

ROUNDTABLE

Who's Who Legal brings together three leading experts to discuss issues facing lawyers today.



DAVID WATKINS
Slaughter and May
Hong Kong



FRANCISCO GUZMÁN ANRIQUE
Carey
Chile



ROBERT GRAMMIG
Holland & Knight
USA, FL

WWL: What has the balance been between private and public M&A in 2014 in your jurisdiction? Is this a continuation or a change from the previous year?

David Watkins: The M&A landscape in Hong Kong (and indeed the broader Asia region) is generally dominated by private M&A deals. One factor that contributes to this is the make-up of the share registers of a fair number of the public listed companies in Hong Kong, where it is common to find family control structures which have been in place for generations. Simply speaking, there are not a lot of public companies in Hong Kong in which control is “for sale”. That said, last year we actually saw some very significant public M&A deals taking place in Hong Kong – particularly in the financial services sector, where M&A activity was catalysed by a couple of factors, including new regulatory requirements being imposed on the holding companies of banks, and on the desire by regional institutions, including from China, to gain access to a listed licensed platform in Hong Kong. We were fortunate enough to be on the target and sell-side of the Chong Hing Bank partial takeover by Yue Xiu and on the buy-side of the Wing Hang Bank takeover acting for the bidder, OCBC. While there are a few other notable public targets in contention, we would expect the balance in HK and the region to remain in favour of private M&A for the foreseeable future.

Francisco Guzmán Anrique: The focus of M&A in Chile continues to centre around private deals. While seven tender offers took place between January 2014 and January of 2015 (compared to five in 2013), the Chilean stock exchange markets are still in development and do not yet have the depth to allow for deals at the volume of private M&A.

To date, there are still relatively few publicly traded companies that have a large heterogeneous composition of

shareholders, as most listed companies tend to have controlling shareholders with very high ownership stakes.

Robert Grammig: Over the past year we have represented clients on numerous transactions of varying size, including a number valued in excess of several billion US dollars. We counsel on both private and public M&A transactions involving various jurisdictions around the globe. During 2014, in our primary western hemisphere markets, we saw the mix swing somewhat towards public transactions, as strategic acquirers have been increasingly successful in competing with private equity sponsors for opportunities. So far in 2015, we have seen this trend continue. However, both private and public M&A transactions continue to face myriad challenges for both types of acquirers, not the least of which involve compliance and regulatory issues.

WWL: Have the current political instabilities in various parts of the world affected deals in your jurisdiction? If so, in what way?

David Watkins: Asia remains stable on the political front relative to many other parts of the world. That said, over the past year we have lived through the changing of the guard of the Politburo in China, political turmoil in Thailand and, closer to home, the pro-democracy protests in Hong Kong. Political issues naturally give parties to M&A deals cause to pause (many adopting a “wait and see” attitude). However, overall deal activity in Hong Kong and the rest of Asia remains fairly buoyant. The slow-down in growth in China seems to be having a greater effect on M&A activity levels than regional politics.

Francisco Guzmán Anrique: While political instabilities have been predominant in certain other Latin American countries, such as Argentina, Venezuela and, recently, Brazil, the effects of those circumstances on M&A activity have remained contained within

those specific jurisdictions. Chile, and Latin America as a whole, is now generally considered a more mature market and remains attractive to foreign players. This remains true for 2014, in which foreign companies such as Abbott Laboratories, Itau Unibanco, Lundin Mining, Talanx International AG, Bupa Group and Alliance Boots GmbH all acquired stakes in relevant companies in the Chilean market.

Robert Grammig: With 23 offices in the Americas and the firm's emphasis upon the western hemisphere, our clients' transactions have been less impacted by political instability than in recent years, which leads to stronger domestic and cross-border transactions. We still see challenges in jurisdictions such as Venezuela and Argentina, as well as outside of the Americas. The political volatility in these areas is causing instability-related issues in our outbound representation of strategic acquirers and private equity sponsors. This situation manifests itself by several transactions being placed on "hold" or cancelled. We have also had to structure some transactions to carve out assets or subsidiaries located in certain jurisdictions. As a result, we are proactive in monitoring how instability can impact our clients' transactions and their business strategies. Recognising our clients' need for legal teams that have a clear understanding of the complex issues facing their organisations, we make significant investments to stay abreast of respective industry trends and related business issues prior to such issues becoming generally known. We often work with our worldwide network of local experts to bring the best business intelligence to the table.

WWL: Private equity players continue to play a dominant role in investment across many jurisdictions. Has this been the case where you are? Are you expecting this to continue?

David Watkins: Private equity in Asia is an important part of regional M&A and in some jurisdictions across Asia is becoming ever more so (eg, China, ASEAN). However corporates and SOEs have long dominated the M&A scene in China, Hong Kong and other parts of Asia. There remains a significant level of inbound investment into China and the rest of Asia from corporates from all over the world (some wanting to tap into the Asian growth story; others looking to incorporate cost effective links in their supply chains). There is also a healthy amount of intra-Asian cross border activity as Asian corporates and SOEs seek to expand their markets beyond traditional boundaries.

