WSG Annual Meeting
Panel discussion: Cross-Border transactions into, in and from Africa
14 October 2016, Stellenbosch

Gary Assim (Shoosmiths)
Koos Pretorius (ENSafrica)
Julius Oosthuizen (ENSafrica)
Mathias Schroeder (Heuking Kühn Lüer Wojtek)
transactions into South Africa
view of UK/European brands on international expansion
China/US/South America
UK brands and Brexit
Commonwealth countries
India/Canada/Australia/New Zealand
Africa/South Africa/Sub-Saharan Africa
franchise/wholly-owned/holding companies
Gary Assim (cont.)
Koos Pretorius

outbound transactions (originating in Africa) into the more mature markets of the UK, Europe, North America and Australia

Examples (over past 2 years)

- Truworths / Office Footwear [UK / Germany] (deal value - $368 million or R5.3 billion)
- Foschini / Phase Eight [UK] (deal value - $186 million or R2.6 billion)
- Pepkor / Postie Plus Group [New Zealand] (undisclosed deal value)
• Oceana / Daybrook Fisheries [USA] (deal value - $328 million or R4,6 billion)
• Steinhoff International / Mattress Firm [USA] (deal value - $2,4 billion or R33,6 billion)
• Brait / Virgin Active [UK & Europe] (deal value - $1 billion or R14,0 billion)
• Sasol / Lake Charles Chemicals Project [Louisiana, USA] (project value - $11 billion or R154 billion)
• Medi-Clinic / Remgro / Spire Healthcare [UK] (deal value - $614 million or R8,6 billion)
• Medi-Clinic / Clinique La Colline [Switzerland] (deal value - $107 or R1,5 billion)
common trends/features

- South African corporates across a number of industry sectors (but mostly retailers) seeking currency diversification and entry into more sophisticated, mature and developed markets.
- This is often in addition to (and not to the exclusion of) a well-developed Africa strategy.
- Usually, these transactions constitute large/material transactions for the buyers (category 1 or 2 for listed corporates in SA, with reference to the size of their market capitalization).
• funding requirements are typically met through a mixture of surplus capital available or raised in SA (rights offers, disposals, etc) and local (SA) debt plus foreign debt secured in the target market
• the transactions seldom raise anti-trust or competition law concerns, as these either are first entries by SA corporate into the foreign market or the pre-existing market share of the SA acquirer in the relevant market is small
• the bulk of the legal work is performed by law firms in the foreign (target) jurisdiction and the role of the SA law firm typically is limited (regulatory [JSE, exchange control], funding, etc)

• the acquirer is usually sensitive to adviser and other transaction costs which are mostly incurred in USD, Pound Sterling or Euro
some of the unique challenges of a recent cross-border transaction in the financial services sector in more than 20 African countries:

- the Sanlam Group / Saham Finances transaction. This case study represents one of the Sanlam Group's biggest deals yet and provided the life insurer (Sanlam) and its short-term insurance subsidiary (Santam) with the opportunity to gain entry into a number of new markets, through their acquisition of a 30% stake in Morocco-based Saham Finances, which operates in a total of 26 countries predominantly across Africa and with a presence in the Middle East. This transaction has positioned the partners to the joint venture as the leading insurance groups across Africa
some typical features of cross-border deals in Africa, such as:-

• conducting simultaneous DD investigations in multiple African countries
• ensuring appropriate anti-corruption measures and deal integrity across the target footprint
• varying and/or unclear regulatory requirements in certain African countries (different timelines to approval, inconsistent application of regulations, non-existent legislation / regulations, etc.)
• different legal regimes and language issues to contend with (French, English, Portuguese, OHADA, etc.)
Project Management of cross-border M&A transactions

Dr. Mathias Schröder, LL.M.
Heuking Kühn Lüer Wojtek, Germany
Mathias Schröder (cont.)

Project Management of cross-border M&A transactions

Quarterly M&A activity
Value of deals (US$bn)

<table>
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<th>Year</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Total</th>
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<td>869.7</td>
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<td>971.2</td>
<td>1,205.1</td>
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<td>2016</td>
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</table>

H1 2016: $1.32tn

- H1 2016 vs. H1 2015: 26.8%
  - Lowest H1 value since 2013 ($1.0tn)

- Q2 2016 vs. Q1 2016: 9.5%
  - Both Q1 and Q2 register lowest valued quarters since Q1 2014 ($566.7bn)

Mega-deals
14 deals
$266.3bn

- Mega-deals vs. H1 2016: 60.8%
  - Lowest value & number of mega-deal since H2 2013 (6 deals, $198.2bn)

Cross-border activity

- Between countries: $550.8bn
  - Vs. H1 2015: 15.9%
  - Half-year tally reaches the lowest value since H1 2013 ($349.5bn)

- UK inbound Q2 vs. Q1 2016: 62.1%
  - Lowest half-year value ($46bn) in two years (H2 2013, $54.3bn)

- China into US and Europe: $108.3bn
  - Vs. H1 2016: 163.1%
  - Third annual increase to highest on record from 2015 ($41.2bn)
Mathias Schröder (cont.)
Project Management of cross-border M&A transactions

Legal and other related issues

- Transaction structure
- Corporate Governance
- Multiple legal and regulatory regimes
- Civil law versus Common law
- Market conditions / norms
- Export controls
- Timing requirements
- Formal requirements
- Employment and labour
- Cultural differences
- Political considerations
- Post-closing integration
Cross – border M&A transaction with several jurisdictions involved

Clients sometimes tend to prefer international law firms instead of independent national firms
The most common arguments to retain an international law firm:

- Their well structured short communication lines
- Reliability and quality in all jurisdictions
- Central billing
- One contact person
- Pool of references
- One quality standard
- “One stop service”

Also independent law firms fulfil those arguments as they are well structured, provide highest quality of legal services and offer the client one central contact person. Ideally the client does not even directly realize that several law firms are involved in the project.
How does Project Management look like:

- Preparation stage
- Lead Counsel ↔ Local counsel
- Appointment of local counsel
- Telephone conferences between counsels
- Advantages of independence
- One stop shop “feeling”
  - clean one stop shop ↔ intermediary solution
  - uniform documentation, reports, etc.