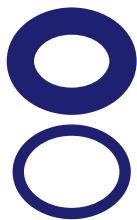




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Capital Markets Q&A

Can Asia's capital markets continue to roar

Asian Legal Business (ALB): 2010 was a year in which many, if not most, exchanges across Asia set new records. Is 2011 also likely to be a year in which new records are set?

Loo Choon Chiaw (LCC): 2010 was indeed a good year for capital markets activities in the Asia Pacific region. All indications prior to the political unrest in the Middle East and North Africa, Japan's earthquake and tsunami, and the damage to its Fukushima nuclear power plant, showed that China was expected to continue to lead the global IPO market in 2011 with regard to the number of new listings and the amount of capital raised. In the first 2 months of 2011, Shanghai Stock Exchange (SSE) has raised US\$4 billion from 8 IPOs. Not to be outdone, the Shenzhen Stock Exchange (SZSE) raised US\$6.5 billion with 51 IPOs in the same period. The total fund-raising of Hong Kong Stock Exchange (HKEx) is expected to exceed US\$50 billion in 2011. The proposed international board of the SSE, if launched, would certainly provide a new platform for foreign companies to be listed, thereby enhancing the overall fund-raising capabilities of the PRC. The impact cannot be over-emphasised as the possibility of foreign issuers raising funds on the proposed international board by selling yuan-denominated securities has not been ruled out.

There is also an increase in capital markets activities in the other countries in the Asia Pacific region. The mega IPO of Hutchison Whampoa's port holding trust in Singapore, which will raise some US\$5.5 billion shall boost the total amount of capital raised on the Singapore Stock Exchange (SGX) to more than 17 times of the amount raised for the same period last year. The Stock Exchange of Thailand (SET) will see the US\$150 million IPO of Thai AirAsia, the 49%-owned Thai unit of the Malaysian budget carrier. The HoChiMinh Stock Exchange (HSX) has a strong pipeline of 80 Vietnamese companies expecting to raise more than US\$600 million.

The positive sentiments outlined above may have to be adjusted in the light of the following factors: namely, the occurrence of any further sovereign debt crisis particularly in Europe, any worsening of the political unrest in the Middle East or North Africa region and any further escalation of the adverse impact of the recent earthquake, tsunami, and damaged nuclear power plant in Japan.

ALB: Thomson Reuters statistics indicate that Hong Kong led the world for IPOs in 2010. In 2011, though, it will face tougher competition for listings from Shanghai and other exchanges in the Mainland, as well as places like Taiwan. Can Hong Kong preserve its market leading position?

LCC: 2010 saw the listing of two mega IPOs in Hong Kong, namely the US\$22.1 billion offering of the Agricultural Bank of China Ltd and the US\$20.5 billion offering by AIA Group Ltd. Whilst most analysts believe that such mega IPOs would not be repeated in 2011 on the HKEx, the strong pipeline of IPOs waiting to be listed on the HKEx is well-known.

The HKEx will soon see the listing of the US\$167 million IPO by Chinese marble quarry operator China Kingstone Mining Holdings Ltd slated for 18 March 2011, to be followed by the listing of the US\$260 million IPO by Chinese property developer Top Spring International Holdings Ltd on 23 March 2011. Far East Horizon Ltd, a financial-leasing unit of state-owned Sinochem Group, plans to list on 30 March 2011 with its US\$600 million offering.

Glencore International AG, the world's largest commodity trader, is seeking to raise up to US\$15 billion in a dual listing in HKEx and London Stock Exchange (LSE). Cheung Kong Holdings Ltd's planned Hong Kong IPO for a yuan-denominated real estate investment trust (REIT) offering, which would be Hong Kong's first yuan-denominated IPO, amounting to US\$1 billion, could be listed on 15 April 2011, subject to the approval of the Securities and Futures Commission and the results of the HKEx's test of the yuan settlement platform.

