Banking & Finance Q&A

Moving past the 'year of fear': Loo Choon Chiaw discusses


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Asian Legal Business: As the world economy has been recovering over the last few months, are there any notable trends?
Loo Choon Chiaw: The world economic landscape has been drastically changed after the recent global financial crisis ("GFC"). Most experts agree that as the developed economies were the most adversely affected by the GFC, consumption from those economies will remain relatively low for quite a while. Some expect the developing economies, especially the PRC, to generate more demand in consumption.

ALB: How about the trends in the global financial sector?
LCC: Industry experts noted a growing and sustained "back to basics" demand on the part of the bank customers (both individual and corporate), probably because the nightmare caused by the infamous Lehman structured products was still relatively fresh in their minds. According to the Monetary Authority of Singapore ("MAS"), as at end May 2009, the banks and financial company involved had offered settlements to 67% of investors on a no-admission-of-liability basis to over 3,600 investors for about $105 million.

In the light of the above, most investors in the capital market, since the GFC, have indicated a strong preference for simple, standardised, straight forward, more transparent, plain vanilla type of products. They have also demanded that trading and settlements be conducted via central clearing mechanisms with a view to reducing counter-parties risks.

Banks in general have certainly felt the pressing need to adjust back to an environment in which profits are primarily earned from the comparatively traditional, unglamorous and less than sexy activities such as the provision of traditional loans and mundane banking services.

With a view to minimising their exposure, banks have also taken further precautions in prohibiting their tellers from referring customers to representatives for the purchase of investment products; in tightening the sales process for specific groups of customers (who may find it difficult to understand the salient features of investment products) and in implementing enhanced product suitability checks for these customers to ensure that they have fully understood the special features, benefits and risks of investment products; in requiring authorised representatives to explain the nature and risks of such investment products to all prospective customers; in enhancing adequate due diligence for new investment products; in introducing a cooling off period of up to 7 days for structured products (with the exception of time-sensitive treasury / investment products); in conducting robust and specialised training as well as examinations for representatives; and in reinforcing commitment to handle complaints and disputes effectively.

ALB: Any notable trends vis-à-vis the regulators?
LCC: Any serious regulators will "react" (the term is not used in a derogatory sense) after a crisis in the light of the valuable lessons which have been learnt. The reaction of the regulators after the GFC was of no surprise to anyone. Regulators across the globe have been re-examining their supervisory and regulatory approaches. Banking and financial regulations have been tightened. More changes to those regulations have been contemplated by many regulators. Such proposed changes include the raising of capital ceiling for banks and financial institution and the imposition of more stringent liquidity management by banks and financial institutions. Reforms are on the cards for the introduction of measures for the enhancement of consumer protection frameworks, and the clearer identification and better monitoring of systemic risks.

ALB: What are the strategies adopted by Singapore in capitalising on those trends indentified?
LCC: Mr Goh Chok Tong, Singapore's Senior Minister and Chairman of the MAS, has recently outlined 5 strategies which Singapore has adopted in its effort to capitalise on the global trends identified. They are: (1) to maintain a sound and progressive regulatory framework; (2) to tap the growing wealth in Asia; (3) to leverage on the massive infrastructural needs in Asia; (4) to enhance Singapore's risk management capabilities and market infrastructure, and (5) to enhance Singapore's talent pool and intellectual capacity.

ALB: What kinds of clients are you acting for and in respect of what type of banking and financing work?
LCC: We act for MNCs, local listed corporations, SMEs, foreign central banks, domestic and international banks and financial

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institutions, financial intermediaries, Chinese (PRC) and Taiwanese (ROC) government-linked corporations and foreign legal firms in respect of cross-border transactions which have a Singapore dimension. We attend to a wide range of domestic and international banking and financing work, ranging from simple bi-lateral facilities to complex club and syndication facilities.

We also advise clients on the full range of corporate finance matters, including, public and private equity and debt offerings, IPO, RTO, M&A and funds matters.

