for M&A products globally. She is their product expert in Global M&A and acts in an advisory role to the group's sales teams worldwide.

Lisa writes a regular blog providing insight on current deals and emerging trends. Other written contributions include an article in "Mergers and Acquisitions - A Practical Guide for Private Companies and their UK and Overseas Advisors" published by Kogan Page

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In addition to his work as a business and commercial lawyer, Riccardo is a serious vintage car enthusiast and has acted for international clients in delicate transactions for the purchase and sale of vintage cars.

MEET THE EXPERTS



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Can you outline the regulatory framework for cross-border M&A in your jurisdiction?

Dreyfuss: Israel is open to and seeks to attract foreign investment. Accordingly, there are generally no limitations on foreign ownership of Israeli companies and assets, with the exception of those foreign entities with connections to certain hostile nations, or for target corporations that hold certain Control Permits issued by the State. There are also no currency control regulations. Foreign investors will of course have to comply with local laws, the pertinent ones in an M&A deal being the restrictive trade practices law, employment laws and tax laws. Certain fields will also have their nuances, for example security and encryption, communications, environment, banking and life sciences – the applicable laws of which would become more relevant in an asset purchase deal rather than a merger or share purchase.

Wright: In the UK, the regulatory framework for listed companies is regulated by the UK Takeover Panel that issues and administers the UK Takeover Code. The Takeover code ensures that all shareholders of UK listed companies are informed and given the opportunity to vote on the merits of a potential takeover of the company in which they own shares. It also ensures that there is a formal process and framework that an acquiror must follow in order to acquire a UK listed target company. The Takeover panel will monitor the conduct of the parties during the offer in order to ensure market stability and to try to balance the interests of both the acquiror and target. It will ensure that there is a limit as to how long the offer for the target company can be pursued (“Put up or shut up” rules) and can extend the deadline in genuine cases. Transparency of the offer is also enforced, ensuring that the financial information in relation to the acquiror and their intentions for the target company, including the impact of the takeover

on employees, are clearly defined. In contrast if a deal involves privately held companies, whilst there is established “practice and custom”, there is no formal official regulatory framework that the transaction must adhere to.

Lanfranchi: As a rule, foreign investors are welcome to invest in any business in Brazil. However, there are sectors of operation in which participation of foreign investors is subject to percentage limitation or other conditions imposed by the applicable law. This is the case, for instance, with health care, broadcasting, mining, water, energy, road cargo transportation, private security, financial institutions, coasting navigation (*navegação de cabotagem*) and civil aviation. Also, in some of these and other sectors, the participation of investors (either Brazilian or foreign), is subject to specific authorisation by the applicable regulatory bodies, such as the Brazilian Central Bank, the Superintendency of Private Insurance and the National Agency of Civil Aviation (ANAC).

There are also limitations to the acquisition of rural property by foreign investors. In a cross-border M&A, if the target company owns rural properties, than legal limits of equity that may be acquired by the foreign buyer shall apply.

It is important to point out that some transactions, irrespective of the sector of operation, or the presence of foreign investors, are subject to approval by the Brazilian Antitrust Agency (CADE). In a M&A transaction, CADE’s prior approval is required whenever: (i) at least one of the groups of companies involved in the transaction had registered, in the last balance sheet,

an annual gross profit or total volume of business in the country in the year prior to the transaction in the amount equivalent or greater than R\$ 750.000.000,00; and (ii) at least one other group of companies involved in the transaction had registered, in the last balance sheet, an annual gross profit or total volume of business in the country in the year prior to the transaction in the amount equivalent or greater than R\$ 75.000.000,00.

Nguyen Huu Hoai: The regulatory framework for M&A transactions in Vietnam has been developed since the first wave of M&A that occurred 10 years ago. It has been developed in a way that encouraged foreign investment. Several restrictions and limitations have been removed and eliminated. The procedures have been simplified in the new Enterprise Law and Investment Law.

Subject to the form of investment [e.g., purchase of shares through the stock market, purchase of shares of an unlisted company, purchase of shares through a private placement, or purchase of shares in a state-owned enterprise (“SOE”) through an IPO, etc] and subject to the extent of foreign ownership in the target company both the licensing and regulatory steps will vary.

Let’s assume a common situation in which a foreign investor acquires shares in a wholly Vietnamese-owned and unlisted company. The target company needs the licensing authority’s consent to allow the foreign investor to acquire shares of the target company if the target company’s activities are conditional for foreign investors or if the level of foreign ownership in the target company (post-closing) is 51% or more. In most other situations there is no similar requirement and the target company can skip this step. Upon completion, the target company only needs to notify the licensing authority of changes in foreign ownership in the target company (regardless of whether the resulting foreign ownership in the target company is minority or majority and irrespective of whether the target company’s business activities are conditional).

Although Vietnam opens its market for foreign investors, restrictions on foreign ownership remain in some limited areas. Foreign ownership can be an issue in areas such as in Publishing Law, Law on Credit Institutions, Law on Civil Aviation, Law on Education, Law on Securities, Law on Insurance Business, Law on Petroleum, etc. Sometimes, restrictions are set out in the Government’s implementing decrees (not in the underlying law).

Foreign ownership in companies that provide certain services is subject to Vietnam’s WTO commitments in respect of these services. Limitations vary from service to service. Most limitations on foreign ownership have now been phased out. Only a few remain. For example, originally the WTO limit on foreign ownership for distribution services was any level less than 100%. This was phased out in 2009 (except for distribution of cigarettes and cigars, books, newspapers and magazines, video records, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar). A limitation of 49% for foreign investment in securities businesses was lifted in 2012; limitations on warehouse services and freight transport agency services was 51% until it was lifted in 2014. Limitations of foreign ownership of restaurant businesses expired in 2015. Even when limitations have been lifted, some informal restrictions have remained.

In case of SOE equitization, the limitation on foreign ownership is regulated by general legislation on the equitization of SOEs. Any limitation on a particular SOE can be found in the Government’s particular decision on equitization of that SOE.

Foreign ownership of a listed company is usually limited to 49%, except in the case of companies that do business in sectors in which a smaller percentage is required. Subject to limitations on foreign ownership under Vietnam’s WTO commitments and subject to the target company’s charter (articles of association), this 49%-limitation can be enlarged by the target company itself with the concurrence of the State Securities Commission.

Have there been any recent regulatory changes or interesting developments?

