Navigating APAC M&A:

Tax, Legal, and Financial Insights

forv/s mazars x STEPHENSON HARWOOD (SINGAPORE) ALLIANCE

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Introduction

Foreword

This report consolidates insights from our seminar titled "Navigating Asia-Pacific M&A Tax & Legal Insights for Success."

The Asia-Pacific (APAC) region is a dynamic and rapidly growing market for mergers and acquisitions (M&A), fuelled by rapid economic growth, diverse regulatory frameworks, and evolving tax laws. Navigating this landscape requires a comprehensive understanding of the key tax, legal, and financial considerations.

This report provides a comprehensive overview of the latest trends, challenges, and opportunities in the APAC M&A market, drawing on discussions among tax and legal professionals specialising in the region. It delves into the evolving tax landscapes of key APAC jurisdictions, exploring recent changes and their implications for M&A transactions.

The report also examines the current state of the M&A market in Southeast Asia, highlighting growth sectors, challenges, and opportunities.

Additionally, it provides insights into legal, due diligence, deal structuring, insurance considerations, and the growing importance of environmental, social, and governance (ESG) factors in M&A decision-making.

By addressing these critical aspects, this report aims to equip businesses and investors with the knowledge and strategies necessary to navigate the complexities of the APAC M&A market and unlock its vast potential.

Introduction

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Forvis Mazars is a leading global professional services network operating under a single brand with just two members: Forvis Mazars Group SC, an internationally integrated partnership operating in over 100 countries and territories, and Forvis Mazars, LLP in the United States.

As a network of just two, allied organisations, we act fast, delivering consistent and agile audit, tax and advisory services worldwide that reflect our clients' unique challenges, complex regulatory landscapes and cultural diversity. We are committed to providing an unrivalled client experience, one that feels right, personal and natural to each and every one of our clients.

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We are built for our clients, people, industry, and society.

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We operate as one team, taking a collaborative, integrated approach that allows us to deliver consistent and personalised services to clients of all shapes and sizes, across all sectors and geographies.

Our multidisciplinary approach is key to supporting our clients' changing needs and helping them achieve sustainable growth. Audit has long been at the heart of our business, and we have developed robust tax, advisory, compliance and sustainability practices.

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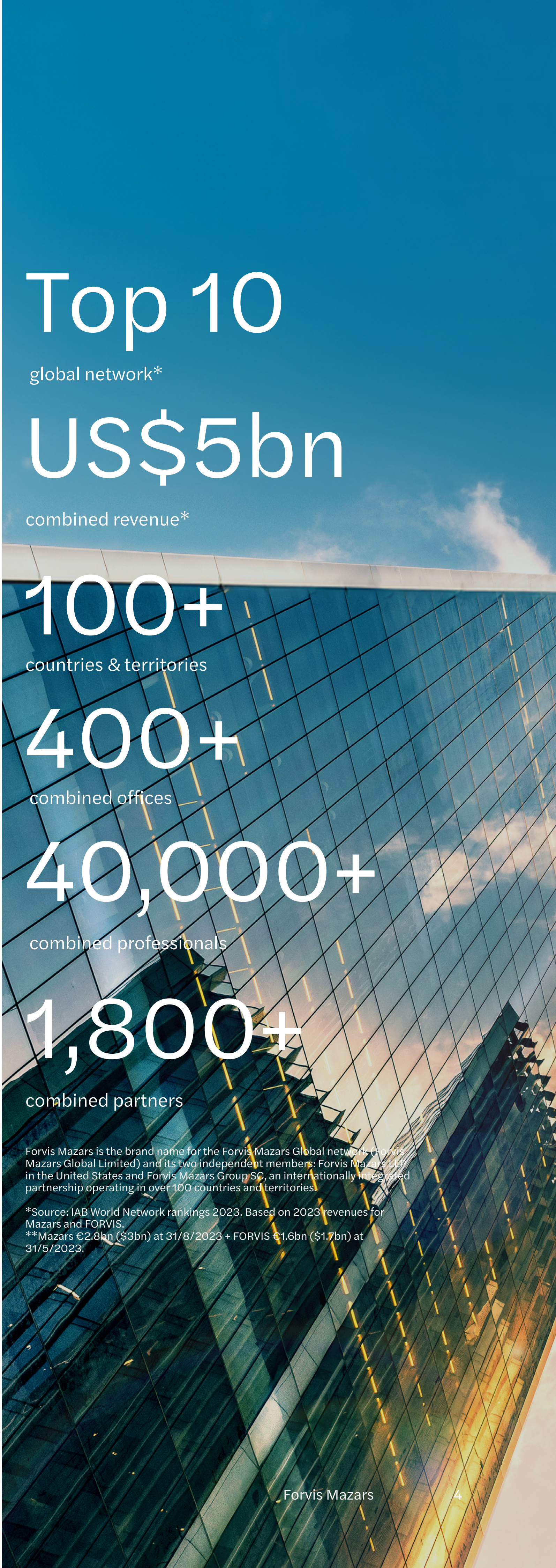

