



Process of an M&A

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13 December 2023

RAJAH & TANN | *Myanmar*



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Experienced in M&A, Foreign Investment Projects, Infrastructure, Energy, Banking, Real Estate Development, Regulatory, and Disputes



GENERAL ROADMAP

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SOURCING POTENTIAL DEALS

Sourcing potential deals



- PE and VC investment opportunities
- Strategic Investments
- Buyout of foreign investors
 - Telenor
 - Puma Energy
 - Ooredoo
 - Sedona Hotel
 - Kirin
- Co-investments



NON-DISCLOSURE AGREEMENT (NDA)

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- **Exchange of Information by the Parties during the deal process**
- **An agreement to ensure that the information disclosed during the process is protected**
- **Mutual vs Non-Mutual NDA**
- **The importance of properly drafted NDA**

NON-DISCLOSURE AGREEMENT (NDA)



Key Terms of an NDA

(i) Parties

(ii) Definition of Confidential Information

(iii) Exceptions to Confidentiality

(iv) Disclosure of Information

(v) Destruction of Materials

(vi) Terms



MEMORANDUM OF UNDERSTANDING / TERM SHEET

Memorandum of Understanding

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- **High Level document setting out the parties' basic understanding**
 - Structure of the Deal
 - Full / Partial acquisition
 - Onshore / Offshore
 - Estimated Value
 - Payment Terms / Conditions
 - Timeline of the process
 - Exclusivity
- **Typically, non-binding**



Term Sheet



- Further details of the key terms of the Definitive Agreements
- No hard rule when to prepare – depending on the progress of negotiations
 - with the MOU
 - after DD
- Pros / cons of having a detailed document at the outset



DUE DILIGENCE (DD)

Why Due Diligence?

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- **Correct Information Asymmetry**
 - An investigation on the target to understand its current state and value
 - Identify issues to be addressed in the definitive agreements



Different Types of Due Diligence

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- **Due Diligence on different aspects of the Target**
 - Business
 - Legal
 - Tax
 - Financial
 - Environmental
 - IT
 - Counterparty
- **Typically engage advisors for each DD**



What is done during Legal Due Diligence

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- **Agree on Scope / Depth**
- **Request for documents / information**
- **Investigate Key Areas**
 - Corporate documents
 - Licences and Permits
 - Material Contracts
 - Labour / employment
 - Assets
 - Disputes / Litigation
- **Due Diligence Report**



DEFINITIVE AGREEMENTS

Share Purchase Agreement / Asset Purchase Agreement / Business Transfer Agreement

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**Document setting out the key terms of the purchase of
shares / asset / business**

- Consideration
- Payment Terms
- Pre-Completion Undertakings
- Conditions Precedent
- Completion
- Representation and Warranties
- Indemnities
- Non-Compete

Findings of the due diligence are reflected



Shareholders' Agreement

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Document governing the rights, obligations and relationship of the shareholders

- Responsibilities of the Shareholders
- Board Composition
- Reserved Matters
- Financing



COMPLETION

Completion Process

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Confirm Conditions Precedent are fulfilled

- Regulatory Approval (MIC / TSMC / FESC)
- Bank Loans
- Rectification of DD issues

Payment of Consideration

- Ensure funds are available

Filings with Authority

- IRD (stamp duty)
- DICA (Change of Shareholder / Director)
- MIC (Notification etc)



SPEAKER PROFILES



HIROYUKI OTA

*Partner (Foreign Attorney)
Japan Desk and Myanmar Practice*

Hiroyuki has a wide range of experience in assisting multinational corporations in entering into the South East Asian market through mergers and acquisitions, joint ventures and greenfield foreign direct investments, which includes countries such as Myanmar, Thailand, Malaysia, Philippines, India and Vietnam, and has a deep understanding of the region.

His work has earned him well-deserved recognition as a “Highly Regarded” lawyer for M&A by IFLR1000.

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