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Cross-Border M&A – 2018 Checklist for Successful Acquisitions in the United States

Global M&A accelerated in the fourth quarter of 2017, driven in part by tech expansion and strong economies in several key markets, and there are many signals pointing to a continued strong pace of transactions, including in the U.S. Overall M&A volume in 2017 continued to be robust, reaching $3.6 trillion, approximately 35% of which involved cross-border deals. Four of the ten largest non-hostile deals announced in 2017 were cross-border transactions.

U.S. targets accounted for approximately $1.4 trillion (approximately 40%) of last year's deal volume, with approximately 18% of U.S. deals involving non-U.S. acquirors. German, French, Canadian, Japanese and U.K. acquirors accounted for approximately 55% of the volume of cross-border deals involving U.S. targets, and acquirors from China, India and other emerging economies accounted for approximately 6% (down from approximately 15% in 2016). Cross-border deals involving U.S. targets included a number of noteworthy transactions, including Reckitt Benckiser's $17 billion acquisition of Mead Johnson and JAB's $7 billion acquisition of Panera Bread.

Based on the current economic environment and recent U.S. tax legislation, we expect the pace of cross-border deals into the U.S. to remain strong. As always, advance preparation, strategic implementation and deal structures calibrated to anticipate likely concerns will continue to be critical to successful acquisitions in the U.S. The following is our updated checklist of issues that should be carefully considered in advance of an acquisition or strategic investment in the U.S. Because each cross-border deal is unique, the relative significance of the issues discussed below will depend upon the specific facts, circumstances and dynamics of each particular situation.

- *Political and Regulatory Considerations*. Investment into the U.S. remains mostly well-received and generally not politicized. But the Trump administration's periodic policy departures and "America First" rhetoric and policy make it more important than ever that prospective non-U.S. acquirors of U.S. businesses or assets undertake a thoughtful analysis of U.S. political and regulatory implications well in advance of any acquisition proposal or program. This is particularly so if the target company operates in a sensitive industry; if post-transaction business plans contemplate major changes in investment, employment or business strategy; or if the acquiror is sponsored or financed by a foreign government or organized in a jurisdiction where a high level of government involvement in business is generally understood to exist. The likely concerns of federal, state and local government agencies, employees, customers, suppliers, communities and other interested parties should be thoroughly considered and, if possible, addressed before any acquisition or investment proposal becomes public. It is also essential to implement a comprehensive communications strategy, focusing not only on public investors but also on these other core constituencies, prior to the announcement of a transaction so all of the relevant constituencies may be addressed with appropriately tailored messages. It will often be useful, if not essential, to involve experienced public relations firms at an early stage in the planning process of any potentially sensitive deal. Similarly, potential regulatory hurdles require sophisticated advance planning. In addition to securities and antitrust regulations, acquisitions may be subject to CFIUS review (discussed below), and acquisitions in regulated industries (*e.g.*, energy, public utilities, gaming, insurance, telecommunications and media, financial institutions, transportation and defense contracting) may be subject to an additional layer of regulatory approvals. Regulation in these areas is often complex, and political opponents, reluctant targets and competitors may seize upon perceived weaknesses in an acquiror's ability to clear regulatory obstacles as a tactic to undermine a proposed transaction. High-profile transactions may also result in political scrutiny by federal, state and local officials. Finally, depending on the industry involved and the geographic distribution of the workforce, labor unions will continue to play an active role during the review process. Pre-announcement communications plans must take account of all of these interests.

- *Transaction Structures*. Non-U.S. acquirors should consider a variety of potential transaction structures, particularly in strategically or politically sensitive transactions. Structures that may be helpful in sensitive situations to overcome potential political or regulatory resistance include no-governance and low-governance investments, minority positions or joint ventures, possibly with the right to increase ownership or governance rights over time; partnering with a U.S. company or management team or collaborating with a U.S. source of financing or co-investor (such as a private equity firm); utilizing a controlled or partly controlled U.S. acquisition vehicle, possibly with a board of directors having a substantial number of U.S. citizens and prominent U.S. citizens in high-profile roles; or implementing bespoke governance structures (such as a U.S. proxy board) with respect to specific sensitive subsidiaries or businesses of the target company. Use of debt or preferred securities (rather than common stock) should also be considered. Even seemingly more modest social issues, such as the name of the continuing enterprise and its corporate location or headquarters, or the choice of the nominal legal acquiror in a merger, can affect the perspective of government and labor officials.

