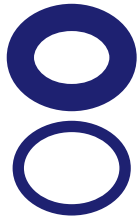


Asian Mergers and Acquisitions Q&A

Asian M&As in 2009: some random Loo & Partners LLP



Loo & partners LLP

俊昭法律事務所

Loo & Partners LLP
88 Amoy Street
Level Three
Singapore 069907

Tel: (65) 6322-2288
Fax: (65) 6534-0833
Email: ccloo@loopartners.com.sg
Website: www.loopartners.com.sg

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▶ THE PHILOSOPHY OF LOO & PARTNERS LLP AS REPRESENTED BY ITS CORPORATE LOGO

The simplicity of our logo echoes our approach when providing legal solutions in meeting clients' needs: simple and effective, concise but not prolix. Our logo epitomizes our corporate philosophy. It underlines the strong sense of esprit de corps which we cherish. The pair of oval rings represents our clients and our firm. We regard ourselves as our clients' strategic partner when tackling their daily challenges.

While the two oval rings are similar, they are by no means identical, each has its distinct identity. The upper (and heavier) ring represents our clients. It reminds us of our solemn oath to do our utmost in the discharge of our duty to our clients. We are represented by the lower ring. It affirms our consistent approach in subordinating our interests to those of our clients.

Although we are close partners of our clients, we, nevertheless ensure that there is a sufficient space between us, symbolized by how the two rings are positioned: proximate yet separate, giving us the requisite objectivity in recommending to our clients-partners the best options in meeting their daily challenges.



Loo Choon Chiaw

ALB: How would you characterise the Mergers and Acquisitions ("M&A") landscape in Asia at the moment?

LCC: M&A activities have certainly been adversely affected by the current global financial tsunami. Relevant statistics show that the M&A activities declined globally in 2008, both in terms of volume and quantum. It is pertinent to note that the decline has been less significant in the Asian Region. The M&A activities in 2008 have registered a drop of 43.4% in America, 42.9% in Europe, the Middle East and Africa, 24.4% in Japan, and only 5.5% in the Asia-Pacific Region (excluding Japan). At present, there is a huge expectation or valuation gap between the targets (the would be sellers) and the predators (the would be buyers). The prospective targets refuse to accept the existing low valuation of their shares (or assets) and hope that the economy will soon turn around, thereby pushing the valuation of their shares (or assets) higher. In contrast, the prospective predators, while waiting for clearer and more stable economic prospects, also hope that the prospective targets' bargaining position may be weakened with time, thereby be compelled to dispose of their shares (or assets) at an even lower valuation. Figuratively, there is a tug-of-war between the prospective targets and the prospective predators.

ALB: What is the outlook for the M&A activities in 2009?

LCC: The outlook in 2009 appears to be hazy at the moment. The opinions of market experts

are divided on this issue. Some are of the view that the current meltdown presents lowly-gearred, well capitalised institutional investors with a golden opportunity to pick up bargains. They speculate that M&A activities would start to pick up in late 2009. Others, however, take the stand that in the light of the credit crunch, there would not be many M&A deals in 2009. As a born optimist, I am more inclined to the former view. One must not forget that the same capital market turmoil that has caused the delays in projects, the cancellations of sale orders and the insolvency of companies will also bring about more divestments, privatisations and distressed sales. Thus, I believe that shrewd institutional investors with a deep pocket that have no funding problems shall be on a lookout for good acquisition opportunities even in 2009. I further believe that there will be acquisitions of US and European companies by companies from the Asian Region, in particular from the PRC, India and Japan.

ALB: Why the PRC, India and Japan?

LCC: The companies from these countries are relatively less exposed to the sub-prime crisis. They have also been blessed with a steady and sustained domestic demand for their products and services. There is also an abundance of lowly-gearred, well capitalised and well managed companies in those countries. The oversea acquisitions by PRC companies amounted to approximately USD47.9 billion in 2008. Moving forward, ambitious PRC conglomerates with international exposures will continue to pursue selective oversea acquisitions. It is noteworthy that recently the China Development Bank of China ("CDBC") made its very first M&A loan of RMB 1.6315 billion to CITIC Group for the acquisition of Baiyin Nonferrous Metal (Group) Co., Ltd., a pillar large-scale nonferrous metal production plant. The CDBC's M&A loan did not appear to be an isolated event as the Industrial and Commercial Bank of China has also recently announced its intention to expand the scope of its financial services in 2009 to include M&A loans. There is no reason to assume that the M&A loans shall only be confined to domestic M&As. Oversea M&As effected by Indian companies reached USD13.15 billion in 2008. This trend may continue. According

reflections. *ALB* discusses with Loo Choon Chiaw;

to the latest Thomson Reuters figures, outbound M&A deals from India will continue in 2009 as Indian companies will increasingly be looking to internationalise as well as to acquire well known brand names.

