

# MERGERS & ACQUISITIONS

ANNUAL REVIEW 2013



**FINANCIER**  
WORLDWIDE corporate finance intelligence

Published by  
Financier Worldwide  
23rd Floor, Alpha Tower  
Suffolk Street, Queensway  
Birmingham B1 1TT  
United Kingdom

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Annual Review • April 2013

## **Mergers & Acquisitions**

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# Mergers & Acquisitions

APRIL 2013 • ANNUAL REVIEW

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in Mergers & Acquisitions

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# UNITED STATES

**G. MICHAEL O'LEARY**  
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**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN THE UNITED STATES OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**O'LEARY:** With interest rates remaining artificially low in the US and a market starved for yield oriented securities, M&A activity in the US during the past 18 months has been quite strong, particularly in the energy and real estate sectors. These sectors include a substantial number of publicly traded partnerships and real estate investments trusts, the equity securities of which are yield-oriented and are particularly attractive in this market. As the development of shale resources has progressed, and production of crude oil and liquids has increased, required infrastructure development has led to a substantial volume of M&A and joint venture activity. Additionally, the Patient Protection and Affordable Care Act, also known as 'Obamacare', is resulting in a substantial repositioning in the healthcare industry, which has stimulated a substantial volume of M&A activity in the last 18 months. M&A activity in the technology sector has continued to be driven by the ever-present desire for the latest intellectual property breakthrough, and the need to stay ahead of the competition. M&A activity during 2012 would likely have been even more substantial but for the uncertainties caused by the hotly contested US presidential election and the threat of the so called 'fiscal cliff'.

**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**O'LEARY:** Both strategic and financial acquirers appear to have entered 2013 with a strong appetite for M&A. With continued low interest rates, an improving market for equity securities and a sluggish, albeit improving, US economy, strategic buyers recognise that conditions are favourable to improve their position. This can be achieved by acquiring additional product lines, capacity, intellectual property or a combination of all three. Strategic buyers tend to focus on acquisitions that are expected to enhance their competitive position relative to their peers, and that can be integrated into their existing culture and operations without causing substantial disruption. Financial buyers often focus their activities on businesses that are out of favour in the market and



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are available for purchase at a reasonable price. Additionally, financial buyers have seen a return of the leveraged buyout (LBO). LBOs are typically characterised by a publicly traded company, the market value of which is trading low because it is out of favour with investors, and a sponsor or founder that, with the assistance of financial investors, is able to take the company private. The recent uptick in LBOs is an indication that lenders are more willing to issue new large loans, which may further spur an increase in M&A activity in 2013.

**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**O'LEARY:** While acquisition risk cannot be eliminated, it can be mitigated by thorough due diligence processes. Although acquisitions in different sectors require different risks be the focus of a due diligence review, it is common to engage external accounting, technology, engineering, reserve, legal and other specialists, to assist acquirers in the process. Because of concerns with 'leaks' within the community, the time period for diligence with respect to a publicly traded target can come under intense pressure.

**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN THE UNITED STATES? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**O'LEARY:** Since the recession of 2008-2009, interest rates have remained low. Notwithstanding these low rates, however, it has only been relatively recently that financial institutions have begun making significant new loans. The banking industry was in such bad financial condition as a result of the recession that, despite the injection of federal funds into the banking sector, it fell to private equity and other financial services firms to fill the funding void. Conditions in the banking industry have gradually improved over the last 24 months, however, and banks are once again issuing new loans. Not only have large acquisitions been financed in recent months with bridge or other loans from banks, but large LBOs have also returned after a pronounced hiatus. Assuming that trend continues, it will be a strong indication that M&A activity during 2013 will likely remain strong.



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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**O'LEARY:** Familiarity with the local or industry market can prove vital in closing deals in a tough economic environment. Although any particular transaction could encounter insurmountable obstacles that make it impossible to close, most transactions encounter obstacles that often require working together with the counterparties, their advisers, lenders, and other third parties to negotiate and document an acceptable work around. Familiarity with the local market and local professionals, and the trust and confidence that is the result of working with those persons on prior transactions, can prove the difference between finding a solution acceptable to all parties or, instead, confronting a failed transaction. Such trust and confidence are often the products of spending countless hours together 'in the trenches' trying to creatively and constructively fashion solutions so transactions can close.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**O'LEARY:** Typically, the respective managements of merging companies identify cost and strategic synergies that they expect to result from the merger. Realising these synergies, however, requires careful integration planning, with each merging company identifying its integration team to assure those benefits are realised. These teams will often begin working together before the merger is closed, subject to antitrust and other regulatory concerns. It is important that the integration teams have a clear understanding of the expected synergies and identify the work to be done that is most likely to achieve those results. Even with advance planning and identification of integration teams, however, realising the expected synergies can prove elusive for a variety of reasons – namely, ill-conceived or overly aggressive targeted synergies, software or technological mismatches, integration team members more focused on procuring their next job, or unexpected regulatory hurdles and market changes. While

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unanticipated events can prevent or delay the realisation of expected merger benefits, the constituent companies enhance the likelihood of successfully achieving those benefits if they carefully plan, orchestrate and monitor the integration, and modify the integration plan as circumstances warrant in order to increase the likelihood that the synergies are realised.

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# CANADA

**WILLIAM M. AINLEY**

DAVIES WARD PHILLIPS & VINEBERG LLP

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN CANADA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**AINLEY:** M&A activity in Canada over the last 12-18 months has been relatively strong: not to the level of pre-2008 M&A activity, but showing steady and continued improvement over the period. Among other factors, relatively healthy balance sheets for strategic acquirers, open credit markets in Canada for M&A activity for both strategic and financial buyers, and valuation levels which provide opportunities for earnings growth and accretion are driving deals in the current market. Activity has been fairly broadly based including transactions in the resources, media, financial services, technology and pharmaceutical sectors.

