



McDermott
Will & Emery

WEBINAR

Navigating the Challenges of Cross-Border M&A Transactions

Wednesday,
March 21,
2018

11 am MDT /
10 am PDT



INTRODUCTION

Alexander Lee | McDermott Will & Emery - Partner

Alexander Lee is the youngest tax lawyer to make Chambers Global's list of the top twenty International Tax practitioners in the United States (only two are under the age of 50). He focuses his practice on domestic and international transactional tax matters, with an emphasis on public and private cross-border mergers and acquisitions, lending and finance, and foreign capital markets. Alexander has been involved in over 100 major cross-border transactions including signature transactions like Samsung's \$8.2 billion acquisition of Harmon Kardon and Shaunghui's \$8.0 billion acquisition of Smithfield foods, the largest Korean and largest Chinese acquisitions of US public companies respectively.



Maureen O'Brien | McDermott Will & Emery - Partner

Maureen O'Brien represents a broad range of clients in executive compensation and employee benefits matters. She has extensive experience assisting clients with issues affecting executive compensation and employee benefit plans in corporate transactions, as well as with executive compensation and employee benefits issues arising from restructuring proceedings. Maureen advises clients regarding qualified and non-qualified retirement plans, executive and equity compensation, Code Section 409A, fiduciary matters, multi-employer pension plan issues and employment agreements. She counsels a wide variety of clients, including public companies, private equity and venture capital funds, and private companies regarding employee benefits issues.



Rob Wellner | Velocity Global - Director of Sales

Rob Wellner is the Director of Sales and one of the first employees of Velocity Global. Earlier in Rob's career, he spent 12+ years working in capital markets. His experience gives him a unique perspective on the pitfalls and challenges that can sidetrack global deals and transactions. Rob is a recognized thought leader on international expansion and frequently speaks on international topics such as employment, payroll, expatriates, and global mergers and acquisitions.



AGENDA

- Understanding the Overall Complexities of a Typical Cross-Border Deal
- Employment Transfers of Cross-Border Transactions, Compensation, Benefits and Employee Integration
 - *With McDermott Will & Emery*
- Streamlining Global M&A Transactions and Implementing Your Investment Thesis: Day I
 - *With Velocity Global*

INTRODUCTION – MCDERMOTT WILL & EMERY



Alexander Lee

McDermott Will & Emery - Partner

TALKING POINTS

- Understanding various types of cross-border transactions and their complexities
- Typical challenges associated with cross-border deals

WHAT IS A “CROSS-BORDER” TRANSACTION?