- *CFIUS*. Under current U.S. federal law, the Committee on Foreign Investment in the United States (CFIUS) – a multi-agency governmental body chaired by the Secretary of the Treasury, the recommendations of which the President of the United States has personal authority to accept or reject – has discretion to review transactions in which a non-U.S. acquiror could obtain "control" of a U.S. business or in which a non-U.S. acquiror invests in U.S. infrastructure, technology or energy assets, in order to evaluate whether such transactions could pose a risk to U.S. national security. That authority was notably used in 2016 to block the Aixtron and Lumileds transactions, and in 2017 reportedly to cause the abandonment of transactions including U.S. electronics maker Inseego's sale of its MiFi business to TCL Industries; HNA Group's proposed investment in Global Eagle Entertainment, a U.S.-based in-flight services company; and Canyon Bridge Capital Power's acquisition of Lattice Semiconductor (following President Trump's issuance of an executive order to block the transaction). Although filings with CFIUS are voluntary, CFIUS also has the ability to investigate transactions at its discretion, including after the transaction has closed. While it is still not clear if and how CFIUS's review of cross-border transactions will change during the Trump administration, the last year has been marked by a greater number of CFIUS filings, resulting in longer overall review periods for most transactions. Moreover, pending U.S. congressional legislation would expand CFIUS's review period, increase the scope of transactions subject to CFIUS's jurisdiction, make certain notifications mandatory and allow for expedited review and approval of certain transactions. This legislation, if enacted, would heighten further the potential role of CFIUS and the need to factor into deal analysis and planning the risks and timing of the CFIUS review process.

  We recommend three rules of thumb in dealing with CFIUS:

  - In general it is prudent to make a voluntary filing with CFIUS if an investigation is reasonably likely or if competing bidders are likely to take advantage of the uncertainty of a potential investigation.

- It is often best to take the initiative and suggest methods of mitigation early in the review process in order to help shape any remedial measures and avoid delay or potential disapproval.

- It is often a mistake to make a CFIUS filing before initiating discussions with the U.S. Department of the Treasury and other officials and relevant parties. In some cases, it may even be prudent to make the initial contact prior to the public announcement of the transaction. CFIUS is not as mysterious or unpredictable as some fear – consultation with the U.S. Department of the Treasury and other officials (who, to date, have generally been supportive of investment in the U.S. economy) and CFIUS specialists will generally provide a good sense of what it will take to clear the CFIUS process. Retaining advisors with significant CFIUS expertise and experience is often crucial to successful navigation of the CFIUS process. Transactions that may require a CFIUS filing should have a carefully crafted communications plan in place prior to any public announcement or disclosure. In addition, given that CFIUS will require a draft filing in advance of the official filing, building in sufficient lead time is essential.

Although practice varies, some transactions in recent years have sought to address CFIUS-related non-consummation risk by including reverse break fees specifically tied to the CFIUS review process. In some of these transactions, U.S. sellers have sought to secure the payment of the reverse break fee by requiring the acquiror to deposit the amount of the reverse break fee into a U.S. escrow account in U.S. dollars, either at signing or in installments over a period of time following signing. While still an evolving product, some insurers have also begun offering insurance coverage for CFIUS-related non-consummation risk, covering payment of the reverse break fee in the event a transaction does not close due to CFIUS review, at a cost of approximately 10 – 15% of the reverse break fee.

- *Acquisition Currency*. Cash is the preponderant form of consideration in cross-border deals into the U.S., with all-cash transactions representing approximately two-thirds of the volume of cross-border deals into the U.S. in 2017 (up from approximately one-half in 2015 and 2016), as compared to approximately 45% of the volume of all deals involving U.S. targets in 2017. However, non-U.S. acquirors should think creatively about potential avenues for offering U.S. target shareholders a security that allows them to participate in the resulting global enterprise. For example, publicly listed acquirors may consider offering existing common stock or depositary receipts (*e.g.*, ADRs) or special securities (*e.g.*, contingent value rights). When U.S. target shareholders obtain a continuing interest in a surviving corporation that had not already been publicly listed in the U.S., expect heightened focus on the corporate governance and other ownership and structural arrangements of the non-U.S. acquiror, including as to the presence of any controlling or large shareholders, and heightened scrutiny placed on any *de facto* controllers or promoters. Creative structures, such as the issuance of non-voting stock or other special securities of a non-U.S. acquiror, may minimize or mitigate the issues raised by U.S. corporate governance concerns. The world's equity markets have never been more globalized, and the interest of investors in major capital markets to invest in non-local business never greater; equity consideration, or an equity issuance to support a transaction, should be considered in appropriate circumstances.

