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Singapore: Law & Practice and Trends & Developments

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Drew & Napier LLC

SINGAPORE

Law and Practice

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Drew & Napier LLC

Contents

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1. Legal System and Regulatory Framework

1.1 Legal System

The Singapore Legal System

Singapore adopts a common law system, and its sources of law are derived from the Constitution of the Republic of Singapore, legislation, subsidiary legislation and case law. Judicial power in Singapore is vested in the Supreme Court of Singapore and in such subordinate courts as may be provided by any written law currently in force.

Overview of the Laws and Regulations Applicable to a Business Operating in Singapore

The laws and regulations applicable to a business operating in Singapore depend on factors such as the legal form of the business, its industry sector and its business activities.

An incorporated company is the most common legal form by which businesses operate in Singapore. The main statute applicable to a company incorporated in Singapore is the Companies Act 1967 of Singapore (the "Companies Act"). The Accounting and Corporate Regulatory Authority of Singapore (ACRA) is responsible for the administration of the Companies Act, and is the regulator of, amongst others, business registration in Singapore. Depending on the proposed business name and business activity, specific approval may be required from industry-specific referral authorities in Singapore. Once a company is incorporated in Singapore, it will be a separate legal entity capable of entering into contracts, of suing and being sued, and having perpetual succession with power to hold land.

Some key legal and regulatory regimes applicable to a company incorporated in Singapore include:

- legislation relating to the employment of local and foreign employees, such as the Employment Act 1968 of Singapore (the "Employment Act"), the Central Provident Fund Act 1953 of Singapore, and the Employment of Foreign Manpower Act 1990 of Singapore;
- legislation relating to the protection of patents, copyrights, trade marks and other types of intellectual property, such as the Patents Act 1994 of Singapore (the "Patents Act"), the Copyright Act 2021 of Singapore and Trade Marks Act 1998 of Singapore (the "Trade Marks Act");
- legislation relating to the protection of personal data, such as the Personal Data Protection Act 2012 of Singapore (PDPA); and
- legislation relating to the payment of taxes, such as the Income Tax Act 1947 of Singapore (the "Income Tax Act") and the Goods and Services Tax Act 1993 of Singapore (the "GST Act").

1.2 Regulatory Framework for FDI

Singapore generally has an open investment regime, in line with its broader economic development strategy designed to attract inbound foreign direct investment (FDI), and offers a variety of grants and incentives to eligible foreign investors.

Historically, there has been no specific legislation that governs inbound FDI, and there is generally no requirement for an investment to be reviewed or approved by any Singapore regulatory authority for the sole reason that such investment is from a foreign source.

However, laws and regulations applicable to certain regulated sectors may restrict foreign investments, such as investments in the domestic news media and broadcasting sectors. Please refer to **8.1 Other Regimes** for more information.

Under the new Significant Investments Review Bill (the "Bill") introduced in Parliament on 6 November 2023 and expected to be implemented in 2024, the regulation of significant investments by both local and foreign investors into entities critical to Singapore's national security interests that are designated under the Bill (the "Designated Entities") will be increased. For entities designated under the Bill, notification or approval obligations for specified changes in ownership or control of the entities will be imposed. Financial sponsors who are buying into Designated Entities will be required to notify the Ministry of Trade and Industry (the "Minister") after becoming a 5% controller and will have to seek the Minister's approval before becoming a 12%, 25% or 50% controller. Financial sponsors will also have to seek the Minister's approval before becoming an indirect controller or acquiring as a going concern the business or undertaking, or parts of it.

2. Recent Developments and Market Trends

2.1 Recent Developments and Market Trends

Singapore continues to navigate an uncertain global geopolitical and economic environment, with a series of transformative global events that have reverberated worldwide.

In light of the geopolitical tensions, Singapore's Senior Minister and Co-ordinating Minister for National Security, Teo Chee Hean, commented that trade, investments, supply chains and technology access are increasingly driven by geopolitical considerations rather than economic ones. This is evident in how these tensions have stirred volatility and uncertainty in global markets and continue to cast a shadow on economic stability.

Additionally, extreme weather phenomena are increasingly becoming the world's new reality. Reports show that 2023 is likely the hottest year on record, which has also resulted in extreme weather events around the globe such as devastating wildfires, extreme droughts and record-breaking floods. This has spurred conversations on environmental law and the urgency of climate action, leading to increased legal scrutiny on corporate environmental responsibilities.

These global events acted as catalysts for legal discourse and shaped discussions surrounding international relations and environmental regulations, laying the groundwork for legal adaptations in the forthcoming year. Accordingly, certain trends and developments have emerged in Singapore, some of which are set out in the Singapore Trends and Development chapter in this guide.

3. Mergers and Acquisitions

3.1 Transaction Structures

Overview

Transaction structures used in Singapore depend on factors such as the existing shareholding structure of the target company, the assets involved, the commercial objectives of the parties, the industry, and regulatory considerations.

Common Structures Used for Acquisitions in Singapore

The acquisition of a Singapore private company or a business is commonly structured as:

- an acquisition of shares in the share capital of the private company; or
- an acquisition of the business and assets of the private company.

