The Mergers & Acquisitions Review

Ninth Edition

Editor
Mark Zerdin

Law Business Research

The Mergers & Acquisitions Review

The Mergers & Acquisitions Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Mergers & Acquisitions Review - Edition 9
(published in August 2015 – editor Mark Zerdin)

For further information please email
Nick.Barette@lbresearch.com

The Mergers & Acquisitions Review

Ninth Edition

Editor
Mark Zerdin

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, Felicity Bown

ACCOUNT MANAGER
Joel Woods

PUBLISHING MANAGER
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anna Andreoli

SUBEDITOR
Hilary Scott

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2015 Law Business Research Ltd
www.TheLawReviews.co.uk
No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of August 2015, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-62-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA

ǼLEX

AGUILAR CASTILLO LOVE

AKD NV

ALLEN & GLEDHILL LLP

ANDERSON MŌRI & TOMOTSUNE

ARIAS, FÁBREGA & FÁBREGA

ASHURST LLP

AZMI & ASSOCIATES

BHARUCHA & PARTNERS

BOWMAN GILFILLAN

BREDIN PRAT

BRIGARD & URRUTIA

CLEARY GOTTLIEB STEEN & HAMILTON

CORRS CHAMBERS WESTGARTH

COULSON HARNEY

CRAVATH, SWAINE & MOORE LLP

DELFINO E ASSOCIATI WILLKIE FARR & GALLAGHER LLP

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELLEX

FENXUN PARTNERS

HARNEYS

HENGELER MUELLER

HEUKING KÜHN LÜER WOJTEK

ISOLAS

KBH KAANUUN

KEMPHOOGSTAD, S.R.O.

KIM & CHANG

KINSTELLAR, S.R.O., ADVOKÁTNÍ KANCELÁŘ

KLART SZABÓ LEGAL LAW FIRM

LEGAL ATTORNEYS & COUNSELORS

LETT LAW FIRM P/S

MAKES & PARTNERS LAW FIRM

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

MNKS

MORAVČEVIĆ VOJNOVIĆ I PARTNERI IN COOPERATION WITH SCHÖNHERR

MOTIEKA & AUDZEVIČIUS

NISHIMURA & ASAHI

OSLER, HOSKIN & HARCOURT LLP

PÉREZ BUSTAMANTE & PONCE

POPOVICI NIȚU & ASOCIAȚII

ROJS, PELJHAN, PRELESNIK & PARTNERS

RUBIO LEGUÍA NORMAND

RUSSIN, VECCHI & HEREDIA BONETTI

S HOROWITZ & CO

SCHELLENBERG WITTMER LTD

SCHINDLER RECHTSANWÄLTE GMBH

SELVAM & PARTNERS

SEYFARTH SHAW LLP

SLAUGHTER AND MAY

STRELIA

SYCIP SALAZAR HERNANDEZ & GATMAITAN

TORRES, PLAZ & ARAUJO

URÍA MENÉNDEZ

UTEEM CHAMBERS

VON WOBESER Y SIERRA, SC

WEERAWONG, CHINNAVAT & PEANGPANOR LTD

WH PARTNERS

WILSON SONSINI GOODRICH & ROSATI

CONTENTS

Editor's Preface xiii
Mark Zerdin

Chapter 1 EU OVERVIEW 1
Mark Zerdin

Chapter 2 EU COMPETITION OVERVIEW 11
Götz Drauz and Michael Rosenthal

Chapter 3 EUROPEAN PRIVATE EQUITY 19
Thomas Sacher

Chapter 4 US ANTITRUST 32
Scott A Sher, Christopher A Williams and Bradley T Tennis

Chapter 5 CROSS-BORDER EMPLOYMENT ASPECTS OF INTERNATIONAL M&A 53
Marjorie Culver, Darren Gardner, Ming Henderson, Dominic Hodson and Peter Talibart

Chapter 6 M&A LITIGATION 67
Mitchell A Lowenthal, Roger A Cooper and Matthew Gurgel

Chapter 7 AUSTRALIA 74
Braddon Jolley, Sandy Mak and Jaclyn Riley-Smith

Chapter 8 AUSTRIA 87
Clemens Philipp Schindler

Chapter 9 BAHRAIN 97
Haifa Khunji and Natalia Kumar

Chapter 10 BELGIUM 110
Olivier Clevenbergh, Gisèle Rosselle and Carl-Philip de Villegas

Chapter 11 BRAZIL 122
Moacir Zilbovicius and Rodrigo Ferreira Figueiredo

Chapter 12 BRITISH VIRGIN ISLANDS 132
Jacqueline Daley-Aspinall and Sarah Lou Rockhead

Chapter 13 CANADA 143
Robert Yalden, Emmanuel Pressman and Jeremy Fraiberg

Chapter 14 CAYMAN ISLANDS 158
Marco Martins

Chapter 15 CHINA 173
Lu Yurui and Ling Qian

Chapter 16 COLOMBIA 187
Sergio Michelsen Jaramillo

Chapter 17 COSTA RICA 203
John Aguilar Jr and Alvaro Quesada

Chapter 18 CYPRUS 211
Nancy Ch Erotocritou

Chapter 19 CZECH REPUBLIC 218
Lukáš Ševčík, Jitka Logesová and Bohdana Pražská

Chapter 20 DENMARK 225
Sebastian Ingversen and Nicholas Lerche-Gredal

Chapter 21 DOMINICAN REPUBLIC 236
María Esther Fernández A de Pou, Mónica Villafaña Aquino and Laura Fernández-Peix Perez