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**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**AINLEY:** Strategic buyers in M&A are motivated by different factors in different sectors. In the resource sector, buyers are frequently motivated by the need to replenish their resource and reserve base whereas in other sectors buyers are more focused on growth in earnings and accretion. In the financial resources sector, buyers continue to be motivated by increasing assets under administration and, in the technology sector, buyers frequently are driven both by acquiring scalable technology to complement their existing platforms and acquiring intellectual know how. Financial buyers, who are active though still at significantly lower levels than prior to the global financial crisis, are naturally seeking internal rates of return over relatively finite investment periods that compete favourably with other asset classes.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**AINLEY:** Due diligence remains an indispensable part of minimising transactional risk in M&A deals. The trend to conduct very in-depth due diligence relative to other periods in the M&A cycle continues, and, while there is no substitute from a buyer's perspective for careful and thorough due diligence, ironically the extended period during which due diligence is conducted in the current environment can significantly increase execution risk for a transaction, given the inherent risks to M&A planning and valuation where transactions take a number of quarters and even years in some cases to complete. Another critical area to minimise transaction risk is to investigate and understand fully in advance the drivers for all regulatory approvals that will be required to complete the transaction. Regulatory approval requirements in many jurisdictions generally tend to be increasing, with related increases in the risk to consummating proposed transactions.

**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN CANADA? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**AINLEY:** Banking and finance for M&A transactions in Canada has improved over the last year but had less distance to cover as the financial services sector in Canada remained relatively strong throughout the global financial crisis. While M&A financing was more challenging a couple of years ago, in Canada, financing markets did not close following the GFC and, as a result, M&A activity, though muted, continued throughout that period. However, with the return to some measure of health, of banking and financing markets in the US and Western Europe, there is clearly a positive effect on financing M&A activity for cross-border and larger Canadian transactions, where frequently the purchaser's credit packages involve lenders outside Canada. The important issues for buyers to address in negotiating optimal capital structures for acquisitions have not changed significantly over the years. Certainly, with banks prepared to take fewer risks and to accept less leverage in the acquisition models, buyers are required to have a significantly stronger equity component than prior to the GFC, but that aside the basic approach to structuring M&A credit remains consistent.



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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**AINLEY:** In trying to close deals in the current environment, local market knowledge is particularly important with respect to shifts in the regulatory environment. M&A activity is now so dominated by cross-border and global M&A activity that knowledge of potential competitors and interlopers must be assessed not just on a local, but on a global basis. However, it is critical is to understand at a local level what changes have occurred in the regulatory environment, whether such regulatory requirements are related to foreign investment, and specific industry regulation or specific stakeholder interests such as, in Canada, First Nations interests. Local customs and attitudes as to how the specifics of M&A transactions are negotiated and executed remain important, but the critical aspect is to fully understand any shifting winds in the regulatory environment that must be addressed to complete the transaction.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**AINLEY:** A number of obstacles arise in the context of early integration planning required to deliver the benefits of a merger. Access for the purchaser to detailed operational and commercial information prior to closing can be a significant challenge, especially for strategic acquirers where 'gun-jumping' and other antitrust issues may inhibit an acquirer's ability to have access to critical information of the target. In addition, early recognition of the need to task significant resources in the acquirer's organisation to planning and executing integration planning is frequently an organisational obstacle. Finally, in public company M&A, especially where the transaction is not fully solicited, obstacles to accessing the information required to effectively plan post-merger integration are significantly augmented.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN CANADA GOING FORWARD?**

**AINLEY:** One recent development in Canada, likely to impact M&A transactions in the resource sector, are the recent pronouncements by the Canadian government regarding the criteria on which it will assess 'net benefit to Canada' in considering acquisitions by foreign state-owned enterprises under foreign investment legislation in Canada. State-owned enterprises, more correctly now characterised for purposes of the Investment Canada Act as 'state influenced enterprises', will face real challenges in consummating acquisitions for Canadian resource companies going forward. Another area of M&A regulation which is anticipated to affect how acquisitions get done in Canada will be the anticipated changes to the approach Canadian securities administrators take to regulating the use of shareholder protection rights plans by target boards in M&A transactions.

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# BRAZIL

**LUIS HADDAD**

LILLA, HUCK, OTRANTO, CAMARGO

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN BRAZIL OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**HADDAD:** M&A in Brazil continues to present rather stable growth, and has not suffered significantly as a consequence of the ups-and-downs in capital markets and the downturn of IPOs in the last two years. Interesting drivers of recent M&A activity are the need for restructuring in distressed situations; acquisitions and sales by private equity funds; solutions of succession deadlocks in family-owned companies; and international strategic players trying to enter or expand in the Brazilian market, and benefit from the booming consumption in the countries' lower, middle and upper classes. It is difficult to point out sectors in which M&A is more active than others – transactions are reasonably widespread among different sectors, such as infrastructure, services, consumer goods and others.