The acquisition of a Singapore public company listed on the Singapore Exchange Securities Trading Limited (SGX) is commonly structured as:

- a general offer;
- a scheme of arrangement; or
- a voluntary delisting (where the public company will be delisted from the SGX following the completion of the acquisition).

Common Structures for a Minority Investment in a Private Company Incorporated in Singapore

A minority investment in a private company incorporated in Singapore can take the form of a subscription of shares or convertible instruments issued by the private company or the acquisition of shares from the existing shareholders of the private company via a secondary sale.

3.2 Regulation of Domestic M&A Transactions

Overview

Singapore M&A transactions can generally be categorised as:

- private M&A transactions involving private companies;
- private M&A transactions involving public unlisted companies; and
- public M&A transactions involving public listed companies.

Private M&A Transactions Involving Private Companies

The acquisition of shares or the business and assets of a Singapore private company is generally not regulated in Singapore. However, certain M&A transactions may require regulatory review and approval, such as:

- an M&A transaction that may be expected to result in a substantial lessening of competition within any market in Singapore, as discussed in **6. Antitrust/Competition**;
- an M&A transaction involving a target company operating in certain key sectors where foreign ownership restrictions apply, as discussed in **8.1 Other Regimes**; and
- an M&A transaction involving a licensed entity subject to change of control or change of management approval or notification requirements.

Private M&A Transactions Involving Unlisted Public Companies

In addition to the considerations set out above, an M&A transaction involving the acquisition of an unlisted Singapore public company with (i) more than 50 shareholders and (ii) net tangible assets of SGD5 million or more has to comply with the letter and spirit of the Singapore Code on Takeovers and Mergers (the "Takeover Code"). Approvals by, waivers from, and/or notifications to the Securities Industry Council of Singapore (SIC) may be required depending on the terms of the private M&A transaction.

Public M&A Transactions

In addition to the considerations set out above, an M&A transaction involving the acquisition of a public company with a primary listing on the SGX has to comply with the Companies Act (if the target is a Singapore-incorporated company), the Securities and Futures Act 2001 of Singapore (SFA), the Takeover Code and the Listing Manual of the SGX (the "Listing Manual"). Approvals by, waivers from, and/or notifications to the SIC and the SGX may be required, depending on the terms of the public M&A transaction.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

A private limited company is the most common legal form by which businesses operate in Singapore, representing approximately 71.7% of all live entities on ACRA's register. The key corporate governance rules and requirements applicable to a company can be found in the Companies Act, the constitution of the company, and, if applicable, the shareholders' agreement.

In addition, a company in Singapore listed on the SGX also has to comply with the Listing Manual as well as the Code of Corporate Governance.

Depending on the company's industry sector and its business activities, additional corporate governance rules, requirements and norms may also apply. For example, financial institutions incorporated in Singapore are required to comply with the Guidelines on Corporate Governance issued by the Monetary Authority of Singapore (MAS).

4.2 Relationship Between Companies and Minority Investors

In the case of a private company, it is common for the shareholders of the company to enter into a separate shareholders' agreement setting out the terms governing their relationship, including the rights available to the minority shareholders, such as board or board observer rights, and a list of reserved matters which would require the minority shareholders' consent. Apart from the shareholders' agreement, the constitution of a company sets out the contractual relationship among the shareholders inter se and between the shareholders and the company. In addition to the protections available to the shareholders in the constitution and shareholders' agreement, shareholders of a company may also rely on protections and remedies available under the Companies Act.

In the case of a public listed company, minority shareholders' protections can be found in the Companies Act, the Code of Corporate Governance, the Listing Manual and the Takeover Code.

4.3 Disclosure and Reporting Obligations

There are no specific disclosure obligations for FDI in Singapore. However, general disclosure requirements apply to all persons making, holding or disposing of shares in companies.

Private Company

In the case of a private company incorporated in Singapore, any transfer of shares has to be lodged by the company with ACRA. The information required in such lodgment (including the new shareholder's identity and shareholding) will be reflected in the company's electronic register of members and business profile, which is publicly available through ACRA's business filing portal (the BizFile+ portal).

Public Company Listed on the SGX

In the case of any shareholding in a Singapore company listed on the SGX, there are additional disclosure and reporting obligations under the SFA that apply to a "substantial shareholder" – ie, a shareholder who has an interest or interests in one or more voting shares (excluding treasury shares) in the company – and the percentage of the total votes attached to such shares is not less than 5% of the total votes attached to all voting shares (excluding treasury shares) in the company. These disclosure obligations apply to shareholders who are directly or indirectly holding voting rights in the listed company.

A substantial shareholder is required under the SFA to give a notice in writing to the company within two business days after the substantial shareholder becomes aware that it has become, or has ceased to be, a substantial shareholder. Any change in the percentage level of the substantial shareholder's interest is also disclosable by the substantial shareholder to the company by notice in writing within two business days after the substantial shareholder becomes aware of the change. Upon receiving such notice, the company is required under the SFA to announce or otherwise disseminate the information stated in the notice to the SGX as soon as practicable and, in any case, no later than the end of the business day following the day on which the company received the notice.