Top 10

global network*

US$5bn

combined revenue*

100+

countries & territories

400+

combined offices

40,000+

combined professionals

1,800+

combined partners

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*Source: IAB World Network rankings 2023. Based on 2023 revenues for Mazars and FORVIS.
**Mazars €2.8bn ($3bn) at 31/8/2023 + FORVIS €1.6bn ($1.7bn) at 31/5/2023.

Introduction

About Stephenson Harwood

Stephenson Harwood is a law firm with over 1300 people worldwide, including more than 200 partners. Our people are committed to achieving the goals of our clients - listed and private companies, institutions and individuals.

Stephenson Harwood (Singapore) Alliance

The Singapore office has been established in Singapore for 28 years and, as part of the Stephenson Harwood (Singapore) Alliance, is widely recognised as being a top-tier firm in asset finance, banking, shipping, arbitration, aviation, international trade and corporate, covering the region from its Singapore hub. Stephenson Harwood is a law firm with over 1300 people worldwide, including more than 200 partners. Our people are committed to achieving the goals of our clients - listed and private companies, institutions and individuals.

Our 70 lawyer Alliance team in Singapore, covering international and permitted areas of Singapore law, has built an enviable reputation for investment advice, shipping, offshore and aviation, mergers and acquisitions and corporate, banking and project finance and disputes, and many of our individuals are recognised as leaders in their fields.

Understanding our clients' needs, aims and cultures helps us build lasting relationships. Through the decades of experience built up in Southeast Asia, our team is perfectly placed to provide you with the commercially focused legal services you require.

The Stephenson Harwood (Singapore) Alliance offers clients an integrated service in multi-jurisdictional matters involving permitted areas of Singapore law, including regulatory compliance. Through our alliance partner Virtus Law LLP, we are also able to take actions and represent clients at every level of the Singapore courts.

"The team's strengths lie in their ability to assess what the client needs and then to tailor the advice to the client's specific requirements in an efficient and professional manner."
Chambers Asia Pacific 2023

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200+

Partners

1300+

People worldwide

8

Offices worldwide

26%

Of our people based in Asia

Introduction

Speakers

Tax

Elaine Chow
Partner, Tax
Singapore

Jonathan Stuart-Smith
Partner, Tax
Thailand

Julia Yang
Partner, Tax
Indonesia

Peter Law
Partner, Tax
China

Jacqueline Villar
Managing Partner
Philippines

Kisoo Lee
Partner, Tax
South Korea

Tintin Chu
Senior Manager, Tax
Singapore

Financial Advisory

Laurent Nguyen
Partner, Financial Advisory
Vietnam

Gavyn Ng
Partner - Singapore, Financial Advisory
Singapore

Ellyn Tan
Partner - Singapore, Financial Advisory
Singapore

Nidhi Kapania
Director, Energy & Infrastructure
Australia

Legal and industry experts

Sheetal Sandhu
Partner at Virtus Law,
Stephenson Harwood (Singapore)
Alliance

Jay Tai
Partner
Stephenson Harwood (Singapore)
Alliance

Jamie Wan
Director, Transactions solutions
Aon Asia

Kennard Setiadikurnia
Managing Director
Jast Group Indonesia

Tax insights and considerations for APAC M&A

Evolving tax landscapes in key APAC jurisdictions

Several APAC countries have implemented significant tax changes that impact M&A transactions. Understanding these shifts is crucial for deal structuring and risk mitigation.