Chapter 22 ECUADOR........246
Diego Pérez-Ordóñez

Chapter 23 ESTONIA........257
Sven Papp and Sven Böttcher

Chapter 24 FINLAND........269
Jan Ollila, Wilhelm Eklund and Jasper Kuhlefelt

Chapter 25 FRANCE........281
Didier Martin and Hubert Zhang

Chapter 26 GERMANY........296
Heinrich Knepper

Chapter 27 GIBRALTAR........309
Steven Caetano

Chapter 28 GREECE........321
Cleomenis G Yannikas, Sophia K Grigoriadou and Vassilis S Constantinidis

Chapter 29 HONG KONG........334
Jason Webber

Chapter 30 HUNGARY........344
Levente Szabó and Klaudia Ruppl

Chapter 31 ICELAND........360
Hans Henning Hoff

Chapter 32 INDIA........368
Justin Bharucha

Chapter 33 INDONESIA........386
Yozua Makes

Chapter 34 ISRAEL 400
Clifford Davis and Keith Shaw

Chapter 35 ITALY 410
Maurizio Delfino

Chapter 36 JAPAN 422
Hiroki Kodate and Masami Murano

Chapter 37 KENYA 431
Joyce Karanja-Ng'ang'a, Wathingira Muthang'ato and Felicia Solomon Nyale

Chapter 38 KOREA 442
Jong Koo Park, Bo Yong Ahn, Sung Uk Park and Young Min Lee

Chapter 39 LITHUANIA 457
Giedrius Kolesnikovas and Michail Parchimovič

Chapter 40 LUXEMBOURG 465
Marie-Béatrice Noble, Raquel Guevara, Stéphanie Antoine

Chapter 41 MALAYSIA 479
Rosinah Mohd Salleh and Norhisham Abd Bahrin

Chapter 42 MALTA 491
James Scicluna

Chapter 43 MAURITIUS 503
Muhammad Reza Cassam Uteem and Basheema Farreedun

Chapter 44 MEXICO 513
Luis Burgueño and Andrés Nieto

Chapter 45 MONTENEGRO 523
Slaven Moravčević and Dijana Grujić

Chapter 46 MYANMAR 533
Krishna Ramachandra and Benjamin Kheng

Chapter 47 NETHERLANDS 544
Carlos Pita Cao and François Koppenol

Chapter 48 NIGERIA 557
Lawrence Fubara Anga

Chapter 49 NORWAY 562
Ole K Aabø-Evensen

Chapter 50 PANAMA 600
Andrés N Rubinoff

Chapter 51 PERU 611
Emil Ruppert

Chapter 52 PHILIPPINES 621
Rafael A Morales, Philbert E Varona, Hiyasmin H Lapitan and Patricia A Madarang

Chapter 53 PORTUGAL 630
Francisco Brito e Abreu and Joana Torres Ereio

Chapter 54 ROMANIA 643
Andreea Hulub, Ana-Maria Mihai and Vlad Ambrozie

Chapter 55 RUSSIA 657
Scott Senecal, Yulia Solomakhina, Polina Tulupova, Yury Babichev and Alexander Mandzhiev

Chapter 56 SERBIA 675
Matija Vojnović and Luka Lopičić

Chapter 57 SINGAPORE 685
Lim Mei and Lee Kee Yeng

Chapter 58 SLOVENIA 694
David Premelč, Bojan Šporar and Mateja Ščuka

Chapter 59 SOUTH AFRICA 705
Ezra Davids and Ashleigh Hale

Chapter 60 SPAIN 716
Christian Hoedl and Javier Ruiz-Cámara

Chapter 61 SWITZERLAND 732
Lorenzo Olgiati, Martin Weber, Jean Jacques Ah Choon, Harun Can and David Mamane

Chapter 62 THAILAND 745
Pakdee Paknara and Pattraporn Poovasathien

Chapter 63 TURKEY 753
Emre Akın Sait

Chapter 64 UNITED ARAB EMIRATES 762
DK Singh and Stincy Mary Joseph

Chapter 65 UNITED KINGDOM 774
Mark Zerdin

Chapter 66 UNITED STATES 793
Richard Hall and Mark Greene

Chapter 67 VENEZUELA 834
Guillermo de la Rosa, Juan D Alfonzo, Nelson Borjas E, Pedro Durán A and Maritza Quintero M

Chapter 68 VIETNAM 847
Hikaru Oguchi, Taro Hirosawa, Ha Hoang Loc

Appendix 1 ABOUT THE AUTHORS 857

Appendix 2 CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....905

EDITOR'S PREFACE

By a number of measures, it could be argued that it has been some time since the outlook for the M&A market looked healthier. The past year has seen a boom in deal making, with many markets seeing post-crisis peaks and some recording all-time highs. Looking behind the headline figures, however, a number of factors suggest deal making may not continue to grow as rapidly as it has done recently.