5. Capital Markets

5.1 Capital Markets

Companies can access funding and financing relatively easily through capital markets and bank financing.

The capital markets in Singapore are primarily regulated by the MAS. The MAS regulates activities such as the offer of securities, including debt and equity securities, to investors in Singapore pursuant to the SFA.

Companies can raise funds via initial public offerings, or if they are listed on the SGX, they can undertake a rights issue or placement of their shares to new investors. Companies that list their securities on the SGX are also regulated by the SGX and are required to comply with the Listing Manual, which comprises the Mainboard Rules and the Catalist Rules.

5.2 Securities Regulation

Unless exempted, all offers of securities must be accompanied by a prospectus and a product highlights sheet registered with the MAS. Such exemptions include:

- small offers – ie, personal offers of securities where the total amount raised from such offers within any period of 12 months does not exceed SGD5 million (or its equivalent in a foreign currency) in accordance with Section 272A of the SFA;
- private placements – ie, offers made to no more than 50 persons within any period of 12 months in accordance with Section 272B of the SFA;
- offers made to institutional investors in accordance with Section 274 of the SFA;
- offers made to accredited investors and certain other prescribed persons in accordance with Section 275 of the SFA; and
- offers of securities listed on the SGX made using an offer information statement in accordance with Section 277 of the SFA.

Companies that list their securities on the SGX are also regulated by the SGX and are required to comply with the Listing Manual.

5.3 Investment Funds

In relation to foreign investors structured as investment funds and making a foreign direct investment into Singapore, there is generally no requirement for an investment to be reviewed or approved by any Singapore regulatory authority for the sole reason that such investment is from a foreign source. However, foreign investors should note the forthcoming changes to the investment regime highlighted in **1.2 Regulatory Framework for FDI**.

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

The merger control regime in Singapore is set out in the Competition Act 2004 of Singapore (the "Competition Act"), and the Competition and Consumer Commission of Singapore (CCCS) is the regulatory body governing merger control regimes.

Generally, unless otherwise exempted or excluded, Singapore prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services (the "Merger Restrictions").

A merger is deemed to occur where:

- two or more previously independent undertakings merge;
- one or more persons or undertakings acquire direct or indirect control of the whole or part of other undertakings; or
- the acquisition by a first undertaking of the assets of the second undertaking places the first undertaking in a position to replace or substantially replace the second undertaking in the business in which the second undertaking was engaged immediately before the acquisition.

The Merger Restrictions apply even if any party to a merger or anticipated merger is outside Singapore or any other matter arising out of such merger is outside Singapore. Accordingly, the merger control regime applies to FDI.

The Merger Restrictions do not apply to any mergers (i) relating to certain specified activity, including licensed postal services and the supply of wastewater management services, and (ii) any merger in which economic efficiencies outweigh the adverse effects of the substantial lessening of competition in the relevant market in Singapore.

Voluntary Notification Regime

It is not mandatory to notify the CCCS of any merger, whether before or after its implementation. It is possible to make the investment first before notifying the CCCS of the merger. However, the risk is that the CCCS may commence investigations if there are reasonable grounds for suspecting that a merger has infringed or that an anticipated merger, if carried into effect, will infringe the Merger Restrictions.

Self-assessment

If the merger is not excluded or exempted under the Competition Act, parties should perform a self-assessment to determine whether the Merger Restrictions may be infringed. The CCCS should be notified if the merged undertaking has a market share of at least 40%, or the post-merger combined market share of the three largest firms are at least 70% and the merged undertaking has a market share of at least 20%.

Confidential advice

Parties may apply to the CCCS for confidential advice on whether an anticipated merger, if carried into effect, is likely to infringe the Merger Restrictions. The advice is non-binding on the CCCS. To be eligible for confidential advice, the parties must intend to carry the anticipated merger into effect and the merger must not be publicly known at the time of application.

Notification

Parties can apply to the CCCS for a formal decision if they consider that the Merger Restrictions may be infringed.

Review

The review of applications to the CCCS for a decision on the merger or anticipated merger is conducted in two phases. The CCCS will first conduct a preliminary assessment (Phase 1 review) based on the information collected during the Phase 1 review period. This is expected to take around 30 working days, and the merger will be cleared at Phase 1 if the CCCS is able to reach a favourable decision. A Phase 2 review is triggered if the CCCS is unable to conclude, during the Phase 1 review period, that the merger does not raise competition concerns. The CCCS will request additional information before conducting a more detailed assessment, which is expected to be completed in 120 working days.

6.2 Criteria for Review

The CCCS assesses whether a merger situation results or may be expected to result in a substantial lessening of competition in a market by comparing the extent of competition in each relevant market if the merger proceeds and if the merger does not proceed.

