

米国のM&A関連法規制と 日系企業が見落としがちなりリスク

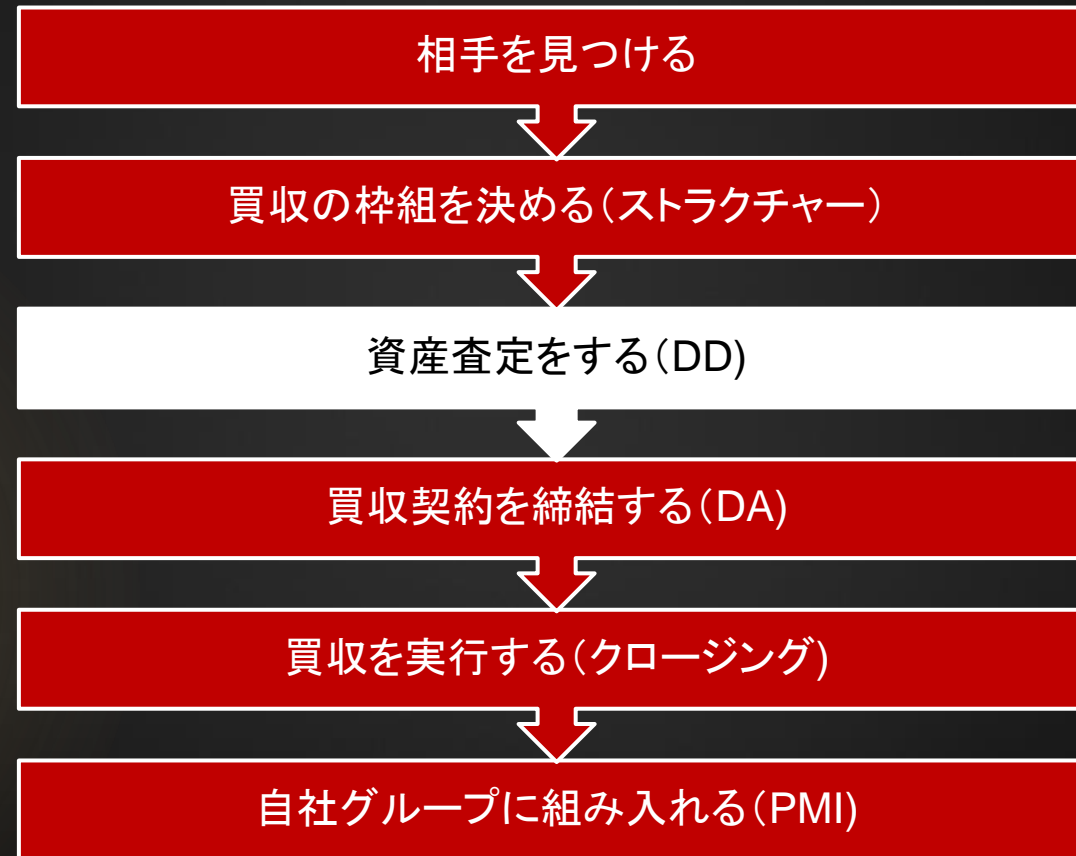
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第2回 米国M&Aセミナー

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(第1回で解説) M&Aの大まかな流れ



資産査定 法務デューディリジェンスの実施

- **目的** リスクの発見／買収価格への影響／買収前後に必要な措置の確認
- **対象** 事業／法務／会計／税務（役割分担、情報共有が必要）
- **期間** 会社規模やオークション形式かで異なる （1ヵ月～数ヵ月）
- **作業範囲の特定／重点分野の特定（何をやるか）**
 - 日系企業が見落としがちな法務リスク（本日前編）
 - 外国企業だからこそ発生する法務リスク（CFIUS・輸出入規制一本日後編）

日系企業が見落としがちな法務リスク ①

福利厚生関連

- どのような福利厚生制度があるか判りづらい
 - 国が主体の日本と民間主体の米国との制度上の違い
 - 年金制度（確定給付 vs. 確定拠出）、健康保険制度（第三者保険 vs. 自社保険）
- ERISA法（Employee Retirement Income Security Act）の順守
 - ERISA法は年金受託者の管理責任を規定し従業員を保護することを目的
 - Non-Discrimination Rule（高級取りの従業員を優遇しすぎない）
 - 違反した場合は税務上の優遇措置を失うリスク
- 401K（確定拠出型年金制度）の法務リスク
 - 会社から従業員への補助金が未払い
 - 買収対象会社が小規模で401Kの特例を利用していた場合、買収後に既存の401Kを維持できないケースも
- 健康保険の法務リスク
 - 退職後の従業員への保険サービス提供（COBRA） 健康保険料は誰が負担するの？

