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MAGNUSSON SAM JALAEI



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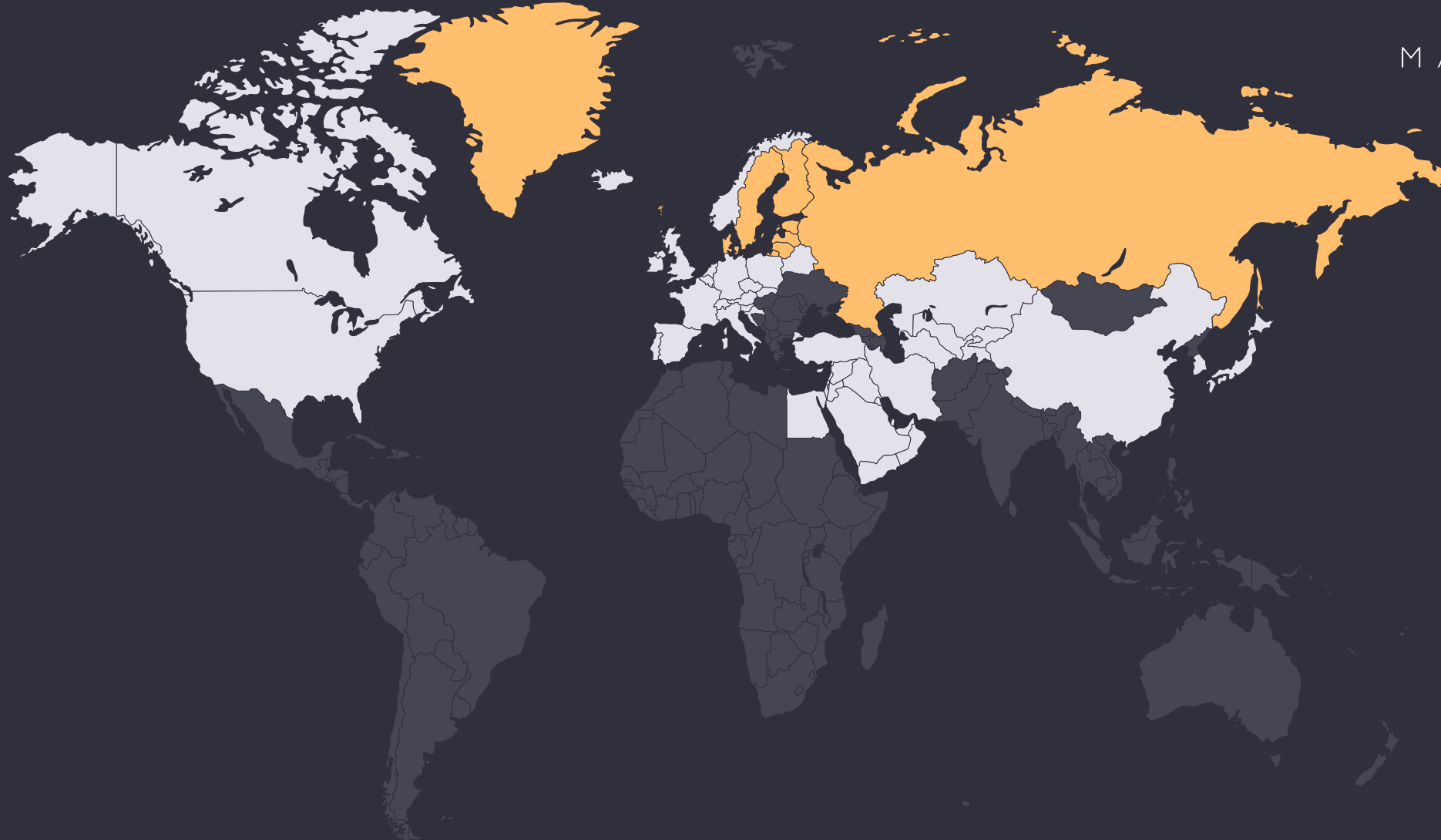
MAGNUSSON COUNTRIES AND OFFICES

BUSINESS GROUPS & OTHER AREAS OF INTEREST

Denmark, Sweden, Finland, Estonia, Russia, Latvia and Lithuania and best friend law firm in Norway