Factors that the CCCS will consider include:

- market shares and market concentration, which assesses the number and size of participants in the market pre- and post-merger;
- barriers to entry and expansion, which assesses the extent to which the expansion of existing competitors and the entry of new competitors will constrain the behaviour of the merged entity;
- any countervailing buyer power, which assesses the buyers' power to constrain the ability of the merged entity to raise prices; and
- any efficiencies that may enhance rivalry in the market.

6.3 Remedies and Commitments

Remedies can take the form of commitments or directions. Additionally, the CCCS is also able to impose a financial penalty on any of the merger parties. In determining the appropriate remedy, the CCCS will have regard to the principle of proportionality in assessing the effectiveness of different remedies and their associated costs in practice.

Commitments

The CCCS may, at any time, before determining whether the Merger Restrictions have been or will be infringed, accept commitments from the parties to take or refrain from taking such action that it considers appropriate to remedy, mitigate or prevent the substantial lessening of competition.

Directions

Where the CCCS determines that the Merger Restrictions have been or will be infringed, the CCCS may give directions to remedy, mitigate or eliminate the adverse effects of such infringement and prevent its recurrence. Such directions include:

- prohibiting the anticipated merger from being carried into effect or requiring a merger to be dissolved or modified;
- requiring the parties to enter into agreements to prevent or lessen any anti-competitive effects; and
- requiring the parties to dispose of such operations, assets or shares of such undertaking.

Financial Penalties

The CCCS may impose a financial penalty if it determines that the Merger Restrictions have been infringed intentionally or negligently.

6.4 Enforcement

The CCCS may conduct an investigation if there are reasonable grounds for suspecting that the Merger Restrictions have been or will be infringed, including where there are substantiated complaints from third parties and via its market intelligence function. The CCCS can accept commitments or impose directions for such infringements, as set out in **6.3 Remedies and Commitments**.

Parties may appeal to the Competition Appeal Board against the CCCS's decision in respect of whether the Merger Restrictions have been or will be infringed, and directions imposed by the CCCS. A further right of appeal exists against the decision of the Competition Appeal Board to the High Court (and subsequently to the Court of Appeal) on any point of law and the amount of financial penalty in relation to such decision.

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

There is generally no requirement for an investment to be reviewed or approved by any Singapore regulatory authority for the sole reason that such investment is from a foreign source. Please refer to **8.1 Other Regimes** for more information on certain key sectors where foreign ownership restrictions apply and **1.2 Regulatory Framework for FDI** for upcoming changes to the regulatory framework for FDI.

7.2 Criteria for Review

This is not applicable in Singapore.

7.3 Remedies and Commitments

This is not applicable in Singapore.

7.4 Enforcement

This is not applicable in Singapore.

8. Other Review/Approvals

8.1 Other Regimes

There are laws, regulations and sanctions regimes which may restrict foreign investments in certain key sectors and business activities.

Domestic News Media Sector

Under the Newspaper and Printing Presses Act 1974 of Singapore, unless governmental approval is obtained:

- all directors of a newspaper company must be Singapore citizens;
- newspaper companies must issue two classes of shares, ordinary and management, with management shares being issued or transferred only to approved Singapore citizens or corporations; and
- no person may acquire more than 5% of the total votes attached to all voting shares in a newspaper company.

Broadcasting Sector

Under the Broadcasting Act 1994 of Singapore, unless the minister otherwise approves, a company must not be granted or hold a broadcasting licence if:

- a foreign shareholder holds or controls 49% or more of the shares of the company or its holding company; or
- the majority of the persons having direction, control or management over the broadcasting company or its holding company are appointed by, or accustomed or under the obligation to act in accordance with the wishes of, any foreign investor.

Other Activities

Singapore has established targeted financial sanctions regimes in respect of designated individuals, entities and activities.

For example, the Terrorism (Suppression of Financing) Act 2002 of Singapore (TSOFA) prohibits certain acts which have the effect of financing terrorism or terrorist acts, such as providing or collecting property with the intention, or knowing or having reasonable grounds to believe, that the property will be used to commit any terrorist act, or using or possessing property for the purpose of facilitating or carrying out a terrorist act. The TSOFA has an extra-territorial effect and may apply to acts committed by any person outside Singapore.

In addition, as a member state of the UN, Singapore is committed to implementing resolutions of the UN Security Council. Some of these resolutions prohibit persons in Singapore from dealing with UN-designated individuals and entities, eg, by providing resources and services for the benefit of such persons, and any FDI to this effect may be subject to sanctions by the MAS.

9. Tax

9.1 Taxation of Business Activities

The main taxes imposed on companies doing business in Singapore are corporate income tax, goods and services tax (GST), and sometimes stamp duty.

Corporate Income Tax

All domestic and foreign companies are subject to tax on all profits that arise or derive from Singapore. Singapore's corporate tax rate of 17% is considered one of the lowest rates internationally.

For income tax purposes, each partner of a partnership (including a limited partnership and a limited liability partnership) will be taxed on their share of the income from the partnership, based on a personal income tax rate if the partner is an individual, or the tax rate for companies if the partner is a company.

There are various tax incentives administered by different government agencies allowing eligible companies to pay a concessionary tax rate or receive a tax exemption on their qualifying income.