- **Singapore**: Effective 1 January 2025, Singapore will implement the Domestic Top-up Tax (DTT) and Income Inclusion Rule (IIR), which will impose a minimum ETR of 15% on large MNE groups with annual group revenue of 750 million euros or more in at least two of the four preceding financial years.Additionally, gains from the sale or disposal of foreign assets will be subject to tax, if such gains are received in Singapore by businesses without economic substance .Businesses in Singapore are advised to assess the impact of these rules on their business.
- **Thailand**: Similar to Singapore, Thailand plans to introduce a 15% domestic minimum tax from 1 January 2025. For many years, the Board of Investment (BOI) has offered various tax incentives to specific industries to attract investments. In response to the new global minimum tax, instead of a corporate income tax (CIT) exemption, companies may now elect for a reduced CIT rate of 10%, extendable for up to five years under certain conditions.
- **Indonesia:** The Tax Harmonisation Law introduces tax-exempt dividend for controlled foreign corporation (CFCs) invest at least 30% of their global net profit after tax in the country. Contribution-in-kind by asset is not subject to VAT. In light of transfer pricing secondary and corresponding adjustments are formally regulated. Renewable energy has been the national strategic priority eligible for tax holiday, tax allowance and import tax and duty exemption. The tax facilities include up-to-20-year income tax holiday, accelerated depreciation, 10-year fiscal loss carry forward and a reduced tax rate for dividend.
- **Philippines:** The Philippines has implemented several tax reforms to attract foreign investment, including reducing the corporate income tax rate to 25%, introducing a 10% tax on dividends for non-residents, and increasing the capital gains tax to 15%. The documentary stamp tax on share sales is now 0.75% of par value or 0.50% of the original issuance tax for no-par value shares. Tax-free exchanges in reorganisations can now be done through a Certificate Authorising Registration. The Philippines has also liberalised foreign ownership in the renewable energy sector, leading to increased investment. Incentives for this sector include a 7-year income tax holiday, a 10% corporate tax rate after the holiday, net operating loss carry-over, accelerated depreciation, zero VAT on renewable energy sales, and tax exemption on carbon credits.
- **Korea**: Korea has aligned with global standards by implementing a 15% global minimum tax. Additionally, the rules for interest expense deductions paid on intercompany loans have been modified. Korea's tax landscape has further evolved with the introduction of more stringent documentation requirements for tax treaty exemptions in terms of beneficial ownership.

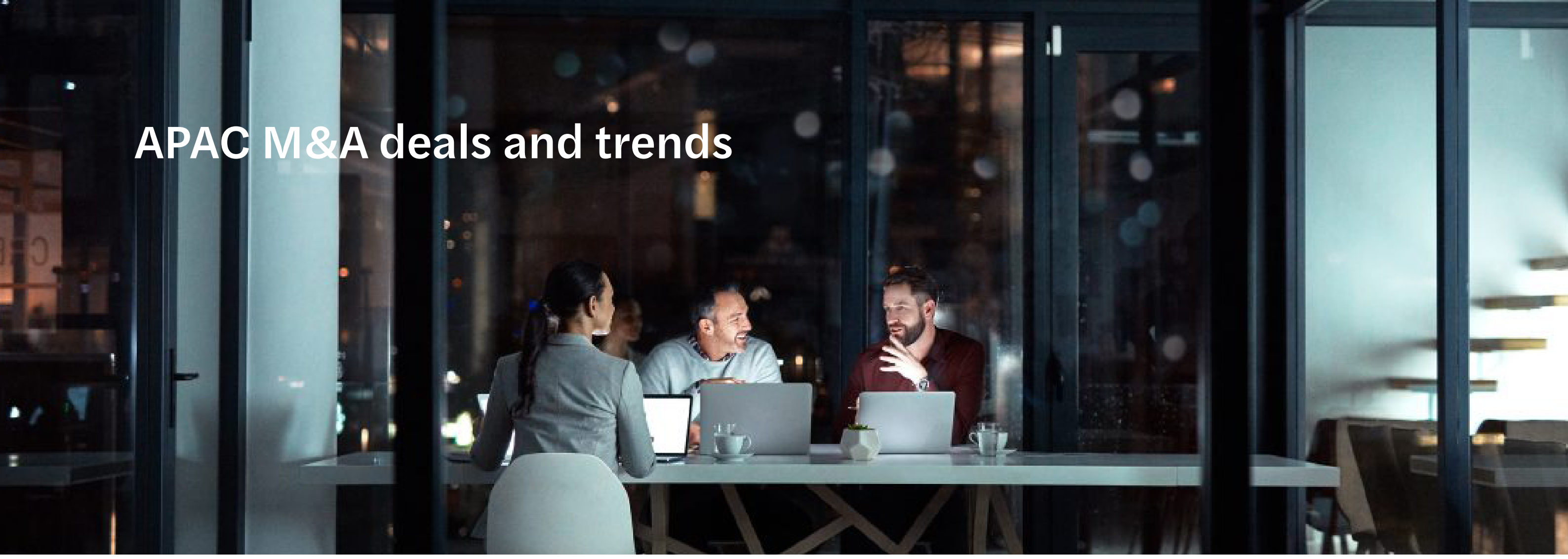
Tax insights and considerations for APAC M&A

