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STATE OF THE MARKET 2020

GETTING BACK TO BUSINESS

We spotlight some of Asia's top dealmakers

How the pandemic is reshaping employment law

The latest updates from the Cayman Islands

PART II

MALAYSIA

The COVID-19 pandemic overshadowed some of the year's biggest events and set well-laid plans into a tailspin. Now, on the brink of a new year, as economies look to open up, the focus is firmly on the future. In Malaysia, as the government eases pandemic-imposed curbs, businesses are hopeful that the year ahead may be one of recovery, but they're not out of the woods yet. **BY ELIZABETH BEATTIE**

In November, after a contraction in the third quarter, Malaysia's central bank announced that 2021 would offer a healthier outlook, Reuters reported. The same month, as the government released a budget focused around COVID-19 recovery, it projected that the country's economy would rebound with growth in the new year.

While these indications are positive, Munir Abdul Aziz, managing partner at Wong & Partners, a member firm of Baker McKenzie International, says the mood in Malaysia is far from jubilant.

"While firms are doing their best to respond, the year has been tough. Conserving cash, staff layoffs, or placing employees on no pay leave are among the ways that businesses are responding internally," Aziz says, noting they are also increasingly focusing on core business "moving to a line of business for which there is demand in the COVID environment, drawing down on credit facilities and seeking indulgences on obligations wherever they can from lenders and trade creditors" he adds.

In Malaysia, a "pensive and uneasy" mood has taken grip, he says, noting there are concerns that the re-introduction of the Conditional Movement Control Order (CMCO) is reversing the "strong bounce back of the economy" during the Recovery Movement Control Order (RMCO). The real question, he says is how much longer SMEs withstand a continued CMCO lockdown.

Of course, there are also concerns about the longer term effect of the downturn should it be prolonged. "Supply chains that have taken many years to build may be irreparably damaged", says Aziz.

But there are some positives. The financial sector remains "largely unaffected" by the downturn.

"If the government is able to get the budget approved, there will be a massive further stimulus in the form of up to 80 billion ringgit [$19.6 billion] being injected in the economy from the withdrawals from employee provident fund accounts of affected members (estimated by the government at 8 million, each of whom are permitted to withdraw up to a maximum of 10,000 ringgit from their accounts)," notes Aziz.

> "If the economy continues to recover, we expect all of our practices to reap the benefits. The transactional practices are already seeing an uptick in activity as companies and investors have been able to factor in the impact of the pandemic in their decisions and sensitized their business plans and models to it."
>
> **— Munir Abdul Aziz, Wong & Partners**

For other businesses, the impact has been mixed, observes Aziz, with affected sectors "in a dire state", while glove makers and electronic manufacturing services companies "have been well placed and are thriving," he adds.

As law firms head into 2021, they do so prepared for an uptick in work.

"If the economy continues to recover, we expect all of our practices to reap the benefits. The transactional practices are already seeing an uptick in activity as companies and investors have been able to factor in the impact of the pandemic in their decisions and sensitized their business plans and models to it," says Aziz.

While from a client perspective, there has also been a realisation that the pandemic affords "not only serious challenges but also major opportunities" he adds, noting there will be a certain element of a fear of missing out "if there are signs of recovery and competitors make moves in an environment when access to financing remains intact."

"Our advisory practices are helping clients in an environment where regulators are doubling down on enforcement across all areas and especially the revenue authority," Aziz says.

Going forward, client service will remain a priority. "We're continuing to build deep and meaningful relationships with our clients and investing in our talent. These priorities will be enabled by innovation, a focus on industry knowledge and service lines, and maintaining and enhancing the profitability of our practices," he says.

Wong & Partners.
Member Firm of Baker & McKenzie International

Looking ahead to the opportunities and challenges to dealmaking in 2021

The dust has finally settled on the US Presidential elections. While most dealmakers are relieved that a big source of uncertainty has been dealt with, they will have to brace themselves for higher corporate tax and detrimental changes to the treatment of carried interest. Regulatory burdens will also become more onerous under a Biden Presidency, potentially blunting deal making activity. But all things considered, the conditions necessary for a much improved deal-making environment in 2021 have emerged.

The reasons for such optimism are apparent at the tail end of 2020. The prospects of a vaccine being available in the first half of 2021 are now clear. The only question is the efficiency of distribution and the effectiveness of mass immunization programs. A post Brexit trade deal between the UK and EU is almost at hand. Financial conditions remain benign as governments continue to provide fiscal stimulus and central banks maintain low interest rates and preserve asset purchase programs.

Businesses with strong balance sheets will seek opportunities for inorganic growth and private equity sponsors with ample dry powder will intensify their hunt for investments. In such an environment, animal spirits will be fuelled by an increasing fear of missing out as businesses transform digitally and exploit the potential of the Fourth Industrial Revolution to drive productivity growth.

The need to make supply chains more resilient against shocks will also drive deal making activity as re-shoring and near shoring become strategic imperatives. The search for resilience will also drive for sustainability in ways of doing business. Combined with capital from asset managers and pension funds focused on environmental, social and governance investment principles, businesses with sustainability embedded in their DNA will be the subject of investor attention as governments, investors and the general public get serious about the green new economy.

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The effects of an adjusting business environment in which resilient businesses that have more effectively weathered the impact of the pandemic rise above pandemic impaired businesses will create opportunities for acquisitions, consolidation and re-combinations. Restructuring and insolvency will ensue from the gradual reduction and cessation of stimulus packages, furlough schemes and temporary relief from legal action in the immediate aftermath of the pandemic. Businesses reliant on such artificial props for survival will undergo restructuring, dispose non-core assets, be re-capitalised or liquidated, all duly lubricated by the continuing availability of competitively priced financing.

But pitfalls will remain. Nationalism and identity politics will continue to dominate. The recently tabled national security and investment law in the UK is just the latest in a long list similar laws enacted by many Governments including those in the West and India, Japan and Australia. Undertaking cross border deals will become harder and take longer as clearances become more complex. Not only due to heightened foreign investment scrutiny but also because of the efforts of competition authorities to stem transactions that result in greater concentration and domination of data and technology by an ever smaller coterie of elite global tech giants.

The bifurcation of technology between China and the US will continue to impact trade and investment flows and by extension, deal-making activity. Supply chains will adjust accordingly and it will be harder for the two supply chains to commingle. Business owners will not only find their universe of customers and suppliers becoming smaller but also their pool of investors. In a continuing reaction against globalisation, participants of one "techno-sphere" will find themselves increasingly unwelcome in the other.

In the meantime, tech giants will, in 2021, likely face the most significant onslaught that they have ever experienced from regulators, politicians and the general public. Instead of being voracious acquirers of competitors, they will more likely divest and restructure.

The effect of restructuring and insolvency will also be an unknown. The recent defaults of State backed enterprises in China is an omen that certain assumptions may no longer hold in 2021. The long term effects of the pandemic on financial institutions and financial infrastructure remain to be seen. Asset prices have recovered from the sharpest fall in history in the steepest ascent ever recorded off the back of massive fiscal stimulus packages financed by the most rapid expansion of sovereign debt in economic history.

Meanwhile, central banks have rapidly accumulated the largest haul of financial assets since the advent of quantitative easing to keep long term interest rates low. Banks now record the thinnest net interest margins in their history as interest rates turn negative and rapidly ageing populations struggle to find returns for retirement.

How long can this last? In many ways the inevitable adjustment to the global economy and in turn, the deal-making environment, have not yet been seen. This uncertainty is probably what represents the greatest risk to the prospects of a swashbuckling year for deal making activity in 2021.