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**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**HADDAD:** The appetite is there, but it is always followed by a rational process of carefully evaluating the assets, the market and the future prospects of the business. Targets are identified mainly by the position they already hold in the market and by the potential they have for growth or just increasing margins – either by enhancing efficiency or promoting consolidations. Financial buyers sometimes tend to take a closer look at businesses that are great from a commercial perspective, but could benefit significantly by developing financial and managerial skills. Both financial and strategic players that are acquainted with the Brazilian business environment are already aware of the intricacies of the Brazilian tax system. It is not unusual for 'tax efficiency' and 'tax competitiveness' to play a role in the identification of opportunities.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**HADDAD:** Basic precautions such as legal and accounting due diligence are a must everywhere. It is no different in Brazil. Brazilian specific features, however, should not be disregarded. Although it seems that the Brazilian legal and business environment is less foreign to North American and European investors than the Chinese, for instance, local knowledge and local counsel are essential. Buyers should also pay attention to antitrust and regulatory clearings. Until last year, antitrust approval was required after the deal closed, which was a very peculiar element in comparison to other countries. Today, Brazilian antitrust legislation is aligned with the most relevant antitrust legislations and requires antitrust approval as a condition precedent to the closing of any deal considered relevant for competition law purposes.

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**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN BRAZIL? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**HADDAD:** Investment banking is becoming more and more sophisticated in Brazil. Local businessmen are increasingly aware of the advantages of relying on financial services in general. Advisory is probably still the most common service rendered by investment banks in M&A deals, allowing more competition between major financial institutions that have an investment banking arm in their structures, and smaller and mid-sized M&A boutiques. However, only major financial institutions would be able to combine advisory and credit facilities to put together a deal that otherwise could not be made. In this field, I would dare to say that the Brazilian M&A industry still has room for further development. Mergers and acquisitions backed by debt do not seem as common as they apparently could be.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**HADDAD:** Irrespective of how tough or how smooth the economic environment is, local knowledge is a basic tool to close a deal successfully in Brazil. In a variety of situations, international counsel also has a crucial role to play. Complexities usually develop in cross-border transactions, in which a multi-jurisdictional team needs to be gathered. As a rule, however, assets are in Brazil, key people are in Brazil, and Brazilian Law is the 'ultimate resort' for the enforcement of rights with respect to a deal. Arbitration in Brazil has also been achieving good levels of credibility, which makes the country an important 'hub' for complex M&A deals in the region.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**HADDAD:** Early integration planning is vital. But we understand that this is what happens only in an ideal situation. In the real world, opportunities appear without prior notice, and competitive pressures push the negotiations forward and often make them move faster than the ability to draw detailed plans. Just as important as planning is the ability to deliver results under the pressure of a tight schedule and without the possibility of dealing with all the risks involved in an ideal manner. A useful capability exists in identifying the real core problems, from which the most relevant risks may arise. In highly complex situations, the solution sometimes involves distinguishing high risks from other kinds of risks that the parties will need to live with in order to move forward in a pragmatic way.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN BRAZIL GOING FORWARD?**

**HADDAD:** The antitrust law enacted in 2012 is a new and important feature of the Brazilian M&A scene. The Brazilian antitrust agency – CADE – has been showing, up to this time, good speed in analysing deals and approving their closure. In mergers involving public companies, an interesting and promising initiative corresponds to the local version of the ‘takeover panel’, inspired by the British model. As with any ‘self-regulation’ structure, it takes time to confirm whether it will be widely adopted and how it will work in practice. There are also other initiatives aimed at bringing small and mid-sized companies to capital markets. With interest rates moving down, there will probably be more demand for equity investments, both private and public. An increase in the number of public companies would help to channel this new demand to new projects, instead of just raising the price of stocks already listed. More active public companies in the market – in the medium and long terms – would probably lead to more active and sophisticated M&A activity.

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# GERMANY

**BENNO A. PACKI**  
V. BOETTICHER HASSE LOHMANN

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN GERMANY OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**PACKI:** The euro crisis was one of the main drivers for M&A activity in Germany in 2011 and 2012. There are a number of investors from eurozone countries, in particular from Southern Europe, that have invested in Germany. Assets and companies with an intrinsic value caught the attention of these investors. In particular, the German real estate sector attracted such investors. Another driver for M&A activity was corporate succession in medium-sized companies, the so-called 'Mittelstand'. Many of these companies were founded decades ago and have been looking for new owners. In this respect, we saw the first takeovers of German medium-sized companies by Chinese investors. A further market trend is the remunicipalisation of municipal suppliers. The most notable sectors in which M&A activity is expected to increase include the IT and biotech industries. There are a number of growing start-ups in these industries that are looking for integration into a large group.

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**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**PACKI:** Strategic buyers are interested, in particular, in the German manufacturing sector which has a huge number of global market leaders in specific business areas. Financial investors would prefer a diversification of their portfolio; however, they are attracted by the German real estate sector. Real estate prices in Germany have been very low compared to other European countries. This, and the fact that Germany is deemed to be a safe haven from the crash of the euro, has triggered investment in the German real estate sector and has led to rising real estate prices. Such investments are supposed to best come through the euro crisis. Both strategic and financial investors believe that the German economy strengthened during the financial crisis of 2008 and 2009.

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**Q** WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?

**PACKI:** According to statistics, more than two thirds of past deals in Europe and the US led to capital losses. The principal reason for this is not the lack of thorough due diligence, but rather the lack of a sufficient strategy on the part of the purchaser to integrate the target company into the purchaser's group. Furthermore, there has been a failure to attract suppliers, customers and employees to continue working with the target company after the change of control. For this reason, due diligence only prior to the signing of the share or asset purchase agreement will not be sufficient. A thorough due diligence process includes an integrated approach to better study the target company during the pre-signing due diligence, the post-signing, and the post-closing process. The minimised risk of capital losses does more than compensate for the transaction costs increased due to such an integrated approach.

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**Q** HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN GERMANY? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?