労働組合がある場合の福利厚生制度

- 確定給付型年金制度の財源不足による追加拠出リスク

日系企業が見落としがちな法務リスク ②

環境関連

- 不動産所有者の環境責任
 - 自身で排出した土壌汚染ではなくても所有していることで汚染除去責任
 - 過去に所有し、すでに売却している土地についても責任
 - リース物件のテナントでも責任を負わされる可能性も
- Phase IIレポートによる保護
 - 環境調査会社によるPhase I調査を実施し、既存の土壌汚染リスクを遮断
- Phase IIレポートでも保護されないリスク
 - Contributory Liability (ゴミ回収業者による危険物質の不法投棄)

日系企業が見落としがちな法務リスク ③

州単位の売上税

- 各州で法人に売上税 (Sales Tax) が課される可能性があり、かつ、制度も異なる
- 企業側も各州で事業内容、売上高、関連性の高さも異なるため、全ての州での売上税に適切に対応している保証がない
- 買収対象会社が小規模で税務申告または免除登録まで手が回っていない可能性
 - 罰金及び追徴で\$10M以上のリスクが発覚した事例
- リモートワークによる類似の税務リスク
 - リモート従業員が住む州での法人への課税
 - リモート従業員の社会保険料その他の税務未払い

US INTERNATIONAL TRADE AND INVESTMENT REGULATIONS CONSIDERATIONS IN M&A TRANSACTIONS

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Non-U.S. Investment Review and Restrictions

- CFIUS can request to review (or require mandatory disclosure of) certain investments and in some cases, restrict or prohibit such transactions, including:
 - **Control transactions** that involve a non-U.S. person gaining control of a U.S. company (includes ability to direct activities, resources, etc. through voting or other means).
 - **Covered investments** in key industries – U.S. TID Business: Ability to direct specific actions and/or access non-public information of businesses that make/use/maintain ***critical technology, critical infrastructure or U.S. citizen personal data.***
 - **Controlled real estate transactions:** Facilities in proximity to critical infrastructure or military locations.
 - **KEY TAKEAWAY:** Identify early on if U.S. target has U.S. government contracts; makes, develops or tests export controlled technology (certain autonomous, EV and high-tech manufacturing can fall under this category).

U.S. Export Controls

- U.S. Export controls can restrict U.S. companies export of components, materials, software and technology to non-U.S. persons including 3rd parties and affiliated companies (and their employees).
- Exports covered include physical exports from the U.S., exports from 3rd countries of U.S. origin items and technology “exports” via electronic or hard-copy document, including access to export-controlled technology by non-U.S. persons in the U.S.
- **KEY TAKEAWAY:** When acquiring a U.S. company, interactions with that company (including R&D, supply chain, HR and sales transactions) may be subject to U.S. export controls and require appropriate attention to compliance by non-U.S. parent company personnel.

U.S. Economic Sanctions

- U.S. economic sanctions can restrict or prohibit U.S. companies and individual U.S. persons from engaging in transactions with designated individuals, companies or countries.
- U.S. subsidiaries of non-U.S. companies can be impacted, as well as individual U.S. citizen personnel, wherever located.
- U.S. companies are expected to have adequate compliance measures to screen transactions with non-U.S. parties, including identification of “red flags” (e.g. transactions that appear intended to evade sanctions).
- **KEY TAKEAWAY:** When acquiring a U.S. company, the U.S. company may have restrictions on where its products can be sold or used (e.g. Russia) or from where materials can be sourced.

U.S. Import and Supply Chain Restrictions

- U.S. restrictions on import of items containing inputs that are the product of forced labor.
- Policy and enforcement strengthened by recent Uighur Forced Labor Prevention Act (UFLPA), which presumes items containing inputs from Xinjiang region of China involve forced labor and cannot be imported into the U.S. The U.S. government has announced targeted enforcement in certain industries (increased seizure, inspection and denial) and is reviewing others.
- **KEY TAKEAWAY:** Although not currently targeted for enforcement, the U.S. government has received substantial reporting that car battery production in China (particularly for EVs) may involve forced labor. Such imports into the U.S. may be in the next round of products to be prioritized for increased enforcement.

U.S. Import and Trade Policies

- U.S. anti-dumping, countervailing duty, and other trade remedies targeting specific products and/or specific exporting countries.
- Large increase in trade remedy penalties and enhanced duties applied against imports considered of Chinese origin (even where some assembly has occurred in 3rd countries).
- **KEY TAKEAWAYS:** U.S. government policy likely to continue to target imports with Chinese origin or key components. When acquiring a U.S. company, accounting for enhanced duty costs (present or future) based on sourcing, or means of reducing these duties, should be a key consideration.

U.S. Requirements for Government Procurement or Subsidies

- U.S. Federal government procurement laws and regulations have recently changed to increase content requirements for certain procurement by the U.S. government.
- U.S. Federal government procurement also restricts use of products or services by certain Chinese owned entities (e.g. Huawei, ZTE, etc.).
- New U.S. Federal subsidies for advanced manufacturing (such as semi-conductors) and renewable energy infrastructure (such as solar) also contain significant U.S. content requirements.
- **KEY TAKEAWAYS:** When acquiring a U.S. company, it will continue to be bound by the above U.S. content requirements and Federal government national security procurement restrictions.

ご質問は下記へどうぞ

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