Mergers and Acquisitions Q&A

2011: Another record year for Asian M&A? ALB discusses

Asian Legal Business (ALB): As the spectre of the financial crisis is lifted from the region, M&A levels took off around Asia. What do you feel are the prospects for another record-breaking year in 2011?
Loo Choon Chiaw (LCC): The Asia Pacific region has indeed experienced strong growth in M&A activities. Bloomberg has reported that Asia Pacific eclipsed Europe in 2010 as the second most active region, following North America. Thomson Reuters predicted that global M&A activity will increase by 36% in 2011 to USD3.04 trillion as opposed to the 12% growth in 2010. Closer to home, we have seen the incoming wave of M&A activities sweeping across the region in the past few months, with PRC's Zhejiang Geely Holding Group, PRC's No 10 automaker's acquisition of Swedish luxury car brand Volvo from US giant Ford for USD1.6 billion; Indian billionaire Sunil Mittal's Bharti Airtel Ltd's acquisition of African assets of Zain, Kuwait's largest phone operator for USD10.7 billion; SGX's proposed takeover of Australia Stock Exchange for SGD10.7 billion; Malaysia's Khazanah's acquisition of Singapore's Parkway Holdings for SGD3.5 billion; a Singaporean individual investor's acquisition of Singapore's Thomson Medical Center for SGD513 million; and Malaysia's Maybank's takeover of Singapore's Kim Eng Holdings for SGD1.79 billion. Business confidence is crucial for sustained M&A activities. Any factors which may mar such confidence, such as social and political instability, would adversely affect M&A activities. Barring the recurrence of another GFC or any major political unrest in the Middle East caused by the domino effect of the downfall of Mubarak of Egypt, the future looks good. While 2010 was a year of great recovery from the GFC for companies in the region, 2011 is destined to be a year of dealmaking activities.

ALB: One of the major stumbling blocks to deal making at the height of the GFC was the difficulties in obtaining financing. Are your clients reporting that the pressure on this front has eased so far this year?
LCC: Asian companies now have the necessary cash to get deals done. Moody's Corporation reported that the total cash reserves of Asian companies (not including the reserves of financial institutions) have touched USD231.6 billion in mid-2010. Given the vast amount of money flowing around and against the backdrop of a relatively low interest-rate environment in the region, M&A activities will continue to flourish in Asia, despite the higher valuation asked by the targets in line with market recovery. Most of our corporate clients, in particular private equity funds and venture capitals who are in search of acquisition opportunities, are very liquid. Funding is certainly not of their concern. What they need are quality acquisition targets.

ALB: The rejuvenation of M&A levels across the region has seen some suggest that acquirers in the US & Europe will resume their pre-GFC Asian acquisition sprees. Do you think this is likely to occur in 2011?
LCC: According to a report by the United Nations Conference on Trade and Development, the MNCs in developed countries are sitting on a cash pile of USD4 – 5 trillion. Apparently, the money was initially hoarded as a buffer against a potential double-dip recession or other systemic shocks. The stagnant growth in the US and Europe will prompt some of the more forward looking MNCs over there to pursue acquisition opportunities in the region.

ALB: What sectors or industries are such companies likely to be attracted to?
LCC: The active sectors shall be natural resources (oil and gas, coal, and agriculture); followed by consumer (retail food and beverages), healthcare and infrastructure (energy utilities, power, transport, and water). All these sectors are key ingredients to sustaining economic growth. The PRC, for instance, relies heavily on natural resources as well as technological know-how to foster its developing economy.

ALB: As much as inbound deals are important, it has been Asian companies pursuing targets overseas that has been the real headline-grabbing trend of the past few years. Will this continue to be a fixture of Asia's M&A landscape?
LCC: The burgeoning trend of PRC enterprises pursuing outbound M&A is clear. PRC's off-shore M&A deals have grown to a record number of 188 transactions totaling a value of about USD38 billion in 2010 as compared to 144 deals in 2009 valued at USD30 billion. Such outbound M&A deal activity is likely to continue with its strong growth in 2011 primarily prompted by the continued demand of PRC for natural resources, technologies and know-how.

The high profile USD10.7 billion acquisition of mobile-phone operators in Africa led by Indian billionaire Sunil Mittal may encourage other large Indian MNCs to search for acquisition opportunities abroad. Some analysts have predicted that Indian M&As in 2011 may very well surpass its 2010 record of USD71 billion.

ALB: Do you expect to see increasing levels of inter-regional M&A deals in Asia in 2011?
LCC: As mentioned above, there has been a flurry of inter-regional M&A deals since late 2010, such as PRC's Geely's acquisition of Swedish luxury car brand Volvo, India's Bharti Airtel's acquisition of African assets of Kuwait-owned Zain; the SGX – ASX merger, Malaysia's Khazanah's takeover of Singapore's Parkway Holdings and Malaysia's Maybank's takeover of Singapore's Kim Eng Holdings, which are illustrations of regional companies seeking growth outside their home markets.