Tax due diligence and strategic structuring

Thorough tax due diligence is not just a procedural step; it's a strategic imperative in APAC M&A. Analysing the target company's tax history, compliance with local laws, and potential tax exposures arising from the transaction is essential. By understanding these complexities, businesses can employ strategic deal structuring to optimise tax efficiency and minimise liabilities.

Leveraging tax treaties, optimizing debt-to-equity ratios, and establishing holding companies with adequate economic substance are some of the strategies that can be deployed to achieve tax benefits.

APAC M&A deals and trends



Market trends and challenges

The APAC M&A market is a dynamic landscape shaped by various trends and challenges. China's growing economic influence is a dominant factor, particularly in East and Northeast Asia, impacting transaction volumes and deal values. The financial services sector is a major contributor to M&A activity in Southeast Asia, with Singapore and Malaysia being key players. The COVID-19 pandemic and the resulting economic slowdown have led to an increased interest in distressed assets, presenting opportunities for investors with expertise in restructuring and turnaround strategies.

However, the APAC M&A market also faces challenges. The economic slowdown and the pandemic have created uncertainties and impacted valuations, leading to a mismatch in pricing expectations between buyers and sellers. This has made it more difficult to negotiate deals and has led to a decrease in transaction volumes. The regulatory environment in the region can be complex and varies across countries, necessitating thorough legal, and financial due diligence to ensure compliance and mitigate risks. Additionally, factors such as supply chain disruptions and financing difficulties can pose challenges in sectors like renewable energy. In light of the increase emphasis on ESG considerations, practitioners also face greater challenges in balancing various interests during distressed transactions.

Opportunities in renewable energy and infrastructure

Despite the challenges, the APAC region remains attractive for M&A activity. The growing interest in distressed assets presents opportunities for investors with the right expertise. The renewable energy and infrastructure sectors offer significant growth potential, driven by government incentives and increasing demand for sustainable solutions. The rise of technology and digitalisation also creates new opportunities for M&A in the tech sector, particularly in data centers and digital infrastructure.

This optimistic outlook should inspire investors and businesses to explore the potential of the APAC M&A market.