- *M&A Practice*. It is essential to understand the custom and practice of U.S. M&A transactions. For instance, understanding when to respect – and when to challenge – a target's sale "process" may be critical. Knowing how and at what price level to enter the discussions will often determine the success or failure of a proposal; in some situations it is prudent to start with an offer on the low side, while in other situations offering a full price at the outset may be essential to achieving a negotiated deal and discouraging competitors, including those who might raise political or regulatory issues. In strategically or politically sensitive transactions, hostile maneuvers may be imprudent; in other cases, unsolicited pressure might be the only way to force a transaction. Takeover regulations in the U.S. differ in many significant respects from those in non-U.S. jurisdictions; for example, the mandatory bid concept common in Europe, India and other countries is not present in U.S. practice. Permissible deal protection structures, pricing requirements and defensive measures available to U.S. targets will also likely differ in meaningful ways from what non-U.S. acquirors are accustomed to in their home jurisdictions. Sensitivity must also be shown to the distinct contours of the target board's fiduciary duties and decision-making obligations under state law. Finally, often overlooked in cross-border situations is how subtle differences in language, communication expectations and the role of different transaction participants can affect transactions and discussions; preparation and engagement during a transaction must take this into account.

- *U.S. Board Practice and Custom*. Where the target is a U.S. public company, the customs and formalities surrounding board of director participation in the M&A process, including the participation of legal and financial advisors, the provision of customary fairness opinions and the inquiry and analysis surrounding the activities of the board and financial advisors, can be unfamiliar and potentially confusing to non-U.S. transaction participants and can lead to misunderstandings that threaten to upset delicate transaction negotiations. Non-U.S. participants need to be well advised as to the role of U.S. public company boards and the legal, regulatory and litigation framework and risks that can constrain or prescribe board action. These factors can impact both tactics and timing of M&A processes and the nature of communications with the target company.

- *Distressed Acquisitions*. Distressed M&A is a well-developed specialty in the U.S., with its own subculture of sophisticated investors, lawyers and financial advisors. The U.S. continues to be a popular destination for restructurings of multinational corporations, including those with few assets or operations in the U.S., because of its debtor-friendly reorganization laws. Among other advantages, the U.S. bankruptcy system has expansive jurisdiction (such as a worldwide stay of actions against a debtor's property and liberal filing requirements), provides relative predictability in outcomes and allows for the imposition of debt restructurings on non-consenting creditors, making reorganizations more feasible. In recent years, court-supervised "Section 363" auctions of a debtor's assets (as opposed to the more traditional Chapter 11 plan of reorganization) have become more common, in part because they can be completed comparatively quickly, efficiently and cheaply. Additionally, large non-U.S. companies have increasingly turned to Chapter 15 of the U.S. Bankruptcy Code, which accords debtors that are already in insolvency proceedings abroad key protections from creditors in the U.S. and has facilitated restructurings and asset sales approved outside the U.S. Firms evaluating a potential acquisition of a distressed target based in the U.S. should consider the full array of tools that the U.S. bankruptcy process makes available, including acquisition of the target's fulcrum debt securities that are expected to be converted into equity through an out-of-court restructuring or plan of reorganization, acting as a plan investor or sponsor in connection with a plan of reorganization, backstopping a plan-related rights offering or participating as a bidder in a "Section 363" auction. Transaction certainty is critical to success in a transaction in bankruptcy, and non-U.S. participants accordingly need to plan carefully (particularly with respect to transactions that might be subject to CFIUS review, as discussed above) to ensure they will be on a relatively level playing field with U.S. bidders. Acquirors must also be aware that they will likely need to address the numerous constituencies involved in a bankruptcy case, each with its own interests and often conflicting agendas, including bank lenders, bondholders, distressed-focused hedge funds and holders of structured debt securities and credit default protection, as well as landlords and trade creditors.

- *Debt Financing*. While recent trends that have influenced acquisition financing seem positioned to continue in 2018, the recent U.S. tax legislation could alter the course of these trends in significant ways. Modestly rising interest rates and generally strong reception for acquisition financings in both the investment grade and high-yield markets continue to provide opportunity to lock in attractive long-term fixed rates to finance acquisitions. Moreover, as anticipated in our 2017 memo, U.S. regulatory oversight of banks that led to leveraged lending constraints appears to be relaxing in practice, with banks providing acquirors more flexibility to finance acquisitions at higher leverage levels.

