

**15.617, Spring 2004**  
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**Lecture 12: 3/29/04**

Guest: David Walek, Ropes & Gray

- I. Why Int'l M&A is different?
- II. International JVs (joint ventures)
- III. Lawyering

I. Why Int'l M&A is different?

- For the large part domestic and international deals are not that different.
- There are same issues, covenants about business, IP issues, and antitrust issues
- 80% the same
- 20% different:
  - tax and structuring issues
  - you need an international tax expert (lawyer)
    - you're dealing with multiple tax jurisdictions assuming a US firm is acquiring a firm outside of US
    - when you do int'l M&A you do it with several foreign subsidiaries
    - John Kerry is trying to eliminate companies from going off shore
    - High profit in low tax jurisdiction
- The Netherlands is a popular structure for companies to adopt since it is easier to do business there
- Multinational acquisitions: there is not a separate body of law that governs int'l corporate law/tax
- You are always dealing with local law.
- In Delaware it's easy to set up a corporation
- In Germany, it's not enough to have a signed agreement since it only holds when you read it to a local magistrate.
- Many countries don't have corporate law; but some have more regulations than US
- Holland has a strict corporate law
- Delaware has a well established corporate system.
- In a lot of countries you need to have a local representative there that acts as a local executive.

Antitrust/competition law

- As a practical matter, foreign countries aren't into antitrust
- In Europe, there is one head that takes care of all the antitrust rulings for all of the countries.

- IP: these days this is the key reason why people are buying companies
  - Trade secrets
  - Software
  - Brands
  - Chemical compounds
- The degree of IP protection is not the same around the world
- Therefore, get appropriate information before making a decision
- China has weak IP for software/media.
- Some countries have foreign ownership limitations (less so these days)
  - Currency controls
- Around the world there are more foreign corrupt practices.

Lawyers have:

- rule of law: a broader depiction of corruption
- America's law is 99% reliable
  - Due process is not always the case around the world
- other countries are more apt to put company-people in jail
- In America you might just get a fine/sanction
- Terminating distributors is more problematic overseas than in the US
  - US honors contracts
- Labor issues: harder to change workforce rules overseas.

## II. Int'l JVs (joint ventures)

- non-international reasons to do JVs:
  - a partnerships of some kind
  - strategic alliances/contractual
  - company who change their goals (ex. Millennium Pharmaceuticals)
  - Millennium developed a drug, and another party manufactures it, and another party markets it (strategic alliance)

## JV

- takes the strategic alliance one step further to pursue a project
- a shared investment w/economic risk and return
- everyone gets a return
- Whether its worth doing this depends on the size, duration, liability issues, management issues.
- There are dichotomies between local and federal government rules.
- "Favored status" from being locally owned.
  - Easier to get gov't contract
  - Easier to get tax breaks
- In the US we have majority, minority, or 50/50
- In terms of control over entity
- each party has its own concerns

- The control mechanisms
  - Voting regulations
  - How many Board seats
  - Super-majority provisions
  - Selection of management
  - Types of return (preferred, etc.)
  - You want to prevent deadlocks
- deal with the ownership of the venture:
  - could be going into new country
  - switching industries
  - need another facility

Tagalong: if majority wants to sell out, they have to take minority along (reciprocal of a drag)

### III. Lawyering

- Initially historically, foreign lawyers are less involved with business deals (they tend to be gatekeepers)
- US lawyers find ways to work around the law.