In 2008, Japanese companies utilised approximately USD75.9 billion for overseas acquisitions. Japanese MNCs are also well-positioned to continue with their overseas acquisitions in 2009. The acquisitions will primarily be prompted by a strategic necessity. They have no choice but to expand beyond their matured domestic market. Furthermore, Japanese banks, being less exposed to the current credit turmoil, are familiar with the granting of large M&A loans for overseas acquisitions.

ALB: In your view which sectors in particular will see the most M&A activities in 2009?

LCC: I think the financial services, natural resources and energy sectors will be quite busy. Distressed sales shall be the major feature of M&A activities in 2009. Famous consumer brands shall also be the sought after targets for acquisitions. The acquisition of Woolworths (the international retail giant), and the impending acquisition of Waterford Wedgwood (the high end pottery utensil and accessory manufacturer) are good examples. While 2009 may not witness many mega acquisitions, there would not be a lack of mid-cap acquisitions.

ALB: As a specialised corporate firm, how does your firm view the decline in M&A activities?

LCC: Viewing the half-emptied glass, we feel grateful that the glass is still half-filled! Opportunities abound in any crisis. The tug-of-war between the prospective targets and the prospective predators referred to earlier cannot go on forever. Once equilibrium is reached, a commercial bargain will be struck, thereupon competent legal advice and services shall have to be sought to structure and finalise the legal aspects of the transaction. Speaking from my personal experience and in a usual case involving an acquisition of a substantial amount, our learned friends (incidentally, this is a term of endearment used by lawyers when they refer to colleagues of other law firms acting for the other side during formal proceedings, no matter how disagreeable or unpleasant they find the

other lawyers to be) and our firm would have been rendering advice and services to our respective clients behind the scene even before the commercial bargain is struck.

ALB: What are these legal advice and services which you have mentioned?

LCC: Under the existing circumstances, i.e., when there is a scarcity of external funding, investment bankers shall be compelled to utilise creative and innovative deal structures to complete the transaction. "Plain Vanilla" transactions whereby an acquisition is effected solely by cash funded by banks or share swap shall become the notable exception. Instead, the completion of transactions will most probably have to rely on Private Equity Funds or even Sovereign Wealth Funds, where appropriate, which have not been adversely exposed to the sub-prime crisis (as opposed to external funding from banks). Assets may be sold on a piece-meal or bought on a lease-back basis. The swapping of debt for equity (and vice versa), the utilisation of options, warrants and other financial devices or a combination thereof shall be creatively deployed to get the transactions done. No matter how novel the deal structure may appear to be, the commercial consensus shall have to be accurately reflected in the legal documentation based on clear and established legal principles and concepts. That will be the moment when law firms need to provide their value-add services. In that connection, our learned friends and our firm will have to be engaged in very involved (and very often, extremely tedious) negotiations with a common objective of producing the final documentation which both parties could live with and ready to sign on (or more accurately, would have no choice but to accept unless they could afford not to seal the deal in question).

ALB: I take it that you were referring to the provision of the legal advice and services by your firm as regards its existing practice areas. Has your firm embarked upon any new types of work since the decline in M&A activities?

LCC: As a firm, we always try to expand into new practice areas whether in good times or bad. Indeed, we have to work even harder

▶ THE PRACTICE AREAS OF LOO & PARTNERS LLP

Loo & Partners LLP was founded in 1985 as a niche practice, handling mainly banking, corporate, securities and commercial work. Within these broad categories, the firm provides the entire spectrum of legal advice and services.

Whilst the firm does not maintain any office outside Singapore, it has, over the years, developed good relationships with leading law firms located in the major financial and trading centres.

The support of a comprehensive network of correspondent law firms throughout the ASEAN countries— Hong Kong, China (PRC) and Taiwan (ROC) puts the firm in a strategic and unique position to serve its clients in their regional needs.

to detect the relevant market trend during bad times. As and when dictated by the relevant commercial circumstances, we shall take up the gauntlet and position our firm to capitalise on those commercial opportunities and where appropriate, expand our scope of services to cover those new practice areas. Last year, we were approached by a client to act in the acquisition of a coal mine. In the process of taking our client's instructions and as we researched into the commercial statistics of the coal industry, we were impressed by the great commercial potential afforded to our firm should we mobilise our collective expertise in developing this practice area. Thereupon, we promptly set up a new practice group, namely, the Natural Resources and Energy Practice (NREP) Group. In connection therewith, we mobilised substantial in-house and external resources in training our NREP colleagues and in ensuring that they are familiarised with the commercial and legal intricacies of coal projects. We were lucky in that our investment of resources in enhancing the capabilities of our NREP Group has yielded good dividends. Our NREP colleagues are now kept busy executing the acquisitions of coal mines in Indonesia, the PRC and Mongolia. They have also just been instructed to advise on a dedicated coal terminal project in Russia. To be extremely honest, had there not been a downturn last year, there would have been less incentive for us to develop our expertise in the natural resources and energy practice area. As the saying goes, every cloud has a silver lining!