Inbound or Outbound Transactions

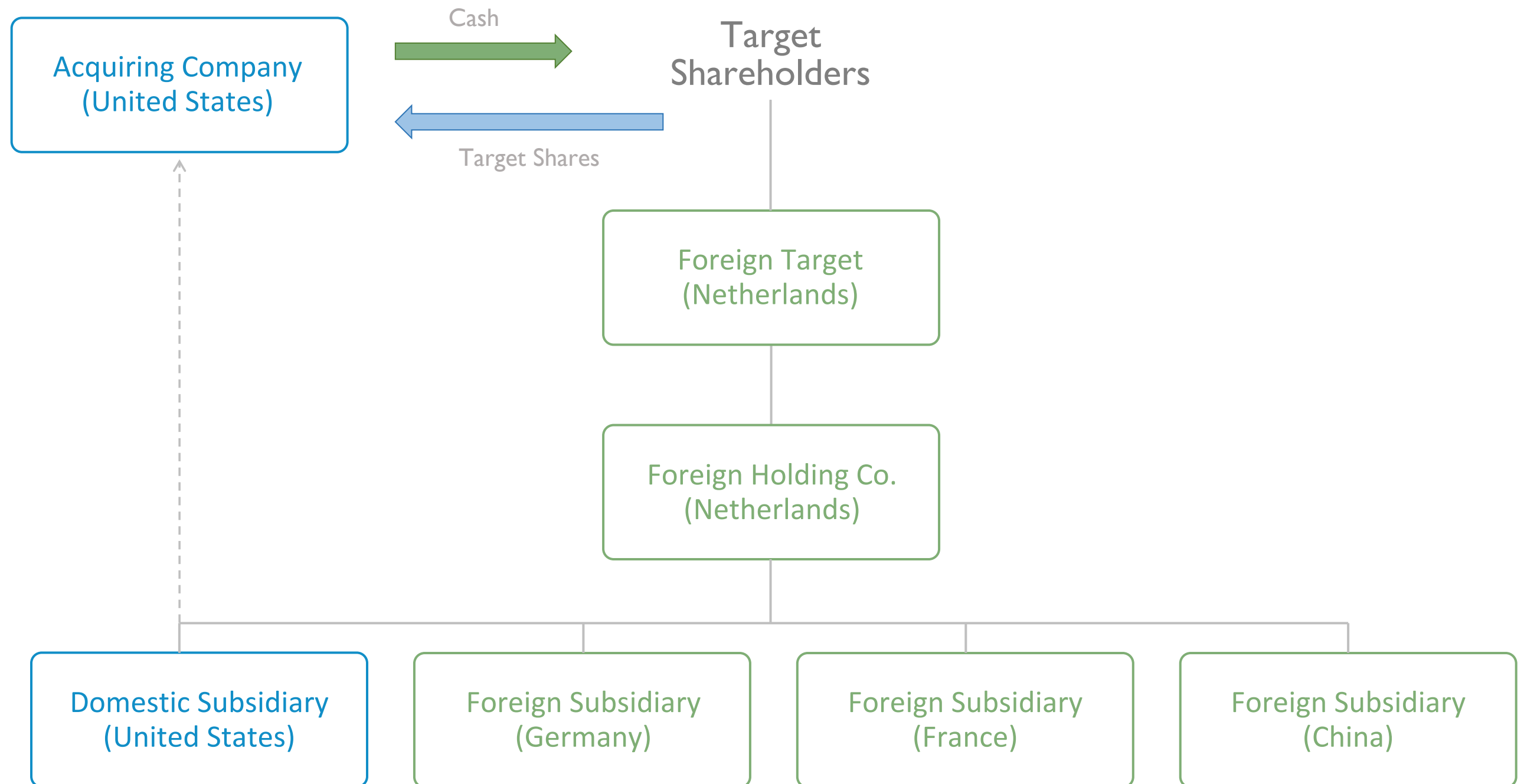
- US domestic company acquires foreign company
- Foreign company acquires domestic US company
- Domestic company acquires another domestic company with foreign subsidiaries?