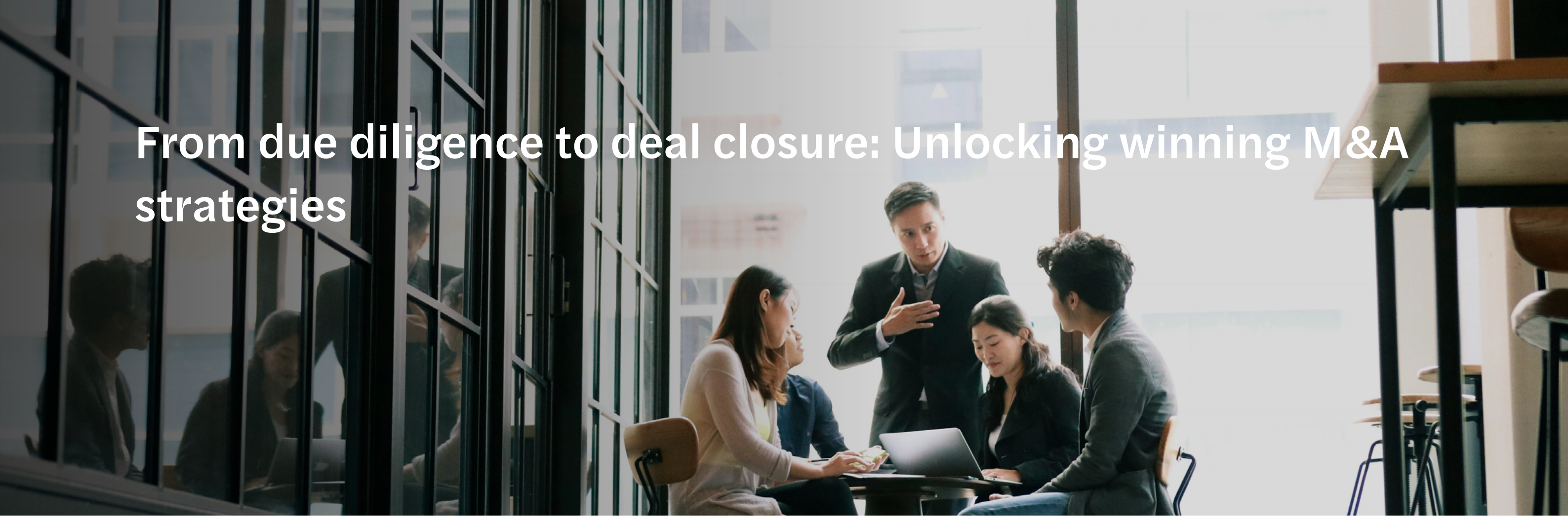
The renewable energy sector in APAC is experiencing significant growth, with countries like China leading the way in market size. While Australia and Japan are playing catch up due to China's dominance, there is still strong interest and potential for growth in these markets. Rooftop solar projects have shown resilience despite declining installation costs and market disruptions. The region also sees a growing interest in hydrogen and nuclear energy as potential alternatives to fossil fuels, offering investors a promising and lucrative future.

Trends in the Financial Services sector

The financial services sector in APAC is also undergoing significant changes. There is a growing trend towards digital transformation, with fintech and decentralised finance (DeFi) gaining traction. This leads to increased M&A activity in the sector, as traditional financial institutions seek to acquire or partner with fintech companies to enhance their digital capabilities.

However, the sector also faces challenges, such as the economic slowdown, which has decreased transaction volumes and values. There is also a growing interest in distressed assets in the financial services sector, presenting opportunities for investors with the right expertise.

From due diligence to deal closure: Unlocking winning M&A strategies



Southeast Asia: state of the market

While M&A activities have generally been slow, to focus on the positive, there has been an uptick in M&A activity as compared to 2023 – bolstered by improving consumer confidence, stabilised inflation rates, decreasing interest rates, and steady structural growth drivers and demographics in the region. Industries with growth prospects include:

- **Technology and digital assets** – digital transformation is necessary for businesses to stay competitive, and the region, in particular, countries like Indonesia, Malaysia, and Vietnam, are experiencing rapid digital transformation with a focus on e-commerce, fintech and insurtech;
- **Renewables** – the renewables sector in countries like Thailand, the Philippines, Vietnam and Indonesia havs a sizeable energy market and presents a significant opportunity;
- **Infrastructure** – Infrastructure and real estate projects remain highly popular and are driven by economic growth in countries like Indonesia, the Philippines and Vietnam.

Bigger Asian players, such as the Chinese and Japanese acquirers, are also increasingly looking towards Southeast Asia for outbound M&A opportunities. Despite the opportunistic mood, the trend of increasingly stringent regulations globally continues to impose a cost on businesses, especially small and medium-sized enterprises. Overall, stable macroeconomic fundamentals, a supportive political environment, coupled with investor-friendly policies have resulted in Southeast Asia being a dynamic region for deal activity. On the Warranty & Insurance (W&I) front, there has also been increased awareness and utilisation of insurance solutions for M&A transactions in Asia.

Deal structuring and financing

When financing an M&A transaction, it is advisable for businesses to conduct comprehensive due diligence and valuation of the target company to assess financial risks and opportunities associated with the transaction. The optimal deal structure must be determined, considering cash flow needs, existing capital structure, tax implications, and strategic goals. Effective risk management is crucial, involving identifying and mitigating risks such as interest rate volatility, credit risk, and market conditions to ensure financial stability post-acquisition.