Even China Hongqiao Group Ltd, a leading aluminium producer in the region, which scrapped its then proposed US\$2.2 billion offering on the HKEx in January, has revived its IPO plan and could, according to market sources, be seeking to list on the HKEx by March this year. HKEx has also managed to attract the attention of Italian fashion house, Prada SpA, famous for its Prada and Miu Miu brands, which has apparently opted to list on the HKEx as opposed to its home exchange in Italy. SBI, a Tokyo-based conglomerate, which focuses in financial and real estate activities, is seeking to list on the HKEx via the Hong Kong Depository Receipts (HDR) route and if and when the financing exercise is completed, it shall be the second company after Brazil's Vale SA to list on the HKEx via HDRs.

Although the HKEx has also seen casualties such as the suspension of the proposed IPO of Australian billionaire Clive Palmer's Resourcehouse Ltd. and of Perth-based lithium-concentrate miner Galaxy Resources Ltd respectively, in view of its strong liquidity, perceived higher valuations and broad international investor base, HKEx shall remain the preferred platform for foreign companies looking to raise capital in the Asia Pacific region despite competition from Taiwan Stock Exchange (TWSE), SSE and SZSE. Indeed, before the launch of the international board of the SSE, if it takes off at all, HKEx will be the only

in '11? ALB discusses with Loo & Partners, Loo Choon Chiaw

platform in the PRC on which foreign issuers could seek listing of their shares.

ALB: As a specialist corporate practitioner with an impressive Greater China footprint and having assisted the overseas listing plans of many PRC entities, what, in your views, are the most fundamental legal issues which a PRC entity that aspires for an overseas listing must address?

LCC: A PRC entity that aspires for an overseas listing shall have to address and deal with the implications of (1) the "Provision on mergers and acquisitions of domestic enterprises by foreign investors" (关于外国投资者并购境内企业的规定), which was promulgated collectively by six PRC government authorities and came into force on 8 September 2006 (Provision 10), and (2) the "Notice on issues relating to the administration of foreign exchange in fund-raising and reverse investment activities of domestic residents conducted via offshore special purpose companies", which came into force on 1 November 2005 (《国家外汇管理局关于境内居民通过境外特殊目的公司融资及返程投资外汇管理有关问题的通知》) (Notice 75).

Provision 10 provides that the acquisition of PRC domestic enterprises by affiliated foreign enterprises established or controlled by PRC domestic companies, enterprises or natural persons must be approved by the Ministry of Commerce (MOC). Provision 10 further provides that the overseas listing of a special purpose company on an overseas stock market must be approved by the China Securities Regulatory Commission (CSRC).

Under Notice 75, PRC residents have to register their foreign investments with the local State Administration of Foreign Exchange (SAFE) branch prior to the incorporation or taking control of any Special Purpose Vehicle (SPV) and prior to the alteration registration through which such SPV acquires the PRC residents' assets for the financing of foreign investments. It further requires PRC residents, who are majority shareholders in the SPV, to register or record with the local SAFE within 30 days from the date of any increase or reduction of capital, share transfer, mergers or demergers, change in long-term equity or debts investments and outward guarantees in the SPV. Moreover, profits, dividends and foreign exchange relating to capital changes received by PRC residents from the SPV shall have to be repatriated to the PRC within 180 days of receipt thereof. For SPVs which have been incorporated or restructured before Notice 75 came into force, the domestic residents would be obliged to complete the supplemental registration before 31 March 2006. When a PRC resident violates the provisions in Notice 75, it technically constitutes an evasion,

and SAFE will penalise such PRC resident in accordance with the relevant foreign exchange rules and regulations.