ALB: What type of new work do you see flowing in to your practice?
LCC: We have been receiving increasing instructions from corporate clients who wish to undertake an internal corporate restructuring exercise, for instance, the voluntary winding up or striking off of a dormant subsidiary, the amalgamation of 2 or more entities in the group which exercise similar functions, as a prelude to major financing exercises to address regulatory or tax issues. We have also been receiving more instructions from clients in relation to the restructuring of their existing financing arrangements. In similar vein, we have also been receiving instructions from financial institutions for advice relating to the legal implications of their customers' existing financing arrangements in the light of a proposed reorganisation of their customers' internal group structure.

With an appetite for expansion and with it, a need for financing, many of our clients are also actively reviewing their options, ranging from equity financing (for instance, private placement, IPO and rights issues) to debt financing (for instance loans and bonds) or a hybrid financing arrangement comprising both equity and debt elements (for instance, convertible loans and loans with equity kickers, such as, options or warrants on shares).

ALB: Your firm has garnered strong support from foreign banks that chose to set up their branches in Singapore. Why Singapore?
LCC: In Singapore, the banking system is central to its economy. Thus, high systemic support is expected in times of financial turbulence. Moody's Investors Service noted in its recent report, "Banking System Profile for Singapore," that, banks in Singapore enjoy a stronger operating and regulatory environment than banks in most of its neighboring countries despite the volatility in the city-state's economic growth. The operating environment for the Singaporean banks has been robust attributed by: its good economic growth (in most years); a well established and efficient legal system; and sound controls of corruptions.

ALB: Is there more interest in Shariah-compliant financial instruments and financing?
LCC: As you may be aware, in accordance with Shariah principle, Islamic banking activities must avoid riba (the payment or receipt of interest), must prohibit gharar (uncertainty), must posses an element of risk-sharing and profit-sharing, and ought to focus on halal activities, i.e. be confined to Islamic permissible activities. Shariah-compliant financial activities have unique characteristics that make shariah-compliant financial instruments attractive. These unique characteristics include the requirement that every Islamic finance transaction must be supported by an underlying and genuine trade and business-related activity. Being supported by such activities means that the gearing of the Islamic finance transaction would be lower than that applicable to a conventional finance transaction. The requirement to share risk and profit between the funder and the entrepreneur has the effect of ensuring that the funder is just as careful and vigilant as the entrepreneur in carrying out the requisite due diligence investigations before agreeing to fund the transaction. Thus, advocates argue that Islamic financial activities, as compared to conventional financing activities, are likely to be less speculative, more prudent and with less leverage.

With a view to promoting Islamic banking activities, Asian nations such as Malaysia, Indonesia, Brunei, Singapore and Hong Kong SAC being acutely aware of the lucrative opportunities presented by the Shariah-compliant banking activities have, without exception, allocated much resources to review, revise or change their legal, regulatory and fiscal framework to ensure that Islamic banking activities are not disadvantaged vis-à-vis the conventional banking activities.

Hence, in the light and aftermath of the GFC and notwithstanding the Dubai World 'default' debacle on 23 November last year, there may be more interest in Islamic financing even amongst non-Muslim.

ALB: As your firm undertakes Islamic finance work, please share your thoughts on the opportunities and challenges presented by Islamic banking?
LCC: In structuring financing transactions, whether they are conventional finance transactions or Islamic finance transactions, competent legal advice and services are essential. As Islamic finance is still in its infancy stage, it presents opportunities to lawyers who are familiar with such transactions. Legal skills and advice shall be needed to ensure that the legal documents are consistent with the applicable Islamic principles. Lawyers with expertise in conventional finance will face great challenges and opportunities to use their cumulative experience to develop innovative Islamic financial products by utilising concepts used in existing conventional finance which are not inconsistent with applicable Islamic principles. The Dubai World 'default' debacle shall invariably cause the bankers who are entering into new Islamic financing deals to be more cautious in structuring such transactions. This will certainly bring more work for the lawyers whose practice covers such areas.

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