The Mergers & Acquisitions Review

Sixth Edition

Editor
Simon Robinson

Law Business Research

The Mergers & Acquisitions Review

SIXTH EDITION

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EDITOR'S PREFACE

Deal-making has remained on the agenda in the past year, although the first half of 2011 showed a stronger performance than the second half, which saw a significant fall in transactional activity. In the wake of continuing economic uncertainty, opportunities for acquisitions remain limited to companies and institutions on a stable financial footing. At the same time, corporates are beginning to focus on their core business and looking for ways to return value. Valuations remain favourably low for purchasers, and the prospect of striking a bargain makes cross-border M&A attractive for those who can afford it. While access to the loan market has remained difficult, cash-rich corporations have begun to swing the balance in their favour. Shareholder participation and a desire for control and accountability are on the rise, and an atmosphere of increased regulation, reform and austerity is building. We remain in a state of geopolitical flux, and these factors continue to complicate the global economic scenario. The period of widespread unrest in the Middle East and North Africa seems to be reaching a settled conclusion, although the situation in Syria (and possibly Mali and Sudan) is still volatile. A number of countries have seen fresh elections and a transition of leadership, including France and Russia, and a change of leadership in China is expected following the 18th National People's Congress this autumn, when the US presidential elections will also take place. The sovereign debt crisis and the ongoing uncertainty over the fate of the eurozone are further contributing to the lack of confidence in the markets.

All is not doom and gloom, however, and whereas the global picture remains difficult, there are signs of hope. The emerging markets have shown a persistent growth in outbound investment, spurred on by a desire to build a more prominent global presence and for the purpose of accessing new markets. European targets remain of interest to both US and Middle and Far-Eastern buyers. Inbound investment from the emerging markets into both Africa and Australia is on the rise, and this has strengthened activity in the energy, mining and utilities sector. The technology, media and telecoms sector has also shown signs of promise with some high-profile deals, and must be watched with interest in the coming year. There is hope that, as political and economic factors

stabilise, M&A activity will once more gather pace and momentum, and enter a new era of resurgence. We shall see.

Once again, I would like to thank the contributors for their continued support in producing this book. As you read the following chapters, one hopes the spectre of the years past will provide a basis for understanding, and the prospect of years to come will bring hope and optimism.

Simon Robinson
Slaughter and May
London
August 2012

Chapter 60

UNITED ARAB EMIRATES

DK Singh and Laena Rahim[1]

I OVERVIEW OF M&A ACTIVITY[2]

Over the past 12 months, activity in mergers and acquisition has picked up considerably in the UAE. The Arab world has undergone more upheaval in the past year than in the past several decades, and transitions and reforms are taking place in many countries in the Middle East and North Africa (MENA) region. Thus, other markets in the MENA region continue to be sluggish, but the UAE market has been robust, primarily as a result of political stability. In addition to the 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 construction, industrial and consumer products, and in the insurance and financial services sectors.

The UAE led the M&A activity in the MENA region by registering 40 per cent of the total M&A deals in the region.[3] The UAE topped with 49 deals followed by Saudi Arabia, the largest Arab economy, where 44 deals were registered. In terms of value also the UAE ranked highest with 40 per cent of total disclosed value, chased by Saudi Arabia at 29 per cent and Kuwait at 11 per cent.

Although the UAE escaped the turmoil that hit the Arab world in the recent months, it is fair to say that it has not been 'business as usual' in the UAE in 2011. The acquisitive process was modest and the aggregate deal valuation for 2011 was comparatively lower, not only because of the current political unrest in the MENA

1 DK Singh is a partner and Laena Rahim 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 Ernst & Young's industry update and Thomson Reuters Middle East Investment Banking Analysis.

region but also because of rising oil prices. Consequently, many investment bankers are currently revising their predictions for 2012 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 require as much disclosure as other more mature jurisdictions. This has made it challenging to do deals.

