



UIA 11th Winter Seminar

Cross-border M&A Transactions

M&A in Highly Regulated Industries - Asset Deals in the Life Sciences Sector Switzerland

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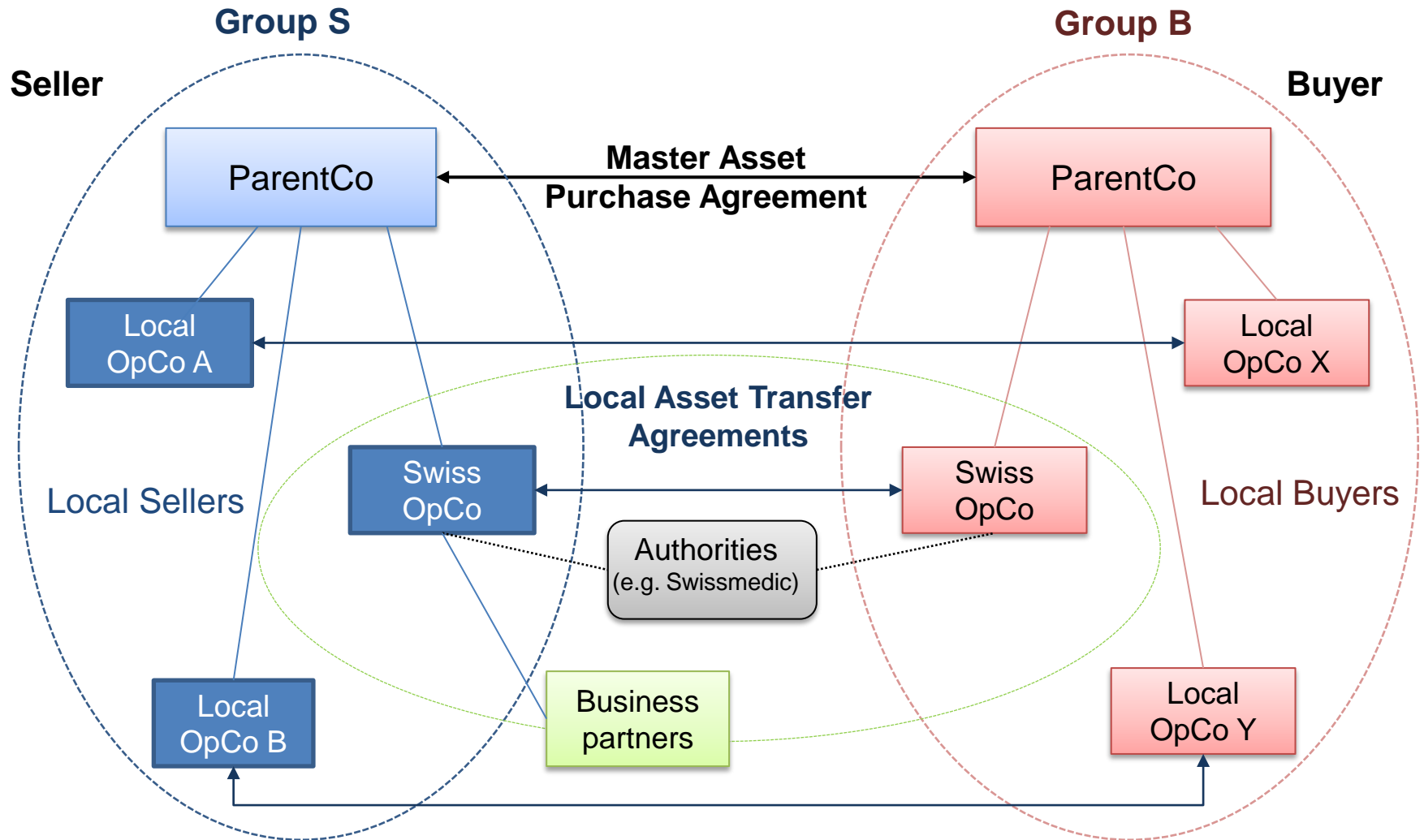
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Introduction