GST

GST is a consumption levied tax on the import of goods and almost all supplies of Singapore. The prevailing GST rate is 8% and the Singapore government has announced that the GST will be increased to 9% with effect from 1 January 2024.

Stamp Duty

Stamp duty is imposed on certain instruments prescribed under the Stamp Duties Act 1929 of Singapore (the "Stamp Duties Act"), which include instruments relating to charges over immovable property and shares, transfers of interests in immovable properties in Singapore and transfers of shares. The stamp duty rates vary depending on the type of instrument.

9.2 Withholding Taxes on Dividends, Interest, Etc

Payments such as interest, royalties, rent for the use of movable properties, and management fees made to non-residents are subject to withholding tax. Singapore does not impose withholding tax on dividends and, thus, dividends paid to foreign corporate shareholders by a company tax resident in Singapore are not subject to tax.

The rates of withholding tax depend on the nature of the income. For example, interest in connection with any loan or indebtedness is subject to withholding tax of 15% or the prevailing corporate tax rate, while income received or earned from the rights to use intellectual property such as copyrights, patents and trade marks are subject to withholding tax of 10% or at the prevailing corporate tax rate.

Withholding tax rates (if payable) may be exempted or subject to a reduction in tax rates under fiscal initiatives, treaty rates or double taxation agreements.

9.3 Tax Mitigation Strategies

Corporate income tax rebates are available to eligible companies to provide relief for business costs and restructuring. Both domestic and foreign companies (which are not subject to withholding tax) can qualify. Relief from stamp duty may be available for share transfers pursuant to a transfer of assets between associated permitted entities, subject to the conditions for relief being met. The key requirements for relief are that (i) the relevant transferor and transferee companies are closely associated in terms of shareholding and voting rights for a minimum of 12 months, and (ii) the transfers have a bona fide purpose.

Tax incentives, in the form of a concessionary tax rate or tax exemption, are available to eligible companies through schemes such as the Financial Sector Incentive Scheme, the Pioneer Certificate Incentive (PC) and the Development and Expansion Incentive (DEI). An approved company under the PC or DEI is eligible for a corporate tax exemption or a concessionary tax rate of 5% or 10%, respectively, on income derived from qualifying activities.

The Inland Revenue Authority of Singapore (IRAS) also set up the M&A Scheme in 2010, which has been extended until 31 December 2025. Under the M&A Scheme, an acquiring company making a qualifying acquisition of the ordinary shares of a target company during the valid period would be granted an M&A allowance, based on the applicable rates during the period in which the qualifying share acquisition is made. Any contract or agreement for the sale of equitable interest in ordinary shares or on any transfer documents for the acquisition of ordinary shares in the M&A Scheme would also be granted stamp duty relief and double tax deduction on transaction costs, subject to terms and conditions.

9.4 Tax on Sale or Other Dispositions of FDI

Capital gains derived by a foreign investor from the sale or other disposition of FDI are not subject to tax in Singapore.

9.5 Anti-evasion Regimes

Singapore's general anti-avoidance rules (GAAR) are found in Section 33 of the Income Tax Act. Similar provisions exist in the GST Act and the Stamp Duties Act. Whether there is tax avoidance is dependent on the facts of each case; this would involve an enquiry into the subjective motive of the taxpayer for entering into the arrangement and subjective consequences sought, as well as the manner in which the arrangement is carried out in the light of the specific legislative provision. According to the IRAS, examples of tax avoidance arrangements falling within Section 33 of the Income Tax Act are:

- the circular flow or round-tripping of funds;
- the set-up of more than one entity for the sole purpose of obtaining tax advantage;

- changes in the form of business entity for the sole purpose of obtaining tax advantage; and
- the attribution of income that is not aligned with economic reality.

Transfer pricing rules apply to transactions between two related parties to ensure that the parties are taxed based on an arm's length value of the transaction. Related parties are parties where one party directly or indirectly controls the other, or where both parties are directly or indirectly controlled by a common third party. This definition is construed broadly to include relationships between resident entities and non-resident affiliates. Where the pricing of a related-party transaction is not made at arm's length and results in reduced profit for the Singapore taxpayer, the IRAS may adjust the profit of the taxpayer upwards.

10. Employment and Labour

10.1 Employment and Labour Framework

Overview

The Employment Act is the main employment legislation in Singapore and applies to most employees (except for seafarers, domestic workers, statutory board employees and civil servants) working under a contract of service with an employer.

The Ministry of Manpower (MOM) also issues guidelines and advisories to supplement the law. While these guidelines and advisories are generally non-binding, the MOM may take action against employers for non-compliance.

Notably, the Tripartite Guidelines on Fair Employment Practices (TGFEP), which primarily seek to protect workers against discrimination based on age, race, gender, religion, marital status and family responsibilities or disability, will be enshrined in law. Currently, non-compliance with the TGFEP may result in the prosecution of the employer and/or key personnel and/or the debarment from making or renewing work pass applications for up to two years.