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MAGNUSSON INTERNATIONAL



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ESTABLISHED

2004

LAWYERS

130

PEOPLE IN TOTAL

150

LANGUAGES SPOKEN

17

COUNTRIES

7

OFFICES

12

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DENMARK, SWEDEN, FINLAND, ESTONIA,
RUSSIA, LATVIA, LITHUANIA

OUR CLIENT SEGMENTS



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HEALTH



ENERGY



ENVIRONMENT



TECHNOLOGY



METAL INDUSTRY



FINANCING



REAL ESTATE



RETAIL



INTERNATIONAL
TRADE & TRANSPORT



CONSTRUCTION



TEMPORARY LABOUR



INSURANCE &
RISK MANAGEMENT



MEDIA



PUBLIC SECTOR



SPORT &
ENTERTAINMENT



CHEMICAL INDUSTRY

SAM'S CONTACT DETAILS



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SAM JALAEI

**PRIMARY CONTACT
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CO-HEAD OF CORPORATE & M&A
HEAD OF CAPITAL MARKETS
HEAD OF MIDDLE EAST DESK**

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M&A TRENDS – COVID-19



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Around the world, governments are starting to think about how to reopen the economy once the virus is suppressed. It is not a matter of simply pulling a switch that turns on the lights. Rather, it is a matter of deciding on the sequencing of removing barriers to economic activity. Acting too soon risks reigniting the outbreak. Meanwhile, acting too late risks allowing many businesses to fail. We share with you what we have experienced so far in terms of M&A, and we give you our view on the future.

WHAT HAVE WE EXPERIENCED

- Virtually all **transaction processes are put on hold**.
- New inquiries come primarily from foreign PE funds.
- **The focus of PE funds** is currently on current portfolio companies rather than new investments, where the following characteristics rule.
 - Heads and owners exercise due care.
 - Contingency plans have already been drawn up and, in selected cases, fully or partially implemented.
 - Cash position is attempted maximised to the extent possible in the respective portfolio companies, including increased contingency liquidity through extended lines at the banks
 - Public sector aid packages have been applied for to the extent possible.
 - We have bridged payments from the public sector, as the aid packages are not in all cases operational yet.
 - Process risk has become a bigger part of everyday life, where in the past we talked primarily about credit risk.
 - CAPEX in portfolio companies is limited to a minimum for the rest of the year.
 - There is a growing understanding that the current situation with COVID-19 requires 3-party solutions (State, bank and owners) or 2-party solutions (bank and owners, primarily on very creditworthy cases).
 - There is a growing understanding that there has been an increase in risk premium over a short period of time.
 - There is a common and increased understanding of the need for solutions in terms of both short and long-term financing.
 - Visibility seems blurred in both the short and long term.
- The **portfolio companies least affected** are those with a solid online platform used as a distribution channel.
- **SaaS:** Increased interest in the SaaS business and online stores (processes that were previously inactive are now active).
- **Business plans:** New business plans are wanted from the companies post-C-19 and updated cases will then be launched on the market.
- **MAC is back:** Increased focus and negotiations between the parties on Material Adverse Change clauses in M&A deals in the period between signing and closing. Buyers will insist that a MAC clause is agreed in the SPA including any material adverse change irrespective of whether it will hit all peers in the industry or only the target. Sellers wish to include an express C-19 carve out. Potential increase in number of M&A disputes going forward in relation to whether MAC clauses are triggered or not due to C-19 and its financial impact.
- **Conditions precedent (CP):** Buyers are increasingly focusing on including a CP for specific C-19 related risks identified during the due diligence, if the deal can't be postponed or put on hold.
- **Pre-Closing Obligations:** Sellers' further in-depth analysis of whether they can comply with their pre-closing obligations and covenants, e.g. contracts, employees, business operations and contingency plans, etc.

FUTURE PROSPECT



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"This crisis is unprecedented, but the financial system is better prepared this time around. Thus, a faster economic and equity recovery will hopefully lead to a rise in the M&A activity sooner, particularly in certain sectors such as on-line business, health and pharmacy. We will also experience disposal of distressed assets and activities through restructuring and accelerated sales processes based on a thorough due diligence and valuation negotiations in a different M&A market"

