The Mergers & Acquisitions Review

Eighth Edition

Editor
Mark Zerdin

Law Business Research

The Mergers & Acquisitions Review

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THE PRIVATE COMPETITION ENFORCEMENT REVIEW

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EDITOR'S PREFACE

There is cause for optimism and caution in light of the past year's events.

First, we can be tentatively optimistic about Europe. The possibility of a euro breakup appears to have faded, and European equities markets performed, on the whole, exceptionally well in 2013. Indeed, the euro/dollar basis swap has moved sufficiently to open up euro capital markets to borrowers wishing to swap proceeds to dollars; the World Bank sold its first euro benchmark bond for more than four years in November 2013, and non-European companies like Sinopec and Korea Natural Gas have issued large euro bonds in recent months. If the European economy continues to grow (and analysts are expecting growth to quicken), it is hoped that the prospect of crisis will continue to fade.

Second, though 2013 was a comparatively languid year for global M&A, the buoyancy of the credit and equity markets cannot be ignored. In terms of financing, the seeming willingness of banks to allow for looser borrower constraints, to underwrite jumbo facilities in small syndicates, and to offer flexible and fast bridge-financing for high-value acquisitions, presents a financing climate that should be particularly amenable to corporate M&A. It is also notable that continued political and economic instability did not impede the completion of some standout deals in 2013, including the *Glencore/Xstrata* tie-up and Vodafone's disposal of its shareholding in Verizon Wireless. These deals show that market participants are able, for the right deal, to pull out all the stops. After a period of introspection and careful balance sheet management, corporates may be increasingly tempted to put cash to work through M&A.

There remains, however, cause for prudence. There is considerable uncertainty as to how markets will process the tapering of quantitative easing (QE) by the US Federal Reserve. The merest half-mention by Ben Bernanke, in May 2013, of a possible end to QE was enough to shake the markets, and to nearly double the 10-year US Treasury yield in a matter of months. Emerging markets are particularly sensitive to these shocks. The oncoming end of QE may already have been priced into the markets, but there is a possibility that its occurrence will cause further, severe market disruption. In addition, there are concerns around how the funding gap left by huge bank deleveraging will be filled, and centrifugal pressures continue to trouble European legislators. Finally, there are broader concerns as to the depth of the global economic recovery as growth in the BRIC economies seems to slow. Optimism should, therefore, be tempered with caution.

I would like to thank the contributors for their support in producing the eighth 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 2014

Chapter 66

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 2013, the markets in the United Arab Emirates (UAE) have picked up considerably since the global financial crisis despite political instability and civil unrest in various parts of the Middle East. Over the past twelve months, activity in mergers and acquisitions has increased considerably in the UAE and it has emerged as a front runner in the Middle East and North Africa (MENA) region in terms of total value of disclosed domestic merger and acquisition deals in 2013.[3]

M&A activity in the UAE region has been on an upward trajectory due to restored investor confidence in the markets. The total domestic deal value in 2013 was US$22.5 billion and the total deal value for outbound deals was approximately US$18.5 billion, contributing to 37 per cent of total announced deal value in 2013. Of the top-10 announced deals, by value in the MENA region, five of the deals were by UAE companies and two of the deals were by Qatari companies.[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 front runners 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.

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*, 24 April 2013.

4 Ernst & Young 2013 year-end MENA mergers and acquisitions (M&A) update.

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

The ranking is based on analysis of factors such as, a country's regulatory and political 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.

While deal activity in the UAE has increased considerably compared with 2011 and 2012, it is fair to say that investors observe a cautious approach and it may take some time for the UAE market to reach its pre-global financial crisis level. Additionally the current political unrest in parts of the MENA region may have a negative impact on increase in growth of M&A activity in the UAE.

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 Draft Commercial Companies Law (Draft CCL) aims to establish stricter obligations for maintenance of company records and accounts. The proposed obligations under the Draft CCL, if not complied with, will invite penalties ranging from 50,000 to 100,000 dirhams.