On 4 August 2023, the MOM announced that it has accepted the final set of recommendations by the Tripartite Committee on Workplace Fairness for the Workplace Fairness Legislation (WFL). The WFL is Singapore's first workplace fairness law and is slated to be passed in the second half of 2024. The key thrusts of the recommendations of the Tripartite Committee on Workplace Fairness are as follows:

- strengthening protection against workplace discrimination;
- supporting business/organisational needs and national objectives;
- resolving grievances and disputes while preserving workplace harmony; and
- ensuring fair outcomes through redress for victims of workplace discrimination and appropriate penalties for breaches.

When enacted, the WFL will likely complement, and not replace, the TGFEP.

Trade Unions and Collective Bargaining

According to the MOM's website, at the time of writing, there are approximately 65 registered trade unions in Singapore.

Only trade unions recognised by the employer under the Industrial Relations Act 1960 of Singapore (IRA) can represent their members in collective bargaining. The collective bargaining process may be initiated by the trade union or the employer. Pursuant to Section 25 of the

IRA, a collective agreement should be valid for at least two years but not more than three years, from the date on which it is expressed to commence, and must be filed to the Industrial Arbitration Court (IAC) within one week of signing. If a collective agreement cannot be concluded, the trade union or the employer may request for conciliation assistance from the MOM. Disputes which are unresolved through conciliation may be escalated to the IAC for arbitration.

10.2 Employee Compensation

Employees are generally compensated through cash and statutory benefits such as paid sick leave and hospitalisation leave. Some employers may offer equity compensation, such as the grant of employee share options or share award plans. The vesting of the options granted under the share options or share award plans may be accelerated as a result of an acquisition of the employer.

10.3 Employment Protection

Share Sale

In the context of an acquisition of a company incorporated in Singapore by way of a transfer of shares, the completion of such acquisition should not have an impact on the employment contract between the target company and its employees. The rights available to an employee of the target company would continue to be effective against the target company.

Business Transfer

In the context of a business transfer (including the disposal of business as a going concern and a transfer effected by sale, amalgamation, merger, reconstruction or operation of law), Section 18A of the Employment Act sets out the protection for employees affected by the business transfer. Where this Section applies, the outgoing employer has an obligation to, amongst other things, notify and consult with the affected employees and their trade union as soon as it is reasonable and before the business transfer. The employment of affected employees will be automatically transferred with the business, and their employment terms, including compensation, will remain the same unless otherwise agreed upon by the employees or the trade union.

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

Intellectual property is generally not an important aspect of screening FDI in Singapore. Please refer to **7.1 Applicable Regulator and Process Overview** for a summary of FDI screening in Singapore.

11.2 Intellectual Property Protections

Intellectual Property Protections in Singapore

Singapore is considered to have strong intellectual property protections, with international surveys consistently ranking Singapore's intellectual property regime as among the best in the world.

Limitations

There may be difficulty obtaining protection for certain intellectual property. For example, under the Patents Act, an invention which would be generally expected to encourage offensive, immoral or anti-social behaviour is not a patentable invention. This is a broad limitation and might possibly extend to, for example, pharmaceutical products relating to genetic manipulations that raise safety concerns. Similarly, trade marks that are contrary to public policy or morality may not be registered under the Trade Marks Act.

11.3 Data Protection and Privacy Considerations

Specific Laws and Regulations

The PDPA establishes general data protection and data privacy laws, and regulates the collection, use, disclosure and processing of personal data in Singapore. In addition to the PDPA, subsidiary legislation, such as the Personal Data Protection Regulations 2014, has been enacted to govern data protection in Singapore.

Extraterritorial Scope

The PDPA applies to organisations which collect, use or disclose personal data within Singapore. The definition of "organisation" under the PDPA is broad and includes any individual, company, association, or body of persons, corporate or unincorporated, whether or not formed or recognised under the law of Singapore, or resident or having an office or place of business in Singapore. Accordingly, the PDPA has an extraterritorial scope that could extend to a foreign investor in its home jurisdiction.

Enforcement

There is a strong enforcement focus for these laws, with the Personal Data Protection Commission (PDPC) being established under the PDPA for the purpose of administering and enforcing the PDPA. The PDPC has a wide discretion to issue remedial directions as it thinks fit, including requiring an organisation to stop collecting and using personal data in contravention of the PDPA, and to destroy personal data collected in contravention of the PDPA.

The PDPC may also require an organisation to pay a financial penalty of up to 10% of the annual turnover in Singapore of the organisation (if such annual turnover exceeds SGD10 million) or SGD1 million, with the maximum amount varying depending on factors such as the provision of the PDPA that is contravened. The PDPC must consider certain factors when determining the amount of penalty imposed, including the nature and gravity of the non-compliance, the type and nature of the personal data affected, and whether the organisation had previously failed to comply with the PDPA. Additionally, non-compliance with certain provisions of the PDPA may constitute a criminal offence and may result in imprisonment.

The decisions relating to organisations found to have contravened their obligations under the PDPA are also published publicly on the PDPC's website.