One key driver affecting global figures is the widely expected rise of US interest rates. Cheap debt has played a significant part in the surge of US deal making in the first few months of 2015, and the prospects of a rate rise may have some dampening effects. However, the most recent indications from the Federal Reserve have suggested that any rise will be gradual and some market participants have pushed back predictions for the first rate rise to December 2015. Meanwhile, eurozone and UK interest rates look likely to remain low for some time further.

The eurozone returned to the headlines in June as the prospect of a Greek exit looked increasingly real. Even assuming Greece remains in the euro (as now seems likely), the crisis has severely damaged the relationship between Greece and its creditors. The brinksmanship exhibited by all parties means that meaningful progress cannot occur except at the conclusion of a crisis: the idea that reform will benefit Greece has been lost and each measure extracted by creditors is couched as a concession. However, while the political debate has become ever more fractious, the market's response to the crisis has been relatively sanguine. This is largely a result of the fact that the volume of Greek debt is no longer in the market, but in the hands of institutions. But it is also a sign of the general market recovery and expectations that major economies will continue to grow.

Perhaps one of the more interesting emerging trends in the last year is the interplay between growth and productivity. Some commentators have suggested that the recent rise in deal making is a symptom of a climate in which businesses remain reluctant to invest in capital and productivity. Pessimistic about the opportunities for organic growth, companies instead seek to grow profits through cost savings on mergers. It is difficult to generalise about such matters: inevitably, deal drivers will vary from industry to industry, from market to market. However, if synergies have been the principal motivation in

much of the year's deal making (it certainly has been in a number of large-cap deals) then it may be that the market is a little farther from sustainable growth than some would like to think.

I would like to thank the contributors for their support in producing the ninth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
August 2015

Chapter 64

UNITED ARAB EMIRATES

DK Singh and Stincy Mary Joseph[1]

I OVERVIEW OF M&A ACTIVITY[2]

In line with the global trend for mergers and acquisitions in 2014, the markets in the United Arab Emirates (UAE) have picked up considerably despite fluctuating oil prices, political instability and civil unrest in various parts of the Middle East. Over the past 12 months, activity in mergers and acquisitions has increased considerably in the UAE and the value of mergers and acquisitions transactions in the Middle East reached US$50.3 billion. This is the highest annual total since 2010 and was largely driven by outbound M&A activity.[3]

M&A activity in the UAE region has been on an upward trajectory due to restored investor confidence in the markets. The UAE reached its strongest ever economic growth in 2014 with its real gross domestic product (GDP) going up by 4.6 per cent and the nominal GDP reaching 1.47 trillion dirhams.[4]

The UAE market has been robust, primarily as a result of a strong regulatory and political environment and infrastructure. According to the MARC M&A Attractiveness Index 2013,[5] the UAE has emerged as one of the frontrunners among the list of countries that have the potential to develop into future growth markets for M&A activity and the UAE was ranked 19th in the list of countries across the world in terms of M&A activity. The ranking is based on analysis of factors such as a country's regulatory and political

1 DK Singh is the managing partner and Stincy Mary Joseph is an associate at KBH Kaanuun.

2 All statistics and references in this chapter are derived from publicly available sources but have not been independently verified.

3 Gulf News, 20 January 2015

4 WAM report on HH Sheikh Mohammed's note on the state of the UAE's economy.

5 Published by the CASS Business School M&A Research Centre.

environment, economic and financial factors, infrastructure and assets, technological capabilities and socio-economic characteristics.[6]

In addition to political and economic stability in the UAE, the UAE is undoubtedly attracting global investors because of increased cash flow generated from high oil prices and government investments in infrastructure, health care and utilities. Within the UAE, a principal driver for domestic M&A activity remains consolidation, and particularly in the construction, industrial and consumer products, insurance and financial services sectors.

Other factors that have affected the level of M&A activity generally, and ones that are not unique to the UAE, are extended due diligence and the disparity in the valuations of target companies between prospective sellers and buyers. In addition, corporate disclosure is historically limited in the Middle East and UAE laws do not facilitate the level of disclosure as would be available in more mature jurisdictions. This has made it challenging to do deals. That said, the new Commercial Companies Law (CCL) aims to establish stricter obligations for maintenance of company records and accounts.

The value of announced M&A in the Middle East in 2014 rose 23 per cent to US$50.3 billion from 2013, the highest annual total since 2010, according to a report by Thomson Reuters. In 2014 the number of inbound M&A deals was lower compared to 2013 but the deal value has increased. As of 14 December 2014, 58 deals were announced compared with 62 deals in 2013, this amounted to an aggregate deal value of US$3.98 billion, a significant increase in comparison to the aggregate deal value of US$1.29 billion that was announced in 2013.

