Global Private M&A Guide - Limited External Content - Singapore

Quick reference guide

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# Due diligence, pricing and closing

**Due diligence**

Due diligence investigations remain an essential tool for assessing and reducing the risks inherent in a merger or acquisition transaction in Singapore. In the absence of complete knowledge of the operations, the scope of the assets and the extent of the liabilities of the target, due diligence investigations give the prospective buyer an opportunity to assess the legal and financial state of affairs of the target. Due diligence also facilitates effective deal structuring and it is a vital part of most mergers and acquisitions in Singapore.

**Pricing and payment**

There are no legal requirements to carry out a valuation or follow a particular valuation model for determining the purchase price for companies or assets in Singapore. In practice, commonly used valuation methods include net asset value (NAV) and using a debt-free, cash-free basis (representing the enterprise value of the business). Purchase price adjustments are common, based on any shortfall or excess of the target's actual working capital against a target working capital. All types are seen, including working capital adjustment, cash-free, debt-free, NAV adjustments. In addition, more sellers (particularly in private equity transactions and/or auction sales) seek 'locked box' accounts to avoid post-completion adjustments.

No exchange control approvals are required for inward investment into Singapore, for the remittance of dividends or profits, or for the repatriation of capital.

**Signing/closing**

*Is a deposit required?*

The payment of deposits is not common practice in Singapore except in the real estate sector.

*Is simultaneous signing/closing common?*

Signing and closing may occur simultaneously in Singapore. However, where it is necessary to obtain regulatory or other approvals before closing or for the buyer to complete further due diligence after signing the agreement, then a split signing and closing will occur, which is also common in Singapore.

# Approvals/registrations

**Foreign investment restrictions**

Singapore does not have an economy-wide foreign investment law that restricts or regulates foreign investments. That said, there are sector-specific foreign investment legislation/licensing regimes in respect of certain sectors, such as media, financial services, telecommunications and real estate. For further information, see the more detailed section on "Foreign investment restrictions".

**Antitrust/merger control**

Notification of a relevant transaction is not mandatory under Singapore's merger control regime. The competition authority is unlikely to investigate unless a transaction meets certain thresholds it considers are indicative of potential competition concerns. M&A activities are regularly monitored and the authority may approach parties for further information about the transaction. For further information, see the more detailed section on "Antitrust/merger control".

**Other regulatory or government approvals**

For certain sectors, consent from the relevant industry regulator may be necessary, depending on the nature of the target's business. The Section 54 Prohibition does not apply to mergers that are approved by the Minister, the Monetary Authority of Singapore or other regulatory authority. Similarly, the Section 54 Prohibition does not apply to mergers that are under the jurisdiction of other regulatory authority under any written law relating to competition - examples include telecommunications services, and media services.

In some sectors, however, a change of control or transfer of assets may merely require notification to the relevant authorities rather than an obligation to obtain consent.

Other sector-specific regulators also have residual powers to consider competition law provisions as part of their general enforcement powers. For example, the Infocomm Media Development Authority has jurisdiction to enforce competition law principles in respect of the activities of telecommunications and media services in Singapore. Similarly, the Civil Aviation Authority of Singapore has jurisdiction over the operation of airports and the provision of airport services and facilities, while the Energy Market Authority has jurisdiction over the electricity and gas markets in Singapore.

The Electricity Act 2001 administered by the Energy Market Authority (EMA) is also relevant to State Grid’s management and/or operation of their assets in Singapore. The relevant prohibitions under the Electricity Act are:

Agreements, decisions or concerted practices that prevent, restrict or distort competition in any wholesale electricity market or the retail electricity market in Singapore – s 50. (Note: This prohibition also covers acquisition, directly or indirectly, of shares in or the assets of an electricity licensee).

The abuse of a dominant position in any wholesale electricity market or the retail electricity market in Singapore that may affect trade within Singapore.

The Significant Investments Review Act (SIRA) was passed in January 2024 and is expected to come into force later in 2024. The aim of the SIRA is to ensure the continuity of critical entities i.e. entities that are critical to Singapore's national security interests. These entities will be designated and regulated by the investment management regime provided for in SIRA. A number of notification or approval requirements for specific changes in ownership or control of designated entities will be imposed on buyers, sellers and the designated entities, including:

A buyer (in respect of a designated entity) will be required to notify the Minister within seven days after becoming (alone or together with its associates) a 5% controller.

A buyer (in respect of a designated entity) will be required to seek the Minister's approval prior to becoming (alone or together with its associates) a 12%, 25% or 50% controller, an indirect controller, or acquiring as a going concern (parts of) the business or undertaking of the designated entity. The Minister may approve an application if the buyer, and every associate of the buyer that the Minister knows is an associate, is a "fit and proper person".

A seller will be required to seek the Minister's approval when ceasing to be (alone or together with its associates) a 50% or 75% controller.

The Minister's approval will be required for the appointment of key officers such as the chief executive officer, director or chairperson of the board of directors in designated entities. The Minister's approval will also be required for the removal of such officers. The consent of the Minister will be required for designated entities to be voluntarily wound-up (to ensure the security and reliability of their critical functions). Likewise, the Minister will be able to issue special administration orders to direct the assumption of control of the designated entity's affairs, business, and property to ensure their continuity should national security issues arise, or the delivery of essential services be disrupted. The Minister will also have the power to remove key officers in the interests of national security. The Minister will have general powers to review transactions involving entities that have acted against Singapore's national security interests.