Form of the Transaction

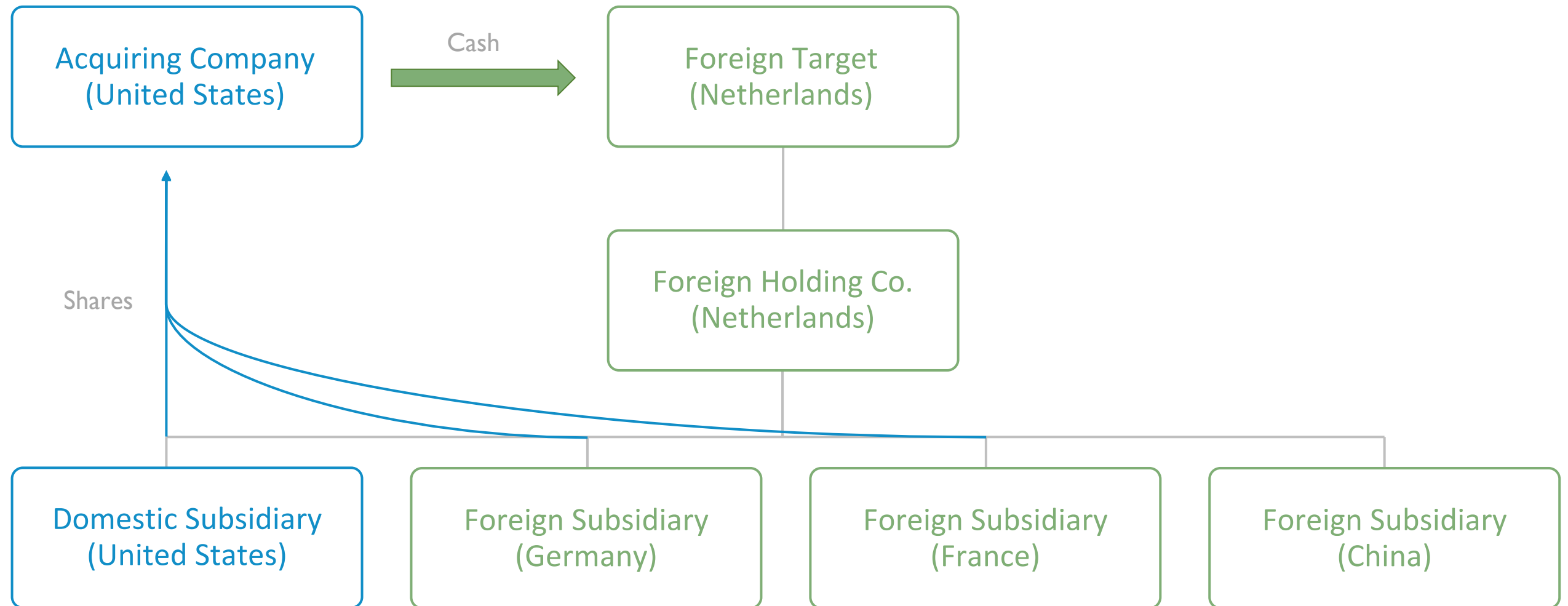
Equity Sales v. Asset Sales

- **Equity Sales**
 - Full acquisition
 - Carve-out transaction
 - Joint venture
 - Capital investment
- **Asset Sales**
 - Acquisition of all or substantially all of assets
 - Carve-out transaction

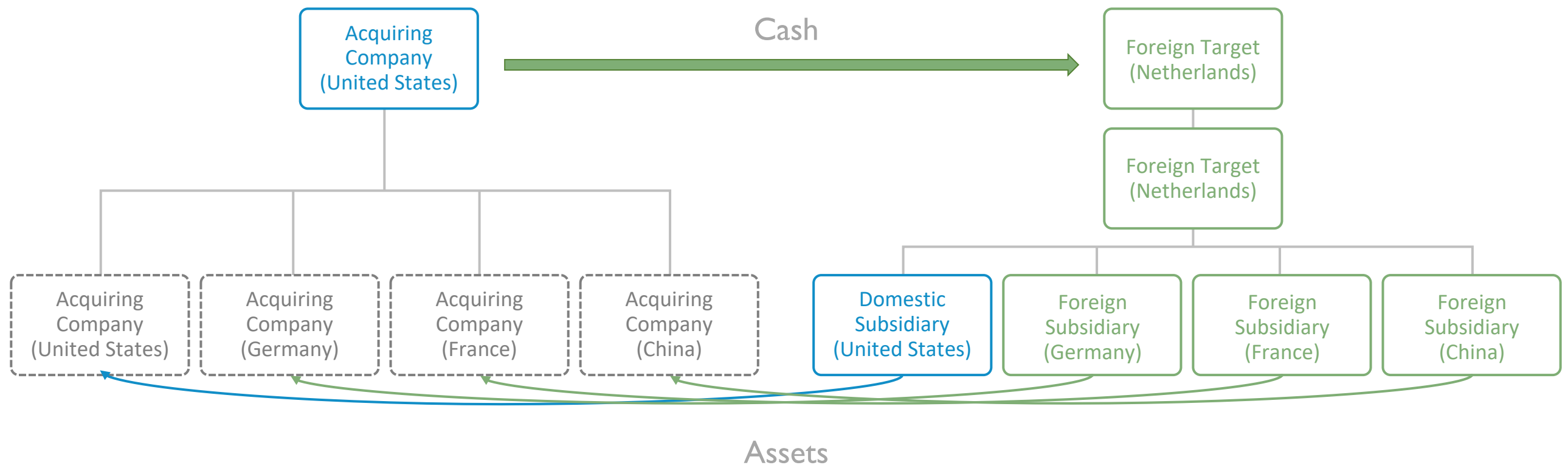
FULL ACQUISITION OF EQUITY TRANSACTION



EQUITY CARVE-OUT TRANSACTION



ASSET PURCHASE TRANSACTION



Notes: * Certain other Franklin Mint entities are in progress of dissolution and excluded from this chart. ** Certain ranches are owned directly by the 1985 Trust. + 40% Resnick children ++ Entity is a limited liability company for corporate purposes, but made an election to be treated as owned 50/50 by SAR and LRR, respectively, for tax purposes. +++ Denotes 50% outside ownership