**PACKI:** Due to the euro crisis, European financial institutions are very reluctant to provide capital. In particular, German banks prefer to focus on financing deals of well-known customers and prefer to invest in specific sectors, such as companies with an expected growth or assets with an intrinsic value. Two sectors with access to above average capital are the manufacturing and the real estate industries. Furthermore, financial institutions insist on higher equity ratios than before the financial crisis. Starting with a minimum equity ratio of approximately 10 percent, the required equity ratio may be 50 percent or even more, depending on the risk of the investment. Therefore, starting discussions with financial institutions at an early stage is necessary to figure out the approximate equity ratio required by the market for an investment in a specific industry.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**PACKI:** Although export-oriented, German companies typically have a huge number of German suppliers and German customers. It is, therefore, crucial to be familiar not only with the global market in which the target company is doing business, but also the target company's supplier and customer structure. The purchaser should at least seek advice from business consultants or lawyers familiar with this market. Furthermore, management companies providing interim management services may be of help since there will typically be a manager in their network experienced in the specific business area.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**PACKI:** For the purchaser, an M&A deal is typically not a routine matter. Therefore, the purchaser's management is typically not experienced in the integration of a target company, especially of a target company located in a country different to the purchaser's country of origin. In this case, if the purchaser's management does not obtain advice from qualified experts about the steps to be taken in integrating the target company, they will likely be surprised by developments in the target and have to react, instead of integrating the target into the business structure of the purchasing group. In particular, it is crucial to motivate the employees, above all the senior executives, by generating a spirit of optimism, emphasising the new corporate identity, communicating the transaction as a 'merger of equals', or offering a stock option plan, among other things.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN GERMANY GOING FORWARD?**

**PACKI:** Currently, the main drivers of M&A activity in Germany are the decisions of the European Central Bank and investments, in particular those by foreign companies in Germany. However, these trends are not based on the regulations of the German government, rather driven by the eurocrisis and market trends. M&A activity within the European Union may not, in general, be limited by the freedom of establishment and the freedom of movement of capital. Also, in general Germany is very reluctant to limit cross-border M&A activities with countries outside of the European Union.

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# POLAND

**PAWEŁ SIKORA**  
 KKG KUBAS KOS GAERTNER

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN POLAND OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**SIKORA:** When it comes to M&A in Central & Eastern Europe (CEE), last year was definitely less interesting than 2011, which was considered to be a record-breaking year for M&A deals. In 2012, the total deal value of transactions in Poland was €9bn from 331 transactions completed – compared to 2011 where the total value was €18bn from 516 transactions completed. However, Poland remained among the region's leading countries for M&A. While it is quite hard to distinguish the most active sector among completed transactions, there were a few high-profile deals from the financial sector in particular. The most notable being the acquisition of Kredyt Bank by Santander, and TUIR Warta by Talanx. The other most active sectors were the retail and fast-moving consumer goods (FMCG) industries.

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**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**SIKORA:** Last year clearly demonstrated that consolidation trends were continuing. Acquirers tended to find a target that could improve their current commercial activity rather than explore new sectors. Also, private equity funds tended to collect assets within specific sectors. We could say that this is another way in which the 'crisis times' have impacted the M&A markets. Not only do buyers pay more attention to how much money they are spending but also how it is being spent. Very often, the main goal behind the transaction is that, not only will buyers want the target company to expand the scale of their current activity, but also to make significant savings in operating costs.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**SIKORA:** Of course, thorough due diligence is, and should always be, an obligatory and crucial part of the transaction. There are more than enough examples that demonstrate how improperly conducted due diligence can impact the economic goal behind the transaction, in many cases making the further conduct of business activity impossible. For instance, shortly after the transaction is completed it may turn out that the legal title of key assets of the target is threatened, or tax arrears are so high that the target may be on the way to bankruptcy, and thus be subject to insolvency proceedings.

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**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN POLAND? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**SIKORA:** As we are still in the middle of 'crisis times' in the eurozone, which have cast a pall over the transaction market, it is crucial for financial institutions providing financing for transactions to ensure appropriate levels of security. Therefore, the key issue between the financing institutions and the acquiring party is to provide appropriate safeguards which would not impact the target in a way that obstructs commercial activities. The tax optimisation of the transaction should also be considered by the acquiring party, as despite the constant adverse changes to our legislation there are still certain ways to reduce the fiscal costs of the transactions.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**SIKORA:** Local market knowledge should never be an underestimated factor of any deal. However, in many cases the acquiring party is well prepared even before the deal is completed. Very often, assessing the possibilities of further development of the business is the first step of the procedure, and an economical one. It must also be stressed that often acquirers decide not to release managers from their duties upon completion of the transaction. On the contrary, it is very common that acquirers seek guarantees that the incumbent managers, who possess the relevant local market knowledge, will fulfil their duties for a certain period of time in order to advise the business.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**SIKORA:** This depends very much on the type of transaction and, of course, the type of target. There are many obstacles that can be encountered in the course of the transaction. For instance, the time period scheduled for due diligence may need to be drastically extended as new, relevant issues can come to light during the process. On the other hand, negotiations with financing authorities may drag on if the authority in question does not accept the structure of the transaction or the level of the offered security. It must also be stressed that, in some cases, the acquiring party will be required to deal with trade unions and negotiate the privileges to be granted to the employees by the new owner.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN POLAND GOING FORWARD?**

**SIKORA:** In force since 27 October 2011, the latest amendments to the Polish Code of Commercial Companies – implementing the provisions of the Directive of the European Parliament and of the Council 2009/109/EC, amending the provisions of the Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC as well as the Directive 2005/56/EC – will certainly affect transactions. The Act has already affected a number of transactions since its inception. By virtue of the Act, the amendments in the provisions of the Commercial Companies Code, regulating the mergers of joint stock companies, cross-border mergers of joint-stock companies, and the division of companies were introduced – allowing parties to take advantage of time and cost saving procedures. This mechanism will surely stimulate the transactions market.