Trends and Developments

Contributed by:
Tan Teng Sen, Priscilla Wang, Vincent Wong and Christal Lim
Drew & Napier LLC

Drew & Napier LLC is one of the largest law firms in Singapore and has provided exceptional legal advice and representation to discerning clients since 1889. The calibre of the firm's work is acknowledged internationally at the highest levels of government and industry, and marks Drew & Napier as Singapore's world class law firm. Its corporate/M&A practice is one of Singapore's leading M&A practices. It regularly advises parties, including vendors, purchasers, investors, boards of directors and financial advisers, on a wide range of corporate and commercial matters, such as domestic and cross-border M&A transactions, joint ventures, investments as well as complex reorganisations. The firm's M&A practice is supported seamlessly by its other market leading practices, including banking and finance, tax, competition, real estate and intellectual property practices. With the launch of Drew Network Asia in 2020, which now covers nine out of 11 countries in South-East Asia, Drew & Napier is well-placed to handle multi-jurisdictional transactions, particularly in South-East Asia.

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Introduction

Singapore continues to navigate an uncertain global geopolitical and economic environment, with a series of transformative global events that have reverberated worldwide.

In light of the geopolitical tensions, Singapore's Senior Minister and Co-ordinating Minister for National Security, Teo Chee Hean, commented that trade, investments, supply chains and technology access are increasingly driven by geopolitical considerations rather than economic ones. This is evident in how these tensions have stirred volatility and uncertainty in global markets and continue to cast a shadow on economic stability.

Additionally, extreme weather phenomena are increasingly becoming the world's new reality. Reports show that 2023 is likely to have been the hottest year on record, which has resulted in extreme weather events around the globe such as devastating wildfires, extreme droughts and record-breaking floods. This has spurred conversations on environmental law and the urgency of climate action, leading to increased legal scrutiny on corporate environmental responsibilities.

These global events have acted as catalysts for legal discourse and shaped discussions surrounding international relations and environmental regulations, laying the groundwork for legal adaptations in the year ahead. Accordingly, certain trends and developments have emerged in Singapore.

Sustainability Reporting

For companies listed on the Singapore stock exchange, the listing rules mandate that listed issuers must produce an annual sustainability report, which must include the following primary components:

- material ESG factors;
- climate-related disclosures consistent with the Task-Force on Climate-Related Financial Disclosures (TCFD) recommendations, policies, practices and performance, targets, sustainability reporting framework and board statement and associated governance structure for sustainability practices.

Where the issuer cannot report on any primary component, the issuer must state this and explain what it does instead and the reasons for doing so.

In December 2021, the Singapore Exchange Regulation announced the introduction of climate disclosure rules on sustainability reporting, which involves issuers making climate-related disclosures, including any climate-related risks and opportunities which could impact the issuer's future financial position and performance, in order for investors to price or value their investments accordingly.

While climate disclosures, as part of an issuer's sustainability reporting requirements, are required to be done on a "comply or explain" basis,, these climate disclosures are set to become mandatory from the financial year ending 2023 for companies in the financial, agriculture, food and forest products, and energy industries. In respect of the financial year ending 2024, in addition to the above, companies in the materials and buildings, and transportation industries will also be mandated to make climate disclosures in their sustainability reports.

Currently, other than those companies subject to the Energy Conservation Act 2012 of Singapore and Carbon Pricing Act 2018 of Singapore, non-listed companies are not required under legislation to prepare any form of climate reporting in

Singapore. In 2023, the Accounting and Corporate Regulatory Authority of Singapore (ACRA) and the SGX RegCo concluded a public consultation on recommendations to advance climate reporting in Singapore. A key recommendation includes mandatory climate reporting from financial year ending 2027 for large non-listed companies with an annual revenue of at least SGD1 billion, with a review to be conducted in the same year with a view to mandatory climate reporting around financial year ending 2030 for other large non-listed companies with a revenue of at least SGD100 million. ACRA and SGX RegCo will be considering the feedback received from the public consultation before finalising the recommendations by 2024.

Significant Investments Review Bill

Singapore introduced a Significant Investments Review Bill in November 2023 to protect the national security interests of Singapore by regulating significant investments in, and control of, designated critical entities in Singapore. Only entities that are critical to Singapore's national security interests will be designated under this regime and the new regime will apply to both local and foreign investors.

Entities may be designated if they are incorporated, formed or established in Singapore, carry out any activity in Singapore, or provide any goods and services to any person in Singapore. In the event of proposed ownership or control changes, amongst others, such designated critical entities would be required to notify or seek approval from the authorities.

Some of the notable features of the Significant Investments Review Bill include the following.