Ultimately, the chosen type of financing should align with the businesses' financial health, risk tolerance, and long-term strategic goals. Businesses can consider various types of financing: debt, equity, or a hybrid of both. Debt financing allows companies to leverage existing assets and generate higher returns on investment. It provides a fixed cost of capital and interest that may be tax-deductible. However, excessive debt can lead to financial strain, especially during economic downturns or changes in market conditions. Alternatively, equity financing provides companies with a permanent source of capital without the obligation of repayment or interest payments. While it improves the company's financials and increases its valuation, equity financing will also result in diluted ownership and control, and shareholders may demand higher returns on investment.

In practice, most companies will use a combination of both debt and equity financing. Increasingly, businesses facing challenges can seek alternative financing, such as private credit. With the private credit market having grown 30 times in the last two decades, it is becoming a more popular funding choice due to its key advantages of offering flexible terms and quicker approval. However, the downside is that these loans typically have higher interest rates.

From due diligence to deal closure: Unlocking winning M&A strategies

Trends of legal due diligence

Legal due diligence is one of the most important steps of an M&A transaction. Lawyers aim to assess the legal risks and compliance issues associated with the target company, ensuring that the acquirer understands the potential liabilities, litigation risks, contractual obligations, and regulatory compliance of the target company before finalising the transaction. Businesses have emphasised that conducting legal due diligence is crucial for buyers to mitigate risks and gain a thorough understanding of potential liabilities prior to entering transactions.

In recent years, there has also been a trend towards expanding the scope of due diligence to include a more comprehensive assessment of risks. This includes areas such as cybersecurity, tracing and verifying ownership of intellectual property rights, environmental law compliance, and anti-money laundering regulations. Businesses have reported that conducting extensive and detailed due diligence is highly beneficial, especially for complex transactions. They have also noted that, in some cases, operational and technical due diligence is necessary as well.

Further, due diligence processes often run concurrently with the W&I insurance process, particularly where parties intend to utilise insurance in the transaction. Ideally, the scope of due diligence workstreams should be coordinated with insurance brokers early on. This ensures robust insurance coverage that addresses any potential gaps and prevents the need for additional due diligence requests later. The use of artificial intelligence to save time and costs in due diligence has also become increasingly prevalent, with law firms adopting machine learning and investing in tools to increase the speed and depth of due diligence. Such tools can automate document reviews, analyse large datasets for key insights, and enhance the efficiency and accuracy of risk assessments, resulting in 20–30% cost savings for clients.

There has also been an increased use of vendor due diligence (VDD) in recent years, a specialised approach that shifts the diligence perspective from the seller to the buyer. VDD involves rigorous analysis of sale assets, helping targets minimise risk, expedite the sale process and enhance overall value creation. This approach facilitates a transparent and efficient sale process, benefiting both the seller and the buyer and allowing for a more informed and confident decision-making process. VDD is now increasingly recognised as a useful tool for streamlining the due diligence process and highlighting key value points. From a purchaser's perspective, establishing a solid baseline through VDD makes for a more confident and approachable deal process.

Overall, the role of legal due diligence has shifted from simply verifying legal status and contractual obligations to proactively identifying and mitigating risks, ensuring a smooth post-acquisition integration, and navigating a changing regulatory landscape.

Rise of W&I insurance

Post-COVID, there has been an increase in M&A transactions utilising W&I insurance. As the market for W&I insurance matures and more players enter, W&I insurance has become an affordable solution available in almost all countries, capable of catering to multiple industries. The increasing involvement of W&I insurers and brokers has positively impacted M&A deals, with clients increasingly adopting a more proactive approach to risk management, dedicating more time to financial modelling, and conducting more extensive due diligence. Clients appreciate several benefits of W&I insurance, including:

1. Enabling sellers to make a clean exit;
2. Protecting parties from unknown and unforeseen risks; and
3. Streamlining the negotiation process.

With the maturation of the W&I insurance market in recent years, data relating to claims have become more comprehensive. The most common claims relate to breaches involving financial statements and tax issues, and these breaches are typically discovered within six months post-completion[1]. Such claims data demonstrates the effectiveness of W&I insurance, underscoring the importance for parties in M&A transactions to stay informed about available insurance options.

[2] AON. (2024). 2024 Transaction Solutions Global Claims Study: Effectively Managing Deal Risk to Secure Investments and Enhance Returns. Retrieved from https://www.aon.com/m-and-a transaction/2024claimstudy.