Dreyfuss: Recently the Israel Tax Authority (ITA) published a draft circular on the applicable tax to be paid on holdback/deferred consideration in an M&A transaction. While not binding it reflects the ITA's position and brings more clarity as to how the ITA can be expected to act.

Until the draft circular was published, it was questionable whether consideration due to a founder/key employee held back upon an exit to be paid at a later date (typically upon the completion of a predefined employment period), would be treated as income and subject to tax at a rate of up to 50%, or a capital gain and subject to a lower tax rate of 25% – 32%. The ITA has now indicated that such payment should be treated at the lower capital gains rate provided that the following conditions are met:

- i. The shares are ordinary shares, with identical rights to the other ordinary shares in the company.
- ii. But for the hold back mechanism the gain from the sale of such shares would be considered a capital gain.
- iii. The entrepreneurs/key employees held such shares for at least six months.
- iv. The holdback payment does not include any additional consideration, and equals the consideration that would have been due to the entrepreneurs/key employees at the closing of the sale – i.e. the same price per share paid to all ordinary shareholders. (If the price per share is higher, only the difference will be taxable as income.)

- v. The entrepreneurs'/key employees' salary is not reduced going forward.
- vi. The purchaser accounts for the holdback payment as consideration for the purchase of shares in the transaction and not salary.
- vii. The entrepreneurs/key employees report and fully pay their taxes for the sale of their shares – including in connection with the unpaid holdback payment. (If in the end an entrepreneur/key employee does not receive the total consideration, s/he will be entitled to a tax refund.)

This is good news for investors and buyers, as founders and senior management can no longer resist hold back mechanisms on the grounds that they would be prejudicially taxed.

Nguyen Huu Hoai: The Ministry of Finance (“MOF”) has recently imposed a substantial capital gains tax on the indirect sale of shares between two offshore entities in an offshore entity that holds an interest in a Vietnamese entity. The transaction involved a Thai-based entity (buyer) and a Hong Kong-based entity (vendor) that held shares in another Hong Kong-based entity. The latter Hong Kong-based entity holds shares in a Vietnamese company. The MOF's legal grounds to impose capital gains tax on this transaction are controversial because normally this would be considered an offshore transaction. Its ruling is a warning, even in indirect sale transactions, whenever the target is a Vietnamese company. Tax planning, of course, should be addressed in every M&A acquisition. Tax planning may often be more than simply reading the law.

Are you noticing any trends with regards to specific markets, industries or deal volume?

Dreyfuss: In 2013 the Law for the Promotion of Competition and Reduction of Concentration was enacted in Israel to address the concentration of a significant proportion of the economy's financial and non-financial assets in the hands of a small number of industrialists. The law seeks to divest such control, and force some of Israel's leading players to dispose of certain assets. As a result there has been an increase in the number of M&A deals with corporations seeking to divest early at a reasonable value, rather than having a fire sale closer to the compliance date in December 2019.

In the high tech space, the current hot technologies for investors are cyber security, robotics, augmented reality and Fintech.

Wright: Based on statistics available in BvD's Zephyr database up to the close of business on 30/09/2016, announced global cross-border deals are on target to reach record levels of deal value with £835bn announced so far. This upward trend in terms of cross-border deal values is not however reflected when it comes to the number of announced deals. Based on the current levels recorded, 2016 is not on target to surpass the record high of 2015, but should beat previous highest levels recorded in 2014 and 2007 by some way. When we look at 2016's “mega deals”, whilst the absolute number of deals at the end of September 2015 were greater (15 v 12), this year's “mega deals” have been worth £318bn versus £234bn. This clearly indicates that buyers are willing to pay premium prices for their overseas competitors and push up the individual values of these “mega deals”. In 2016 Western Europe-based acquirors have so far been driving cross-border transactions, accounting for 52% of all announced deals by value and 43% of all deals

by volume. North American companies occupy second place by absolute deal volumes, but this region is out-placed by acquiror companies located in the Far East and Central Asian region when comparing deal values, and they have so far racked up £213bn of cross-border activity.

In terms of the types of industries where companies have been targeted by foreign buyers, the top four (as defined using UK SIC codes) are manufacturing of beverages, the manufacturing of chemical products, the manufacturing of computer and electronic products and then the manufacturing of pharmaceutical products. Each of these four sectors has had a couple of significant “mega deals” that have accounted for between 43 and 98% of the year's total deal value so far. This is again evidence that acquirors are willing to pay significant prices for their cross-border counterparts in order to consolidate their own market position and maximise global opportunities.

Lanfranchi: Since 2015, we have been noticing an increase on the number of M&A transactions in the health area. It comprises purchase and sale of (i) health care establishments, (ii) manufacturers of medical equipment; and (iii) health ancillary services providers.

Specialised companies have noticed an increase on the number of M&A transactions in IT, auxiliary services (such as marketing), chemical, insurance and food companies.

Due to the Brazilian economic crisis, many companies are entering into operations of purchase and sale of assets, to increase companies' financial availability and

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In the first months of 2016 the Italian M&A market performed well. The market is characterised by cross-border M&A activities, both incoming and outgoing. Analysts expect this trend to be confirmed in the coming months.

- Riccardo Roversi ”

cash flow, which later is reinvested in the company or used to reorganise the companies' finances.

The Brazilian economic crisis has also triggered M&A transactions due to the need of sellers to obtain investment and the willing of foreign investors to take advantage of the price of the assets in view of the favourable currency exchange rate.

Roversi: In the first months of 2016 the Italian M&A market performed well. The market is characterised by cross-border M&A activities, both incoming and outgoing. Analysts expect this trend to be confirmed in the coming months. High expectations are in the mid-market where private equity is performing well with huge financial resources ready to be invested. The Banking sector is also expected to accelerate M&A activities with the acceleration of the banking system's rationalisation and consolidation process.

Nguyen Huu Hoai: Foreign investors are currently interested in industries and sectors that produce/provide products/services to consumers such as retailing, food and beverage, aviation, pharmacy, etc. The real estate and health care businesses are other important sectors.

Interestingly, Thai investors are large players in M&A transactions. There have been two large transactions in the retail industry involving Thai investors. The value of these two transactions is about two billion US dollars and represents one third of the total transaction value this year.

Tatsuno: A trend we are witnessing is the rise of interest in Japanese start-ups involving the latest technologies, such as the internet of things (or IoT), artificial intelligence, financial technology (or FinTech), life science companies and innovative manufacturing. Based on data from Japan Venture Research, a Japanese research and consulting firm, a record JPY153.2 billion - inclusive of both foreign and domestic investments - was invested in Japanese start-ups in 2015, and this trend has continued into 2016.