COMPLEXITIES OF THE CROSS-BORDER TRANSACTION

Types of Issues Typical in a Cross-Border Transaction

- **Corporate**
 - Movement of assets / title transfer
 - Third-party consents
 - Key documents / controlling jurisdiction(s)
 - Transition services agreements
- **Intellectual Property**
 - Carve-out of certain IP rights
 - Licenses
- **Regulatory**
 - Approval of government in certain countries (CFIUS, MOFCOM, SAFE, etc.)
 - Approval based on specified industries (environmental, defense, technology, etc.)

COMPLEXITIES OF THE CROSS-BORDER TRANSACTION

Types of Issues Typical in a Cross-Border Transaction

- **Tax Structure**
 - Creation of additional entities (treaty rates)
 - Direct purchase or subsidiary purchase
 - Check the box
 - Impact of GILTI / Subpart F
 - Re-domicile intellectual property (FDII Rules)
- **Trapped Cash / Withholding Taxes (Leakage)**
 - New repatriation rules
 - Section 965 repatriation
- **Transfer Taxes**
 - VAT issues
 - Country-by-country tax treatment

INTRODUCTION – MCDERMOTT WILL & EMERY



Maureen O'Brien

McDermott Will & Emery - Partner

TALKING POINTS

- Transfer of employees can be complicated depending on jurisdiction and transaction type
- Payroll and cultural integration are key for a smooth transition
- Executive compensation and employee benefit plan requirements must be understood for a successful workforce integration

EMPLOYMENT TRANSFERS IN CROSS-BORDER TRANSACTIONS

Transferring the Workforce to a New Employer or Continuing the Workforce with the Current Employer

- Automatic transfer (TUPE or similar, stock sale)
- Offer and acceptance (US asset sale, other non-EU countries assets sale)
- Does transaction trigger statutory or contractual severance?
- Are sign-on bonuses typical in the affected jurisdictions?
- Location of new employment
- Union, trade association, and works council issues
- Compliance with country-specific immigration and visa requirements

EMPLOYEE BENEFITS ON A GLOBAL SCALE

Pension Schemes

- Defined benefit v. defined contribution
 - Country-specific requirements
 - Union or works council requirements
- Employee expectations
- Asset transfers

Health Benefits

- Providing health benefits with no gap in coverage (US)
- Hidden claims liabilities
- Transfer of pre-tax accounts

Fringe Benefits

- Transfer of vacation liabilities
- Other fringe benefits

INTRODUCTION - VELOCITY GLOBAL



Rob Wellner

Velocity Global - Director of Sales

TALKING POINTS

- An innovative solution to streamline global transactions
- Demonstrating certainty to close
- Increasing buying power

GLOBAL TRANSACTION SOLUTIONS

End-to-end global transaction solutions can assist you with **acquiring global businesses.**

- Facilitate global mergers, acquisitions, carve-outs, divestitures, and other complex international transactions.
- Experience faster transaction closing and reduced risk.

GLOBAL TRANSACTION SOLUTIONS

You just signed a term sheet to buy a company. But before you can close, you need to hire 100 employees across 50 countries...