A LOOK INTO THE FUTURE

- Some PE funds expect to stay longer in their portfolio companies as the current situation postpones exit.
- Some PE funds considering making use of a clause to extend the life of the fund.
- **The current situation** with COVID-19 may provide some opportunities for takeovers in the market and this is closely monitored by the PE funds.
- The **market risk** is considered to be increased, which is also expected to be the case after a reopening, as in selected segments there may be a change in buying behaviour, primarily for B2C.
- All things being equal, **acquisition multiples are expected to decline** in the short term, due to the increasing uncertainty.
- It is to be expected that the risk of breach of financial covenants will increase and a period of alternative performance metrics will have to be established in the future until business momentum is fully or partially re-established.
- The levels of gearing are not expected to rise due to the increasing uncertainty.
- Funding costs have already increased in the market (for example corporate bonds) and it will, all things being equal, be more expensive to finance future acquisitions.
- Tomorrow's winners are those who manage to adapt to the new situation and create solutions that are saleable in both the short and long term.
- **Reps and Warranties/Limitations/W&I Insurance:** Potential trend of the buyers looking for expanding their list of warranties and the sellers looking to include broader materiality and knowledge qualifiers, avoid repeating the warranties at closing and consider including a general C-19 related exclusion of liability. Buyers will seek taking out transaction insurances, e.g. W&I insurance, instead of relying on the sellers' or guarantors' covenants but premiums may also increase to the extent that the use of such will decline.
- **Disclosures:** Sellers aim to provide very specific and detailed disclosures with respect to C-19 related issues in order to ensure fair disclosure.
- **Due Diligence:** Certain areas are to be subject to greater scrutiny by the purchasers, e.g. financial impact on the target, risk of breach of covenant in facility agreements, material contracts with customers and suppliers, force majeure clauses, insurance coverage, entitlement to governmental relief and tax packages, IT systems, employees and compliance with law and regulations, etc.
- **Indemnities:** Buyers to include indemnities for specific well-known risks and the sellers to include duration limitation and capped amounts of any indemnity.
- **Consideration and financing:** Likely to see more earn-out mechanisms and models based on turnover or EBITDA etc. in order to bridge the gap between the sellers' expectations and the buyers' valuation. The terms and conditions of the earn-out mechanisms must be carefully negotiated due to the C-19 uncertainties. Sellers to dive further into the buyers' acquisition financing and the purchase price, e.g. the buyers' ability to secure debt financing to fund the purchase price. The sellers should consider requesting equity and debt commitment letters in order to safeguard the buyer's payment obligations.
- **Post-Closing transition and separation activity:** Higher scrutiny of the terms and conditions of the agreed transitional services between the sellers and the buyers to be provided by the sellers to the target following post-closing, e.g. duration of transitional services.
- **Long Stop Dates:** The parties should carefully negotiate the long stop dates for the fulfilment of agreed conditions precedent – which is when the buyer is entitled to walk away, if the conditions agreed for the transaction have not been met – as delays will occur due to C-19 impact.

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SAM JALAEI



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Sam is the Chairman of Magnusson Denmark. He is also the Co-Head of Corporate M&A and Head of Capital Markets of Magnusson Denmark and also Heads the Middle East Desk of Magnusson firmwide.

He has since 2000 specialized in M&A, Corporate Commercial, Private Equity and Venture Capital, Capital Markets, Employment Law and Disputes which he has practiced as partner and co-managing partner during his time as partner and co-managing partner at the CPH office of the global UK law firm, Eversheds, and during his career at Kromann Reumert and Bech Bruun.

Sam graduated top 1% in 2000 from The University of Copenhagen and also studied at New York University School of Law. He has vast experience with Danish and cross-border/international M&A transactions, including planning and completing due diligence investigations, sales preparations and negotiating and drafting various transaction documents. Since 2000, Sam has advised major listed and unlisted global Danish and international companies in Corporate Commercial matters and advised Stock Exchanges and listed companies on Capital Market issues. Sam has acted as key account manager and single point of contact for both listed and unlisted major Danish and international clients in various business sectors and project managed cross-border transactions in the US, Continental Europe, Middle East and South Africa. He also advises on private equity, venture capital and corporate restructurings. Sam has also during the years been recommended in both Legal 500 and Chambers for Corporate M&A and Banking and Finance. He also advises major listed and unlisted Danish and international companies in Middle East.

Sam also lectured at The University of Copenhagen Faculty of Law in classes on M&A, European Corporate Finance and Contract Law. Furthermore, Sam is the co-author of a number of Danish and English legal articles. Sam speaks fluently Danish, Farsi, English and German. Sam is also a former board member of AmCham Denmark and current board member of Fremad Amager Elite ApS (football club).

For more details about Sam visit:
<https://www.magnussonlaw.com/people/sam-jalaei/>