Naturally, the deal size in transactions involving start-ups tends not to be substantial. On the other hand, 2016 has seen a couple of transactions of considerable deal size involving foreign acquisition of Japanese technology-related companies, where the targets were originally business units in or group companies of large Japanese corporations operating on a “selection and concentration” strategy, and were eventually spun off and sold as part of corporate restructurings.

Cross-border M&A is currently at the highest YTD level on record. What are the key drivers behind the rise in cross-border M&A?

Wright: Motivations for cross-border deals will vary company-to-company based on their size, industry activity and geographical location, amongst their other specific traits. But underpinning company-specific motivations is the increasing globalization of economies and the world in which we live.

Globalization provides companies with a number of opportunities upon which to capitalise. Such opportunities include:

Access to new customers and markets: the number of the world's inhabitants continues to grow, with an ever increasing populous of middle class consumers in some of the world's biggest countries. This new and increasingly affluent consumer group generates increasing demand for goods and services that needs to be satisfied.

Access to new resources, both in terms of potential labour force and natural resources: historically, new human capital included looking to outsource certain jobs carried out within companies to a cheaper overseas workforce than the incumbent local one. However, more recently it has been about acquiring particular “know-how” and skillsets that might be in short supply locally. Natural resources, whether they linked to a company's energy supply or its ability to source raw materials for the manufacture of its products, are also significant motivators for companies to look globally.

Access to new assets: these can be tangible, such as property or industrial assets, and intangible, such as intellectual property, e.g. patents, trademarks or designs. Buying a new technology or invention is a significantly quicker route to market than developing that exper-

tise in-house for many companies and is particularly prevalent in industries such as technology, pharma and manufacturing.

The increasing spread of globalization has led even smaller companies and not just the multinationals to look with a more open mind about acquiring overseas competitors or peers in order to maximise such growth opportunities within this new global market place. Cross-border deals have been helped by many economies around the world showing slow or declining annual growth rates and this is leading to more and more governments being prepared to welcome Foreign Direct Investment into their economies. As a result of an increased acceptance of FDI (either by mergers and acquisitions or via greenfield and brownfield investments) governments are reducing the amount of regulatory constraints previously placed on companies if they wanted to enter new geographical markets.

Nguyen Huu Hoai: There are four key factors:

- i. Vietnam has a population of about 90 million people. A large majority are at an age in which they are forming families. Therefore, sectors and industries that provide products or services to this cohort of the population are growing quickly to meet this demand. Growing family income is another positive factor.
- ii. Thai investors want to explore the benefits accorded to ASEAN countries, and to enter into the growing Vietnamese market where Thai products can be sold.



iii. Vietnam is becoming more integrated with regional and world economies. In addition to the ASEAN community, Vietnam and 11 other countries have recently signed the Trans-Pacific Strategic Economic Partnership Agreement (“TTP”) which, when ratified, will provide additional benefits for Vietnamese exporters to sell their products to large TTP countries (e.g., US, Japan, Canada, etc). In return, TTP countries will more easily be able to export their services and commodities to Vietnam. Vietnam

has also recently signed free trade agreements with the EU and Korea.

iv. A key factor revolves around the Government’s plans to divest its equity in several SOEs or in state-controlled enterprises that are in healthy financial circumstances. There will be a larger pool of shares for foreign investors that want to buy shares of SOEs by IPO or through the stock market.

What are some of the key issues that need to be considered by a foreign investor when planning an investment in your jurisdiction?

Roberts: Some of the key issues that need to be considered by a foreign investor early in a transaction are: (i) whether to establish a U.S. entity for the transaction; (ii) the type of U.S. entity to be established, i.e. a corporation or a limited liability company; and (iii) the type of transaction structure to be used. Generally, a U.S. entity will be established. However, a foreign investor may not want to recognise U.S. based income through a pass through entity; therefore, in such a case, we would form a corporation for the transaction. The state of formation of the entity also needs to be chosen; although generally Delaware is the jurisdiction of choice. The transaction structure will be dictated by the type of transaction, such as an acquisition or a joint venture. The limited liability protections to the foreign investor and the tax consequences of the structure will be key drivers of the structure. Also, in the context of the structure in a joint venture, corporate control and governance issues will be key issues.

Dreyfuss: One of the key issues for a foreign investor to consider when making and investment in an Israeli company, is whether the target received financing from the Israel Innovation Authority (formerly the Office of the Chief Scientist of the Ministry of Economy). This authority offers favourable financing to Israeli companies as the grants are repayable by way of royalties upon the commercialisation of the sponsored product. In other words if the project is not successful, there is no repayment obligation. However, these grants impose certain restrictions, particularly limitations on the transfer of the funded intellectual property and know how, and the manufacturing of the funded product – outside of Israel. A foreign investor who intends to use the funded IP or transfer manufacturing, should be aware that such

transfers have a price. The allocation of responsibility for obtaining the requisite approvals from the Authority, and paying the relevant “fines”, should be addressed in the transaction documents. Even if there is no intention to transfer the IP or manufacturing outside of Israel, if the investment would constitute a change in control in the target company, the foreign investor would be required to undertake to the Authority to comply with the terms of the grant and applicable laws.

Another key issue for an investor, particularly an investor who is buying out a founder or senior management, is Israel’s statutory restrictions on non-compete provisions. According to Israel’s Restrictive Trade Practices Law, when a shareholder sells his shares, any exclusivity undertaking according to which such shareholder agrees not to compete with the target company may not exceed four years as of the closing of the transaction. If however the shareholder continues to be employed by the company following such exit, the non-compete period may continue for a longer period, provided that it does not exceed two years as of the date of termination of such shareholder’s employment.

Lanfranchi: The key issues depend on the sector of operation in which the investment is intended. Usually, labour, tax and environmental issues tend to be essential in the decision making process.

Brazilian labour rules are protective to employees. This way, courts tend to issue decisions on their benefit and adverse to employers. That said, it is important to verify – previously to the acquisition/investment – how the company deals with the obligations imposed by the applicable Labour Law and the labour lawsuits in prog-

ress) to estimate future losses in case lawsuits are filed against the company. For the same reason, dismisses after de acquisition/investment shall be well planned, once severance pay and possible indemnification due can achieve high amounts.