Despite the adverse economic and political factors, some significant mergers and acquisitions were completed in the past 12 months, including:

a sale of Abu Dhabi Commercial Bank's 24.9 per cent stake in RHB Capital Berhad to Aabar Investments PJSC for $1.9 billion;

b Abu Dhabi-based International Petroleum Investment Company's $4.9 billion in Cepsa, a Spanish oil company;

c Abraaj Capital's acquisition of Amundi's North African equity platform from Société Générale and Crédit Agricole and will manage the $161 million SGAM Al Kantara Fund and absorb the 11 member Amundi investment team;

d the sale of Abu Dhabi Commercial Bank's 24.9 per cent stake in RHB Capital Berhad to Aabar Investments PJSC for $1.9 billion;

e Centurion Investment's acquisition of a 40 per cent stake in UAE-based healthcare business NMC Healthcare, worth $1.089 billion;

f DP World's $1.5 billion sale of its Australian container terminal assets;

g Waha Capital PJSC's acquisition of a 20 per cent stake in AerCap Holdings N.V. for $376 million;

h Dnata's 100 per cent acquisition of Alpha Flight UK Limited from Milan-based Autogrill SpA for $158 million;

i Aabar's sale of a 3.22 per cent stake of Atlantia SpA to Sintonia SA (Italy), the Italian based infrastructure holding company of the Benetton family, for $426 million and its acquisition of a 4.99 per cent stake in UniCredti SpA for $2.48 billion through its wholly owned subsidiary Aabar Luxemborg Sarl;

j Majid Al Futtaim Group's acquisition of a 49 per cent stake in MAF Greater Union LLC from Amalgamated Holdings Ltd for $77.06 million;

k Abu Dhabi Commercial Bank's acquisition of the retail banking and SME business of Royal Bank of Scotland ('RBS') in the UAE for a total cash consideration equalling the net asset value of the RBS's UAE retail banking business plus $46 million; and

l Ithmar Capital's $272 million investment in Al Noor Medical Company, a healthcare operator.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The legal framework for M&A activity in the UAE is to be found primarily in the Commercial Companies Law No. 8 of 1984, as amended, ('the CCL'). The CCL is also supplemented by laws in the free zones where M&A activity is not restricted by the CCL.

There is also the Takeover Rules Module ('the TKO'), which applies specifically in the Dubai International Financial Centre ('the DIFC').[4]

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 one of the designated UAE commercial free zones[5]) to have at least 51 per cent[6] of its shares owned by a UAE national or a company wholly owned by UAE nationals.[7]

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 being undertaken; (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.

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 ('the ADX'), the Dubai Financial Market ('the DFM') or NASDAQ Dubai. The M&A regimes are generally the same for targets 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 ('the ESCA'). The various disclosure and reporting requirements are as prescribed by ESCA. In addition, the DFM and the ADX each 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 ('the TKO') that is part of the Rulebook administered by the Dubai Financial Services Authority, the financial regulator of the DIFC.

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

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

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

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

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

shareholders of the target to acquire their shares if the consideration payable is shares in the acquiror. 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.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Corporate law

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

A new CCL has been contemplated for several years now and last year the UAE Minister of Economy announced that there would be far-ranging reforms, particularly in relation to ownership and control of companies. The UAE cabinet has recently approved a draft of the much-discussed new CCL but we still have to wait for the draft to become actual law, and its approval will represent a significant step in the development of corporate law in the UAE. Removing the maximum foreign shareholding ceiling of 49 per cent will be a milestone development and should assist in opening up the UAE market for foreign investment. The new CCL has been eagerly anticipated although it is accepted that it is unlikely that the restrictions would be removed entirely in any particular sector.

An additional reform that is being considered is for shareholders in an LLC to be able to pledge their shares to third parties. This could potentially increase M&A activity, 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 take security over shares in an LLC by way of a pledge. This could potentially mark the beginning of a significant form of leverage which has never previously been seen in the GCC markets. It is widely reported that the new CCL will also impose a corporate governance framework on UAE companies in an effort to increase transparency as well as revise the annual accounting period.

The actual provisions of the legislation remain to be seen but any (partial) relaxation on foreign ownership restrictions would undoubtedly serve to benefit mainland

UAE's economy and boost M&A activity generally. The trend of reform in the UAE is progressive, but the implementation will only be known when it happens.

Nevertheless, since the law has not been finally ratified and published, we cannot be certain that the final version of the new CCL will include all or any of these far-reaching changes. It is encouraging that such fundamental developments in corporate law are being considered. If the draft does become law it should cement the UAE's position as the jurisdiction of choice for businesses looking to establish a presence in the Middle East. There is no doubt the new draft law liberalises many key aspects of company investment, and indirectly, opens the door to a new era of competitive strategy and market by those bold enough to take the plunge.

ii Takeover law

There are no specific ESCA proposals to reform takeover regulation at the present time but, again, any relaxation under the new CCL on the required UAE national ownership percentage from 51 per cent to below 50 per cent would presumably create more opportunities for M&A activity. For example, Reuters reported that the potential takeover of Aramex (by one of a number of notable global suitors) towards the end of 2010 hinged on the relaxation of the UAE laws on foreign ownership.

