

Legal Compliance Issues in Mergers and Acquisitions of Multinational Corporations and Their Countermeasures

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ABSTRACT

This paper examines cross-border mergers and acquisitions (M&A) practices, providing in-depth analysis of legal compliance challenges and systematic solutions for enterprises navigating globalization. The study reveals that companies must address dual challenges: the "outsider disadvantage" stemming from information asymmetry and the "home country disadvantage" arising from specific national contexts. These challenges manifest in four key dimensions: politicized national security reviews, conflicting antitrust standards across jurisdictions, sensitive cross-border data flows, and persistent risks from overseas anti-corruption and trade controls. To tackle these issues, the paper proposes a comprehensive risk management framework spanning the entire transaction lifecycle. This includes cross-jurisdictional due diligence mechanisms integrating competitive intelligence and organizational identity analysis, proactive government communication to streamline approvals, data compliance integration solutions covering the entire M&A cycle, and detailed indemnity clauses with compensation mechanisms embedded in M&A agreements. These measures collectively establish a robust risk management system, offering enterprises systematic solutions and practical guidance for global compliance operations.

KEYWORDS

M&G of TNCs; Legal compliance; Double disadvantage; National security review; Cross-border data

1 Introduction

In the sixth wave of global mergers and acquisitions, Chinese enterprises often face legal obstacles when acquiring U.S. companies, with U.S. national security and antitrust reviews becoming the biggest challenge for fintech companies' overseas investments. These reviews are heavily influenced by political factors and have stringent standards, highlighting the urgent need to address compliance risks in cross-border M&A. However, the process of cross-border M&A is far from smooth. The challenges faced by companies have gone beyond traditional commercial and financial risks, plunging them deeper into complex compliance dilemmas shaped by information asymmetry and identity perception biases. The case of Huawei's setbacks in the U.S. underscores how the "outsider disadvantage" in host countries and the "source disadvantage" in home countries intertwine, politicizing and complicating legal compliance issues. Against this backdrop, this article aims to analyze the core legal compliance risks in cross-border M&A, focusing on how to build a pragmatic, forward-looking, and actionable compliance response system. This provides solid theoretical support for enterprises to successfully implement M&A and achieve sustainable global development in the volatile international environment.

2 Importance and Complexity of Mergers and Acquisitions of Multinational Corporations

2.1 Strategic Importance of Mergers and Acquisitions of Multinational Corporations

Reverse cross-border mergers and acquisitions hold crucial strategic significance for enterprises to break through development bottlenecks, especially for companies in emerging economies. They serve as a key springboard to overcome technological barriers, acquire core strategic assets, and enter high-end markets. Taking Huawei as an example, in the context of intense homogenization in the telecommunications industry and significant pressure on patent innovation, it has repeatedly attempted to acquire U.S. company 3Com and bid for Motorola's radio business. The core objective was to obtain the target company's patented technologies, mature market channels, and industry resources, thereby breaking the technological monopoly and market barriers in the U.S. telecommunications sector and achieving penetration into the high-end communications market. This process directly demonstrates the core value of reverse cross-border mergers and acquisitions in addressing strategic weaknesses and enhancing global competitiveness.

2.2 The Particular Complexity of Mergers and Acquisitions of Multinational Corporations

The core complexity of multinational mergers and acquisitions does not stem solely from geographical differences in cross-border operations, but more importantly, it manifests in the dual challenges of addressing both "outsider disadvantages" and "source disadvantages." In Huawei's U.S. acquisition practices, outsider disadvantages arise from compliance information gaps caused by its unlisted status—insufficient disclosure of equity structures, financial

statements, and other information leads to cognitive biases among U. S. stakeholders regarding the company's background and operational objectives. Source disadvantages, on the other hand, stem from the negative stereotypes generated by its "China enterprise" identity, with the U.S. government defining it as "a government-backed cyber spy," thereby creating organizational identity stigma. The intertwining of these two disadvantages not only directly caused multiple acquisition obstacles for Huawei but also triggered compliance issues such as product bans and business contraction, becoming a complex barrier that is difficult to avoid in reverse cross-border mergers and acquisitions ^[1].