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Paweł Sikora is a senior associate at KKG Kubas Kos Gaertner. Mr Sikora has extensive experience in the fields of companies law and bankruptcy law. He concentrates on projects connected with subjective changes of enterprises, for example, mergers, acquisitions, and other forms of restructuring or bankruptcy. He also specialises in conducting court proceedings, mainly in commercial cases.





# CHINA

**LAWRENCE CHIA**  
DELOITTE TOUCHE TOHMATSU

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN CHINA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**CHIA:** Through 2012, dealmaking in China remained robust, with the market actually witnessing the largest annual number of deals by volume since 2007. The bulk of this activity was driven by a renewed bout of domestic consolidation, spearheaded by the continued implementation of China's 12th Five Year Plan, which is focused on shifting the economy's wider technological frontier upwards and outwards via the promotion of what are called the 'seven strategic sectors'. Foreign M&A investment into China, however, was lacklustre, most likely as a direct result of the eurozone sovereign debt crisis. Nonetheless, this apparent lack of inbound activity did not deter Chinese buyers from purchasing foreign assets. On the contrary, it most likely aided overseas investment from China, with outbound M&A activity hitting record levels in 2012.

**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**CHIA:** From a local perspective, the strategic appetite to initiate a deal in China has risen, primarily because as the wider Chinese economy has developed, so business owners and leaders have increasingly explored inorganic growth options in order to grow market share. This is evidenced by the increased proportion of domestic and outbound transactions that took place in 2012. Potential outbound bidders are also looking to acquire technological best practices via M&A routes, as well as purchase reputable brand names overseas in order to introduce them back to an increasingly affluent Chinese middle class consumer. However, it is perhaps a different story when looking at private equity-backed investments, with both wider financial uncertainty and a raft of new legislation emanating from Chinese regulators causing China-focused general partners a lot of pain over the course of 2012.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**CHIA:** First, investors should bear in mind that conducting an M&A deal is a complex process, requiring the interaction of a large number of highly-skilled teams to cover a diverse range of issues including taxation, legal and accounting jurisprudence, as well as acquisition financing, in order to succeed. Managing these disparate workflows is therefore of paramount importance during any transaction. Any buyer should also clearly define goals for the transaction, as well as ways to measure success. Beyond this, proper preparation can smooth the way for effective execution. This is particularly important in post-merger integration planning: the acquiring firm must think through the integration process long before the deal is closed. Management, HR, IT, and finance issues must also be considered, as well as broader strategic, competitive, and business cycle concerns. Further, in the execution stage, measuring and mitigating deal risk is paramount. Buyers must conduct extensive primary data research on the ground as desk-based research can be insufficient or inaccurate.

**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN CHINA? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**CHIA:** Deals conducted by Chinese state-owned enterprises are typically funded by the government and, as a result, face few financial constraints. However, securing deal financing in China, especially for private M&A transactions, has traditionally been difficult simply because Chinese banks don't provide avenues for acquisition financing to private sector companies in order for them to undertake M&A transactions. However, the fact that the authorities are looking to deepen the country's financial markets as well as continue to liberalise the RMB, suggests that, with time, financial tools will increasingly be made available to help private businesses secure the funding that they require to undertake transactions.



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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**CHIA:** Local knowledge is always of paramount importance when looking to transact, and even more so in today's fragile macroeconomic environment. It is therefore important to recognise that individual market conditions may vary, and volatility or weakness in one region or country may not be the same in another. It is therefore imperative that thorough on-the-ground research from primary sources in the target market is conducted, especially in countries with more opaque regulatory processes. Moreover, once a target has been identified, a comprehensive due diligence process can help minimise unforeseen risks and close loopholes that may result from the buyer's unfamiliarity with the local marketplace. Due diligence should be broader than simple financial and tax due diligence. It should also include HR, IT and integrity due diligence exercises, all of which will undoubtedly smooth the way towards a successful transaction outcome.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**CHIA:** Common challenges that face Chinese acquirers during the post-merger integration (PMI) process are often associated with direct, often material, changes that must be made in order to allow the bidding and target companies to operate as one entity. This includes the upgrading of manufacturing facilities and R&D capabilities, and the streamlining of sales workflows, among other processes. These are all necessary in order to capture the maximum amount of synergies set out in the joint business plan. This also includes IT system upgrades to ensure the new entity's smooth transition into a part of the acquiring company, as well as changes to employee compensation schemes to ensure stability. Finally, the two businesses should also examine the possibility of integrating other service centres such as the Finance, Procurement and PR departments.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN CHINA GOING FORWARD?**

**CHIA:** China's ongoing process of financial liberalisation has meant that a number of developments took place over 2012 within the wider regulatory space, not least following the recent promulgation of Circular 59, which, in short, will give foreign investors looking to buy Chinese assets much more leeway in terms of opening foreign exchange bank accounts. Previously, approval from China's State Administration of Foreign Exchange was required in this regard, but this is now no longer required. Moreover, the recent decision to impose a US\$57m fine upon a cartel of LCD TV manufacturers including Samsung, LG and Chimei Optoelectronics for fixing local prices between 2001 and 2006, is a good indication that Chinese regulators are getting serious on price-fixing.