The most significant and one of the largest M&A deal in 2014 was DP World's acquisition of Economic Zones World FZE from Port and Free Zone World FZE for a transaction value of US$3.5 billion. Within the MENA region, Qatar emerged as a frontrunner in terms of deal activity and accounted for 65 per cent of the Middle East region's outbound M&A activity in 2014 followed by Saudi Arabia and the UAE at 9 per cent.[7]

With significant infrastructural changes occurring in the UAE such as investments by the government in large number of infrastructure projects, expansion of national airport and numerous transportation projects – the UAE continues to remain an attractive destination for international investors and its significance as a business hub for the Middle East and Africa region.[8] In the first quarter of 2015, the MENA region witnessed 29 M&A outbound deals and 17 inbound M&A deals amounting to an aggregate deal volume of US$8058 million.[9]

The volume of deal activity will continue in an upward trajectory of M&A activity in the UAE with the impending Expo 2020 that will be hosted by the emirate of Dubai. This is expected to bring in a significant amount of foreign direct investment

6 MARC M&A Attractiveness Index 2013.

7 Gulf News, 20 January 2015.

8 June 2015, www.ameinfo.com.

9 Mergermarket Group, Middle East and North Africa Capital Confidence Barometer, 12th Edition, April 2015.

into the UAE, particularly Dubai, and is likely to boost Dubai's role as a regional hub for servicing inbound and outbound M&A and PE activity across the MENA region. As corporates in the UAE focus on growth and with significant international investor interest, particularly of private equity firms in the UAE market, M&A activity in the UAE is forecast to continue on an upward trajectory.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The legal framework for M&A activity in the UAE is found primarily in the Commercial Companies Law No. 2 of 2015 (CCL). The extant CCL (No. 8 of 1984 will be replaced entirely by the new CCL. Existing companies (unless they fall within an exception) are required to comply with the provisions of the new CCL by June 2016.

The CCL was issued by the President of the UAE, His Highness Shaikh Khalifa bin Zayed Al Nahyan in April 2015 and will come into force in July 2015 and will replace the existing Federal Law No. 8 of 1984. The CCL is also supplemented by laws in the free zones where M&A activity is not restricted by the CCL. A free zone is formed separately through the enactment of federal and local laws dealing specifically with that particular free zone and each of the free zones follow their own implementing regulations under which separate rules apply on the acquisition and mergers of free zone companies. The implementing regulations of most of these free zones contain very basic regulations on the merger or amalgamation of two companies, an exception being the Takeover Rules Module (TKO), which applies specifically in the Dubai International Financial Centre (DIFC).[10]

One principle to keep at the fore in terms of any M&A activity in the UAE is that a number of restrictions are imposed on foreign investors. The CCL requires nearly all types of foreign-owned companies in the UAE (outside of those constituted in a designated UAE commercial free zones)[11] to have at least 51 per cent[12] of its shares owned by a UAE national or a company wholly owned by UAE nationals.[13]

Under the CCL, two companies can merge by (1) the passing of a resolution by the shareholders of a company (adopted by 75 per cent of votes in favour where a quorum of 75 per cent of the shares are present or represented) resolving to dissolve and merge with another company; (2) the valuation of the net assets of the dissolving company in accordance with the provisions in the CCL on evaluation of shares; (3) the passing of a resolution by the shareholders of the acquiring company (adopted by 75 per cent of the votes in favour where a quorum of 75 per cent of the shares are present or

10 The DIFC is an onshore capital market designated as a financial free zone.

11 Please see Section IV, *infra*, for a further brief commentary on UAE free zones.

12 In the case of some activities the threshold is even higher.

13 Or nationals of one of the countries of the Gulf Cooperation Council (GCC).

represented) resolving to an increase in capital; and (4) the issuance of shares by the acquiring company to the shareholders of the dissolving company.[14]

Unlike certain other jurisdictions in the Middle East, the UAE does not have a formal takeover code to regulate public takeovers and mergers. There are three recognised exchanges in the UAE: the Abu Dhabi Stock Exchange (ADX), the Dubai Financial Market (DFM) and NASDAQ Dubai. The M&A regimes are generally the same for companies listed on the ADX and the DFM and each is governed by the CCL. The DIFC M&A regime is applicable to target companies listed on NASDAQ Dubai; which is very different to the DFM/ADX regime and is broadly similar to the regime in the United Kingdom.

For companies listed on the DFM/ADX, the main regulator is the Emirates Securities and Commodities Authority (ESCA). Therefore, a merger or acquisition of a publicly listed company would require the approval of the ESCA. The various disclosure and reporting requirements for an acquisition are as prescribed by the ESCA. In June 2012, the ESCA published new disclosure and share dealing rules concerning DFM/ADX listed companies that require persons or entities intending to acquire 30 per cent or more of the shares in a DFM/ADX listed company to notify the DFM/ADX. It is pertinent to note that upon such notification the DFM/ADX may block the proposed transaction, following consultation with the ESCA, if it has reason to believe that the purchase may harm the interests of the DFM/ADX or the national economy. In addition, the DFM and the ADX regulate the listing and disclosure rules applicable to their respective markets and the Department of Economic Development in Dubai and Abu Dhabi are responsible for certain procedural matters.

M&A transactions in the DIFC involving public companies are principally regulated by the Takeover Rules Module (TKO) that is part of the Rulebook administered by the Dubai Financial Services Authority, the financial regulator of the DIFC.[15]

Acquisition can be done in the UAE as follows.

i Exchange offer

Even though neither the CCL nor the rules and regulations of the exchanges of the UAE have takeover rules or regulations, an offeror can make a contractual offer to the shareholders of the target to acquire their shares if the consideration payable is shares in the acquiror, subsequently the target becomes a subsidiary of the offeror.

ii Cash offer

An offeror can make a contractual offer to the shareholders of the target company in exchange for cash. Similarly, if the offer is accepted, the target company becomes a subsidiary of the acquiror.