From due diligence to deal closure: Unlocking winning M&A strategies

Challenges: a lack of transparency

Poor levels of transparency are a real challenge and a significant deterrent to conducting deals in Asia. In some Asian countries, the regulatory environment is complex and opaque, posing difficulties for foreign businesses navigating local laws. Corporate governance standards may also be less stringent and less well enforced than in more developed markets, raising concerns about accountability. Further, corruption remains a challenge in some parts of Asia, potentially undermining transparency and trust in business transactions.

To mitigate these challenges, several steps can be taken:

- Conduct thorough diligence to understand the risks associated with the business;
- Engage local experts to help navigate the local regulatory landscape and provide a deeper local understanding of the issues;
- Establish clear terms in transaction agreements;
- Choose an effective governing law and dispute resolution mechanism that can be enforced (such as Singapore); and
- Consider risk mitigation measures such as W&I insurance to protect against unknown risks.

Challenges: regulatory and compliance risks

When considering cross-border transactions, issues such as foreign ownership restrictions, anti-trust laws, and national security considerations come to mind. Foreign ownership restrictions are a tool to balance market liberalisation and protectionism and are regulated differently across Southeast Asia. Businesses will thus need to understand the specific national restrictions, approval processes, ownership limits, reporting requirements and consider the use of specific ownership structures. For anti-trust laws, most Southeast Asian countries have anti-trust regimes that require an approval or notification process, and seeking anti-trust confirmation from regulators can be voluntary and mandatory. As for national security laws, this is especially relevant in sensitive sectors like defence and technology, and governments may review M&A deals for national security risks such as foreign control over critical assets or access to sensitive technologies. This is a dynamic area, with recent years seeing the implementation of new regulations, such as the Significant Investment Review Act of Singapore, which took effect in March 2024.

These regulatory and compliance challenges pose significant complexities and can often be subject to interpretation. They can also be time-consuming due to multiple levels of regulatory approval and resource-intensive, especially when a deal is prolonged.

Notwithstanding these challenges, certain actions can be taken to navigate the complexities, including:

- Commencing early due diligence;
- Engaging local advisers – engage local teams and regulatory advisers to anticipate challenges and structure the deal accordingly to meet the requirements (e.g. foreign minority shareholder with Class A enhanced voting right shares and local majority shareholder with Class B limited voting right shares);
- Staggering transactions such as buying an initial minority stake and increasing the stake once the approval process is certain and
- Proactively engaging with government agencies and regulators.

Challenges: uncertain enforcement of laws

It is no secret that businesses consider the rule of law and the uncertain enforcement of laws in Southeast Asia to be a significant challenge. Southeast Asian states often rank poorly in the global rule of law indices. Historically, the region has had a diverse range of governance systems, resulting in a varying level of commitment to the rule of law. An effective way to tackle this challenge is by selecting an appropriate governing law and implementing an effective dispute resolution mechanism.

Singapore law is currently one of the most adopted governing laws in cross-border transactions in

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Asia. Due to its well-established framework, wide recognition, clarity, predictability and enforceability, Singapore law is recognised as an effective governing law for complex transactions. With Singapore being a signatory to multilateral and bilateral treaties such as the New York Convention and the Singapore Convention on Mediation, Singapore arbitral awards, court orders and mediated settlements can be enforced in almost all major commercial jurisdictions and many other regional ones.

Singapore also offers a varied suite of arbitration and dispute resolution platforms, such as the Singapore International Commercial Court (SICC), Singapore International Arbitration Centre (SIAC), and Singapore International Mediation Centre (SIMC). These platforms complement each other, allowing parties to tailor their dispute resolution process.

Concluding thoughts: a winning M&A strategy

In summary, businesses can have a winning M&A strategy by taking a proactive stance on risk management; prioritising a comprehensive due diligence process; utilising W&I insurance and having a strong management team with regulatory, technical, and operational knowledge and skillset.

Contacts

Forvis Mazars in Singapore
135 Cecil Street, #10-01, Singapore 069536

Tel: +65 6224 4022
Email: contact@mazars.com.sg

Stephenson Harwood (Singapore) Alliance
8 Marina Boulevard #29-01, Marina Bay Financial
Centre Tower 1, Singapore 018981
Tel: +65 6226 1600 / +65 6737 1234
Email: info.sin@shlegal.com

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