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Solving Problems in U.S. - Israel Cross Border Transactions

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Key Issues Investing or Acquiring a US Business

Not as simple as you would expect…

- The US market has rightfully earned a reputation as a great place to do business for several reasons:
  - Strength, stability transparency of the regulatory and legal framework
  - Vibrant financial market
  - Access and acceptance of technological advancement
- However, Israeli buyers or investors in US businesses need to be aware of certain key issues, and should consult with local advisers before engaging
- M&A Process :
  - Use of advisors is customary and should not be viewed as sign of weakness or strength
  - Competitive processes are extremely common
  - No special treatment – level playing field and money talks
  - Certainty of close (ability to finance, regulatory or other consents) are important factors

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- Accounting Differences: As most Israeli companies operate under IFRS, they should be aware of some material differences between IFRS and US GAAP, that could affect pricing of the transaction:
  - Revenue recognition
  - Expense recognition
  - Employee benefits
  - Impairments
- Valuation standards and differences:
  - In General US companies trade at a premium to their global comps, both in public markets and M&A transactions
  - US targets expect significant value for growth and PEG is an often used multiple
  - Public companies will focus primarily on P/E and accretion dilution
  - Certain Industries and buyer will expect to be priced based on EBITDA multiples

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- Acquisitions or investments in highly regulated Industries
  - Defense, telecom, financial institutions and energy related companies may require specific approvals and/or ownership limitations
  - Need to structure the transaction accordingly (JV, minority investment, preferred stock, key positions to be held by US citizens etc.)
- Tax considerations could have a material affect on the way you should structure the transaction and the nature of the acquiring vehicle
  - State vs. Federal tax
  - S Corp's and LLC's
  - Treatment of dividend/ royalty payments
  - Transfer pricing
  - Deductibility of interest expenses
  - Loss carry forwards

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- Cultural differences and corporate governance standards
  - Easier than China or Japan, but still language, customs and business methods are different (and change between different areas within the US)
  - Need to think about post deal integration well in advance as part of the due diligence process
  - In general, US shareholders will expect higher corporate governance standards than their Israeli counterparts

- Other Issues
  - Foreign Currency and Interest rate risks
  - Litigation risk very popular due to strong plaintiff bar, almost a certainty in public acquisitions
  - Specific issues in acquiring a business under bankruptcy

Thank You!

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