  The recently enacted U.S. tax legislation, described in greater detail below, could influence these trends in a number of ways. First, the new law vastly reduces the incentives for U.S. parented multinationals to hold cash offshore, which cash will now be available for U.S. parent corporations to repay debt or for alternative purposes (*e.g.*, share buybacks or M&A) that otherwise may have necessitated incremental borrowings in the U.S. Second, the new law limits deductions for net business interest expense, imposes additional limitations on deductible payments to non-U.S. affiliates and denies deductions for amounts paid or accrued in respect of certain "hybrid" arrangements. The potential limitations on interest expense deductibility arising from these rules need to be carefully considered in connection with any potential acquisition of a U.S. target. In addition, financing-related market trends and developments generally should be monitored in planning acquisitions in the U.S.

  Important questions to ask when considering a transaction that requires debt financing include: what the appropriate leverage level for the resulting business is; where financing with the most favorable after-tax costs, terms and conditions is available; what currencies the financing should be raised in; how fluctuations in currency exchange rates can affect costs, repayment and covenant compliance; how committed the financing is or should be; which lenders have the best understanding of the acquiror's and target's businesses; whether there are transaction structures that can minimize financing and refinancing requirements; and how comfortable a target will feel with the terms and conditions of the financing.

- *Litigation*. Shareholder litigation accompanies many transactions involving a U.S. public company but generally is not a cause for concern. Excluding situations involving competing bids – where litigation may play a direct role in the contest – and going-private or other "conflict" transactions initiated by controlling shareholders or management – which form a separate category requiring special care and planning – there are very few examples of major acquisitions of U.S. public companies being blocked or prevented due to shareholder litigation or of materially increased costs being imposed on arm's-length acquirors. In most cases, where a transaction has been properly planned and implemented with the benefit of appropriate legal and investment banking advice on both sides, such litigation can be dismissed or settled for relatively small amounts or other concessions. Moreover, the rate of such litigation (and the average number of lawsuits per deal) has declined in recent years, due in part to changes in the law that reduced the incentives for shareholder plaintiffs' attorneys to bring such suits. Sophisticated counsel can usually predict the likely range of litigation outcomes or settlement costs, which should be viewed as a cost of the deal.

  While well-advised parties can substantially reduce the risk of U.S. shareholder litigation, the reverse is also true: the conduct of the parties during negotiations can create an unattractive factual record that may both encourage shareholder litigation and provoke judicial rebuke, including significant monetary judgments. Sophisticated litigation counsel should be included in key stages of the deal negotiation process. In all cases, the acquiror, its directors and shareholders and offshore reporters and regulators should be conditioned in advance (to the extent possible) to expect litigation and not to view it as a sign of trouble. In addition, it is important to understand that the U.S. discovery process in litigation is different, and in some contexts more intrusive, than the process in other jurisdictions. Here again, planning is key to reducing the risk.

  Likewise critical is careful consideration of the litigation aspects of a cross-border merger agreement. The choice of governing law and the choice of forum to govern any potential dispute between the parties about the terms or enforceability of the agreement will substantially affect the outcome of any such dispute and may be outcome-determinative. Parties entering into cross-border transactions should consider with care whether to specify the remedies available for breach of the transaction documents and the mechanisms for obtaining or resisting such remedies.

- *Tax Considerations*. President Trump recently signed into law sweeping changes to business-related U.S. federal income tax rules that are expected to have far-reaching implications for U.S. domestic and multinational businesses, as well as domestic and cross-border transactions. Among other things, the new law significantly reduces corporate tax rates, permits full expensing of certain property, adopts features of a "territorial" tax regime and imposes additional limitations on the deduction of business interest and various related-party payments. By reducing the "headline" corporate tax rate below that of many Organisation for Economic Co-operation and Development (OECD) countries, the new law makes conducting business in the U.S. more attractive. But, to pay for the reduced rates and migration to a "territorial" tax regime, the new law contains numerous revenue raising provisions as well. While a comprehensive summary is beyond the scope of this checklist (for more detail, see our memo of December 23, 2017), key changes in U.S. business taxation include the following:

    - A permanent reduction of the corporate federal income tax rate to 21%, and full expensing of depreciable tangible assets placed in service during the next five years.

