Energy & Resources Q&A

Loo Choon Chiaw discusses the promise of Asian


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***Asian Legal Business:* With the improvement of market sentiments, has there been an increase in M&A activities?**
Loo Choon Chiaw: Global M&A activity has been at its peak since late 2009. According to Bloomberg news, global takeovers announced to date have totalled USD 1.29 trillion, approximately an increase of approximately 23% from last year.

***ALB:* How about the M&A activities in the E&R sector?**
LCC: It has been reported that natural resources companies, including miners, oil and natural gas producers and fertilizer manufacturers, have launched a total of USD 316 billion in M&A deals in the first eight months of this year.

***ALB:* China has been conspicuous for its activities in the E&R space. Do you expect China's interest in E&R to continue will change in the months ahead?**
LCC: With a population of 1.3 billion and a real GDP growth rate in the region of 10% per year, China, one of the fastest growing economies in the world, has an insatiable demand for E&R. China's need for energy is projected to increase by 150% by 2020. Take oil for example, China's oil consumption grows by 7.5% per year, seven times faster than the United States. China's rich E&R base has been depleting speedily in tandem with its phenomenal economic growth and rapid urbanisation. For strategic reasons, China has to rely on imports for critical supplies of fuel and minerals. China's pursuit of E&R shall continue. She really has no choice.

***ALB:* What distinguishes China's overseas M&A activities for E&R from the others?**
LCC: Unlike the M&As from other jurisdictions, China's strategic acquisitions of E&R are usually publicly funded. For instance, the China Development Bank (CDB) has recently loaned the state-owned China National Petroleum Corporation USD 30 billion to build up the latter's war chest for its overseas acquisition spree. China Investment Corporation (CIC), China's sovereign wealth fund, has also been busy undertaking strategic acquisitions. The USD 3 billion acquisition of the equity stake in Blackstone, the largest United States private equity firm, by CIC in 2007 and the USD 1.5 billion purchase of a 17.2% equity stake in Teck Resources, the largest base metals company in Canada, by CIC in 2009 are good illustrations. Just this week, Sinochem Group, a Chinese chemical conglomerate, has formally asked the Chinese government to back its hostile bid, estimated to be in the region of USD 40 billion to USD 60 billion, for Canada's Potash Corporation, the world largest fertilizer company, against the USD 39 billion offer made by BHP Billiton.

***ALB:* Why are the Chinese enterprises so aggressive in their pursuit of overseas M&A of E&R?**
LCC: The M&As for E&R are carried out by the Chinese as a national effort. I have already touched on the strong financing support which the CDB has been providing to the Chinese enterprises for such acquisitions. A deep pocket makes such acquisitions easier. It is noteworthy that the Chinese government has also issued express policy directives in encouraging the Chinese enterprises to acquire overseas resources, mining and energy interests. With easy funding and official encouragement, the Chinese enterprises have been effecting acquisitions not just for short-term economic benefits, but, very often for indirect long-termed strategic benefits, for which enterprises from other jurisdictions would not be in a position to undertake. For instance, the 20% acquisition by the state-owned Industrial and Commercial Bank of China (ICBC) in South Africa's Standard Bank for USD 5 billion was carried out to provide ICBC with an indirect and long-term strategic access to the mining, energy and other natural resources in Africa.

***ALB:* What are the general methods used in acquiring E&R?**
LCC: Theodore Moran has identified four basic patterns of E&R acquisitions: (1) the predator/buyer takes an equity stake in a major producer/target to procure a share of production; (2) the predator/buyer takes an equity stake in an independent producer/target to procure an equity-share of production; (3) the predator/buyer makes a loan to a price-making producer/target (one of a handful of firms with market shares large enough to affect industry prices, i.e. the larger government producers among the Organisation of Petroleum Exporting Countries (OPEC) in return for a purchase agreement to service the loan; and (4) the predator/buyer makes a loan to a price-taking producer/target (part of

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the competitive fringe of firms with market shares too small to affect industry prices) in return for a purchase agreement to service the loan. Each of the four approaches will allow the target to have preferential access to a long-term supply of E&R.

***ALB:* Oil and Gas will continue to cast the largest shadow over the E&R industry in Asia Pacific but what other sectors would you identify as bright spots in the region?**
LCC: As highlighted in the Pew Report, the 'clean energy' space has experienced investment growth of 230% since 2005. Even during the Global Financial Crisis, the investment growth declined by a mere 6.6% in 2009. Clean energy investments in the G-20 reached an average of USD 32 billion in each of the last three quarters of 2009. Industry experts have estimated that clean energy investments would reach a staggering USD 200 billion in 2010. The numbers are clear. The trend seems obvious. The tone has been set. The 'clean energy' space shall be the blue-eyed boy of the investment community in the next decade and beyond.