---

14 Articles 276–280 of Commercial Companies Law No. 8 of 1984 regulate the mergers of companies.

15 The Takeover Rules Module and was amended in (No. 87) 2012, which repeals and replaces the Takeover Rules Module (TKO) module of the DFSA Rulebook.

iii NASDAQ Dubai

Pursuant to the TKO, the offeror may offer to acquire the shares of the target for cash or for shares. If the target is a company constituted pursuant to the laws of the DIFC (where 100 per cent ownership by a foreign entity or national is possible), the offeror who acquires 90 per cent of the shares of the target has a 'squeeze-out' right to buy the remaining 10 per cent from the minority shareholders who have declined its offer. However, there are no scheme of arrangement or statutory merger provisions that can be used to acquire a target.

M&A in the UAE in comparison to developed markets such as the Unites States and the United Kingdom is in a fairly nascent stage with no reported hostile takeover bid and robust shareholder activism. The CCL does not contain any provisions restricting a hostile bid and the concept of a shareholder rights plan and other takeover defence mechanisms is generally absent in practice.

The rules issued by the ESCA shall be applicable in the case of mergers of public joint stock companies. In addition to the ESCA, certain industry-based regulatory bodies such as UAE Central Bank may have a role to play in certain M&A transactions based on the industry in which the parties to the transaction operate.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Corporate law

The restrictions imposed on foreign ownership under UAE law presents an unacceptable loss of control for many potential foreign investors. It attracts criticism as it does not allow foreigners to have sufficient control and there have been discussions in the past to relax these restrictions in order to attract and encourage foreign investment.

The new CCL does not alter the provisions of the previous version of the CCL in terms of foreign ownership and control of companies. The new CCL provides for certain key changes including but not limited to mergers and amalgamations. A few of the key amendments pertaining to mergers and amalgamations are as follows:

Under the new CCL the two companies involved in a merger are required to enter into a merger contract and such contract should address key aspects such as the total consideration for the proposed transaction and the method of arriving at the consideration. The CCL also requires the merger contract to be approved by a 75 per cent majority of the existing shareholders of both the companies. Additionally, the notice of the proposed general meeting should include a summary of the merger contract. Under the CCL a shareholder, holding at least 20 per cent of the share capital, who dissents to the proposed merger may appeal before a court of law within 30 working days from the date of approval of the merger by the general assembly.

Under the CCL, the acquirer is not required to make a pre-emptive offer to its existing shareholders when issuing shares to shareholders of the merging company subject to approval by at least 75 per cent of the existing shareholders of both companies.

A dissenting shareholder (of the acquiring company or the merging company) may notify the company within 15 days of passing the merger resolution that it wishes to withdraw from the company and recover the value of its or his shares. Pursuant to

the Draft CCL, the valuation is to be assessed by the parties and on failure to arrive at a mutual agreement it shall be referred to a committee formed by the Minister of Economy and Commerce.

Under the CCL, shareholders in a LLC are allowed to pledge its shares to third parties. This could potentially increase M&A activity, utilisation of LLCs in financing structures, liquidity in terms of shares, and is a positive step as lenders may be more inclined to advance funds to LLC shareholders if they can obtain security over shares in the LLC by way of a pledge. This could potentially mark the beginning of a significant form of leverage, which is uncommon in the GCC markets. In addition the CCL imposes a corporate governance framework on all UAE companies by requiring companies to maintain accounting records at their head office for a minimum period of five years (Article 26 of CCL) to explain transactions of the company in an effort to increase transparency. In addition, all companies are required to apply international accounting standards and practices.

Other significant changes in the CCL include, the valuation of the net assets of the merging company in accordance with the 'non-cash consideration' valuation procedures for LLCs or JSCs.

ii Takeover law

There are no specific ESCA proposals to reform takeover regulation in the immediate future but the CCL states that in the event of mergers of public joint stock companies the rules issued by the ESCA shall be applicable. The new law includes a 'placeholder' for the introduction of a takeover code by the ESCA.

On 18 February 2014 the ESCA issued the Authority Board of Directors' Decision No. 10 of 2014 concerning the regulation of listing and trading of shares of private joint stock companies. In June 2012, the ESCA published new disclosure and share dealing rules concerning DFM/ADX listed companies, which require persons intending to acquire 30 per cent or more of the shares in a DFM/ADX listed company to notify the DFM/ADX, and the DFM/ADX may block the transaction, following consultation with the ESCA, if it has reason to believe that the purchase may harm the interest of the DFM/ADX or the national economy. Other than these amended disclosure and share dealing rules, there is no takeover code or other similar regulation issued by the ESCA that govern takeovers.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

An obstacle to foreign involvement in M&A transactions in the UAE, and a common theme in this chapter, are the restrictions on foreign ownership, referred to above. In addition, the majority stakes in many UAE companies are controlled by the government or families that are often reluctant to sell their stakes or give voting rights or representation on their board to foreign shareholders. Additionally, the lack of mandatory tax filing requirements in the UAE often poses as a deterrent to robust M&A activity due to unavailability of information for assessment of risks of the target's business as well as valuation of assets of the target. Therefore, the majority of foreign M&A activity into the

mainland jurisdiction (sometimes referred to as 'onshore UAE') tends to take the form of minority stakes by way of joint venture.