Your CFO, General Council, and Head of Talent must find a solution to get the deal closed while retaining talent

Traditional Route

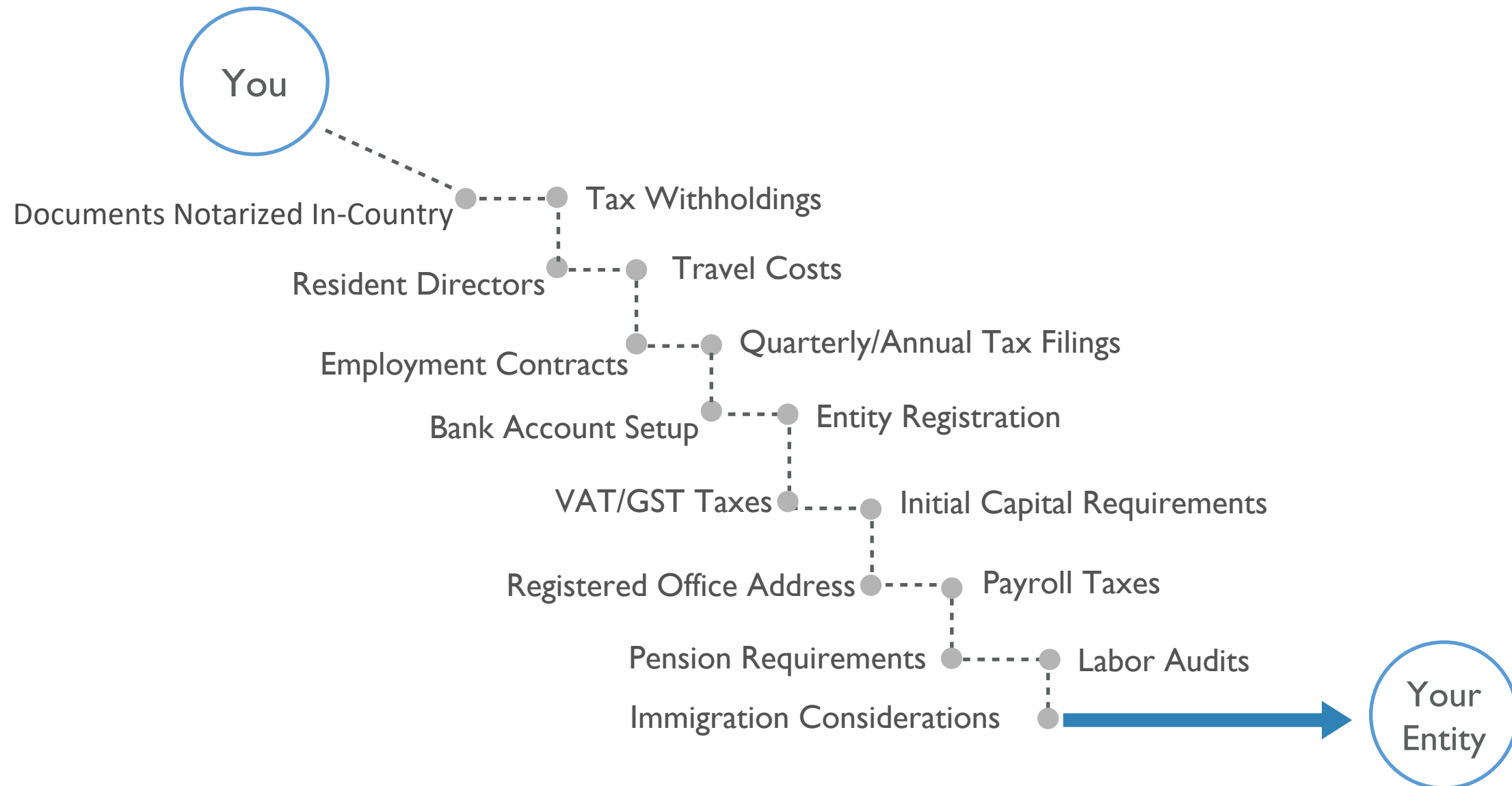
- Create foreign entities in each country
- Costly and time-consuming

OR

Velocity Global's International PEO Solution

- Hire all employees compliantly without setting up foreign entities
- Reduce costs by up to 60% v. entity setup
- Hire employees up to 90% faster, literally within days

TRADITIONAL GLOBAL EXPANSION MODEL



To establish an entity, you must consider all of these variables.

Maintaining ongoing corporate compliance will require a team of local accountants, lawyers, and HR and payroll specialists.