The most significant and the largest M&A deal in 2013 was the merger of Dubai Aluminium with Emirates Aluminium. The US$15 billion deal created a fifty-fifty joint venture between the parties.[7] The other significant deals were the acquisition of Itissalat Al Maghrib SA (Maroc Telecom) in Morocco by Emirates Telecommunications Corporation, UAE for US$6.1 billion and the acquisition of Dubai First, a financial services firm owned by Dubai Group by First Gulf Bank for a reported deal value of 601 million dirhams.[8] The trend of telecommunications deals representing megadeal values continued in the Gulf region in 2013 with the Qatar Foundation buying a 5 per cent stake in Bharti Airtel for US$1.3 billion.[9]

Figures for the first quarter of 2014 are currently unavailable although preliminary reports on reported deal activity indicate a continued upward trajectory of M&A activity in the UAE. Additionally the markets have responded well to the Emirate of Dubai winning the bid to host Expo 2020. This is accepted to bring in significant amount of foreign direct investment 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.

6 MARC M&A Attractiveness Index 2013.

7 *Gulf News*, 3 June 2014.

8 *Khaleej Times*, 7 November 2013.

9 *Grant Thornton Deal Tracker*, 9th Edition, 2013.

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. 8 of 1984, as amended, (CCL). 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 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

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).

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

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 below:

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.

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 shareholder rights plan and other takeover defence mechanism are 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

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.

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 Federal National Council (FNC) of the UAE has approved a new draft Federal Commercial Companies Law. The draft law is expected to replace the extant Commercial Companies Law (Federal Law No. 8 of 1984) and is presently awaiting approvals from the Supreme Council and the President of the UAE prior to enactment. Prior to tabling of the Draft CCL before the UAE cabinet there were expectations that there may be amendments to the provisions in the CCL on foreign ownership of companies. However, the Draft CCL does not alter the current provisions of the CCL in terms of foreign ownership and control of companies. The Draft CCL contemplates 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 extant CCL merger regime there is no requirement for a merger contract. Pursuant to the Draft 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 Draft 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 Draft 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 Draft 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 Draft 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 Draft CCL imposes a corporate governance framework on UAE companies by requiring companies to maintain accounting records to explain transactions of the company in an effort to increase transparency.

Other significant changes in the Draft 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.

The Draft CCL has to be ratified by the Supreme Council, signed by the President and published in the UAE Federal Official Gazette in order to become law. Until then, the law on commercial companies remains as set out in UAE Federal Law No. 8 of 1984, as amended. While the provisions on foreign ownership and control restrictions remain, there is no doubt tht the Draft CCL is a step in the right direction to encourage and regulate M&A activity in the UAE.

ii Takeover law

There are no specific ESCA proposals to reform takeover regulation in the immediate future but the Draft CCL states that in the event of mergers of public joint stock companies the rules issued by the ESCA shall be applicable.

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.

Recent significant deals in onshore UAE have seen investment come from several countries including Canada, China, India and the United Kingdom. In late 2010, the Economist Intelligence Unit published a report stating that foreign direct investment in the UAE will remain strong in the short term and is expected to average US$10.4 billion annually between 2010 and 2014. Projections are that foreign direct investment in the UAE will reach US$13.5 billion by 2014 compared with US$6.2 billion in 2010 and US$5 billion in 2009.

The final report highlights a number of industries as being more attractive for investment than others. The industries that have the most attractive profile in the UAE are telecoms and utilities. In terms of non-financial services in areas such as transportation, business services, health care, legal services and education, Dubai ranked among the global top 20 foreign direct investment destinations.

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 total value of foreign direct investment through UAE free zones had reached US$12 billion in 2013 and is projected to cross US$14.4 billion in 2014.[16]

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, 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 recent win of Dubai for hosting World Expo 2020 may significantly boost foreign direct investment in the services sectors of Dubai. 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. The country's investor-friendly legislation and easy access to fast-growing Middle Eastern and African markets have made it a hub for foreign investments, according to the report.[17]

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Over the past twelve months, financial services, airline, health care, energy and telecommunications were areas of focus for both domestic and cross-border M&A activity.

In the MENA region the attractive sectors were banking and capital markets, the airline sector, the manufacturing sector and professional firms and services that led the overall deal activity with eight deals each, followed by oil and gas with seven deals, consumer products with six deals and real estate and telecoms with four deals each. The sector with the largest disclosed deal value was telecoms, representing US$7 billion.[18]

16 *Gulf News*, 12 April 2014.

17 *Khaleej Times*, January 2014.