When we are approached by a PRC entity to act in its proposed overseas listing, the first task will be for us, in consultation with the relevant PRC legal counsel, to address the implications of Regulation 10 and advise on the proposed restructuring plan. We, in consultation with the PRC legal counsel, will advise the PRC entity not to proceed with its proposed overseas listing plan if we conclude that, in the light of all the relevant circumstances, the PRC entity cannot be restructured in a way that will fall outside the ambit of Regulation 10. Under the existing PRC legislative and regulatory framework, we doubt that the MOC and/or the CSRC will grant the relevant approval for a restructuring plan which falls within the ambit of Regulation 10. The PRC entity will be advised by us, in consultation with the PRC legal counsel, in detail on its reporting obligations under Notice 75 before the commencement of the proposed overseas listing, after the clearance of the Provision 10 issues.

ALB: How do you feel about the SGX-ASX merger?

LCC: The proposed SGX-ASX merger represents an international trend relating to the restructuring of exchanges. The merger usually involves 2 stages. Firstly, the privatisation or demutualisation stage, where a state-owned exchange restructures itself into a for-profit entity and where segregation of ownership, management and the trading rights at the exchange is achieved. Secondly, the consolidation stage where the for-profit exchanges seek ways to integrate internationally for strategic reasons to attain economies of scale and enhance their overall capabilities in the face of fierce competition from other exchanges. The proposed SGX-ASX merger concerns the consolidation stage. The merger, if effected, will create the 5th largest securities exchange in the world by market capitalization, the second largest listings platform in Asia, and the largest provider of exchange-traded funds (ETFs), derivative products and REITs in Asia. It is noteworthy that shortly after the announcement of SGX-ASX was made, Deutsche Boerse had announced a bid for NYSE Euronext, whilst LSE had also revealed its plans to take over Toronto Stock Exchange parent TMX Group Inc.

ALB: How will the SGX-ASX merger alter the capital market situation in Asia?

LCC: If the proposed merger does materialise, it may be the catalyst for further mergers of alliances among the Asian exchanges, resulting in better integration of the capital and investment markets in the Asia Pacific region.

The merger shall create a channel between the exchanges and create opportunities for participants in both markets to diversify their holdings. Even if it does not ignite a wave of mergers and acquisitions, it will definitely create more investing and trading opportunities and attract both long-term and short-term investments into the region. The combined platform will diversify the product and customer bases of the 2 exchanges and create cross-access opportunities for investors and market players. Listed companies from both exchanges will benefit from the enhanced profile of the combined platform among the international investing community. The international investors will be able to benefit from an enlarged pool of investment and trading opportunities.

ALB: What is your firm's reaction to the recent Sendai earthquake?

LCC: The recent natural calamities which befell Japan and the damage caused to the Fukushima nuclear power plant were really unfortunate. Our hearts go to the Japanese people, especially the victims and their families. We salute the Japanese engineers and technicians at the Fukushima nuclear power plant, who opted to stay on to battle and contain the nuclear meltdown at the risk of their own lives. Despite the severity of the calamity, none doubts Japan's economic resilience in the face of a major disaster as it did in 1995. Most analysts have opined that there would be a minor slowdown in the region in view of the trade disruption in Japan. Most were not unduly pessimistic over the longer term, as steps would have to be taken to make up for lost production in Japan, thus regional trade would be increased subsequently. Most also expected that Japan's economy would be stimulated by a massive reconstruction expenditure, which would surpass that incurred during the reconstruction of Kobe after its 1995 earthquake. Our firm has lived through the Singapore's financial crisis in 1985, the Asian financial crisis in mid-1997, and the global financial crisis in 2008/2009. My colleagues and I have witnessed (albeit from a distance) the Dubai World default in November 2009, the Greece financial crisis in December 2009, and more recently, the unrest in the Middle East and North Africa. Crises come and go. Life must go on! Our firm shall, as always, take all things in their stride. We shall continue to strive to give our best to our clients in all matters large and small. We shall continue steadfastly in our pursuit for excellence. If I may borrow a verse from Henry Longfellow's 'A Psalm of Life', "Let us, then, be up and doing, with a heart for any fate; still achieving, still pursuing, learn to labour and wait."