Tax rules in Brazil are also an important point to be considered. Brazilian companies are subject to many levels of taxation: federal, state and municipal. Taxes authorities have five years counted from the taxable event to collect or question the payment of taxes, reason why a good due diligence shall be done with regard to payment of taxes. In addition, corporate reorganisations with the sole purpose of tax efficiency can be questioned by tax authorities and may be considered fraudulent. In this sense, not only past corporate reorganisations shall be evaluated, but also it is important to consult specialists before implementing any corporate reorganisation on the target companies.

Another important point to be considered is the environmental issue, due to its liability being strict. Companies that are subject to environmental rules have to comply with several determinations and obtain different licenses. Failure to comply with the respective regulations can be penalised in civil, administrative and criminal instances, and the penalties can be applied to the company, to its shareholders and to its officers, regardless of their knowledge or consent to the illegal action.

Riccardo: Key issues to be considered by foreign investors will differ depending on the market sector in which the investment is made. For example, regulatory issues affecting a specific market (e.g. real estate) can be quite different from the regulatory environment to which the investor is used in its own jurisdiction and can make a lot of difference in terms of timings and profitability of the proposed investment if not properly addressed and taken into account in planning the investment and negotiating the relevant terms and conditions.

From a more general point of view, foreign investors

entering Italy should always be aware that:

- obtaining authorisations and clearances that may be requested by any Italian administration or public body, that may affect the transaction itself or the activity of target (actual or intended), can require considerable time;
- the Italian employment law environment can be very challenging due to a high degree of employee protection;
- management of an Italian company often requires a frequent contact with local entities, public or not, therefore a managing body composed by foreign members only, not being present in Italy, could make the day-by-day management more difficult and, from this point of view, is not to be recommended.

Nguyen Huu Hoai: It is often a challenge to invest in an emerging and developing country like Vietnam. There are a number of steps to consider:

- α) the foreign investor will often execute preliminary documents: confidentially agreement, letter of intent, MOU (binding or non-binding) or term sheet;
- β) the foreign investor will normally carry out a due diligence (“DD”) and other pre-contract investigations in order to know and understand the target company and its potential new partner. An appropriate scope of the legal and financial DD investigation should be formulated. Typically, legal and financial DD investigations are necessary. A technical DD may be desirable if the foreign investor has concerns about the physical condition of the target properties or if environmental issues should be addressed (e.g., in the case of buying a resort located in an area affected by rising sea levels or in case of a power plant that is under construction, etc). The for-

eign investor will seek representations and warranties and/or undertakings in respect of material and important matters;

- χ) upon completion of a DD investigation, the foreign investor will need to decide whether to go ahead or to modify its proposal. If it decides to go ahead, the parties need to identify the definitive agreements [e.g., share purchase agreement, share subscription agreement, investment agreement, shareholder agreement, amended charter (articles of association/by-laws), loan agreement, etc]. As the mode of acquisition often has tax implications, the foreign investor will want to determine whether the transaction will be an asset acquisition or a share acquisition. Typically, it is a share acquisition;
- δ) importantly, the foreign investor should know what third party consents will be required (e.g., Government approvals, shareholders’ approval, lenders’ consent, etc);
- ε) the foreign investor will need to consider several situations: (i) negotiation may be time-consuming and costly; (ii) differences in corporate and national cultures can affect the negotiation process and the integration of business operations; (iii) protection of minority shareholders will be important if the foreign investor will be a minority shareholder in the target company; (iv) the post-closing management structure of the target company will also be crucial; (v) tax planning is necessary in order to avoid and to mitigate tax risks; (vi) if the transaction involves intellectual property (“IP”) – e.g., trademarks, brand name, software, etc – the foreign investor needs to determine whether its intellectual property will be transferred or licensed to the target company and whether, in the future, the foreign investor will be allowed to use IP created by the target company; (vii) the foreign investor should seek appropriate redress in case

the seller commits a breach; (viii) should a DD investigation of key management personnel be conducted?; and (ix) generally, in what circumstances can the foreign investor exit from the transaction before closing and/or after closing.

Tatsuno: Labour issues are one of the key considerations for foreign investors in Japan. Japanese labour law prohibits the unilateral dismissal of employees unless such dismissal is, among other factors, “objectively justifiable”. The standard for proving objective justification is so high, however, that it is extremely difficult for any employer in Japan to unilaterally terminate an employment contract. Foreign investors with the intention of undertaking pre/post-merger integration that involves reduction in Japanese employee headcount should accordingly bear this in mind.

Because of the traditional culture of lifetime employment, unilateral dismissal of employees in Japan can also be frowned upon as socially inappropriate. As an extension of this, employees in Japan generally expect to enjoy the same, if not a higher, level of employment conditions (such as in respect of salary and benefits) as the years of their service increase, such that foreign investors have to be careful, and should consult with labour lawyers, when offering reduced employment conditions as part of post-merger cost reduction measures.

To pre-empt such problems, prior communication with employees of the target Japanese company, carried out with understanding of local sensitivities, is often undertaken well before the consummation of the transaction.

When investing in Japan, foreign investors should also be mindful of holding on to key persons at the target company, because they are often instrumental in ensuring a smooth ownership transition, especially in the technology sector. It is therefore essential to ensure that key employees at the target are not made to feel that their jobs are at risk because of the transaction, or would become less attractive in the course of any post-transaction restructuring.

What are the most common disputes in cross-border M&A transactions?

Roberts: The disputes in a foreign cross-border M&A transaction are generally not dissimilar to U.S.- based M&A transactions. The key issues are transaction structure; tax issues; representations and warranties of the parties; indemnification obligations of the parties; security for indemnification; and non-competition and non-solicitation restrictions. An obvious issue that is more important in cross-border M&A transactions than other transactions is the dispute resolution and choice of law provisions. These provisions may be more heavily negotiated in cross-border transactions because of the parties' sensitivity to those issues. Also, in cross-border deals, certain aspects of the transaction are often more at issue, such as employment and labour law issues. The reason is that foreign jurisdictions are generally more protective and regulated than the U.S. and these issues are pushed to the forefront of the deal.

Dreyfuss: Prior to the closing of an M&A, disputes can arise pertaining to a breach of a no-shop (exclusivity) obligation, a party's withdrawal from negotiations, or the intentional non-fulfilment of a conditions precedent to frustrate the closing and derail the deal.

Post-closing, disputes can arise in connection with the target's breach of its representations and warranties, as the target has painted an inaccurate picture and is worth less than the purchaser paid.