    - A move toward a "territorial" tax system that generally eliminates tax on dividends received by a domestic corporation from a 10% owned non-U.S. corporation (and that may also eliminate tax on gain recognized upon a sale or disposition of such stake in a non-U.S. corporation). The new law mandates a one-time income inclusion by 10% U.S. shareholders of the historic earnings of a non-U.S. subsidiary, generally at a tax rate of 15.5% or 8%, depending on whether such earnings were invested in cash or other assets. The international tax regime also includes new rules that are intended to deter U.S. corporations from shifting profits out of the U.S. and, to this end, taxes 10% U.S. shareholders on the "global intangible low-taxed income" of a non-U.S. subsidiary (generally, the non-U.S. subsidiary's earnings in excess of a deemed 10% return on tangible assets), and provides a favorable deduction relating to income deemed attributable to sales of property for non-U.S. use or services provided to a person outside the U.S.

- ➢ The new law limits deductions for net business interest expense to 30% of an amount that approximates EBITDA (and, beginning in 2022, EBIT), limits deductible payments made from U.S. to non-U.S. affiliates in multinational groups by way of a "base erosion" tax and prohibits deductions for certain interest and royalty payments to related non-U.S. parties pursuant to "hybrid" arrangements. In addition, the use of a corporation's net operating loss carryforwards in any particular year will be limited to 80% of taxable income.

- ➢ The new law includes additional rules intended to deter "inversion" transactions.

The totality of these changes may shift transaction dynamics in complex and potentially unanticipated ways that will unfold over time. Specifically, we anticipate that (i) eliminating the incentives for U.S. parented multinationals to hold cash offshore could free up a significant portion of such cash for domestic and cross-border acquisitions by U.S. corporations, (ii) in cross-border transactions involving the receipt of acquiror stock, the identity of the acquiring entity will continue to be affected by the U.S. anti-"inversion" rules, and (iii) the changes to the U.S. international tax regime are unlike to establish the U.S. as an attractive holding company jurisdiction due to the retention and expansion of complex "controlled foreign corporation" rules.

Potential acquirors of U.S. target businesses will need to carefully model the anticipated tax rate of such businesses, taking into account the benefits of the reduced corporate tax rate, immediate expensing and, if applicable, the favorable deduction for export-related activities, but also the impact of the new limitations on interest expense deductions and certain related-party payments, as well as the consequences of owning non-U.S. subsidiaries through an intermediate U.S. entity.

- *Disclosure Obligations*. How and when an acquiror's interest in the target is publicly disclosed should be carefully controlled and considered, keeping in mind the various ownership thresholds that trigger mandatory disclosure on a Schedule 13D under the federal securities laws and under regulatory agency rules such as those of the Federal Reserve Board, the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC). While the Hart-Scott-Rodino Antitrust Improvements Act (HSR) does not require disclosure to the general public, the HSR rules do require disclosure to the target before relatively low ownership thresholds may be crossed. Non-U.S. acquirors should be mindful of disclosure norms and timing requirements relating to home jurisdiction requirements with respect to cross-border investment and acquisition activity. In many cases, the U.S. disclosure regime is subject to greater judgment and analysis than the strict requirements of other jurisdictions. Treatment of derivative securities and other pecuniary interests in a target other than common stock holdings can also vary by jurisdiction.

- *Shareholder Approval*. Because most U.S. public companies do not have one or more controlling shareholders, public shareholder approval is typically a key consideration in U.S. transactions. Understanding in advance the roles of arbitrageurs, hedge funds, institutional investors, private equity funds, proxy voting advisors and other market players – and their likely views of the anticipated acquisition attempt as well as when they appear and disappear from the scene – can be pivotal to the success or failure of the transaction. These considerations may also influence certain of the substantive terms of the transaction documents. It is advisable to retain an experienced proxy solicitation firm well before the shareholder meeting to vote on the transaction (and sometimes prior to the announcement of a deal) to implement an effective strategy to obtain shareholder approval.

- *Integration Planning*. Post-acquisition integration is often especially challenging in cross-border deals where the integration process may require translation across multiple cultures, languages and historic business methods. If possible, the executives and consultants who will be responsible for integration should be involved in the early stages of the deal so that they can help formulate and "own" the plans that they will be expected to execute. Too often, a separation between the deal team and the integration/execution teams invites slippage in execution of a plan that in hindsight is labeled by the new team as unrealistic or overly ambitious. Integration planning should be carefully phased in as implementation may not occur prior to the receipt of certain regulatory approvals.