The capital markets in the UAE are still nascent. The expectation that the establishment of NASDAQ Dubai and DIFC would deliver greater depth to the capital markets has not come about. It is noteworthy that only two initial public offerings ('IPOs') have successfully listed in the UAE over the last two years, both of those occurring in 2011 and both of which were Abu Dhabi led (i.e., Insurance House for $18 million and Eshraq Properties for $225 million).

In January 2011, NASDAQ Dubai released its new Listing Rules for consultation, the broad aim of which is to make it easier to list and to improve liquidity in its market. It is hoped that the new rules will help attract local businesses and other small-to-medium enterprises while maintaining international regulatory standards.

However, on 1 October 2011 the Official List and associated Listing Authority responsibilities transferred from NASDAQ Dubai to the Dubai Financial Services Authority ('the DFSA'). Under this framework, the DFSA is now responsible for admission to the Official List while NASDAQ Dubai has responsibility for admission of securities to trading. NASDAQ Dubai will introduce Admission and Disclosure Standards ('ADS') to govern those activities. NASDAQ Dubai has issued a Consultation Paper to facilitate public comment on the proposed ADS. This framework supersedes the proposal for new listing rules that was released by NASDAQ Dubai for consultation in January 2011; those proposed rules will therefore not come into effect. The proposed ADS have been streamlined to align with the DFSA's rules and include fewer eligibility requirements than those proposed in January 2011, thereby broadening the range of companies able to gain admission to trade on NASDAQ Dubai. Once implemented, the ADS will replace the current Issuers and Securities Rules. The consultation period ended on 5 March 2012, and at the time of writing the ADS have not yet become effective. While the final version remains to be seen, the ADS reflects a concerted and coherent effort by NASDAQ Dubai to refine and develop its listing rules and process in order to attract capital and boost liquidity on the exchange.

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, is the restrictions on foreign ownership referred to above. In addition, the majority stakes in many UAE companies are controlled by governments or families that are often reluctant to sell their stakes or give voting rights or representation on their board to foreign shareholders. 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 $10.4 billion annually between 2010 and 2014. Projections are that foreign direct investment in the UAE will reach $13.5 billion by 2014 compared with $6.2 billion in 2010 and $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 30 across a range of industries). The free zones are areas 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. It was reported in late 2010 that the total value of foreign direct investment through UAE free zones has reached $73 billion.[8]

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 and from historic ships to budget hotels.

The UAE has diversified its investment portfolio in recent years by investing into 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 several different types of foreign companies.

8 Gulf News, 3 November 2010.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Over the past 12 months, financial services (particularly banking), health care and telecommunications were areas of focus for both domestic and cross-border M&A activity.

An example is, in July 2010, Abu Dhabi Commercial Bank ('ADCB') acquired RBS' retail banking business in the UAE. This was the first time a UAE bank had bought out an international bank's local franchise and was deemed by ADCB's CEO as a historic milestone for the UAE banking industry. In the current economic climate, the banking industry continues to be the most important sector in terms both of volume and value, the key drivers being consolidation and distress.

Health-care transactions have surged, too, as a result of the facts that it is an area that is deemed to be lacking and that health-care operators are not as exposed to the effects of the financial crisis. These facts coupled with the requirements of an ageing population mean it is a sector that is ripe for further investment. The stellar transaction of this year was the acquisition of a 40 per cent stake in New Medical Centre by Centurion Investments for around $1 billion.

In the telecommunications sector, there has been a flurry of activity, most notably the $2.5 billion acquisition of a majority stake in Nigerian Telecommunications Limited, the former state telecoms monopoly in Nigeria, by New Generation Telecommunications, a consortium consisting of Dubai's Minerva Group, China Unicom (Hong Kong) Limited, and Nigeria's GiCell Wireless Limited.

However, the collapse of the proposed $12 billion mega-merger between the Etisalat Telecommunications Corporation of the UAE and Kuwait's Mobile Telecommunications Company, Zain, and Axiom Telecom's fourth quarter cancellation of its IPO at the last moment serve as a reminder that the markets are still some way from full restoration of confidence.

There have also been major investments in renewable energy projects to allow the UAE to maintain its leadership in this field in the region and remain a global pioneer in undertaking clean energy projects such as Masdar City.