Disputes regarding purchase price adjustments are also common. When the purchase price is based on a formula or an assumption (for example, that the current assets minus the current liabilities equals X), there is usually a post-closing mechanism to confirm the actual purchase price. The final purchase price is frequently a point of contention, as each party attempts to interpret and cal-

culate the numbers in their favour.

Disputes also arise from a seller infringing his non solicitation, confidentiality or non-compete undertakings, the breach of which can significantly devalue the target.

Finally disputes can arise in earn out mechanisms, particularly where these mechanisms include performance milestones.

Lanfranchi: The most common disputes in cross-border M&A transactions are related to financial issues, for example: price adjustment and earn out payment.

Most Brazilian companies do not have a professional management and do not observe the International Financial Reporting Standards (IFRS), mainly in the middle-market, where family businesses prevail.

When a Brazilian company is acquired and a professional management is implemented, applying the IFRS, there are significant adjustments in the companies' accounts. Those adjustments directly reflect in the acquisition price adjustment and in the earn out payment. As a result, many disputes between sellers and buyers arise. Therefore, it is important to clearly indicate in the transaction documents the criteria to be applied in the company's accounts after the acquisition and the methods of acquisition price adjustment and earn out payment.

Riccardo: In our experience the most common disputes arise in connection with representations & warranties with a particular focus on the merits and the quantification of the amounts due by the seller under the indemnity obligations undertaken in the context of the SPA or

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Many recent disputes in cross-border M&A transactions in Japan arise from breach of representations and warranties, whether due to inaccuracy in the financial statements of the target company, failure by the seller to disclose material documents or information, or otherwise.

- Shigeki Tatsuno ”

other transaction documents, as well as the recovery of any such amount.

In particular, we have experienced a number of litigation cases originated by third party claims that were not disclosed (or properly disclosed) during the due diligence phase.

From a different point of view, another issue that often generates litigation in M&A transactions is the breach of the exclusivity undertaking while negotiations are ongoing: in this respect particular attention should be paid to the wording of MOUs or LOIs.

Nguyen Huu Hoai: Disputes may arise pre-closing or following the acquisition. For example, there may be changes in the law or changes in the target's business that affect the transaction; sometimes the Government takes a wholly unexpected position--say, the selling party's tax liability; representations and warranties given by the seller may be found to be untrue or misleading; or the seller breaches its post-closing covenants and the buyer may make a claim for such breaches. These events may lead to a dispute or may materially change the parties' perception of the value of the transaction. From the buyer's perspective, the share purchase agreement ("SPA") should: (i) include a "material adverse effect" clause that allows the buyer to exit in certain circumstances; (ii) address the manner in which disputes will

be resolved. The parties may choose to resort to alternative forms of resolution or to litigate.

Tatsuno: Many recent disputes in cross-border M&A transactions in Japan arise from breach of representations and warranties, whether due to inaccuracy in the financial statements of the target company, failure by the seller to disclose material documents or information, or otherwise.

Breach of undertakings, such as attempts by the acquirer, citing reasons of financial exigency, to downsize the workforce of the Japanese target in contravention of undertakings not to do so, sometimes also result in disputes.

Disputes arising from purchase price adjustments are also seen from time to time, especially in transactions involving a substantial purchase price, as minor differences in interpretation of the adjustment mechanism could make a significant difference.

Sometimes, Japanese parties prefer short-form transaction agreements that leave room for future discussion on certain material terms. In cases where short-form agreements are adopted, there is also potential for disputes on the interpretation of matters that have not been expressly provided for in the agreements.

What is the preferred means of resolving disputes?

Dreyfuss: While arbitration is popular in Israel – as it ensures confidentiality and is considered more efficient, for M&A deals parties still tend to favour the court system. This inclination is fuelled by the fact that after an exit the parties have little common interest. Even in cases where arbitration is chosen, parties reserve their rights to turn to local courts to seek immediate interim relief, i.e. an injunction to prevent a seller breaching his non solicitation, confidentiality or non-compete undertakings. Disputes arising from price adjustment mechanisms are the exception to this trend. Here the parties usually agree to have an expert auditor appointed to determine the accurate purchase price, in lieu of a judge.

Lanfranchi: Traditionally, disputes in Brazil are resolved judicially. However, lawsuits can be time consuming and not always effective, in the sense that judges are not sufficiently specialised or knowledgeable in commercial and M&A matters.

Alternatively, it is common that the parties entering into an M&A transaction determine that disputes will be resolved by means of (i) arbitration procedures, regulated by Law No. 9.307, dated 23 September 1996, or (ii) mediation procedures.

Arbitrators can be freely chosen by the parties, and tend to be specialised on M&A matters. In addition, arbitration enables more flexibility to the parties that can determine the place, the language and other rules applicable to the procedure. Finally, it is timesaving when compared to judicial procedures. On the other hand, arbitration is expensive and may not be worth when low amounts are involved in the dispute.

Mediation is a form to make parties achieve consensus regardless the dissenting points. The parties involved on the dispute elect an independent third party (the mediator) to intermedate and facilitate parties' negotiation. Unlike the arbitration, the third party does not have powers to issue a decision. The function of the mediator is to help parties to come into an amicable settlement. Mediation is faster than arbitration and, generally, is used as a preliminary procedure to the arbitration, so, if parties do not reach an agreement by means of mediation, they proceed with arbitration.

Riccardo: The most common and preferred means of resolving a dispute arising in connection with a cross-border M&A transaction is ICC arbitration. This is obviously the preferred means when the parties involved speak different languages, since it brings the litigation into a neutral territory (i.e. in a country different for the country of purchaser and seller).

If Italian law is applicable, disputes are also often attributed to the competence of Italian Courts, but while this solution is cheaper in terms of costs, it has also some downsides that can be summarised as follows:

- the need to translate all the relevant documentation into Italian;
- the time (longer than an arbitration) necessary to finally conclude the dispute.

Nguyen Huu Hoai: A transaction involving a foreign investor or a foreign invested enterprise can be settled by Vietnamese courts or by Vietnamese arbitration or by international arbitration. One benefit of arbitration,



of course, is that the panel can be selected by the parties. These traditional dispute-resolution means are often reluctantly chosen, because they will be time-consuming and costly.