3 Legal Compliance Issues in Mergers and Acquisitions of Multinational Corporations

3.1 National Security Review and Barriers to Foreign Investment

In the global operations of multinational corporations, national security review mechanisms are increasingly demonstrating politicized and over-sensitized tendencies. This phenomenon is deeply intertwined with the "source disadvantage" faced by companies in host countries, creating market access barriers based on corporate nationality rather than objective facts. Mechanisms represented by the U.S. Committee on Foreign Investment in the United States and the EU's foreign investment review framework often transcend purely security considerations, infiltrating geopolitical factors. Companies from specific countries are frequently pre-classified as potential risks due to their home country's institutional background, even when providing full disclosure and compliance commitments. Such source-country-based discriminatory judgments burden normal commercial investment activities with excessive political attributes, essentially constituting a new form of non-tariff barriers.

3.2 Conflicts Between Anti-monopoly Declaration and Compliance in Multiple Jurisdictions

In the multi-jurisdictional landscape, multinational corporations face increasingly complex compliance challenges in antitrust reporting. Significant differences exist across jurisdictions regarding review processes, substantive standards, and legal remedies: The U.S. emphasizes market concentration and consumer welfare, the EU prioritizes competition effects in single markets, while Asian markets focus on industrial policy impacts. These jurisdictional conflicts not only prolong global transaction approval cycles but also exacerbate compliance issues due to information asymmetry about legal environments. In practice, companies often encounter inadequate documentation preparation due to insufficient understanding of host country reporting requirements, or face compliance dilemmas caused by conflicting remedies across jurisdictions, significantly increasing operational uncertainties and compliance costs in global operations.

3.3 Compliance Risks of Cross-border Data Flow and Privacy Protection

Cross-border data flows and privacy protection remain critical compliance challenges for multinational corporations. Global operations must simultaneously comply with the EU's General Data Protection Regulation (GDPR), the U. S. California Consumer Privacy Act, and diverse data protection regulations across the Asia-Pacific region ^[2]. However, data governance issues are often mistakenly conflated with national security concerns. A typical scenario involves host country regulators imposing excessive controls on cross-border data transfers based on stereotypes about the data governance systems of companies' home countries. Such compliance assessments rooted in preconceived notions about data sources frequently bypass technical evaluations, directly subjecting enterprises to data localization requirements and operational integration obstacles, which significantly undermine the efficiency of global digital operations.

3.4 Overseas Anti-corruption and International Trade Control Risks

Overseas anti-corruption and international trade compliance risks remain a critical concern for multinational corporations. To operate globally, companies must establish robust compliance frameworks that meet regulatory requirements such as the U.S. Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act. However, many firms face compliance gaps due to insufficient understanding of host country enforcement standards and regulatory priorities. Exposure of non-compliance during operations could result in hefty fines, criminal charges, and trade sanctions, which may cause lasting damage to a company's global reputation and operations. In the technology export sector, it is particularly crucial to implement refined compliance management mechanisms to navigate the increasingly complex international trade regulatory landscape.

4 Countermeasures to the Legal Compliance Problems in the Mergers and Acquisitions of Transnational Corporations

4.1 Establish a Cross-jurisdictional Compliance Due Diligence and Risk Assessment Mechanism

In cross-border mergers and acquisitions, establishing a cross-jurisdictional compliance due diligence and risk assessment mechanism forms the cornerstone for addressing challenges. This framework must transcend traditional review parameters by incorporating competitive intelligence and organizational identity perspectives to proactively identify potential "dual disadvantage" risks. Companies should form specialized teams comprising legal counsel, data specialists, government affairs personnel, and cross-cultural consultants. Due diligence should not only evaluate financial and contractual aspects but also thoroughly investigate the target company's political connections, data asset distribution, and its perceived image among local media and key stakeholders ^[3]. When investigating a German automotive parts manufacturer, beyond routine items, it's crucial to verify its transaction history with U.S.-sanctioned entities, assess the completeness of its data governance system, and evaluate local unions' perceptions of corporate culture. This comprehensive evaluation creates a precise risk map, providing critical support for developing differentiated integration strategies.