***ALB:* What are the motivations behind the investments in the clean energy space?**
LCC: I certainly do not believe that the reduction of global warming and the promotion of renewable energy were the investors' preoccupation. One must not expect the investors to be so altruistic. They basically behave as rational economic men. They have to account to their shareholders or funders on the returns and yields from the investments. The investors are motivated by pure economic reasons. There has been a concensus among the more astute investment and business specialists that clean energy economy will emerge as one of the most exciting investment opportunities of the 21st century. There has also been an increasing recognition by governments around the world that safe, reliable, clean energy, for instance, solar, wind, biofuels and the likes can create more jobs, offer business opportunities, reduce independence on foreign energy sources, enhance national security and reduce global warming pollution. The more enlightened governments have also introduced policies to stimulate investments in clean energy space, which attained some success in attracting those investments.

***ALB:* At the height of the Global financial crisis, industry practitioners cited severe difficulties in obtaining financing for E&R deals. Has the situation improved, and given the improvement in general financing conditions, have you seen the entry of new types of finance in the clean energy sector?**
LCC: Financing generally takes one or a combination of three basic forms: (1) asset financing, which is used in connection with the installation of physical assets, namely clean energy equipment, such as wind turbines, solar PVs, solar and energy efficient smart grid, hydro capacity, that generate energy in the form of power and heat. (2) public offerings, which allows the company to raise the much needed capital for expansion and growth, and (3) venture capital or private equity financing, which is usually associated with technology innovation and development. These methods of financing remain basically the same, although the detailed terms and conditions have changed from time to time in the light of the prevailing economic and financial circumstances.

***ALB:* As one of the leading boutique corporate practices in the region undertaking E&R deals, has your firm been kept busy with E&R and clean energy deals?**
LCC: We are most fortunate to have been blessed with a quality and loyal clientele. Our Natural Resources and Energy Practice (NREP) colleagues have been kept very busy, especially so since late 2009, in undertaking various E&R deals, including, the acquisitions of strategic interests in coal mines in Indonesia, Inner Mongolia and Russia and the acquisition of a shipyard with port facilities in the Sovgavan special economic zones in Russia. The firm has also been mandated by a leading Russian energy conglomerate for the acquisition of listed platforms in the region to spearhead its proposed business operations in the Asia Pacific region. Our NREP colleagues are also in the process of setting up a Russia-linked energy and natural resources fund. On the clean energy front, we have just completed the IPO of Leader Environment Technologies Limited, a leading PRC based environmental protection solutions provider specialising in the treatment of industrial waste-gas and waste water emission, in July this year.

***ALB:* As a specialist practitioner, can you share your general thoughts on E&R which we have discussed?**
LCC: Thanks to the internet, 'space' has vanished, time has 'ceased'. The whole world is now truly a global village connected by electronic communication systems. What we do will affect our neighbours in the global village. Indeed, to use John Donne's phrase, 'no man is an island, entire of itself.' We are still grappling with the basic economic issue of allocation of resources, namely, the way in which the limited, exhaustible and fast depleting E&R should be distributed among the competing needs of the inhabitants in this global village. Unless the unlimited desire and demand for E&R is checked, the future of this global village certainly looks bleak. There is already a reference to the Arctic War, the Last Energy War, or the Third (and last) World War. Another heresy? Perhaps not. If you key in the phases 'the Arctic Oil', 'the Peak Oil', 'the last World War' or 'the energy war', numerous articles alerting the readers of the potential arm conflicts among the members of NATO and the Russia, and their respective postures concerning Peak Oil will appear on the LCD of your Blackberry, iPad or notebook.

***ALB:* How about clean energy?**
LCC: The switch to alternative energy and the adoption of 'clean energy' seems an inevitable conclusion. It must be the collective responsibility of all inhabitants, namely the governments, the industries and the individuals, of this global village to embrace the switch. Each shall have to play its/his/her part before it is too late. There is certainly no place for the likes of RDA Corporation in search of their 'unobtanium' in this global village.

As a born optimist, I have every confidence that the inhabitants of our global village will do the right thing. Perhaps, all of us should heed the impassioned plea by Jeremy Rifkin to be involved in the Third Industrial Resolution or the Distributed Energy Revolution, which may open doors to a new post-fossil fuel era, where the inhabitants in the global village shall be able to create its/his/her own energy, store it and then distribute it to each other. Individuals will load solar power from sun, wind from turbines and even ocean waves on each coast. Buildings will become power plants that will loan renewable energy. Smart power grids or inter-grids, for lack of a better term, will facilitate easy distribution of energy among the inhabitants.