The UAE also has a large number of free zones (in excess of 38 across a range of industries). A free zone is an area where 100 per cent foreign ownership of companies is permitted. The free zones have been established primarily for the purpose of attracting foreign investment in the UAE. The UAE free zones have their own laws and regulations that are different to those in mainland UAE. In particular, companies established in the free zones are outside the regime of the CCL and have been expressly excluded from its operation.

The UAE itself has shown considerable interest in making foreign direct investments abroad that enhance its image as a luxury and leisure hub, including investments over a wide range of sectors, from football clubs to prime pieces of real estate, the airline industry and the hotel industry. The UAE has diversified its investment portfolio in recent years by investing in a variety of assets, including stock exchanges and private banks. Sovereign wealth funds in the UAE continue to invest state funds, primarily in the form of minority stakes, in different types of foreign companies.

The UAE was ranked 14th on the latest A T Kearney Global Foreign Direct Investment Confidence Index (FDICI), which measures present and future prospects for FDI flows.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Over the past 12 months, consumption led sectors such as real estate, energy and power, construction, consumer products and financial services were areas of focus for M&A activity in the UAE.[16] In terms of deal count, the media and entertainment, real estate, and energy and power sectors attracted the most number of transactions. Other attractive sectors for M&A activity in the MENA region were banking and capital markets, the hospitality sector, the manufacturing sector and professional firms and services that led the overall deal activity. The transportation and logistics industry saw a significant rise in deal activity driven by a mix of financial and strategic investors.[17]

The first quarter of 2015 witnessed the largest deal with Middle Eastern M&A involvement on a global level – the US$1.9 billion offer for a stake in Canary Wharf Group Plc by Stork Holdings Ltd, jointly owned by Qatar Investment Authority and Brookfield Property Partners.[18]

Other significant M&A transactions in 2014 in the UAE include, Etihad Airways' acquisition of a strategic minority equity stake in Alitalia, the restructuring deal, was valued at more than €1.75 billion,[19] Warburg Pincus, the US private equity

16 E&Y MENA Capital Confidence Barometer, October 2014.

17 www. Arabianindustry.com. February 2015.

18 Gulf News, 13 April 2015.

19 www.wam.ae.

firm acquired a majority stake in Mercator a Dubai aviation software company owned by Emirates' Dnata, which marked the private equity firm's first investment in the region.

Another significant transaction was the US$1.6 billion acquisition of Travelex Holdings Ltd.[20] Other significant transactions include the US$3.2 billion sale of Orbit Showtime Network Co, a Dubai-based owner and TV station operator to an undisclosed US private equity firm.[21]

Private equity firms played a major role in M&A activity in the UAE in 2014, Fajr Capital along with Arab Petroleum Investment Corp (APICORP) acquired Dubai-based oilfield services firm National Petroleum Services. This transaction was one of the largest announced private equity transactions in the MENA region in 2014, as well as one of the largest oilfield services M&A transactions in the Middle East to date.[22] Other significant transactions by the private equity firm include the acquisition of a minority stake in the Middle East, North Africa and Asia business of GEMS Education for an undisclosed sum along with Blackstone and Bahrain's sovereign wealth fund Mumtalakat.[23]

In the telecommunications sector, there has been significant activity, most notably the Emirates Telecommunications Corporation's, also known as Etisalat, acquisition of Vivendi's 53 per cent stake in Itissalat Al Maghrib (Maroc Telecom) in May 2014.[24] The consideration amounted to €4.14 million. As for the financial services sector, Abu Dhabi Islamic Bank, the Abudhabi's biggest Islamic lender, acquired Barclay's retail banking operations for £119 million in 2014. [25]

Many transactions in the MENA region and particularly the UAE are being driven by sovereign wealth funds. Sovereign wealth funds in the MENA region, particularly the UAE have been drivers of outbound investments. In 2014 the sovereign wealth funds were drivers of inbound activity – in the third quarter of 2014 70 per cent of the sovereign wealth funds and private equity deals were domestic and only 15 per cent were outbound.[26]

As a direct consequence of the financial crisis, many UAE companies have been forced to undergo a restructuring of their operations to ensure better efficiency and productivity. Companies seeking to deleverage have helped offset some of the slump in M&A activity.

While perhaps not unique to the UAE, many mid-market deals are often complex due to the family-owned business mentality that exists in the region. This mentality makes it more challenging to do deals and UAE companies have difficulty splitting management from ownership. Many owners are also emotionally attached to their assets, which cuts across and can hinder M&A activity and the disposal of assets.

---

20 Thompson Reuters, 2014 Deal Activity.

21 *Khaleej Times*, 28 December 2014.

22 5May 2015, www.fajrcapital.com/about-us/profile/.

23 AlMasah Capital Limited, MENA PE Newsletter, October 2014.

24 Gulf News, 14 May 2014.

25 26 January 2015 www.thenational.ae/business/markets/rosy-outlook-for-regional-ma#page2.