STREAMLINING EXPANSION

International PEO Model



Normal Working Relationship

With International PEO, you simply sign a contract with Velocity Global and your employee(s) begin operating in-country in as little as 48 hours.

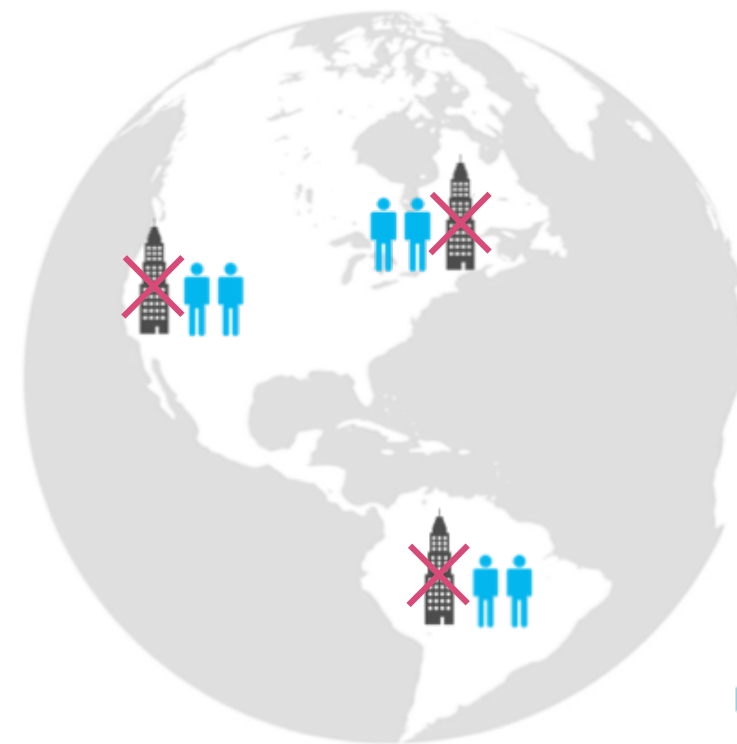
GLOBAL TRANSACTION SOLUTION

Pre-Transaction



 Seller's entities
 Seller's employees

Post-Transaction Using Velocity Global's Solution



*No Buyer
Entities
Required*

 Buyer's employees,
Velocity Global's
infrastructure

INTERNATIONAL PEO ADVANTAGES

Advantages of using Velocity Global to streamline the global expansion process:

Stay compliant and ensure a smooth M&A process

- Strict employment laws in most countries (e.g., no at-will employment)
- Employee fear and disruption during the M&A process

Reduce time to market by up to **90%**

- We onboard your personnel in-country in as little as 48 hours
- You avoid weeks to months of entity setup procedures and headaches

Reduce costs by as much as **60%**

- We provide transparent, cost-effective pricing
- You avoid expensive initial setup and ongoing maintenance costs associated with a new entity

51%

of companies that are looking to work or expand internationally in the next 1-2 years are not sure how.

- PWC

CARVE-OUT SUCCESS STORY

Transaction Overview:

In 2016, a Global Fortune 50 technology company sold a non-core global operation (“target”) worth nearly half a billion dollars to a consortium of multi-billion dollar global technology companies (“buyer”). Per the terms of the seller and the purchase agreement, hundreds of worldwide employees of the carved-out operation needed to be transitioned to the buyer.

The Challenge:

Before the transaction could close, the buyer needed to onboard several hundred of the target’s employees located across 50 countries. Since over half of those employees were located in countries where the buyer did not have existing entities, they needed a solution that enabled quick and compliant employee onboarding to complete the transaction.

The Solution:

Velocity Global’s International PEO offering provided a fast and compliant solution for the buyer. This took care of the employment needs and requirements necessary for maintaining the seller’s employees, enabling the executive teams to focus on setting up entities in each of the countries their new employees were located.

The Outcome:

The buyer successfully completed the acquisition and compliantly hired hundreds of employees in under two weeks through Velocity Global’s International PEO solution. As the buyer establishes its own entities, Velocity Global is seamlessly transitioning each employee off the International PEO model to the entities established in each country.