- *Corporate Governance and Securities Law*. Current U.S. securities and corporate governance rules can be troublesome for non-U.S. acquirors who will be issuing securities that will become publicly traded in the U.S. as a result of an acquisition. SEC rules, the Sarbanes-Oxley and Dodd-Frank Acts and stock exchange requirements should be evaluated to ensure compatibility with home jurisdiction rules and to be certain that a non-U.S. acquiror will be able to comply. Rules relating to director independence, internal control reports and loans to officers and directors, among others, can frequently raise issues for non-U.S. companies listing in the U.S. Non-U.S. acquirors should also be mindful that U.S. securities regulations may apply to acquisitions and other business combination activities involving non-U.S. target companies with U.S. security holders. Whether the Trump administration, U.S. Congress and new commissioners of the U.S. Securities and Exchange Commission will significantly alter the regulatory landscape for public companies and transactions will be a subject of keen interest not only to non-U.S. acquirors, but to all public companies, acquirors and investors. Sweeping change has been promised and may be delivered.

- *Antitrust Issues*. To the extent that a non-U.S. acquiror directly or indirectly competes or holds an interest in a company that competes in the same industry as the target company, antitrust concerns may arise either at the U.S. federal agency or state attorneys general level. Although less typical, concerns can also arise if a non-U.S. acquiror competes either in an upstream or downstream market of the target. As noted above, pre-closing integration efforts should also be conducted with sensitivity to antitrust requirements that can be limiting. Home jurisdiction or other foreign competition laws may raise their own sets of issues that should be carefully analyzed with counsel. The change in the leadership of the U.S. antitrust agencies is not likely to affect the review process in most transactions because the administration of the antitrust laws in the U.S. is carried out by professional agencies relying on well-established analytical frameworks. Accordingly, the outcomes of most transactions can generally be easily predicted. Deals that will be viewed by the agencies as raising substantive antitrust concerns, and the degree of difficulty in overcoming those concerns, can also be confidently identified in advance. In such situations, careful planning is imperative and a proactive approach to engagement with the agencies is generally advisable. In addition, the Trump administration is likely to continue to scrutinize the remedies offered by transaction parties, and to prefer (1) divestitures in lieu of conduct remedies that require ongoing oversight to ensure compliance and (2) acquirors of the divestiture assets to be approved prior to closing rather than permitting divestiture acquirors to be identified by the parties and approved by the agency after closing.

- *Due Diligence*. Wholesale application of the acquiror's domestic due diligence standards to the target's jurisdiction can cause delay, waste time and resources or result in missing a problem. Due diligence methods must take account of the target jurisdiction's legal regime and, particularly important in a competitive auction situation, local norms. Many due diligence requests are best channeled through legal or financial intermediaries as opposed to being made directly to the target company. Due diligence requests that appear to the target as particularly unusual or unreasonable (which occurs with some frequency in cross-border deals) can easily create friction or cause a bidder to lose credibility. Similarly, missing a significant local issue for lack of local knowledge can be highly problematic and costly. Prospective acquirors should also be familiar with the legal and regulatory context in the U.S. for diligence areas of increasing focus, including cybersecurity, data privacy and protection, Foreign Corrupt Practices Act (FCPA) compliance and other matters. In some cases, a potential acquiror may wish to investigate obtaining representation and warranty insurance in connection with a potential transaction, which has been used with increasing frequency as a tool to offset losses resulting from certain breaches of representations and warranties.

- *Collaboration*. More so than ever in the face of current U.S. and global uncertainties, most obstacles to a deal are best addressed in partnership with local players whose interests are aligned with those of the non-U.S. acquiror. If possible, relationships with the target company's management and other local forces should be established well in advance so that political and other concerns can be addressed together, and so that all politicians, regulators and other stakeholders can be approached by the whole group in a consistent, collaborative and cooperative fashion.

Adam O. Emmerich
David A. Katz
Ilene Knable Gotts
Joshua R. Cammaker
T. Eiko Stange
Eric M. Rosof
Emil A. Kleinhaus
Edward J. Lee
Robin Panovka
Scott K. Charles
Andrew J. Nussbaum
Mark Gordon
William Savitt
Joshua M. Holmes
Gordon S. Moodie
Raaj S. Narayan