With the debt finance market still slow and the banks remaining risk averse, the availability of financing to fund M&A deals is scarce. Regional bond markets are not mature enough yet to pick up the slack in this respect, so many transactions are being driven by sovereign wealth funds. One such recent example, and as mentioned previously, is the investment in Italy's UniCredit SpA by Aabar Investments PJSC, one of Abu Dhabi's sovereign wealth funds and the largest shareholder in Daimler AG.

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 $25 billion debt restructuring

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. This mentality makes it more challenging to do deals and UAE companies still have difficulty splitting

management from ownership. Many owners are also emotionally attached to their assets, which cuts across and can hinder M&A activity and the disposal of assets.

The recent financial crisis has highlighted the strengths and weaknesses of the UAE economy, and it is widely acknowledged that the real estate sector is the weak link in the chain. The tourism and aviation sectors were also heavily affected during the financial crisis but they are beginning to fare much better now.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

According to data from Thomson Reuters LPC, syndicated loan activity decreased by 78 per cent in the first quarter of 2011 (compared to the same period in 2010) to reach $2 billion. Fees generated in the Middle East reached $48.8 million during the first quarter of 2011 (58 per cent less than the same period in 2010). Of those fees, M&A generated $16.7 million (a decline of 66 per cent compared with the same period in the previous year).

While the financial crisis resulted in the pricing of lending by international financial institutions generally becoming more competitive, the region saw the retrenchment of the international banks with fewer banks competing to finance M&A transactions and a greater demand for credit. In addition, the local banks have been struggling with dollar funding.

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

Furthermore, corporate M&A activity is linked to the confidence of management and the board. Many managers and directors are still uncertain as to the consequences of the Arab spring in the UAE. Therefore, there are many discussions but not necessarily a lot of financing activity that is likely to close soon.

While private equity activity in the MENA region has remained relatively slow over the last year, the UAE ranked top in the MENA region private equity transactions with over 82 per cent contribution of the total deals worth $993 million reported in the region last year. Even in terms of number of deals, the country was by far the favourite destination.[9]

The main reason for the UAE's success was that it finalised the region's most valuable deal, worth $554 million. The deal saw Abraaj Capital, the region's largest private equity group, acquire a 49 per cent stake in Dubai-based Network International LLC, a payment solutions provider owned by Emirates NBD, through Abraaj Financial Technologies Holdings Limited.

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.

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9 Zawya Private Equity Monitor, Thomson ONE Banker.

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 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 expat wives sponsored by their husband. The part-time employment permit allows the holder to be employed in more than one part-time job.

VIII TAX LAW

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

In Abu Dhabi, according to the Income Tax Decree of 1965 (as amended), every chargeable person who conducts trade or business (including the rendering of services) in Abu Dhabi is subject to pay tax on his 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.

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 trade or business in Sharjah a tax according to 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

With respect to competition law, there is no significant body of law in the UAE dealing with these issues. Traditionally, the UAE has adopted a conservative approach instead of encouraging competition as demonstrated by the above-mentioned requirement that 51 per cent of the shares of a company incorporated in the UAE be held by UAE (or GCC) nationals and the protection granted to emirati agents duly registered under the UAE Commercial Agencies Law No. 18 of 1981, as amended by Federal Law No. 14 of 1988.

The UAE Consumer Protection Law No. 24 of 2006 ('the CPL') and its Implementing Regulations of 2007 ('the Implementing Regulations') comprise very few provisions with respect to competition law. The CPL states that the Implementing Regulations shall set out the basis for determining when there is an abnormal increase in prices of goods and what constitutes an unlawful monopoly.

The Implementing Regulations deal with anti-competitive and monopolistic conduct in more detail than the CPL. The focus of the Implementing Regulations, to the extent they relate to competition law issues, is on irregular movements in prices resulting from practices that are prohibited by the CPL. Neither the CPL nor the Implementing Regulations prohibit the formation of monopolies *per se*. Consequently, companies can acquire their competitors and reach a dominant position in a given market. But there may be restrictions on the dominant player if his actions are deemed to affect prices to the detriment of the UAE consumers or national economy.

The Implementing Regulations set out cases of prohibited monopolies such as: selling goods or services at below cost to create a state monopoly in the market that will cause damage to the UAE consumers; entering into agreements between suppliers with respect to price fixing that cause harm to the consumers or the national economy; creating alliances between more than one supplier which result in damages to the UAE consumers or economy. The Implementing Regulations also states factors that must be taken into account when considering if there has been an extraordinary effect on pricing. These factors include the national inflation rate, the prices of the goods or services in question over previous periods and comparison with prices in neighbouring states.

