DESIGN AND EXECUTION OF A CROSS-BORDER DEAL

Efficiently executing a cross-border transaction requires experience, pragmatism and a specialized skill set. We have closed transactions in more than 75 countries for buyers and sellers across the full spectrum of dealmaking, from venture capital and private equity to multinational corporations.

Below are the key considerations to evaluate and address when designing and implementing a successful cross-border transaction strategy.

PURCHASE PRICE ALLOCATION	While the transaction structure and purchase price allocation both have tax and operational implications, these considerations are far more pronounced in a cross-border deal and can have material timing and cost implications. • Determine the allocation methodology in advance and confirm the timeline required to prepare it • Confirm the financial reporting and tax implications • Assess the implications and logistics of post-closing purchase price adjustments
FUNDS FLOW	The mechanics behind closing date payments in a multijurisdictional transaction can become quite intricate, oftentimes necessitating payments across multiple timezones and in various currencies. • Confirm whether exchange controls apply and whether "local" payments are required or advisable • Analyze the repatriation/extrication logistics, timing and costs for cash in the system and the use and value of "trapped" cash • Address any exchange rate risks • Determine the working capital, debt and debt-like items as well as payment and adjustment implications
EQUITY AWARDS AND ROLLOVER EQUITY	While tax-deferred rollovers and equity participation are commonplace in US domestic transactions, these items can be far less efficient in other jurisdictions and create additional complexity and costs. • Determine the need or desire to utilize rollover equity or other equity compensation early on • Assess the tax implications for both the issuer and the recipient • Confirm any requirements or limitations under applicable securities laws • Consider the impact of equity-based compensation on benefit entitlements and severance obligations
ANTITRUST, MERGER CONTROL AND FOREIGN DIRECT INVESTMENT	Where the target company holds real property or derives revenue in multiple jurisdictions, there can be several filing obligations with differing informational requirements, approval processes and waiting periods to navigate. In many instances, the answer as to whether filing is required is based on assets, sales, turnover or other measures of both parties (and not just the transaction size). • Obtain the sales by country or the location of the real property owned by the target company early in the diligence process • Confirm (and gather) the information required to assess antitrust and merger control filing obligations on the basis of both parties' global operations • Assess the necessary closing conditions and ability (or inability) to defer certain jurisdictions pending approval while closing part of the overall transaction in other jurisdictions • Consider if the proposed transaction will be subject to foreign direct investment regulations in any of the target company's jurisdictions and, if so, what authorizations would be required

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EMPLOYMENT	Multijurisdictional transfers of employment can be administratively cumbersome in ways that may not be intuitive to dealmakers outside of the subject jurisdiction, which can give rise to additional costs and material delays. • Confirm whether works council notifications or consultations are required and whether there are any advance consultation or approval requirements that might dictate the transaction's structure (*e.g.*, in France and the Netherlands) • Assess "acquired rights" or "automatic transfer" requirements • Analyze benefit replication obligations (including a buyer's analysis of its own benefits program and any replication requirements resulting from newly hired personnel) • Determine unfunded or underfunded pension obligations (and funding allocation or purchase price implications for contingent funding obligations) • Evaluate synergy assumptions and the feasibility, timing and cost of reductions in force
LOCAL ENTITIES AND AUTHORIZATIONS	Establishing acquisition vehicles in multiple jurisdictions and transferring or obtaining applicable licenses and authorizations can be burdensome and extend timelines. • Confirm early on if new entities will be required to acquire or hold assets or employ personnel in any jurisdiction and the anticipated timing (which can be measured in months in certain jurisdictions) • Validate the overall licensing and approval requirements for the target (including permits, marking authorizations, certifications of notified bodies, etc.) and the plan (whether through transfer, replication or transition services) to avoid interruptions to the business • Consider the effect of tax or local regulations on governance structures and the constitution of a board of directors (or a local equivalent) following the completion of the transaction
TAX	Tax can be extremely complex in cross-border deals because of many variables (*e.g.*, parties are residents in different jurisdictions or each country has specific tax rules), and there is no one-size-fits-all approach. • Determine the optimal deal structure upfront (*e.g.*, rationalization of acquiring a vehicle, special elections that produce deemed asset sales and cause a step-up in basis, placement of debt with consideration of the utilization of interest expense deductions, allowing for efficient cash repatriation or ensuring a tax optimal exit) • Confirm early on the best approach for integrating the target within the acquirer's existing group, as an efficient acquisition structure often can provide additional flexibility for post-acquisition planning (and failure to plan correctly can limit the ability to restructure efficiently after a closing)
FORMALITIES, DISCLOSURES AND INFORMATION REQUIREMENTS	It is important to establish what formalities are required to complete a transaction in any target jurisdiction as these requirements often are not intuitive and can have a material impact on the transaction's timing. • In jurisdictions where notaries are used, determine the required formalities and whether it will be necessary for the parties (or their representatives) to attend a physical closing meeting • Confirm local banking requirements or other applicable anti-money laundering regulations or information disclosure requirements, which can be administratively burdensome and require third-party involvement
DEFERRED TRANSACTIONS AND TRANSITION SERVICES	The cumulative effect of additional complexities and overlapping dependencies in a cross-border transaction can make the flexibility of multiple closings and transition services attractive. • Consider whether separating certain aspects of the transaction for a deferred or delayed closing can expedite the overall deal timeline • Assess the transfer of beneficial interests in deferred assets with appropriate net cash or other overall economic allocations • Determine whether transition services (or similar leasing, distribution or manufacturing arrangements) are feasible and appropriate