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## LAWRENCE CHIA

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Lawrence Chia has over 25 years of experience with Deloitte Touche Tohmatsu. He began his career with Deloitte UK working within audit in the financial services industry. In 1998, Mr Chia assumed responsibility for the China firm's Mergers & Acquisitions activities, and he is currently the managing partner of Deloitte's Financial Advisory Services in both China and Asia Pacific. Mr Chia also sits on Deloitte's Global Executive Committee for Financial Advisory Services, representing the Asia Pacific region. Recently he also became the global co-chairman of Deloitte Chinese Services Group, a platform for serving Chinese corporations globally.



# INDIA

**KARTIK GANAPATHY**  
INDUS LAW

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN INDIA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**GANAPATHY:** Cross border M&A activity in 2012 remained relatively subdued. We noticed that, though the number of cross-border transactions reduced, domestic M&A activity, including internal restructuring exercises, continued steadily throughout the year. Published reports seem to indicate that the aggregate value of M&A transactions – both domestic and cross-border – was up by approximately 22.6 percent compared to 2011. The industrial, chemical, retail and consumer products, technology, financial services, mining and energy sectors were the most active of 2012. Some of the major deals of the year include the acquisition of US-based Houghton International by Hinduja Group firm Gulf Oil for \$1.045bn and the acquisition of Decision Resources Group, a US-based company in the healthcare information segment from Providence Equity Partners by Mumbai-based Piramal Healthcare for approximately \$635m.

**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**GANAPATHY:** The appetite of strategic and financial buyers for M&A appears to be sensibly balanced. However, potential buyers seem to be apprehensive primarily due to regulatory uncertainty and policy paralysis. With the provisions in the 2012 budget, tabled before parliament, introducing clauses to tax indirect investments retrospectively it appears that foreign investors are a little more anxious about cross-border M&A involving India. The telecom sector is also facing rough weather and low transaction volumes after a recent Supreme Court ruling cancelled as many as 22 spectrum licences. While identifying a prospective target, the key aspects that buyers appear to be looking at are the growth prospects of the business, consolidation of the investment, leveraging economies of scale, intellectual property and the expansion of markets. The availability of exit opportunities is also a significant consideration.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**GANAPATHY:** At the inception of a transaction it is extremely important to analyse the target market, formulate an acquisition strategy and identify the right target. In order to reduce risk, all the time spent on proper transaction structuring is time well spent. A thorough due diligence is certainly critical to such transactions. We have seen that, in addition to the standard financial and legal diligence, it is increasingly common for acquirers to conduct technology and business diligences. Escrow arrangements, holdbacks, earn-outs and reverse vesting arrangements continue to see play as risk mitigation strategies. It remains common to see representations, warranties and indemnities being obtained from promoters and targets, and, in some cases, significant shareholders of closely held companies. Post-acquisition integration planning and implementation also remains extremely important to mitigating risk in a deal.

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**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN INDIA? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**GANAPATHY:** Financing for the real estate sector, leveraged buyouts and management buyouts remain somewhat hard to find. However, with the growth of non-banking finance companies and the availability of non-traditional sources of funds, there seems to be some loosening of financing flow for M&A transactions. There is no bright line test to determine an optimal capital structure, however we have seen lower debt-equity ratios being more attractive, and highly leveraged businesses being less ardently pursued. Compulsorily convertible instruments remain the instruments of choice in India.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**GANAPATHY:** Knowledge of the local market is the key to cross-border acquisitions. In several instances, acquiring companies expect that their detailed knowledge of their home market will translate directly to the target market. Failure to understand the culture, regulatory structure or competitive environment of the target market is a large risk in cross-border transactions. Knowledge of customer and supplier relationships, management and employee relations, and political and economic stresses in the target market are also essential for a successful acquisition. We also notice an increased focus on competition law issues and anti-corruption laws, which require local market knowledge.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**GANAPATHY:** Acquirers sometimes fail to realise that integration requires not only extensive planning, but also persistent and unrelenting execution and follow through. The challenges in integration planning often manifest themselves in information system integration, human resources integration, policies and procedures integration, and being able to effectively achieve operational cohesiveness. Softer aspects, which include time-zones – for call and meeting scheduling; cultural issues, particularly around communication and handling people; and language – also appear to be obstacles that need to be overcome from an integration perspective.

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**Q** COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN INDIA GOING FORWARD?

**GANAPATHY:** Changes in the foreign direct investment regulations, such as allowing 51 percent FDI in multi-brand retail, 100 percent FDI in single-brand retail, and opening up the aviation sector, seemed designed to improve domestic and inbound M&A activity. However, political uncertainty with general elections due in 2014, action by the regulators on the Vodafone tax issue, and the spectre of rampant corruption being exposed continually in the national press, appear to be suppressing cross-border transactions. The roll back of the General Anti-Avoidance Regulation (GAAR) provisions until April 2016, introduced in India under the new Direct Tax Code to counter aggressive tax avoidance schemes, could also have an impact on M&A activity from a cross-border perspective.

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Kartik Ganapathy has significant experience in cross-border M&A, PE investments and joint ventures. He also advises clients with respect to debt investments and corporate and securities law. Mr Ganapathy currently serves as Regional Representative for Asia, in the Securities Law Committee of the International Bar Association. He has been listed as a 'Recommended' lawyer in Private Equity / Venture Capital by the Practical Law Company; a 'leading individual' in Corporate, M&A and Private Equity in Asia by Chambers & Partners; and one of the top 25 'second generation' Indian Corporate Lawyers by RSG Consulting in its first India Report 2010.



