DIAZ REUS ATTORNEYS & COUNSELORS In the News

M&A IN THE MIDDLE EAST: BALANCING RISKS, REAPING REWARDS

January 12, 2012 by Arti Sangar

Fueled by tremendous growth potential and an increasingly progressive regulatory environment, the Middle East is fast becoming a hotbed of M&A activity. Today, for example, the UAE is experiencing an upsurge in cross-border merger and acquisition activity. As a result, dealmakers throughout the Gulf Cooperation Council, including Bahrain, Saudi Arabia, Oman, Qatar, and Kuwait, should be ready to strike while the proverbial iron is hot. As dealmakers survey the wealth of opportunities available in the region, they should be alert to certain trends particular to the Middle East. This article offers a brief overview of key issues to keep in mind as deals unfold.

Due diligence.

Comprehensive due diligence is critical to a successful deal. Keep in mind, however, that companies in the Middle East are generally not required to disclose as much information as their counterparts in the U.S. and Europe. Indeed, deal teams may be surprised to learn that UAE laws do not require as much disclosure as other jurisdictions. This, however, is changing. Although there is little history of corporate disclosure in the Middle East, some countries are taking steps to improve transparency and communication with foreign investors.

Foreign ownership restrictions.

Certain jurisdictions require a local partner with an ownership stake. For example, with the exception of branch and representative offices, every company established in the UAE must have at least one partner who is an Emirati national, who owns at least 51% of share capital. If the business involves a real-estate brokerage, 100% national ownership is required. Notably, these requirements are waived for companies established in free zones like the Dubai International Financial Centre. A company can establish its operations here without incurring the time and expense of locating and vetting a local partner.

Deal structure.

Careful thought must be given to the drafting of agreements. Any plan to assign control and profits must be thoroughly reviewed. This is especially important since different countries within the region may impose penalties for agreements that violate local laws. Investors must also have a well-planned exit strategy. It is common to have a formal agreement for significant transactions of any type, including acquisitions of shares in private companies. There is typically an initial agreement between the buyer and the shareholders, such as a memorandum of understanding, followed by a more complete share purchase agreement and a shareholders' agreement. There is also likely to be a confidentiality agreement and possibly an exclusivity agreement.

Regulatory compliance.

Before considering an acquisition in the Middle East, investors must determine if it is permitted by law. In most Middle Eastern countries, M&A deals can occur only with the prior approval of the relevant government authorities. Thus, acquisitions should always be conditioned upon securing official consent and the flow of funds should reflect this requirement. Escrow arrangements are therefore frequently the preferred option for managing the movement of funds. There are other regulatory issues to consider, such as key documents requiring court notarization. Once the documents are signed, they may need to be submitted to the appropriate authority to register the transaction. Parties based outside the jurisdiction will need to obtain the necessary powers of attorney in advance. In most cases, companies operating in the Middle East will require a trade license permitting them to carry out their specific business. In the case of an acquisition, the transfer of an existing license should be executed.

Financing.

The gradual relaxation of world credit markets will further drive M&A activity in the Middle East but investors will need to find other sources of funds as Western markets continue to restrict lending. Islamic financing offers once such option. Yet, investors may still face some challenges, including a lack of global consensus over the application of Sharia laws and higher transaction costs than those for conventional finance vehicles.

Employee Consultation.

There are no requirements for a company’s board to inform or consult its employees prior to a merger or acquisition. However, consideration should be given to requirements under labour law relating to minimum notice periods, holidays and end of service gratuities.

The M&A market in the Middle East is no longer in its infancy and the region's continued development will offer significant opportunities to investors. It is vital that any M&A strategy accounts for challenges that may arise as a result of local business laws and practices. Sufficient time and resources must be dedicated to ensuring that any cross-border venture is secure, legal, and profitable. Foreign investors looking to take equity stake in the Middle East should carefully consider the structure of a proposed deal from the outset, and then carry out a carefully planned, timed, and well-executed strategy.

Arti Sangar is a Partner at Diaz Reus & Targ, LLP where she heads the firm's Dubai office, located in the Dubai International Finance Centre. She concentrates her practice in the area of mergers and acquisitions and project finance. Miami-based Diaz Reus is a full-service international law firm. The Firm maintains offices in Orlando, Florida; Shanghai, China; Mexico City, Mexico; Frankfurt, Germany; Caracas, Venezuela; Bogota, Colombia; Buenos Aires, Argentina; and Sao Paulo/Belo Horizonte, Brazil. For more information, visit www.diazreus.com.