The parties may seek other alternative solutions whereby a dispute can be settled either by an independent expert, a mediator, or through mutual dialogue and negotiation. For example, in case of dispute on valuation or price, the parties can select an independent and professional valuer who is able to give a fair assessment. Disputes or deadlocks may arise from an unsuccessful negotiation. In such a case, the parties may need to rely on a mediator who can communicate with both parties and is capable to help the parties to reach an acceptable agreement. The best outcome is when the parties can themselves negotiate a solution. This process can be faster and more effective. If the parties fail to reach an agreement, the dispute can then be referred to international arbitration for settlement. Hong Kong or Singapore is often selected as a forum to arbitrate.

We note that a dispute involving real estate can be settled only by a Vietnamese court, and that an arbitral award granted by foreign arbitration must be recognised by a Vietnamese court before it can be enforced in Vietnam. Foreign court judgements are almost impossible to enforce in Vietnam.

Tatsuno: While arbitration is increasingly gaining traction in Japan, Japanese companies generally prefer litigation as the mode of resolving disputes, with the Tokyo District Court being the usual preferred court of jurisdiction. This is the case both in domestic and cross-border disputes. As the foreign party would in most cases also prefer transaction-related disputes to be resolved by the courts of its home jurisdiction, however, transaction parties would typically agree, as a form of compromise, on dispute resolution through arbitration in a neutral forum, such as the International Chamber of Commerce or the Singapore International Arbitration Centre.

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If a merger, consolidation or an acquisition results in the target having a dominant market position – in which the target will have 50% or more of the relevant market after the transaction – the transaction is prohibited (with a few exceptions)

- Nguyen Huu Hoai ”

What measures can be implemented to ensure large cross-border M&A deals receive antitrust clearance?

Riccardo: There are no particular measures to be implemented so as to ensure that large cross-border M&A deals receive antitrust clearance, other than a preliminary and serious review of any potential antitrust issue, in order to properly prepare and file the request for clearance and make clear to the antitrust authority that the proposed transaction does not have any substantial issues on competition.

An analysis must be conducted on a case-by-case basis and, sometimes, the outcome of such analysis may suggest as opportune that some steps are undertaken before filing any antitrust clearance request.

Nguyen Huu Hoai: If a merger, consolidation or an acquisition results in the target having a dominant market position – in which the target will have 50% or more of

the relevant market after the transaction – the transaction is prohibited (with a few exceptions). However, if it has less than 30% of the relevant market, the Vietnam Competition Authority (“VCA”)’s consent is not required. A test market share requires an assessment of the dominant position as it relates to geography, price and products/services. The VCA is developing its own database, but it is at a preliminary stage.

Sometimes, the VCA may need to consult with other ministries or state bodies. Often the parties to the transaction themselves can develop and prepare their own market assessment and survey to analyse the market. The parties can share their findings with the VCA. This can help to facilitate and expedite the assessment process.

How important is leveraging cultural differences in cross-border M&A?

Roberts: Cultural differences are key matters in cross-border M&A transactions. First, depending on the foreign party, simply the differences in language may be a challenge. Although most foreign investors with whom I worked on transactions were fluent in English, there still remains the issue of explaining and understanding complex legal issues and the confidence that our foreign investor clearly understands the issues at hand. Also, the differences in labour and employment laws in foreign jurisdictions (which are much more regulated and employee protective) is much different than those in the U.S (which are much more flexible and advantageous to the employers). That always takes time to explain to our foreign clients and for them to understand and be comfortable with the employment laws of the U.S.

Wright: M&A deals have a reputation for a notoriously low success rate when it comes to maximising shareholder value. Whilst there are many attractions for companies in pursuing cross-border opportunities in the new global economy, the potential for deal failure as a result of cultural differences is even greater. There will always be some cultural differences between companies who are located within the same geography. These can be driven by the management style, ethics and beliefs of the founders or management team. But across different countries and very often across countries within the same region, where multiple languages are spoken and different beliefs and values are held, the potential for cultural differences is even greater.

As previously referenced, new markets and customers are a key driver for cross-border deals, meaning that the acquirer in a cross-border deal needs to think about any cultural differences that might arise well in advance of

the signing of the deal. Such differences may become obvious even in the negotiation stage of the deal and will usually serve as a good indicator for issues that may arise in the future. Thus significant planning to account for the target company culture (whether it is as a result of its physical location or its internal values) should be included in the plans for the post-deal integration strategy.

When a well thought through strategy for integrating companies from different geographies or cultures is put in to place, the ultimate deal drivers of growth and return on investment can be maximised.

Riccardo: While there are no significant cultural gaps in cross-border M&A transactions involving players from Western jurisdictions, we have noted a significant cultural gap when Middle Eastern, Indian and Far Eastern investors are involved. In this respect, the cultural gap has repeatedly represented a serious obstacle to the smooth and straight forward development of negotiations, causing tensions and misunderstandings between the investors and the Italian counterparties due to the difficulties in properly understanding one another.

From a different point of view, foreign investors entering the Italian market must always be warned they are entering into a legal system that, from a cultural perspective, may be different from that to which they are used.

Nguyen Huu Hoai: It is normal for people who live and work in different national and corporate cultures to have differences and that these may become an issue if the people are required to work together. This can happen both during the negotiations and after the acquisition. Accountants, lawyers and advisers can often



act as intermediaries. Intermediary mediation can be an effective channel to resolve a deadlock during negotiations. Integration post-acquisition can take time. It requires effective communication among internal stakeholders so that both leaders and employees can engage and work in the new and blended cultural environment. Frequent personal interaction is important.

Tatsuno: Cultural differences in cross-border M&A are sometimes leveraged to achieve certain outcomes. As mentioned above, there is a traditional culture of lifetime employment in Japan. This is sometimes inimi-

cal to productivity, as workers are given increased benefits year on year by sole virtue of their seniority rather than their performance, while productive or promising workers are disincentivised from exerting best efforts.

Through leveraging cultural differences, a foreign acquirer could (without overtly and immediately reducing any employee's employment conditions) introduce a different compensation system, such as incentive plans, under which productive workers would receive compensation commensurate with their performance as business under the new owner proceeds.

How important are labour and tax issues when integrating companies across borders?

Roberts: Labour and tax are probably the two most important issues in cross-border M&A transactions and the integration of companies following the transaction. The labour laws and issues between the U.S. and foreign jurisdictions are quite distinct. The more flexible labour laws in the U.S. give a foreign investor options in dealing with compensation, insurance and termination issues that foreign jurisdictions do not share. Tax issues, as in the case of any M&A transaction, are extremely important issues. In a cross-border M&A transaction, those issues involve both the tax consequences in the U.S. and the tax interplay between the U.S. and foreign jurisdiction. There also may be opportunity to maximise the tax advantages of a transaction by the interplay between jurisdictions.