4.2 Formulate pre-emptive and Strategic Government Approval Response Plans

Faced with an increasingly complex government approval environment, multinational companies need to establish proactive and strategic approval response plans, with the core focus being the shift from passive waiting to active communication, initiating systematic lobbying and image-building efforts even before formally submitting review applications. Specific implementation paths include: hiring local lobbying teams with political resources and review experience in the host country, establishing informal communication channels with review agencies through professional legal advisors, entrusting credible third-party institutions to conduct independent assessments and publish reports. For instance, when a China technology company acquired a French semiconductor firm, it established a dialogue mechanism with the French Ministry of Economy through a consulting team formed by former government officials three months before transaction disclosure. The company also proactively invited EU-recognized testing institutions to conduct safety assessments of core technologies and regularly released compliance operation white papers to local media. This level of transparency, surpassing conventional requirements, effectively reverses the "confusion of organizational identity" perceived by review agencies and significantly increases approval rates.

4.3 Design of Data Compliance Integration and Risk Control System Throughout the Whole Process

In the field of data compliance integration, multinational corporations must establish a comprehensive data risk management system spanning the entire transaction lifecycle. This system should be designed during the due diligence phase, with complete data isolation and tiered access control protocols established before closing. Critical data assets require defined migration pathways and protection measures. When integrating newly acquired Southeast Asian e-commerce platforms, companies must conduct full mapping of user data flows before closing, establish transitional data processing protocols compliant with GDPR and local regulations, and implement dedicated data encryption and access log monitoring systems. Post-closing, target company data flows should be rapidly integrated into a unified governance framework certified by ISO 27001 and other international standards, accompanied by comprehensive data compliance training for all employees and regular audits ^[4]. A U.S. cloud computing company that acquired a Brazilian data service provider successfully completed full standardization of its data systems within six months. This not only passed local data protection authority reviews but also established the project as a compliance benchmark in Latin America, transforming potential data risk points into key pillars for building market trust.

4.4 Improve the Compliance Commitment and Safeguard Clauses in the Merger and Acquisition Agreement

In cross-border M&A scenarios, optimizing compliance commitments and safeguard clauses in merger agreements forms the cornerstone of risk management systems. These clauses should be tailored to specific risks identified through due diligence, establishing a multi-layered protection framework. This includes requiring sellers to provide detailed disclosures and warranties regarding critical matters (e.g., full disclosure of all export-controlled technology products), establishing special indemnity clauses that hold sellers accountable for penalties and losses arising from historical regulatory violations uncovered during due diligence, and making the acquisition of key regulatory approvals a transactional prerequisite. When involving multiple jurisdictions, agreements must clarify legal compliance priorities, conflict resolution mechanisms, and set up escrow accounts to address potential compliance disputes ^[5]. A European industrial conglomerate, for instance, explicitly stipulated in its acquisition of a Japanese company that original

shareholders would bear compensation liabilities for penalties resulting from undisclosed U.S. export control violations. This clause later helped the company avoid tens of millions in losses during an investigation by the U.S. Department of Commerce.

5 Conclusion

The success of cross-border mergers and acquisitions (M&A) hinges on precise management of complex legal compliance environments. Companies face dual challenges of "outsider disadvantage" and "source disadvantage" during this process, particularly evident in areas like national security reviews, antitrust regulations, cross-border data flows, and anti-corruption compliance. To address these challenges, enterprises must establish a proactive risk management system spanning the entire transaction lifecycle. This involves leveraging cross-jurisdictional due diligence to identify risks, building trust through advance government communications, ensuring full-process data compliance integration, and incorporating comprehensive risk allocation clauses in M&A agreements. These interconnected measures collectively form a robust risk defense framework, enabling companies to navigate compliance challenges and ultimately transform strategic M&A blueprints into tangible global competitive advantages.

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