- M&A activity in Life Sciences sector
- The involved parties
- Acquisitions & divestitures
 - Businesses or parts thereof
 - Products and product lines
- Goals / reasons for M&A
- Life Sciences sector: highly regulated industry

Case Study – Overview



Case Study – Facts

- The Pharma sector
- The «Business»
- Involved parties
 - Group S(eller) and affiliates
 - Group B(uyer) and affiliates
 - Business partners (e.g. supply, distribution)
- Planned divestiture
 - Divestiture of the Business (with several products).
 - Seller is pharma company, operates Business in various markets / jurisdictions with local OpCos.
 - Buyer is experienced in food industry, the Business is a new field.
 - Divestiture in form of asset deal.

Regulatory Framework / Challenges

- Products: Pharmaceuticals
- Regulated industry
 - Swiss statutes, regulations / ordinances
 - Industry standards (GMP, GDP)
- Regulator: Swissmedic (www.swissmedic.ch)
- Establishment licenses
 - Manufacturing, import, wholesale trading, export
 - Requirements
- Marketing authorizations (MA)
 - Product specific authorization
 - Requirements
- Other regulatory issues (e.g. labeling, marketing)

Regulatory / Impacts on Transaction

- Seller's perspective
 - Preparation of carve-out / divestiture
 - Divesting entities
 - Identification of assets, liabilities, contracts of Business
 - Regulatory aspects
 - Transitional considerations
- Buyer's perspective
 - Due diligence
 - Ability to take over / operate the Business (e.g. licenses)
 - Acquiring entities
 - Transitional considerations

Structuring of Transaction

- «Global» divestiture
 - Cross-border, different jurisdictions
 - Master asset purchase agreement (APA)
 - Local asset transfer agreements (ATA)
 - Staggered completion / implementation
- Master APA vs. local ATA
 - Master APA builds basis / framework
 - Local implementation via ATA
 - Ancillary agreements (e.g. manufacturing, services)
 - Choice of law, dispute resolution
- Impact of local laws (e.g. Swiss law)
 - Form of asset deal, transfers and assumptions
 - Employment, tax, regulatory aspects
 - Completion related local law issues

Master APA vs. Local ATAs

Master APA

- Parties: ParentCos
- Sale of assets (description of Business and description / listing of related assets and liabilities)
- Purchase price; adjustment mechanisms
- Closing
 - Conditions
 - Closing sequence
 - Country specific requirements
- Reps & warranties
- Covenants (documentation, cooperation, notifications)
- Remedies; indemnification
- Termination; miscellaneous
- Choice of law; dispute resolution

Local ATA (e.g. Swiss ATA)

- Parties: Local OpCos
- Preamble / reference to APA
- Sale of assets (listing and description of assets and liabilities of *local* Business)
- Purchase price for local transfers
- Closing and related actions
 - Conditions (e.g. consents / approvals)
 - Local transfer requirements (e.g. for inventory, fixed assets, IP rights, contracts, real estate)
- Employment matters; social security
- Linkage to APA
- Choice of law; dispute resolution

Other documents

- Corporate documents / approvals
- Completion documents (e.g. instruments / forms / deeds)



Local ATA – Particularities

(1/2)

- Corporate approvals by Swiss OpCo
 - Board approval
 - Shareholders' approval?
- Form of asset deal
- Object of purchase
 - Description of Business
 - Identification of assets, liabilities, contracts etc.
- Licenses
- Marketing authorizations (MAs)
- Inventories and fixed assets



Local ATA – Particularities

(2/2)

- Intellectual Property (IP)
- Contracts with business partners
- Real estate (public deed, registration; permit(s), if any)
- Assumption of liabilities
- Employment matters
- Signing / closing
- Tax (e.g. VAT)

Transitional Aspects

- Impacts of regulatory framework
- Transitional matters
- Type of services
- Challenges
- Arrangements / models

Discussion

Cross-border divestitures / asset deals

- Structuring considerations
- Planning and timing of transaction
- Common issues in different jurisdictions
- Local law challenges

Contact

Thank you for your attention

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