Francisco Guzmán Anrique: Private equity continues to be a major factor in Chilean deal activity. Chile has remained competitive in the region for the past several years, as stated by the Latin American Private Equity & Venture Capital Association (LAVCA), which in their annual rankings awarded Chile as the country with the best overall conditions for the private equity industry for nine years in a row.

In terms of volume, private equity in Chile has grown significantly: as of the end of 2013, there were approximately

41 investment funds with an estimated amount of investments of US\$700 million. Given Chile's positioning for private equity at a regional level, it is expected that this growing trend should continue.

Robert Grammig: We see this trend de-escalating somewhat throughout North America as well as Latin America. Strategic buyers have been more aggressive of late and are more often successfully competing with private equity. It is hard to say if this is a short-term aberration or a longer-term trend.

WWL: Which sectors have been the busiest over the past year in your jurisdiction? Is this likely to continue, or are there any others you are expecting to pick up in activity?

David Watkins: In Hong Kong there has been a lot of consolidation action and M&A activity in the financial services sector. In the past 12 months we have been involved in buy-outs of three major financial institutions and there are a few more high-profile financial institutions transactions in the pipeline. Other particularly active sectors in M&A in the region include insurance, health care, retail, infrastructure and tech.

Francisco Guzmán Anrique: The past year has featured the energy and finance sectors as the most active in local M&A. These industries witnessed blockbuster deals such as Itau's merger with the Chilean bank Corpbanca (deal value of approximately US\$2.2 billion) and AES Gener's purchase of Empresa Eléctrica Guacolda, a Chilean electricity company (deal value of approximately US\$1.3 billion).

More recently, the health care industry has surged in activity over the past year. In the public sector, three of the tender offers launched in 2014 correspond to companies in the health care, pharmaceutical and health insurance markets, of which the most notable was Abbott Laboratories' acquisition of CFR Pharmaceuticals for about US\$2.9 billion. In the private sector, 2014 featured the acquisition by CHRISTUS Health, a Texas-based non-profit organisation, of 50 per cent of a major Chilean clinic, as a follow-up to its acquisition of 40 per cent of Red Salud UC, one of Chile's largest healthcare networks.

Robert Grammig: Throughout the western hemisphere, we have seen cross-border transactions in the forefront. Our industry-based client teams in financial services, transportation and infrastructure, and natural resources/energy, have been particularly busy. We are also finding that the telecommunications, manufacturing, and retail and hospitality sectors are doing quite well and we expect these to continue to do so. We have found Latin American companies to be making acquisitions in North America and throughout the world at an increased pace, which is an interesting development. The sophistications of these Latin American companies are high and they are increasingly confident buyers.

WWL: Looking to the future, what changes or developments are you expecting to see in the legal market? Have you noticed increased competition within your jurisdiction? If so, how have firms reacted to this?

David Watkins: The Hong Kong legal market is a fairly crowded space. Most major international law firms have a decent-sized office here, many offering the full spectrum of legal services. While in certain practice areas pricing is everything (or almost everything) we see a sophisticated Asian client base becoming ever-increasingly demanding in terms of the quality of legal service they expect and we believe that this trend will continue.

Francisco Guzmán Anrique: Indeed the legal market in Chile continues to be a competitive one. While there are only around 10 law firms with 60 lawyers or more, there has been a growth in the number of boutique firms specializing in specific industry sectors. This shift in competition has offered a new challenge to larger “full-service” law firms, many of which have reacted by establishing more efficient cost-structures so as to offer competitive rates to clients. In this sense, firms with more history are able to rely on their accumulated expertise and experience in order to carry out this process.

Also challenging has been the globalisation of deals, in which the clients expect to have a “one-stop shop” law firm coordinating the legal work in several jurisdictions.

Another development for the legal market has been the surge of the start-up company as a customer for large law firms. The nature of these companies renders the standard by-the-hour billing model unappealing, and in some cases has forced firms to create billing structures that imply sharing in part of the risk of the customer’s enterprise.

Robert Grammig: Having been founded in 1889, Holland & Knight has seen competition wax and wane at various times. Competition is on the rise, creating a challenging legal market. Clients are looking for firms that can efficiently understand their issues, advocate on their behalf, and create solutions to further their business and objectives, all while meeting their budgetary needs. As a result, law firms need to deliver better value-added services more cost effectively. We have seen increased consolidation throughout the western hemisphere, with notable acquisitions being completed in

Canada, dramatic upheavals in established firms in the United States, and increased penetration into Latin American markets by North American and European law firms. All of these circumstances have caused dislocation in the marketplace and have caused clients to re-evaluate their legal representation. At Holland & Knight, we have taken advantage of this market dislocation by using our platform to attract strategic lateral talent. Particularly in Latin America, we are on a mission. These additions have better enabled us to better provide improved seamless service throughout the Western Hemisphere and to deliver desired value-added services with greater efficiency.