

How Deal Makers Are Grappling With Going All-Virtual

By **Elise Hansen**

Law360 (December 11, 2020, 11:04 AM EST) -- The coronavirus pandemic pushed the last vestiges of in-person deal-making online, which has occasionally made it harder to feel out a potential transaction or perform due diligence, but the shift may also spell longer-lasting changes to the mergers and acquisitions process for attorneys and clients alike.

While the technical aspects of inking mergers and acquisitions have remained largely consistent, the health crisis has created logistical hurdles for sealing a deal in some cases. And the relationship side of business — for executives and their lawyers — has had to evolve.

"I think what kicks off nearly every deal is some very positive, energetic, in-person meetings between parties, and obviously those got way curtailed when people became subject to the travel restrictions and the shelter-in-place orders," said Holland & Hart LLP partner Nicole Snyder.

Before the world shut down in the spring in response to the COVID-19 outbreak, deal-making was already rapidly digitizing in many respects, which eased some of the transition pain.

Virtual data rooms were already the norm for certain aspects of due diligence, and electronic signatures, conference calls and emails facilitated communication and paperwork. The steep drop-off in mergers and acquisitions early in the pandemic was more a result of market uncertainty and economic factors than any technological barriers, said Sidley Austin LLP's Chris Abbinante, who co-leads the firm's private equity practice.

"Most deal makers were already doing most deal work remotely," he said. "Honestly, there wasn't a whole lot that had to come together. It was already in place."

But certain clients did balk at moving some aspects of the deal process online, Mayer Brown LLP partner Jennifer Keating said. That was particularly true for clients that considered in-person visits to facilities a key part of due diligence, at a time when some prospective target companies were strictly limiting onsite inspections, she said.

"That was difficult, and I had at least one client who decided not to participate because they just said, we could never get comfortable without doing the level of diligence that we're accustomed to doing," Keating said.

Due diligence and deal negotiations could also be affected by the challenges of integrating merging companies in a purely digital environment, said Deloitte's Mark Purowitz. Companies that anticipate challenges with virtual integration may begin to give additional time or attention to integration prospects during the due diligence stage, and potentially bake that into their deal expectations, Purowitz said.

Many recent multibillion-dollar deals involve "thousands or tens of thousands of employees that are impacted and will need to come together in some form of integration model. It's very challenging to do that in a completely virtual setting," Purowitz said.

"Given the uncertainty of the world we live in right now and the virtual nature of these companies coming together, more effort should be made to consider what could be the integration options — what could go right and what could go wrong — as part of the deal thesis," he said.

But some of the biggest changes to shifting work online have involved the relational aspect of deals, including the traditional, rapport-building meetings between executives.

Snyder of Holland & Hart said that most parties have made the necessary adjustments — deal volume has picked up considerably in recent months — but that the change "certainly was not insignificant."

"Clients and all the parties got immediately pretty comfortable with switching to Zoom and to other meeting platforms, but it was a transition, and I think anytime you're engaging in a significant transaction, it's a leap of faith to do that without being able to look someone in the eye ... and be able to mix and mingle and really assess culture," she said.

And some of the back-and-forth of negotiations that could be navigated with in-person conversations are somewhat more cumbersome online, Keating said.

"We're all used to doing a lot remotely over the phone, but in many deals, the most efficient way to get a deal signed is to get everyone in a room and hammer things out, and that's just not being done in this environment," the Mayer Brown partner said.

However, even if it doesn't perfectly replicate in-person interactions, the rise of videoconferencing has created a helpful alternative to conference calls, said Morgan Lewis & Bockius LLP partner Sheryl Orr.

"It's much more similar to being in the room," Orr said. "You can gauge a little easier than you can just by tone of voice ... how [people] are reacting. You can kind of see by their facial expressions whether they're taking it well or badly, which can help you figure out what your next response is going to be."

The convenience and low cost of videoconferencing means it likely will supplant some of the meetings that were previously in-person, whether it's management presentations or negotiations.

Other meetings will likely revert to being held in person, said Haynes and Boone LLP partner Ricardo Garcia-Moreno.

"I think that people understand that sometimes in a deal it's critical to have everybody together in one place physically ... but that percent of critical, must-have, is probably going to be smaller, because we all know that we can work virtually," he said. "There's a lot of savings to the clients, in particular, of having lawyers and all of the business people just getting together virtually instead of the huge costs of hotels,

airlines and food to get 20 to 30 people converging into one place physically."

Much of that holds also true for M&A lawyers' own form of deal-making: business development. Attorneys have had to find creative ways to build and maintain rapport with existing and prospective clients in a world where interactions that once took place over a meal, a happy hour or at conferences have moved online.

"As lawyers, business development and maintaining existing relationships and developing prospective clients is a very people-focused interaction," Garcia-Moreno said.

The switch to remote "is definitely something lawyers are having to deal with, and are trying to be creative to maintain those contacts with clients or potential clients," he said.

Partners and firm leaders have also had to find new ways to convey a firm's culture to new hires and maintain a sense of cohesion with colleagues — something many of the partners cited as one of the greatest challenges posed by the all-remote environment.

"You have to work three times as hard to get [new hires] to meet everyone and understand the culture and the vibe," Snyder said. The fully remote environment "has been a real exercise in resilience for both firms and businesses."

--Editing by Aaron Pelc and Nicole Bleier.