# MALAYSIA

**GEORGE KOSHY**  
ERNST & YOUNG

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN MALAYSIA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**KOSHY:** Malaysia has seen an increase in M&A activity compared to 2011 with total reported inbound and outbound M&A activity amounting to US\$17.4bn. This is due to favourable macroeconomic conditions, a constructive regulatory environment and various economic transformation programmes currently undertaken by the government. As regional consolidation sectors and specialisation become important, those sectors seeing the most activity are the financial services, transportation and the energy sector. Malaysian companies have also exhibited a healthy appetite for outbound M&A deals. Amongst some of the headline-catching deals are SapuraKencana's bid for Norway-based SeaDrill Limited's rig business, and the bid for Stansted Airport in the UK by a consortium made up of Malaysian Airports Holdings Bhd and YTL Corp Bhd.

**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**KOSHY:** There has been an uptake in the participation of both strategic and financial buyers due to favourable economic conditions which have increased their earnings. Strategic buyers have generally been active in the financial services, energy and utilities sectors. Of note are Petroliam Nasional Berhad's battle for Progress Energy Resources Corp and AIA Group Limited's acquisition of ING Management Holdings Sdn Bhd., valued at US\$5bn and US\$1.7bn respectively. Notable financial buyers such as Navis Capital and Ekuinas have been active in the education, leisure, and oil and gas sectors. The fundamental aspects of a business for each buyer may vary. Strategic buyers are mostly looking to consolidate their position and expand their market share through acquisition, which is quicker than organic growth. Financial buyers' investments start with the exit in mind. Hence, they are more focused on increasing and maintaining the value of portfolio companies.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**KOSHY:** Buyers can seek exclusivity in their negotiations or use a 'locked box' approach whereby the equity price is calculated based on a defined historical balance sheet date agreed by the parties and which does not change. This mechanism minimises risk and provides greater security over the price that is received on completion, and removes the need for the post-completion 'true-up' process which is often disputed. Due diligence, however, will always remain an important and indispensable part of the transaction process. Thorough due diligence requires a lot of resources, and should be regarded as a transaction cost and a mechanism to understand the target's business. The sector of the target and the buyer's assessment of the business risks it faces will be highly relevant in determining whether a complete and thorough due diligence process is needed.

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**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN MALAYSIA? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**KOSHY:** Malaysia has been declared the IPO capital of South East Asia for 2012. It will likely continue to be so, with its bond market continuing to grow, together with an active equity market. It has recently introduced a new capital market guideline which allows public-listed companies to sell bonds to retail investors. The guideline has reinforced the appeal of Malaysia's capital markets. The record level of funds raised in 2012 attests to that. The year saw US\$48.6bn raised, an 89 percent increase compared to the US\$25.7bn raised in 2011. Accordingly, this should ease fund raising for M&A deals. The optimal capital structure depends on a number of variables which include tax considerations, financing requirements and the capital circumstances of the target.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**KOSHY:** Local market knowledge is paramount when it comes to closing a deal in any environment. Local market knowledge includes not only knowledge of local corporate, securities and financial laws, but also local business customs and politics. A sizeable number of Malaysian businesses are entrepreneur-driven and, as such, dependent on the networks of the existing management team which may be reinvented with the new management in place. A strong understanding of the local business environment is important to facilitate a thorough analysis that helps to ensure the smooth execution of deals.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**KOSHY:** Early integration planning is vital to deliver the benefits of a merger since it provides a clear strategic focus for the buyer in terms of the potential synergy that it strives to benefit from. Often, the main obstacles faced by firms in Malaysia in a post-merger situation are the existing employees' reluctance to change and challenges in integrating different management information systems. Having a plan in place for integration should help mitigate the issues.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN MALAYSIA GOING FORWARD?**

**KOSHY:** Malaysia introduced a general competition regime in June 2010 with the enactment of the Competition Act 2010. The Competition Act took effect on 1 January 2012, applying to certain M&A transactions, although the current guidelines do not clarify to what extent M&A activity might be caught up under the general competition law regime and no cases have been tested. It is expected that further guidelines will be issued by the Competition Commission with specific details on

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the application of the provisions of the Competition Act. The Securities Commission Malaysia (SC) has also issued an expanded Practice Note, addressing the requirements on independent advice circulars regarding takeover offers for public-listed entities. Under the enhanced Practice Note, advisers are required to consider 'fair and reasonable' as two discrete terms in making a recommendation on an offer. In order for an offer to be 'fair', the offer price must be at least equal to, or greater than, the value of the securities that are the subject of the takeover offer. Advisers are also required to take into consideration all relevant factors in evaluating whether an offer is 'reasonable'. The overall result will be higher disclosures which serve to provide more transparent and clearer bases to justify a recommendation on the offer.

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## GEORGE KOSHY

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George Koshy has almost 30 years auditing and advisory experience covering a wide range of audit and advisory engagements in various industries. The nature of these advisory engagements includes provision of advice relating to mergers and acquisitions, due diligence reviews, valuations, financial modelling and debt restructuring. Mr Koshy has assisted companies in listings (IPO) on Bursa Malaysia Securities Berhad, and has also been appointed as special administrator for distressed companies. He is a member of the Malaysian Institute of Accountants and Malaysian Institute of Certified Public Accountants, and has served on sub-committees of the Malaysian Accounting Standards Board in reviewing and developing accounting standards.





