Recent Trends in M&A in Asia

ABA Section of International Law
2016 Fall Meeting – Tokyo

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Kaye Naoko Yoshino (Paul, Weiss, Rifkind, Wharton & Garrison LLP)
Summary of the Committee’s session in Tokyo – Recent trends in M&A in Asia

Recent trends in Asian M&A - this subject was very topical to discuss in Tokyo which is one of the significant M&A centers of Asia. The beginning of the session was chaired by Mr. Takashi Toichi of Anderson Mori & Tomotsune, Tokyo. Mr. Toichi explained that the session would be discussed from three perspectives; Asia to US/Europe, US/Europe to Asia, and Asia to Asia.

During the session, recent trends in each market were explained by Mr. Eng Leng NG from Dentons Rodyk & Davidson, Singapore, by using a PowerPoint presentation depicting very recent figures. He explained, among others, about the increasing Asian investments in ASEAN countries, by Japanese and Chinese investors, and some of the key industries where these investments were made.

Mr. Tao Guo from JuneHe, Beijing, explained about the increase of Chinese investors and supported his statement with statistics and relevant background. He discussed about applicable Chinese regulations for outbound investments by Chinese investors. He also spoke about challenges that investors from Western countries are facing regarding Chinese antitrust law and obtaining other regulatory approvals, and also about how Chinese companies seek investment into Japanese and ASEAN countries.

Ms. Kaye N. Yoshino from Paul Weiss, Tokyo, explained about Chinese companies facing increased regulatory scrutiny abroad and uncertainties surrounding CFIUS creating a disadvantage for Chinese investors because of which, they are required to offer higher price, higher termination fee and escrow, etc. in order to enter foreign markets. She also mentioned that Chinese companies prefer to carry out acquisitions in Europe than in the US because of the real and perceived difficulties with CFIUS. In addition, she shares her experience about difficulties Asian companies are facing regarding investments in India, from tax exposure and negotiation perspectives.

Ms. Mitsuru Claire Chino, Executive Officer and General Counsel of Itochu Corporation, Tokyo, shared her experience as in-house counsel of a leading Japanese trading house. She empathized the importance of due diligence, especially integrity due diligence in supply chain management etc., and about the increasing trend of many jurisdictions to require pre-merger notification filings in an extra-territorial manner. She also spoke on the increased importance of due diligence on anticorruption based on the OECD and JFBA guideline, and also from corporate governance perspectives.

To summarize the event: panelists had lively discussed regarding the increase of Chinese and other Asian country investors investing heavily in US/Europe and the arising legal issues relating thereto, including CFIUS. They even discussed the legal and cultural barriers investors from US/Europe and even some Asian countries were facing with respect to the recent trends emerging in M&As in Asia.
Asia to US/Europe
Asian outbound to US and Europe by deal count

- **2013**: Europe - 276, US - 165
- **2014**: Europe - 313, US - 251
- **2015**: Europe - 395, US - 244
- **H1 2016**: Europe - 204, US - 148
Asian outbound to US and Europe M&A – industry of target for the full analyzed period

Based on total deal count
Asian outbound to US and Europe M&A – industry of target by Asian

Based on total deal count
Asian outbound to US and Europe M&A – location of buyer for the full analyzed period

- China: 23.0%
- Japan: 17.0%
- Conglomerates: 13.0%
- Singapore: 11.0%
- Hong Kong: 13.0%
- Indian Sub-Continent: 9.0%
- South Korea: 5.0%
- Taiwan: 3.0%
- Malaysia: 2.0%
- Thailand: 1.0%
- Philippines: 1.0%

Based on total deal count
Asian outbound to US and Europe M&A – location of buyer H1 2016 v 2015 YTD

Based on total deal count
Asian outbound to US and Europe

Based on total deal count
Asian outbound to US and Europe

- Increase of Chinese Buyers with statistics and its background

- Statistics
  - “For the first six months of 2016, China outbound M&A deals reached US$ 111.6 billion, surpassing 2015’s record” - Reuters

- Background
  - China’s 13th Five Year Plan
  - One Belt, One Road
  - Asian Infrastructure Investment Bank
  - Free Trade Zones
  - Regulatory
Asian outbound to US and Europe

• Applicable Chinese regulations for outbound investments by Chinese buyers.

• New Regulatory Channels: Approvals to Filings

• “Special Offers”
  ➢ QDII
  ➢ QDLP
  ➢ QDIE
  ➢ QDII2
Asian outbound to US and Europe

- Recent Trends

- Asian Companies Making Acquisitions in the U.S.: Some Areas of Focus
  - Regulatory Considerations
    - An example: CFIUS
    - Home country – e.g., SAFE in China
  - Financing Considerations
  - Deal Certainty Considerations
    - Reverse Breakup Fees and Escrows
Asian outbound to US and Europe

- Rise of the extra-territoriality of law
  - Anti-bribery legislation (FCPA, UKBA)
  - Anti-trust (EU regime)

- FCPA Guideline (2012)
  - Importance of due diligence (integrity)
  - Traditional method of contractual recourse insufficient
  - Difficulty in analyzing the due diligence results
  - Post-merger integration
US/Europe to Asia
US and Europe inbound M&A to ASEAN countries

- European buyers have a strong appetite for ASEAN targets, particularly in Industrials, consumer, media, info tech and materials.