Thomson Reuters recently reported that dealmaking in Asia could exceed the 2007 record level, spurred by a jump in outbound M&A activity. Singapore may see more outbound deals as some of its large telecom, resources and energy firms are well-positioned to undertake M&As overseas. In Thailand, energy and resources companies such as the PTT Group, top coal producer Banpu and power producer EGCO, have large war checks for acquisitions and are expected to be looking for acquisition opportunities for oversea new energy sources. UBS Malaysia has predicted that there would be a spate of M&As, domestic and regional, in Malaysia due to low leverage levels, easy access to relatively low funding rates and government leaning on the private sector to spur the economy.

ALB: What are some of the issues here that clients should be wary of when pursuing acquisition opportunities?
LCC: Clients should be prepared to address the regulatory hurdles when pursuing oversea acquisition targets. If the deals concern strategic industries, regulators will scrutinise such investment activities, and more so, when the targets are in sectors such as natural resources, agricultural commodity-related sectors, and defence-related companies.

with Loo & Partners, Loo Choon Chiaw

Local hostility about the loss of its crown jewel to foreign interest cannot be underestimated and must be managed. The bid for Malaysia's highway operator Plus Expressways Bhd by both UEM Group Bhd – Employee Provident Fund (EPF) and Jelas Ulung Sdn Bhd is illustrative. Even where the bid by Jelas Ulung was higher, it was unsuccessful because it was revealed that the proposed funding was arranged by a subsidiary of a 'foreign' bank. SGX's proposed USD7.8 billion takeover of ASX was not plain sailing either. It met opposition from some Australian lawmakers, who will have influence over whether to allow legislative changes which are necessary for the deal to proceed.

ALB: The New Year has brought with it talk of 'harmonising' competition law regimes across the region, especially in Southeast Asia. What impact do you think this will have on the dealflow into the region?

LCC: As there is no single agreed set of international competition law that suits all, there has been much talk amongst the member countries of ASEAN of the need for a regional competition regime, which harmonises the substantive national competition laws in accordance with international guidelines, to achieve the effective enforcement of competition law at the regional level.

A harmonised regional competition law and policy will certainly enhance regional economic cooperation and ensure that the regional market be open to international trade and investment and prevent powerful transnational corporations from entirely dominating the regional economy. Recently, the ASEAN Experts Group on Competition has drawn up the ASEAN Regional Guidelines on Competition Policy (Regional Guidelines) which are based on the Group's experiences and international best practices. Such an initiative will have a positive impact and will encourage more inter-regional deals.

ALB: Will the 'harmonising' of such competition law regimes across Southeast Asia serve, as some have suggested, as an impediment to attracting inbound M&A?

LCC: The harmonisation of the regional competition laws will not per se be an impediment to inbound M&As. As mentioned earlier, such competition law regimes have been harmonised and brought into line with international competition law regimes and policies. Thus, many of the foreign predators would not be complete strangers to the concept of such competition law regimes.

Very often and as experience has shown, what really matters is not the contents of such competition law regime but how the local regulators approach, interpret, construe and implement the detailed rules in practice.

ALB 8:As one of the leading boutique corporate practices in the region undertaking M&A deals, has your firm been kept busy with instructions?

LCC: We are most fortunate to be blessed with a very loyal and quality clientele and our M&A colleagues have been kept rather busy with various M&A deals, both local and abroad. Away from home, for instance, we have been advising clients on their acquisitions of interests in coal miners in Indonesia, Inner Mongolia and Russia, and the acquisition of a port facility in the Sovgavan special economic zone in Russia. The pipeline of M&A projects looks positive.

ALB: Your clients are noted as being among the most loyal of all. How did you manage to retain your loyal clientele when they are spoilt for choices when undertaking regional M&As with so many law firms, including some international law firms, to choose from?

LCC: Other than viewing our clients as our 衣食父母, loosely interpreted as those on whom our livelihood depends, which is taken as a given in our firm, we constantly remind ourselves that we must provide 'value-add' to our clients. To that end, we are not contented with merely identifying and crystallising legal issues for clients' review. With each legal issue identified, we try to provide alternative solutions in response to each, for our clients' consideration. We do not see our role as clients' advisors per se, rather we constantly position ourselves as clients' strategic partner in tackling their daily challenges. Very often the commercial utility and pragmatism of our advice and solutions actually open doors for our clients and provide them with more options, in terms of the choice of the jurisdiction where they ought to domicile their special purpose vehicles for the particular M&A, the choice of the governing law, and the method and forum to settle dispute. While noting Lord Chesterfield's oft-quoted dictum that "Advice is seldom welcome, and those who need it the most always like it the least", we insist on rendering frank and candid advice to our clients, no matter how bad or negative that the advice may appear or sound. Judging by the increasing number of our loyal and quality clients, we must have done something right.

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