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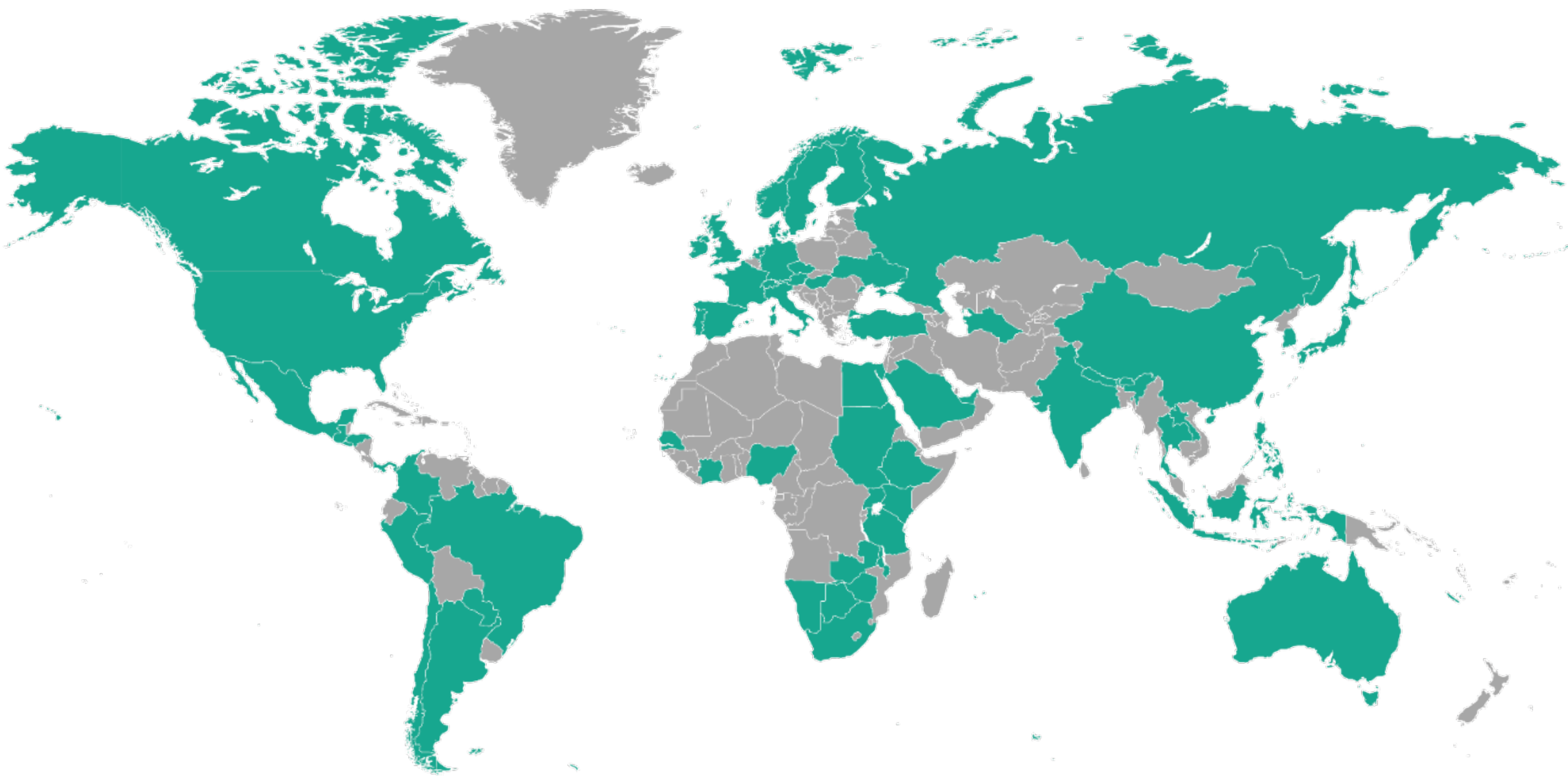
Access more resources and get in touch with our experienced deal team by visiting mwe.com/crossborder.



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