- In 2015 US investment declined but this is now appearing to trend up, with European investment in the region also trending up.

- Both European and US investments into the ASEAN countries as at H1 2016 are almost on par with the full year 2015.
US and Europe inbound to ASEAN countries
M&A – location of target – H1 2016 v 2015 YTD
US and Europe inbound to ASEAN countries
M&A – industry of target by Europe or US buyer

Based on total deal count 2015 – H1 2016
US and Europe inbound to ASEAN countries
M&A – location of target for the full analyzed period

- Singapore, 40.0%
- Malaysia, 18.0%
- Vietnam, 13.0%
- Indonesia, 12.0%
- Philippines, 7.0%
- Thailand, 7.0%
- Cambodia, 2.0%

Based on total deal count
US and Europe inbound to China

- Statistics

- Challenges

- Chinese anti-trust law
  - Basic Requirements
  - Case Study: Uber/Didi

- Regulatory Approvals
  - Approvals to Filings
  - New Foreign Investment Law
US and Europe inbound to China

- Increased importance of pre-merger notification in the PRC

- Issue of transactions outside the PRC
  - Issues surrounding bidding projects
  - Issues surrounding parties in joint control
US and Europe inbound to other Asian countries

- Recent Trends

- U.S. Companies Making Investments in Japan: Some Observations
  - Cross-Border Transactions by Companies in Regulated Industries
Within Asia
Asia Inbound M&A to ASEAN countries

- Chinese investment in the ASEAN countries is only 1-2% of the total investment in the region.
- Japanese investment in the region is 3-5% of the total investment in the region.
- The vast majority of investment in the region comes from Singapore and the South East Asia region.
- Chinese buyers in the region has increased by 30% in H1 2016, but overall they remain one of the less frequent buyers.
Asia inbound to ASEAN countries
M&A – industry of target

<table>
<thead>
<tr>
<th>Industry</th>
<th>Deal count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automotive</td>
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<tr>
<td>Banks</td>
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<tr>
<td>Consumer</td>
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<tr>
<td>Diversified Financials</td>
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<td>Healthcare</td>
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<td>Info Tech</td>
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<td>Insurance</td>
<td>160</td>
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<td>Materials</td>
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<td>Media</td>
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<td>Real Estate</td>
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<td>Retailing</td>
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<td>Telecommunication Services</td>
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<tr>
<td>Utilities</td>
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</tbody>
</table>

Based on total deal count 2015 – H1 2016
Asia inbound to ASEAN countries
M&A – location of target for the full analyzed period

Based on total deal count
Asian domestic M&A by deal count

- The reference to ‘domestic’ means domestic within the Asia region, so Chinese ‘domestic’ transactions could involve a buyer or seller from another country in the Asian region.
- Data based on deal count.
- Domestic M&A in Asia continues to climb year on year.
- China, Japan, India, Hong Kong and Singapore are the largest domestic buyers, in comparison the top targets also include South East Asia.
- Real estate and industrials are top targets industries.
Asian domestic M&A – industry of target for the full analyzed period

Based on total deal count
Asian domestic M&A – industry of target H1 2016 v 2015 YTD

Based on total deal count
Asian domestic M&A – location of target for the full analyzed period

- China, 33%
- Japan, 17%
- Indian sub-continent, 11%
- South Korea, 11%
- Malaysia, 7%
- Singapore, 5%
- Hong Kong, 4%
- Thailand, 4%
- Indonesia, 3%
- Vietnam, 2%
- Philippines, 2%
- Taiwan, 1%

Based on total deal count
Asian domestic M&A – location of target H1 2016 v 2015 YTD

Based on total deal count
Asian domestic

- Japanese Anti-Bribery Law

- OECD criticism of Japanese Anti-Bribery Law
  - Movement towards personal jurisdiction
  - Treatment of facilitation payment
  - Revision of Guideline to Prevent Bribery of Foreign Public Officials (2015)
  - JFBA guideline on anti-bribery (2016)
  - Matter of group corporate governance (2014)
Asian domestic

- Investments by Chinese companies in Japanese and ASEAN countries.

- Current Status

- More on “One Belt, One Road”
Asian domestic

- Recent Trends

- Japanese Companies Investing in the Asia: Some Observations
  - Use of Representation and Warranty Insurance
  - Importance of Anti-Corruption Due Diligence
Thank you