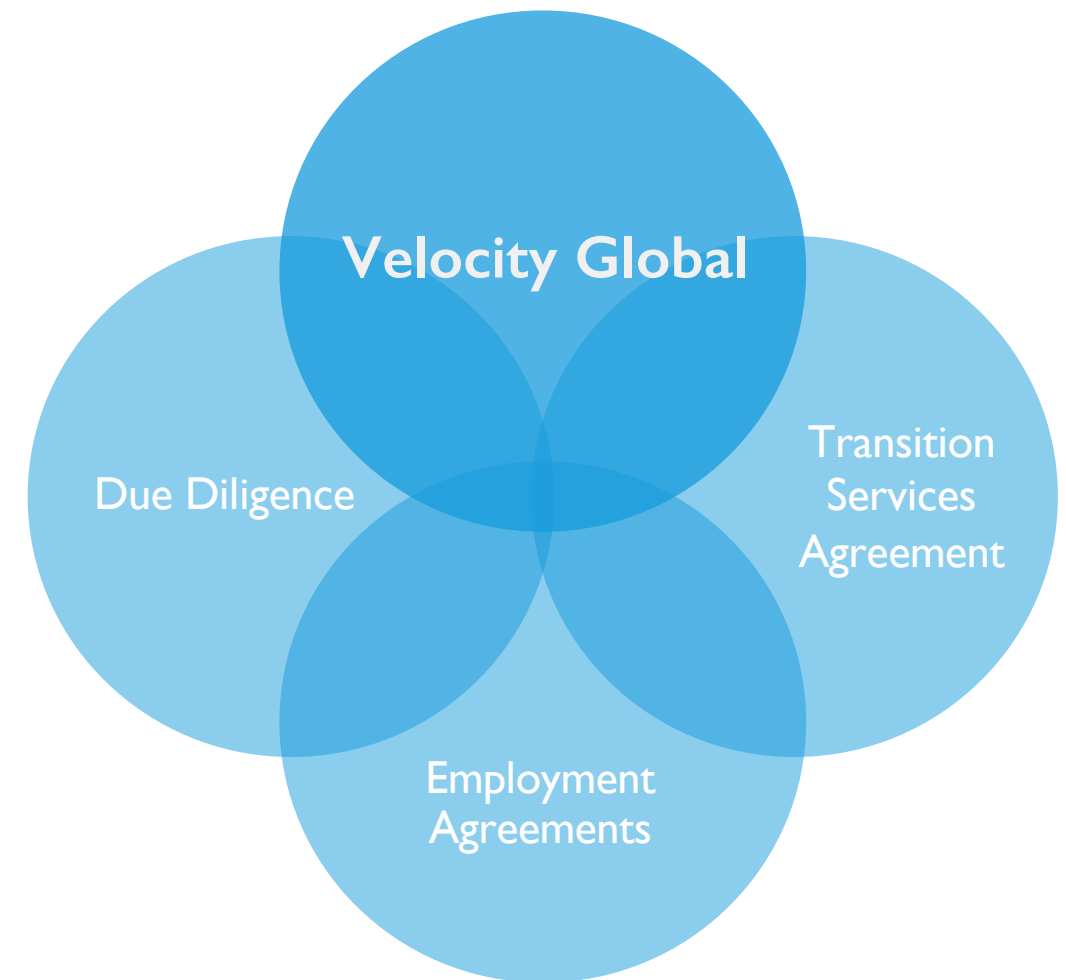
“The Velocity Global team is always there to answer any questions that my employees or I have and guide us through the next steps as we navigate this growth.”

- Buyer’s VP of Human Resources

GLOBAL TRANSACTION SOLUTIONS

Reducing global transaction risks and issues inherent to global M&A

- Asset transaction may leave buyer without foreign entities
- Strict employment laws in most countries (e.g. no at-will employment)
- Employee fear and disruption during the M&A process
- Ongoing benefits and insurance coverage for acquired employees
- Protecting IP and confidentiality
- Employee visa requirements
- Complicated local payroll calculations and technology



QUESTIONS?



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