26 E&Y MENA Capital Confidence Barometer, October 2014.

Activity in the hospitality sector is likely to increase not only in the UAE but in the GCC region as well due to events such as the Expo 2020 and World Cup 2022 that will be hosted in Qatar – this is likely to cause a surge in deals in the hospitality sector with M&A and private equity funding being used to accelerate such deals.[27]

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

According to data from Bloomberg, the volume of announced deals in the MENA region was US$107.12 million and the total deal count was 1,190.[28] In the first quarter of 2015 the volume of announced deals in the MENA region was US$221.25 million and the total deal count was 318.[29] These numbers reflect an upward trajectory in deal activity in 2015. Thomson Reuters LPC, investment banking fees generated in the Middle East for completed M&A transactions totalled US$212.8 million.

Following the financial crisis, financial institutions have taken a more careful approach that should force greater disclosure in the medium to long term, thereby ensuring more careful evaluation and differentiation of investment opportunities.

While private equity activity in the MENA region has remained relatively slow during the financial crisis, in 2013 and 2014 the markets saw a surge in private equity backed deals in the UAE. One of the significant PE deals concluded in 2014 in the UAE was UAE-based Fajr Capital, Blackstone and Bahrain's sovereign wealth fund Mumtalakat's acquisition of a minority stake in the Middle East, North Africa and Asia business of GEMS Education for an undisclosed sum.[30]

As discussed above, the changes in the CCL permitting shareholders in an LLC to pledge their shares to third parties could potentially increase M&A activity and offer comfort to financial institutions to advance funds to LLC shareholders.

A majority of companies in the UAE are dominated by government and quasi-government enterprises and family conglomerates. A majority of family-run businesses in the UAE tend to run businesses that are heavily reliant on agencies or franchises of foreign brands in the UAE and are therefore subject to restrictions in their contractual arrangements with the foreign brands. Additionally the restrictions on foreign ownership that exist in the UAE tend to significantly limit the available target companies in the UAE for cross-border M&A.[31]

VII EMPLOYMENT LAW

The UAE Labour Law No. 8 of 1980 (as amended) governs employment law in the UAE.

Since January 2011, the maximum age that foreign workers can be employed in the UAE has been raised from 60 to 65 years old. Expatriate and foreign workers who

27 Alpen Capital, GCC hospitality Industry Report, September 2014.

28 Bloomberg, Q4, Global M&A Financial Advisory Rankings, 2014.

29 Bloomberg, Q1, Global M&A Financial Advisory Rankings, 2015.

30 AlMasah Capital Limited, MENA PE Newsletter, October 2014.

31 www.theoath-me.com/s/global-trends-in-mergers-acquisitions.

are over 18 years of age (and less than 65 years' old) who have not previously worked in the UAE can now apply for short-term work permits valid for 60 days, which can be renewed up to five times.

Also since January 2011, university and college students sponsored by the institute in the UAE at which they are enrolled can legally work part time if they apply for a part-time work permit from the UAE's Ministry of Labour. A part-time employment permit (valid for a year) is also available to expatriate residents working full time who have a valid labour card and to expatriate wives sponsored by their husbands. The part-time employment permit allows the holder to be employed in more than one part-time job.

VIII TAX LAW

There is no federal tax law in the UAE, but each of the seven emirates has its own tax law. There is no personal income tax, capital gains tax, value added tax or withholding tax in the UAE. Currently, there is legislation in force in the emirates of Abu Dhabi, Dubai and Sharjah establishing a general corporate tax regime.

In Abu Dhabi, according to the Income Tax Decree of 1965 (as amended), every chargeable person who conducts trade or business (including the rendering of services) in Abu Dhabi is subject to pay tax on his or her earnings on a sliding scale up to a maximum of 55 per cent. There are taxes on oil and gas companies at rates specified in the relevant concession agreement, a flat rate on annual profits of branches of foreign banks and a flat rate service tax on hotel services and entertainment.

The Dubai Income Ordinance of 1969 and Dubai Income Tax Decree (as amended) provide that all companies that conduct trade or business in Dubai are required to pay tax on their earnings on a sliding scale up to a maximum of 55 per cent. Oil companies pay up to 55 per cent tax on UAE-sourced taxable income and banks pay 20 per cent. The taxable income of banks is based on their audited financial statements. As for oil companies, the computation of their taxable income is based on their concession agreement. It is pertinent to note that free zones in the UAE offer a 50-year tax holiday thereby exempting taxation of corporations.

In Sharjah, the Income Tax Decree of 1968 (as amended) specifies that there shall be imposed on the taxable income of every chargeable person generating income from carrying out trade or business in Sharjah tax on a sliding scale of up to 55 per cent.

Although there are tax laws currently in practice in certain emirates, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay tax in the UAE. Therefore, unless M&A transactions are connected to these activities, the UAE tax regime is not a consideration that ought to be taken into account.

IX COMPETITION LAW

A new Competition Law (UAE Federal Law No. 4 of 2012) was enacted in October 2012, which applies to establishments that engage in economic activity, hold any intellectual property right in the UAE or engages in economic activities that affect competition within the UAE. The law came into force on 23 February 2013 and companies regulated by it were granted a grace period of six months to ensure their practices are in compliance

with the new law. The Competition Law seeks to regulate restrictive agreements and abuse of dominant position in the market by key players.

