UIA 11\textsuperscript{th} 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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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

Group S

ParentCo

Local OpCo A

Local Sellers

Group B

ParentCo

Local OpCo X

Local Buyers

Master Asset Purchase Agreement

Local Asset Transfer Agreements

Authorities (e.g. Swissmedic)

Business partners

Local Sellers

Seller

Buyer
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](http://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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