



# Mergers & Acquisitions

# 2017

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Editors:

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# Singapore

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## Overview

### Singapore – Laws and regulations relating to M&A

The laws and regulations relating to mergers and acquisitions (“M&A”) in Singapore are found in various specific rules and regulations, and in general principles of contract and company laws.

For companies incorporated, registered in Singapore or carrying on business in Singapore, the laws and regulations applicable to M&A are primarily contained in the Companies Act, Chapter 50 of Singapore (“Companies Act”), the Securities and Futures Act, Chapter 289 of Singapore (“SFA”) and their relevant subsidiary legislation.

Real estate investments trusts (“REIT”) are subject to the SFA and Code on Collective Investment Schemes issued by the MAS. Business trusts (“BT”) are subject to the Business Trusts Act, Chapter 31A of Singapore.

The Companies Act applies to both private and public companies and generally deals with rules and regulations relating to the establishment of companies, basic governance rules including maintenance of capital, director’s duties and liabilities, compulsory acquisition, schemes of arrangement and amalgamations.

The SFA deals with securities offerings, licensing and business conduct of providers of capital markets services, substantial shareholder notifications, rules relating to scrippless shares and market conduct rules (e.g. insider trading prohibitions and market manipulation). It is worthwhile noting that in Singapore there is no distinction between private and public securities offerings although there are specific exemptions available from compliance with the securities-offering regime.

In addition, public companies, REIT and BT which are the subject of takeovers, schemes of arrangement, trust schemes or schemes of amalgamation are also subject to the Singapore Code on Take-overs and Mergers (“Code”) issued by the MAS pursuant to the SFA. While the Code is drafted with listed entities in mind, it is stated clearly in the Code that the specific rules and general principles set out in the Code can also apply to unlisted public companies, REIT and BT with 50 or more shareholders or unitholders and net tangible assets of S\$5m or more.

Listed entities are also subject to the rules of the Singapore Securities Exchange Trading Ltd (“SGX”) set out in its listing manual (“SGX Listing Manual”). The SGX Listing Manual has one set of rules for entities listed on its Main Board and another for entities listed on Catalist (which is for companies with smaller market capitalisation, etc.). Both sets of rules are broadly similar and deal with continuing listing and disclosure obligations,

interested party transactions, acquisitions and disposals and routine shareholder matters. We have set out below the more common structures utilised in Singapore for M&A in private and public M&A. It should be borne in mind, though, that certain structures set out below can be utilised by both private and public companies (such as the scheme of arrangement or amalgamation), depending on how the transaction is sought to be effected. In addition, all M&A transactions in Singapore must consider the application of the Competition Act, Chapter 50B of Singapore which is enforced by the Competition Commission of Singapore, as the Competition Act prohibits, amongst other things:

- (i) agreements which have as their object or effect the restriction, distortion or prevention of competition within Singapore;
- (ii) conduct which amounts to the abuse of dominant position in any industry in Singapore; or
- (iii) mergers resulting in, or which may result in, a substantial lessening of competition in any industry for goods or services in Singapore.

Other industry-specific legislation such as the Banking Act, Chapter 19 of Singapore, Insurance Act, Chapter 142 of Singapore, and the Financial Advisers Act, Chapter 110 of Singapore, may also impact an M&A involving entities governed by these legislation. Where there are entities in other regulated industries, any conditions imposed by the regulatory authority would also need to be considered.

#### *Common structures for private M&A*

In Singapore, private M&A transactions would most commonly be effected by one of the following structures:

- (i) an acquisition of shares with voting rights by way of a sale and purchase agreement;
- (ii) an acquisition of a business or assets by way of a business or an asset purchase agreement; or
- (iii) a joint venture whereby two or more parties cooperate for a particular common business goal either by participating in an incorporated or registered vehicle or by way of an unincorporated arrangement.

#### *Common structures for public M&A*

In Singapore, public M&A transactions can be effected, amongst others, by one of the following structures:

- (i) a takeover of a public listed company, REIT or BT by way of a general offer for all of the voting shares or units in a public listed company, REIT or BT effected in accordance with the Code;
- (ii) a scheme of arrangement (which is a legislative procedure to restructure a company) under section 210 of the Companies Act, which has to be approved at a scheme meeting by a statutorily-imposed majority in numbers and holding three-fourths in value and sanctioned by the High Court of Singapore, at which point it is binding on all shareholders;
- (iii) a scheme of amalgamation under sections 215A-J of the Companies Act which allows two or more Singapore incorporated companies to amalgamate and continue as one company through a voluntary amalgamation process; or
- (iv) a trust scheme constituting an acquisitions of units in a BT.

Of these, (i) and (ii) are the most common structures.

## Significant deals and highlights

According to reports, while the number of M&A deals in Singapore increased, deal values actually fell in 2016. Amongst the largest deals was the acquisition of Asia Square Tower 1 by the Qatar Investment Authority from Blackrock for S\$3.4bn.

On the public M&A front, take-privates and delistings from the Singapore Exchange were a common theme in 2016. According to a *Business Times* report in December 2016, a total of 26 companies were delisted from the Singapore Exchange. Seven companies with a market capitalisation of more than S\$1bn were delisted, including Neptune Orient Lines (“NOL”), SMRT Corporation, China Merchants Holdings (Pacific), Biosensors International, Tiger Airways, Sim Lian Group and Osim International. Other than NOL, these delistings were initiated by the existing shareholders of the respective companies.<sup>1</sup>

## Key developments

Key developments impacting M&A in Singapore going forward include the coming into effect of the changes to the Code in March 2016.