The Consumer Protection Department can take the necessary steps and measures against prohibited monopolistic practices and transactions that cause harm to the national economy or the interests of the consumers. Such steps and measures include ordering the prices of goods or services to be reduced to what the department deems an acceptable level.

X OUTLOOK

In the Middle East, and especially the Gulf, the market turmoil related to the Arab Spring has not led to a dampening of enthusiasm. The main appetite of both strategic and financial buyers is in Saudi Arabia, the UAE, Kuwait and Oman, and informed regional and international investors are looking at a number of opportunities in the MENA region. Valuations are clearly one catalyst, but the changing geopolitical landscape also plays a key role.

M&A experts predict that several sectors such as education and health care, consumer goods and the food and beverage industry will continue to be of interest, in addition to the financial services sector, which is also ripe for consolidation.

In the UAE, the forecast looks more positive as the economy slowly but surely shows signs of recovery; M&A 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 centre of regional politics, and as economic and financial centres. Whether such

competition will affect the UAE's prominent position as a regional hub is difficult to predict, but there is no doubt that the UAE is large strides towards improving the business environment in order to maintain that position.

The UAE certainly will remain concerned about the unrest currently gripping the MENA region but it should be better protected than some of the other Gulf states and some commentators have predicted that the unrest should benefit the UAE given its political stability. It remains to be seen if the rest of the year will yield more M&A transactions.

As a consequence of the political unrest, many investment bankers have revised their predictions and some believe that there will be more government investments in domestic economies in infrastructure, health care and education. These investments are designed to better meet the expectations of the national populations. Also, it is expected that sovereign wealth funds will review their investment strategies and invest their capital in national and regional companies.

Trends to watch are consolidation within MENA and divestiture of non-core assets by companies completing restructurings. Other possible trends are cash-rich regional funds investing in international assets and buyers outside of the region seeking strategic assets in the MENA region. Certain professionals in the region also expect financial services, manufacturing and industrials, consumer products, telecoms and property to lead deal values in 2012.

Important catalysts for deal flow in 2012 will be companies that are in the process of completing large restructurings and will need to sell assets following completion of those restructurings and expectations of more realistic values on the part of sellers. Restructuring, particularly in the construction and real estate sectors, is predicted to continue for the foreseeable future, which should drive M&A activity.

In the past few years, there has been much discussion about amending the CCL to provide a higher percentage of foreign ownership for companies constituted in the UAE. People who had seen a draft of the new CLL had indicated that the percentage of foreign ownership would depend on the sector of activity of the company in question.

However, at the time of writing, recent press coverage indicates that a senior official of the Economy Ministry has stated that the UAE now has no plans to raise the 49 per cent foreign ownership limit for UAE companies (listed or otherwise) outside the various free zones.

This will be seen as closing the door on any possibility of having a company law that allows overseas investors to fully own entities outside of the UAE's free zones.

It will also be seen as denting any hopes of the UAE's organised exchanges being upgraded to emerging market status (increasing foreign ownership limits was a key criterion set out by index compiler MSCI in its review of the UAE for an upgrade to such status).

Finally, in 2011 the GCC Financial Market Committee approved unified rules governing shares, bonds, *sukuks* and investment funds listed on the GCC financial markets. However, the rules are not mandatory for two years and consequently, it is unlikely they will be implemented fully before 2013.

Appendix 1

ABOUT THE AUTHORS

DK SINGH

KBH Kaanuun

DK Singh is a dual-qualified lawyer with experience of and permission to work in two jurisdictions: India and the United Kingdom with over 10 years' experience. He is a partner in the corporate group and his expertise covers mainstream company 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 (acting for both public companies and private companies), 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.

LAENA RAHIM

KBH Kaanuun

Laena Rahim is a qualified advocate and solicitor from the Malaysian Bar with more than 10 years' experience in corporate and capital market transactions and international securities market regulation and standard setting.

While in private practice in Malaysia, Ms Rahim worked on matters throughout south-east Asia where her main focus was in the areas of corporate and commercial law, compliance and regulatory as well as conveyance.

Prior to joining KBH, Ms Rahim was attached to the Securities Commission Malaysia. Her primary contribution at the Commission was towards the formulation of international and regional initiatives for standard setting and promoting the integration and development of capital markets. She was admitted as an advocate and solicitor of the Malaysian Bar in 1999 and has been based in the UAE since 2011.

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