It is pertinent to note that certain sectors such as telecommunications, financial services, oil and gas, small and medium-sized enterprises and certain entities owned or controlled by the federal and emirate governments are excluded from the application of the law.[32] Violations of the Competition Law are punishable by a fine or suspension of operations of the company's business for a specified period of time. The Ministry of the Economy (MoE) may grant exemptions from certain provisions of the law. A Competition Regulation Committee will be responsible for overseeing competition issues in the UAE.

A key highlight of the Competition Law is the merger control provisions. These provisions play a major role in M&A activity in the UAE as the Competition Law provides for a mandatory filing and suspension of the transaction pending clearance by the Competition Regulation Committee, MoE. Under the Competition Law a notification must be made to the MoE at least 30 days prior to date of the transaction requesting clearance where a transaction (1) results in the acquisition of direct or indirect control; (2) may affect competition in a market by creating a dominant market position; and (3) the market share threshold is met. The market share threshold will be notified by way of the Implementing Regulations. The MoE has to pass a resolution clearing the proposed transaction within a period of 90 days or may seek additional information in which case the duration for processing the application will be extended for 45 days. Based on the transaction, the MoE may resolve to grant approval, conditional approval or prohibit the proposed transaction.

The Competition Law also provides for fines and penalties for non-compliance with provisions of the law. Some of the key fines imposed by the Competition Law are as follows:

a failure to notify a transaction that has to be notified – 2 to 5 per cent of the company's annual revenue derived from sales of applicable products or services. In the event the amount cannot be calculated them a fine ranging between 500,000 and 5 million dirhams may be imposed;[33]

b implementation of a transaction before grant of approval – a fine of 50,000 to 500,000 dirhams may be imposed; and[34]

c entering into restrictive agreements or abuse of dominant position in market – a fine of 500,000 to 5 million dirhams may be imposed.[35]

Additionally the MoE may impose sanctions such as suspension of business activities of the infringing company.

32 Article 4, Competition Law.

33 Ibid., Article 17.

34 Ibid., Article 18.

35 Ibid., Article 16.

Therefore, companies proposing to enter into an M&A transaction will have to consider their activities and the impact of the Competition Law to ensure proper compliance.

X OUTLOOK

In the Middle East, and especially the UAE, the market for M&A activity has resurged with a number of strategic transactions being concluded over the past 12 months. The main appetite of both strategic and financial buyers is in the UAE, Saudi Arabia, Qatar, Kuwait and Oman, and informed regional and international investors are looking at a number of opportunities in the MENA region. Valuations are clearly one catalyst, but the changing geopolitical landscape also plays a key role.

M&A experts predict that several sectors such as education and health care, financial services, manufacturing, energy (particularly clean technology), and consumer goods will continue to be of interest to investors.

In the UAE the forecast looks more positive as the economy has taken strong strides towards recovery and M&A and PE activity is on the increase, although investors are naturally more cautious, and restructuring is emerging as a means of facing new economic realities, both globally and regionally.

The UAE does not have robust M&A laws and takeover regulations compared to the United States, Europe and certain countries in Asia, a primary reason being the ownership of business in the UAE – approximately 80 per cent of non-oil GDP within the Middle Eastern region is owned by family-owned business groups. These family-owned businesses are privately held and their operational control is maintained by the family members.[36]

Regionally, other Gulf states are working hard to position themselves at both the heart of regional politics, and as economic and financial centres, particularly Qatar and Saudi Arabia. Whether such competition will affect the UAE's prominent position as a regional hub for servicing inbound and outbound M&A and PE activity across the MENA region is difficult to predict, but there is no doubt that the UAE is improving its business environment in order to maintain that position.

---

36 Deloitte Press Release, June 29, 2014

Appendix 1

ABOUT THE AUTHORS

DK SINGH

KBH Kaanuun

DK Singh is a dual-qualified lawyer with experience of and permission to work in two jurisdictions: India and the United Kingdom with over 18 years' experience. He is a partner in the corporate group and his expertise covers mainstream corporate and commercial work. He has brought a wealth of experience to the Dubai office of KBH Kaanuun, particularly in the areas of mergers and acquisitions, company law and administration matters.

Mr Singh is also an experienced arbitrator and works closely with the dispute resolution group to assist clients in international arbitrations. He has, for three years running, been listed as a leading individual by *Chambers Asia* for his dispute resolution work and is also listed as a lead individual for developing the Indian practice of a UK-based firm.

STINCY MARY JOSEPH

KBH Kaanuun

Stincy Mary Joseph is an associate in the corporate team and her practice focuses on mergers and acquisitions, private equity, investment funds, capital markets and general corporate advisory. Prior to joining KBH, she worked with India's leading law firm where she advised on mergers and acquisitions of private and public listed companies and capital market (debt and equity) transactions.

KBH KAANUUN
Dubai International Financial Centre
Gate Village 7, Level 2
PO Box 506546
Dubai
United Arab Emirates
Tel: +971 4 709 6700
Fax: +971 4 709 6711
dubai@kbh.ae

www.kbh.ae