# SAUDI ARABIA

**KEVIN T. CONNOR**  
SQUIRE SANDERS

**Q HOW WOULD YOU DESCRIBE M&A ACTIVITY IN SAUDI ARABIA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE DRIVING DEALS IN THE CURRENT MARKET? ARE CERTAIN SECTORS MORE ACTIVE THAN OTHERS?**

**CONNOR:** According to a report from Ernst & Young, overall M&A deal value in the MENA region grew by more than 40 percent in 2012 to nearly \$45bn, compared to \$31bn in 2011. The significant increase was driven in large measure by businesses restructuring their capital in 2011 and positioning themselves to finance and close deals. Countries ranked highest in terms of announced deal value were the UAE at \$13.5bn, followed by Qatar at \$11bn and Kuwait with \$4bn. The countries with the largest number of reported acquisitions in 2012 were the UAE with 77 deals, Qatar with 48 deals and Saudi Arabia with 33 deals. Favourable interest rates, inflation and an overall improvement in market conditions were the other main factors driving deals in the current market. Telecommunications, oil & gas, professional services, food and beverage, and consumer products were the most active sectors. In Saudi Arabia, increased competition for revenue growth is leading to consolidation across many sectors.

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**Q HOW WOULD YOU CHARACTERISE THE APPETITE OF STRATEGIC AND FINANCIAL BUYERS FOR M&A? BROADLY SPEAKING, WHAT FUNDAMENTAL ASPECTS OF A BUSINESS ARE THEY LOOKING FOR WHEN IDENTIFYING A PROSPECTIVE TARGET?**

**CONNOR:** Saudi Arabia is one of the world's fastest growing markets. Accordingly, appetite for assets in the Kingdom is high. Buyers are looking to the Kingdom to drive revenue growth, especially through product diversification, growth of existing product lines and enhanced market share. Other factors include achieving economies of scale for operations, accessing complex and difficult technologies, and obtaining tax advantages. Firms also look to merge horizontally with suppliers and logistics firms to increase productivity and profits. The attractiveness of real revenue growth prospects in Saudi Arabia continues to outweigh transaction risk for strategic buyers.

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**Q WHAT STEPS SHOULD A BUYER TAKE TO MINIMISE TRANSACTIONAL RISK IN A DEAL? IS THOROUGH DUE DILIGENCE AN INDISPENSABLE PART OF THE PROCESS?**

**CONNOR:** The first step is to educate the business and legal teams on the critical issues which will drive success – or failure – in Saudi. Simply stated, buyers must know the market, including the business culture as well as the law, and be able to identify all potential risks. Due diligence is a must. Advanced planning and detailed due diligence will help identify risks and minimise potential complications that will require attention during the transaction and later during integration. A buyer needs to develop relationships with many stakeholders, including the government, and those who influence decisions. Culturally, you have to be compatible, or have agents who act on your behalf who are familiar with the culture and the way business is done in Saudi and the MENA region. Depending on the level of trust and the willingness to collaborate, contract negotiations can be very smooth or be difficult and protracted. The key is to be prepared and knowledgeable.

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**Q HAVE YOU SEEN AN IMPROVEMENT IN THE BANKING AND FINANCE ENVIRONMENT TO SUPPORT M&A DEALS IN SAUDI ARABIA? WHAT IS YOUR ADVICE TO ACQUIRERS ON DESIGNING AND NEGOTIATING THE OPTIMAL CAPITAL STRUCTURE?**

**CONNOR:** Overall, investment banks saw strong growth in the MENA markets in 2012. This was evident by the significant increase in numbers of deals closed. Buyers need to understand local conditions and whether or not a local partner is required. Ultimately, the capital structure must make sense for the acquiring entity such that the target is not overly burdened with debt. In many cases, minimum capital requirements for registration and licensing will drive capital structure. Equipment, staffing development and operational needs will also come into play.

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**Q HOW IMPORTANT IS LOCAL MARKET KNOWLEDGE WHEN IT COMES TO CLOSING DEALS IN A TOUGH ECONOMIC ENVIRONMENT?**

**CONNOR:** The MENA region is historically, culturally and economically diverse, and includes the oil rich gulf economies as well as resource scarce countries like Egypt, Morocco and Yemen. Local knowledge is not an ancillary aspect of success – it is a fundamental prerequisite.

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**Q MOST EXPERTS AGREE THAT EARLY INTEGRATION PLANNING IS VITAL TO DELIVERING THE BENEFITS OF A MERGER. WHAT ARE THE MOST COMMON OBSTACLES THAT ARISE IN THIS CONTEXT?**

**CONNOR:** There are several common problems that can spoil merger success, ranging from having no consistent day-one strategy, and not managing price and synergy expectations, to poor communications and an inability to surmount cross-cultural barriers. Political considerations may further complicate these deals. Buyers should have an integration plan which is sensitive to local cultures and practices. The foreign buyer must understand the local market and all relevant stakeholders, including government and regulatory authorities, employees, suppliers and customers.

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**Q COULD YOU OUTLINE ANY RECENT DEVELOPMENTS IN M&A REGULATIONS THAT WILL AFFECT TRANSACTIONS IN SAUDI ARABIA GOING FORWARD?**

**CONNOR:** Saudi Arabia has implemented various programs to improve the business environment, provide comprehensive services to investors, and foster investment opportunities in key sectors of the economy. For example, Saudi Arabia has established a bond market for debt securities. The Department of Zakat and Income Tax issued a ministerial resolution regarding the avoidance of double taxation. The country has also signed a number of tax treaties with other jurisdictions which provide for tax credit or exemption for taxes paid in Saudi Arabia. There are also reduced withholding tax rates for interest and royalties in some of the treaties.

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## KEVIN T. CONNOR

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Kevin Connor is a partner at Squire Sanders and serves as the coordinating partner for the firm's Middle East and North Africa (MENA) practice. He has advised a broad range of companies and foreign investors on various aspects of international business law, particularly in acquisition-related matters, energy, infrastructure projects, commercial disputes and finance. He has also assisted dozens of companies over the years with FCPA issues in emerging markets, in Central and Eastern Europe as well as in the Middle East.

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