Riccardo: It is always important to fully evaluate the tax impact of any cross-border M&A transaction. Tax issues may vary depending on the actual type of transaction involved, but in general terms, the most relevant tax issues generally refer to capital gains' taxation, dividend taxation, transfer pricing, in addition to pre-existing potential tax liabilities that the investors could be called to meet post-closing.

To that purpose it is highly recommended that any preliminary project is also subject to tax structuring with the assistance of tax advisers and that a full tax and accounting due diligence exercise is performed.

Labour issues are also quite important, in particular with large cross-border deals involving companies employing a large number of people.

Italian employment law is quite protective toward employees: litigation may take several years and may result in high costs in terms of legal fees and amounts payable to the employees involved (if they are successful).

In addition, if the intention of the investor is to carry out, prior or post-closing, a restructuring of the workforce (for strategic or financial/economic reasons), the relevant procedure (that may vary in connection with the specific tool chosen from amongst those available under Italian law) is very complicated and requires a number of activities in which public authorities are also involved. Also in this respect the prior analysis of the workforce of the target is highly recommendable together with, if necessary or required, a prior planning of all the measures on the structure of the workforce that the investor foresees putting in place. In addition a full labour due diligence exercise is strongly recommended in order to gain full knowledge of any pre-existing labour issue and properly tailor the relevant set of representations and warranties and indemnity obligations accordingly.

Nguyen Huu Hoai: Tax liability (capital gains tax) imposed on the seller can be expected to affect the purchase price. Vietnam has signed tax treaties with several countries. There is room to explore tax benefits under some tax treaties. The selection of the jurisdiction where the seller is incorporated may have favourable tax implications. An appropriate structure for the proposed transaction is another way to exercise tax planning. These matters should be addressed when the parties shape the transaction structure.

What buyer protections exist for buyers entering into unfamiliar territory?

Roberts: It is extremely important that Buyers entering unfamiliar territory engage the right transactional advisors onto their team; namely attorneys, accountants, bankers and consultants. It is important to engage these advisors as early as possible in order to identify and then address critical issues that need to be resolved in the transaction. Having the proper deal team in place early in a transaction will afford the foreign investor the opportunity to build in legal protections from the offset. The ultimate protections will be provided through transaction structure and the transaction documents.

Dreyfuss: The best protection for a buyer entering into a transaction in an unfamiliar territory is thorough due diligence, in order to identify all the risks, whether legal or financial in the proposed deal. Once this process has been completed these risks can be evaluated and responsibility allocated in the transaction documents, including any necessary adjustment to the original purchase price.

The most common protection for buyers in an M&A deal is an escrow arrangement, where part of the consideration is held back as security against any breaches of the representations and warranties by the sellers, or certain risks identified in the due diligence process. For example tax exposure or threatened or ongoing litigation.

The value of a company largely depends on the talent of its employees and management. Although a buyer cannot force continued employment, it can align interests by insisting on earn out provisions or offering other financial incentives to senior employees. This will ensure that management stay on with the target and continue

to guide the company through territory that the buyer is unfamiliar with, and cannot navigate itself.

Non-compete provisions, although limited in their enforceability, are also an important tool to protect the value of the target and the buyer's interest.

Finally, a new market is emerging in Israel with respect to warranty & indemnity (W&I) insurance. Insurance companies are beginning to offer buyer's insurance against a seller's breach of its representations and warranties, and this may be an interesting option for buyers entering into unfamiliar territory.

It should be noted that while in other jurisdictions indemnity provisions are used to protect buyers, they are not required under Israeli law, as a breach of a representation or warranty would simply be treated as a breach of contract. On the contrary, indemnity clauses are typically employed by sellers in Israeli deals, to limit the scope of their liability.

Lanfranchi: In addition to a stringent financial and legal due diligence, prior to the acquisition, it is important that the buyer conducts market research through a specialised company, to get to know better the target's industry, its special features and its potential of development.

Apart from that, after the consummation of the transaction, it is important to ensure a good transition of the management of the target. Regarding that matter, it is recommended that the former managers and/or owners of the business be maintained in the management of the target, if they have the business know how and the

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- Vanessa Lanfranchi ”

target's history, which can be an asset to the execution of the buyer's business plan.

The Buyer can adopt alternative ways of payment of the acquisition price, in a way to combine target's future results with the acquisition price. The earn out is a common instrument, in which the price paid to sellers reflects the company's results. This way, if target obtains a good result, sellers will be remunerated accordingly.

Riccardo: As mentioned above, carrying-out a complete due diligence exercise (legal, tax, accounting and business) and negotiating an appropriate set of representation and warranties assisted by indemnity obligation of the Seller, represent the typical and most common protection for foreign buyers.

It is always recommended that those activities are performed with the assistance of professionals active in the jurisdiction of the target, in order to avoid future issues deriving from the lack of knowledge of the jurisdiction the buyer is entering.

Where possible under the circumstances, to increase the level of protection buyers should seek to secure the seller's indemnity obligations through a security package (e.g. first demand bank guarantees, holdback, escrow etc.) in order to minimise the risk of recovery of any potential amount owed to buyer.

Nguyen Huu Hoai: The law provides certain statutory protections, but they should be elaborated in the documentation. The parties can agree, for example, that the buyer has contractual rights to:

- i. terminate the transaction at the buyer's convenience;
- ii. exercise put/call options;
- iii. buy-out a minority party – where appropriate;
- iv. participate in management through board representation;
- v. claim against improper dilution of equity;
- vi. determine distribution of profits.

What steps should a company take to ensure a successful and efficient integration process following an acquisition?

Wright: I have always been of the view that ensuring a successful and efficient integration process following an acquisition actually starts at the due diligence phase. This includes the acquiror looking at all aspects of the target's business, ranging from its financials to its products / service offering, its customers / suppliers, through to its senior people and culture. If insufficient scrutiny is carried out at this point, all sorts of post-deal integration issues can arise that were never foreseen and have to be dealt with "on the fly".

A dedicated deal integration team should be formed, with its size and skillset determined by the available resources within the acquiror company and preferably with some prior experience of integration after an acquisition.