The Ministry of Trade and Industry clarified that the SIRA will complement Singapore's existing sectoral legislation which has ownership and control safeguards to monitor and manage entities in the following regulated sectors – telecommunications, banking and utilities.

# Employment

**Acquisition of shares**

Where a transaction takes the form of an acquisition of shares in a company with employees, there are unlikely to be significant employment law issues, as the underlying employment contract (and employee benefits generally) between the target and its employees will usually be unaffected by the change in control. The contracts of key senior personnel should be checked for any change of control provisions. Due diligence should be undertaken to ensure that potential liability for past acts and omissions is known.

**Acquisition of assets**

In a business sale scenario, or in a restructuring involving a merger, take-over, sale of parts of the company or setting up a subsidiary company, the employees of the transferor may be transferred to a related company such as a subsidiary, or to a totally unrelated company by operation of law.

The Ministry of Manpower (MOM) has issued guidance to exclude application of the automatic transfer from the following scenarios:

Transfer of assets only

Transfer of shares

Transfer of operations outside Singapore

Outsourcing of supporting functions.

Unless the employee agrees to changes in the terms, the transferring employee's terms or conditions of employment will remain the same and the transferee employer will take over the transferring employee's contract of service on the existing terms.

The transferring employee has the right to:

Be notified of the transfer and of matters relating to the transfer.

be given the opportunity to consult their employer.

Preserve the original terms and conditions of employment under the new employer.

The transferor will be required to:

Notify the affected employees or their union of the impending transfer within a reasonable time.

Inform affected employees about the terms of transfer, so that they or their union can hold consultations with the company.

Ensure that there is no break in employment during the transfer.

Ensure terms of employment are not less favorable after the transfer.

For the transfer of foreign employees holding work passes, arrangements will have to be made to notify, or make new applications, and/or cancel such work passes with the Ministry of Manpower (MOM) (as the case may be). The buyer should also ensure that it is permitted within its quota to hire any foreign employees on certain categories of work passes.

Employers must make a mandatory retrenchment notification to MOM regardless of the number of employees affected. The Commissioner of Labour may also require any employer to furnish at any time any information on the retrenchment of any employee by an employer.

# Tax

Singapore stamp duty is chargeable on the mortgage of Singapore immovable property and stock or shares, or any transfer of any interest in Singapore immovable properties (including leases) and shares in Singapore companies or companies which maintain a share register in Singapore (Stampable Property).

For a transfer of shares in Singapore companies or in companies which maintain a share register in Singapore, stamp duty is payable at the rate of 0.2% on the higher of: (i) the consideration paid; and (ii) the open market value of the shares. For non-listed companies, where the open market value and fair market valuation are not available, as an administrative practice, the Inland Revenue Authority of Singapore (IRAS) generally accepts the valuation of shares by reference to the net asset value of the target company.

For conveyance, assignment or transfer of non-residential real property in Singapore between 20 February 2018 to 14 February 2023, buyer's stamp duty is payable at the rates of 1% on the first SGD 180,000 of the purchase price or market value of the real property (whichever is higher); 2% on the next SGD 180,000; and 3% thereafter. On or after 15 February 2023, buyer's stamp duty for non-residential real property is payable at the rates of 1% on the first SGD 180,000 of the purchase price or market value of the real property (whichever is higher); 2% on the next SGD 180,000; 3% on the next SGD 640,000; 4% on the next SGD 500,000; and 5% on the next SGD 1,500,000.

For residential real property, the top marginal rate of buyer's stamp duty is 4% if the conveyance, assignment or transfer is executed between 20 February 2018 to 14 February 2023. On or after 15 February 2023, the top marginal rate of buyer's stamp duty is 6%. There may also be seller stamp duties applicable in the case of the sale or disposal of certain residential and industrial properties, depending on the holding period of the property.

In addition, to the extent that there is a transfer of interests in any entity that: (i) holds any residential property in Singapore; or (ii) beneficially owns (directly or indirectly) any entity that holds residential property in Singapore, it should be considered whether the transaction may trigger additional conveyance duty.

Generally, all taxable supplies of goods and services made in Singapore by a taxable person in the course or furtherance of any business carried on by it are subject to Singapore goods and services tax (GST) at the prevailing rate of 9%. The GST rate was 8% in 2023 and 7% before 2023. Where goods are exported or when international services are supplied, such supplies may be zero-rated.

Share sales are generally exempt from GST. Asset sales that qualify as a transfer of going concern (TOGC) are excluded from GST provided certain conditions are met.

**OECD's Two-Pillar Solution**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has put forward a so-called Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. Pillar Two is intended to introduce a global minimum effective rate of tax of 15% for large businesses in each jurisdiction where they operate and will lead to fundamental changes in the international tax system. It is currently being implemented in a large number of jurisdictions. Singapore plans to implement the global anti-base erosion (GloBE) rules (i.e., income inclusion rule and undertaxed profits rule) and domestic top-up tax from in-scope businesses' financial year starting on or after 1 January 2025. The domestic top-up tax will top up the multinational enterprise groups' minimum effective tax rate in Singapore to 15%.

Businesses will need to consider how the Pillar Two rules could impact on the life cycle of M&A transactions from the pre-acquisition phase (including transaction planning such as the choice of acquisition and financing structure and due diligence of the target group), the acquisition phase (such as contractual risk allocation around Pillar Two) to the post-acquisition phase and the impact of Pillar Two on any post-acquisition integration.

# Post-acquisition integration

For information on post-acquisition integration matters, please see our [Post-acquisition Integration Handbook](https://www.bakermckenzie.com/en/insight/publications/resources/post-acquisition-integration-2023).

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