18 EdY MENA Mergers & Acquisitions update, 24 April 2013.

Health-care transactions have surged because it is an area that is deemed to be inadequately provided for and because health-care operators are not as exposed to the effects of the financial crisis.

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.[19] The consideration amounted to €4.14 million. Etisalat bought into Maroc Telecom through a separate legal entity, Etisalat International North Africa (Eina). The effective interests in the capital of Eina are Etisalat (91.3 per cent) and Abu Dhabi Fund for Development (8.7 per cent). The deal saw Etisalat expand its services to nearly 800 million people across 19 countries throughout the Middle East, Africa and Asia. The life sciences and pharmaceutical industry also saw a few major deals the most significant among them being Elan Corporation's acquisition of a stake in New Bridge Pharmaceuticals, a company headquartered in Dubai. The reported deal value is US$40 million.[20]

There have also been major investments in renewable energy projects to allow the UAE to maintain its leadership in this field in the MENA region and remain a global pioneer in undertaking clean energy projects such as Masdar City. The financial crisis had a tremendous impact on real estate companies and post recession what has emerged is the restructuring and consolidation of investments in the real estate sector. One of the top deals by value in the MENA region is the merger of UAE-based Sorouh Real Estate PJSC and Aldar Properties PJSC. The reported value of the deal is US$2 billion.

Many transactions in the MENA region and particularly the UAE are being driven by sovereign wealth funds. Of the 442 deals announced in the MENA region in 2013, sovereign wealth funds were involved in 19 deals with an announced deal value of US$14.5 billion. Sovereign wealth funds are the single largest buyer constituency in MENA contributing 29 per cent of total deal value in 2013. One such recent example is Mubadala and the Investment Corporation of Dubai's decision to merge the businesses of Dubai Aluminium (DUBAL) and EMAL into a jointly held, equal-ownership company called Emirates Global Aluminium (EGA). The new company will be the fifth-largest global aluminium company by production upon completion of phase two development of EMAL in 2014.

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. Restructuring in the UAE has become prevalent, and is well publicised, none more so than state-owned conglomerate Dubai World's US$25 billion debt restructuring a few years ago.

While perhaps not unique to the UAE, many mid-market deals are often complex due to the nature of the family-owned business mentality that exists in the region. This mentality makes it more challenging to do deals and UAE companies have difficulty

19 *Gulf News*, 14 May 2014.

20 *Bloomberg Businessweek*, 20 May 2013.

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.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

According to data from Thomson Reuters LPC, investment banking fees generated in the Middle East for completed M&A transactions totalled US$212.8 million. The United Arab Emirates was the most active nation accounting for two-fifths of activity, followed by Saudi Arabia with 22 per cent.[21]

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.

Furthermore, corporate M&A activity is linked to the confidence of management and the board.

While private equity activity in the MENA region has remained relatively slow over the last year, accounting for only 66 out of 442 deals, the UAE ranked top in the MENA region private equity transactions. One of the significant PE deals concluded in 2013 in the MENA region was Jabez Partners' acquisition of Green Non-Life Insurance Company in South Korea for US$1.5 billion. Other key transactions include Abraaj Group's acquisition of a minority stake in Ghana Home Loans (GHL), a leading residential mortgages provider in Ghana and the acquisition of Fan Milk, a West Africa based manufacturer of dairy products for a reported deal value of approximately US$350 million by the Abraaj Group.[22]

As discussed above, the proposed change in the Draft CCL permitting shareholders in a 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.

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 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.

21 Thompson Reuters, MENA Report, October 2013.

22 Financial Times, 25 November 2013.

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 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.[23] 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

23 Article 4, Competition Law.

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 for clearance where: (1) a transaction 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 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;[24]

b implementation of a transaction before grant of approval – a fine of 50,000 to 500,000 dirhams may be imposed; and[25]

c entering into restrictive agreements or abuse of dominant position in market – a fine of 500,000 to 5 million dirhams may be imposed.[26]

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

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 with the Law.

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 last twelve 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.

24 Ibid., Article 17.

25 Ibid., Article 18.

26 Ibid., Article 16.

M&A experts predict that several sectors such as education and health care, financial services, manufacturing, energy particularly clean tech, consumer goods industry 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.

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.

Appendix 1

ABOUT THE AUTHORS

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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.

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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.

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