The deal integration team should then be provided with a clear plan on what needs to be done, including its priorities in terms of tasks. There should also be a very clear understanding of what the key drivers for the deal were, i.e. whether there were financial synergies, or whether it was access to new markets or technologies etc. by this team and both companies' senior management so that all parties are on the same page. Other tasks might include overseeing the migration of IT and finance functions, dealing with any governance issues or statutory or regulatory requirements, and ensuring that any processes that acquiror has in place are transferred over to the new business or vice versa.

One critical step that should not be overlooked by the deal integration team is that of bringing the two organisations together in terms of the people and cultures. It's vitally important that employees are kept appropriately

informed as to what is going on until such time that the integration of the target company into the acquiror has been completed. The "human capital" in either company has the ability to derail all of the best laid plans and motivations for the original deal.

Riccardo: Integration of software platforms: in our experience, post-acquisition issues on integration refer mainly to IT issues. We have noticed that often prior to closing investors fail not pay enough attention to the possible combination of different software platforms, with subsequent delays in combining the activities and taking advantage of the synergies generated by the acquisition, as well as generating many problems and difficulties in the day-to-day management of the combined companies.

Adopting group policies: the buyer should adopt the necessary measures to align the target company to policies adopted in its own group of companies. Such measures should be aimed at introducing those policies in a clear and smooth manner, so as to progressively reduce the cultural gap existing in the workforce active in different jurisdictions.

Nguyen Huu Hoai: "Fighting" or "divorce" may occur in an unsuccessful and hostile acquisition. Operational deadlocks may also arise post-acquisition. Below are some recommendations to avoid these:

- i. build trust through greater personal interaction among stakeholders is an effective way to overcome differences;
- ii. develop a practical and fair corporate governance structure;



- iii. apply appropriate management structures that may be used to avoid management and operational deadlocks (e.g., chairman's casting vote, independent director's swing vote, right to appoint/nominate representatives to hold key management positions);
- iv. develop a policy to retain the target company's key people who can help smooth the transition; and
- v. be prepared to change and to adopt the other's strength.

Tatsuno: A successful and efficient integration process is often dependent on key persons at the target com-

pany. It is therefore important, even as early as the due diligence stage, for the acquirer to identify those persons who will be key to a smooth integration and successful future operations. Once identified, the acquirer should as soon as practicable, whether by providing reassurance or discussing future incentives, induce the key persons to stay with the target company.

The posting of suitable key persons from the acquirer to the target company often also enables the acquirer to "win the hearts and minds" of the target's personnel, as rapport is established between the acquirer and the management team at the Japanese target company, and as their respective visions begin to align.

Are there any peculiarities regarding company incorporation which buyers need to be aware of in your jurisdiction?

Roberts: The only peculiarities that I have found over the years regarding company incorporation in the U.S. by foreign investors is the ease in which a U.S. entity may be established in comparison to foreign jurisdiction. At one international M&A conference, my colleagues were amazed at the ease at which we could form an entity in the U.S. When I described the ability to set up a Delaware entity in a matter of minutes via an electronic filing, the others were shocked.

Riccardo: Incorporating a company in Italy is not difficult. The process is generally quick and can be completed in few days, provided that standard documents are used. If the context of the transaction requires the preparation of specific documents (e.g. by-laws with specific tailor-made provisions) the process may take some additional days.

In general terms, a foreign investor incorporating a limited liability company (S.r.l. or S.p.A.) should be aware that:

- all Italian companies must be registered with the Companies Register and VAT office;
- companies incorporated by a sole shareholder

require that the entire amount of the share capital is paid-in at incorporation;

- any acquisition (having a value equal or higher than 10% of the share capital) of assets from the directors and or shareholders within two years from date of the company's registration with the Companies Register, is possible only if accompanied by a sworn appraisal attesting the value of the assets to be purchased. The same requirement applies to any contribution in kind made by whomsoever in favour of the company.

Nguyen Huu Hoai: In the past, a foreign invested enterprise ("FIE") needed only to obtain an investment certificate ("IC") which is construed to be a business license. Under the new Enterprise Law and Investment Law, an FIE, in which foreign ownership is 51% or more, needs to obtain two licenses: an Enterprise Registration Certificate ("ERC") and an Investment Registration Certificate ("IRC"). In addition to the ERC and IRC, an FIE which is operating in special sectors must obtain additional licenses such as printing license, operating license to run a hospital, operating electrical permits, etc.

What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

Wright: We are only at the beginning of Q4 and already 2016 has been a tumultuous year; we have seen the British people vote to leave the EU, the price of oil remain at some of its lowest levels for nine years, global economic growth remains very slow and there are concerns that there is another impending banking crisis.

Whilst "Brexit" has not formally begun it's still difficult to foresee the impact that this will truly have on the global economy and also the number of cross-border deals UK-based companies will find themselves involved in during and after "Brexit". There was clear evidence that in the week immediately after the EU referendum (Week 26) a significant number of cross-border deals targeting UK companies were announced – 45 totalling £1.2bn as opposed to the previous weekly high in week 18 where 30 deals totalled £12.1bn (one deal accounted for £12bn of the total). Clearly overseas buyers were capitalising on the pound's fall immediately after the vote.

As it currently stands, "Brexit" does not seem to be deterring foreign acquirors from targeting UK companies, with record announced deal values of £182bn, which with three months of the year remaining are 61% higher than previously seen. Not unsurprisingly, given sterling's current low value, the levels of deals where UK companies are acquiring overseas companies are likely to be significantly down on 2015's total of £106bn.

I would not expect the desire of UK companies to want to acquire overseas targets to diminish once the British government invokes Article 50 to formally bring the UK out of the EU. In fact, I could envisage that if the global trade deals the UK negotiates are not well received, this might lead to more British companies looking to make acquisitions overseas in order to ensure that their route to the global economy remains fully accessible. I could foresee the opposite of this happening in terms of foreign companies looking to acquire UK companies and I would expect to see lower numbers of deals next year than this year. Despite the fact that sterling is likely to still be a weakened currency, the economic uncertainty that invoking Article 50 would bring is sure to outweigh the ability to pick up UK businesses cheaply for potential overseas acquirors.

Nguyen Huu Hoai: A second wave of M&A activity should occur when the Government begins to divest its equity in large SOEs and when listed companies increase the headroom for foreign investors. While this has long been under discussion, many signs have become more positive. In reality it has become easier for foreign investors to have a majority interest in most businesses. This situation has evolved over time (See our discussion at Question 1). There are still administrative hurdles in some situations involving foreign ownership. However, most situations can be easily dealt with.