### Code changes:

The key changes to the Code are as follows:

(a) Providing certainty in cases of competing offers

To provide greater certainty on the applicable procedures and timelines where there are competing offers, amendments have been made to: (i) clarify that the offer timetables will be aligned to that of the latest offer; and (ii) prescribe a default auction procedure, if neither offeror has declared its final offer price in the later stages of the offer period.

(b) Encouraging pro-active offeree boards

To encourage offeree company boards to take a more active role in safeguarding shareholders’ interests, amendments have been made to clarify that: (i) soliciting a competing offer or running a sale process does not amount to frustration of the existing offer; and (ii) an offeree board may consider sharing available management projections and forecasts with the independent financial adviser.

(c) More timely disclosure

To ensure that shareholders and investors are apprised of material information on a timely basis, the Code will now require earlier disclosure of any material change to information previously published in an offer.

(d) Codifying and streamlining existing practices

The Code has been amended to: (i) clarify the standards that are required of pre-conditions in a pre-conditional voluntary offer; (ii) allow the offeree company to post the offer document at an earlier date in a pre-conditional offer; and (iii) clarify how the offer value for a different class of shares (e.g. preference shares) should be calculated.

In addition, the secretariat of the SIC has started a periodic newsletter, “Take-overs Bulletin”, in 2016 for participants in take-overs and mergers. The aim of the bulletin is to provide market participants with: (i) a better understanding of the Code; (ii) guidance on procedures to comply with the Code; and (iii) updates on regulatory developments.

### Budget proposals for tax incentives for M&A

The M&A scheme was first introduced in 2010 (and now extended to 2020) to encourage companies to consider M&A as a strategy for growth and internationalisation and is

relevant for any company incorporated and tax resident in Singapore.

In the 2016 Budget,<sup>2</sup> the following changes were proposed to the M&A scheme which took effect for acquisitions made from 2016:

Revised tax benefits under the M&A scheme

- (a) The M&A allowance rate of 25% is capped at S\$20m for qualifying share purchases.
- (b) The cap on the value of qualifying acquisitions for the M&A allowance per Year of Assessment is now S\$40m.
- (c) Stamp duty relief on the transfer of unlisted shares has been correspondingly capped at S\$40m on the value of qualifying M&A deals.

### **Industry sector focus**

According to data from corporate finance advisory firm Duff & Phelps reported in *The Straits Times*<sup>3</sup>, the biggest contributor to M&A deal values in 2016 Singapore was the real estate sector at close to 30%, overtaking the technology sector which was last year's leader, now slipped to third place after the industrial sector. The report also said that private-equity and venture-capital investments in Singapore companies this year increased in value to US\$3.5bn compared to US\$2.2bn, US\$2.4bn and US\$0.9bn for 2015, 2014 and 2013, respectively.

### **The year ahead**

Going forward in 2017, take-privates and delistings should continue to dominate the local M&A scene. The major shareholders of both Global Logistics and United Engineers are reported to have commenced processes to maximise value for their stakes in the listed companies. Whether these companies and others will be taken private and delisted in 2017 remains to be seen.

According to the *Singapore Business Review*,<sup>4</sup> Singapore may see a subdued M&A uptick in 2017. Citing a report by Intralinks Deal Flow Predictor, the top three sectors predicted for M&A activity are TMT, Industrials and Healthcare. M&A activity may be spurred by the need for survival and long-term profitability, which in turn may result in consolidation of players in industries affected by cost-cutting and where players are over-leveraged. Another potential driver for M&A activity in Singapore is likely to be companies unlocking value, boosting weak profits or streamlining operations through divestments, which in turn mean more assets may be available for disposal. With the depressed property market and property stocks trading low, property players and REITs may particularly be subjects of interest. In summary, despite the concerns about the effect that the weakening economy and market volatility may have on Singapore-led M&A activity, there appear to be some grounds for cautious optimism.

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### **Acknowledgment**

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**Endnotes**

1. Based on *The Business Times* report on 21 December 2016.
2. Singapore Budget 2016 and Singapore Budget Synopsis 2015, PwC.
3. Data from Duff & Phelps as reported by *The Straits Times* on 13 December 2016.
4. Based on the *Singapore Business Review* report on 17 November 2016.

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Steven Lo is a director in the Corporate & Finance Department. Steven's practice focuses on corporate finance and mergers and acquisitions. He has represented issuers, underwriters and selling shareholders in a variety of domestic and international capital markets transactions. He has extensive experience in both private and public merger and acquisition transactions in Singapore and the region, having acted for bidders, target companies and financial advisers in such transactions.

He has been noted in the *Asia Pacific Legal 500* as a "highly experienced corporate/M&A lawyer", for "providing solid advice", and for "understanding commercial issues and realities".

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Sandy co-heads Drew & Napier's Mergers & Acquisitions Practice, Banking & Finance Practice and Projects, Energy & Infrastructure Practice.

Effectively bilingual in English and Chinese, Sandy advised on some of the biggest/high-profile/award-winning M&A and Finance deals in the region in recent years.

A rare versatile specialist who successfully straddles her corporate and finance practice, Sandy has won high praise from clients and peers for both areas of work and is ranked as a leading lawyer in international legal publications like *Chambers Asia Pacific*, *Chambers Global*, *Asia Pacific Legal 500*, *IFLR1000*, and *Who's Who Legal*.

"Sandy Foo is well respected for her expertise on the corporate side, where peers note her outstanding commercial acumen in meeting her clients' needs." She has "amazing knowledge of her subject matter" and is "a great negotiator to have on your side" – *Chambers Asia Pacific*.

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