- Notifications to the Minister for Trade and Industry (the "Minister") have to be made if the proposed sale would result in the investor becoming a 5% controller in the designated entity. When such investor would become a 12%, 25% or 50% controller in the designated entity, the approval of the Minister must be sought. Concurrently, investors that are looking to sell their interest in a designated entity such that they would cease to be a 50% or 75% controller are also required to obtain prior approval from the Minister. The failure to do so would void the proposed transaction.
- Designated entities will be required to seek the approval of the Minister for the appointment of key executive positions such as the chief executive officer, directors and chairperson of the board. The Minister may also remove such key officers in the interest of national security.
- Designated entities cannot be voluntarily wound up or dissolved without the consent of the Minister and where national security issues arise or if the delivery of essential services are disrupted. Orders can also be given to direct the assumption of control of the designated entities' affairs, business and property, to ensure their continuity.
- Even if an entity is not designated under the regime, the Minister may still review the entity's ownership or control transactions, whether direct or indirect, and make orders in relation to the transfer or disposal of equity interests or the control of voting power in the entity if the Minister is satisfied that such entity has acted against the national security interests of Singapore.

The Minister of Trade and Industry, Gan Kim Yong, has commented that this strengthens Singapore's position as a trusted hub for business to invest with confidence, as Singapore remains open and connected to the world. As most critical entities in Singapore are presently covered by existing sectoral legislation, it is expected that only a handful of critical entities will be designated under this Bill. Further, the Ministry of Trade and Industry will continue to closely engage with stakeholders and ensure that the overall impact on affected business will be minimised.

Singapore-Asia Taxonomy for Sustainable Finance

The Monetary Authority of Singapore (MAS) launched the Singapore-Asia Taxonomy for Sustainable Finance (the "Singapore-Asia Taxonomy"), which seeks to provide financial institutions with guidance on how to identify and classify activities that can be considered green or transitioning towards being green.

It is a sustainable finance framework which defines green and transition activities that contribute to climate change mitigation across eight focus sectors:

- energy;
- real estate;
- transportation;
- agriculture and forestry/land use;
- industrial technology;
- information and communication technology;
- waste/circular economy; and
- carbon capture and sequestration.

The framework offers extensive coverage as these sectors make up 90% of the region's greenhouse gas emissions.

The Singapore-Asia Taxonomy also pioneers the concept of a "transition" category, which is particularly relevant in Asia where the shift towards a net zero economy is coupled with economic development, population growth and rising energy demands.

"Transition" activities refer to activities that do not meet the green thresholds now but are on a pathway to net zero or contributing to net-zero outcomes. As achieving zero emissions is still limited by technological evolution in some sectors, a transition threshold acknowledges this transition phase while ensuring it remains credible.

Transition activities are defined through two approaches, as set out below.

- A traffic light system that defines green, transition and ineligible activities across the eight focus sectors – activities classified in the green category can qualify for green or sustainable financing, activities in the amber category can access transition financing, and activities in the red category or deemed to pose significant harm would not be eligible for sustainable financing. However, the transition activity threshold will not last indefinitely and has a sunset date as the Singapore and regional economy become less carbon-intensive with time.
- A "measures-based approach" to encourage capital investments into decarbonisation measures or processes that will help reduce the emissions intensity of activities and enable the activities to meet the green criteria over time.

The taxonomy also includes specific criteria on financing the early retirement of coal-fired power plants, where such power plants are a critical part of the energy transition in the Asia-Pacific region where coal accounts for almost 60% of power generation. To ensure credibility, the taxonomy also sets out requirements that these plants have to be closed by 2040 and that electricity generated has to be fully replaced with clean energy within the same electricity grid.

The detailed thresholds and criteria will help to reduce the risk of green or transition washing, as financial institutions will be able to disclose how their financed activities and labelled products are aligned with the taxonomy. This helps increase taxonomy-aligned financing solutions and facilitate sustainable development in markets.

Base Erosion and Profit Shifting 2.0 (BEPS 2.0) Pillar Two

The OECD's Inclusive Framework (IF) on BEPS agreed on BEPS 2.0 in October 2021, to which Singapore is a signatory. It looks to deal with the issue of multi-national enterprises (MNEs) paying different effective tax rates in the different jurisdictions that they operate in, depending on the types of economic activity conducted and the domestic corporate regime, with the digitalisation of the global economy. The highlights of the initiative include the following.

- Pillar 1, which focuses on redefining how taxing rights are allocated among countries. It proposes new rules to determine where MNEs should pay taxes and seeks to re-allocate some profits and taxes from where economic activities are conducted to where the markets are, irrespective of physical presence. It requires affected MNE groups to re-allocate globally 25% of their profits in excess of 10% of their global revenue to the jurisdictions where the markets are.
- Pillar 2, which introduces a global minimum effective tax rate (ETR) of 15% for MNE groups with revenues of at least EUR750 million, through the Global Anti-Base Erosion (GloBE) Model Rules. This ensures that MNEs pay a minimum level of tax regardless of where they operate, in order to deter profit shifting and tax base erosion. Companies will have to evaluate whether the ETR falls under 15% for every jurisdiction in which the MNE operates in. If an affected MNE has an ETR of less than 15% at the group level, other jurisdictions can collect the difference of up to 15%. Additionally, specified payments made to related parties and taxed below 9% may be subjected to new withholding taxes.

While some jurisdictions have announced that they will adopt legislation to implement Pillar 2 rules to be effective in 2024, Singapore plans to introduce Pillar 2 rules from the financial year beginning on or after 1 January 2025. This will mean that MNEs have to start preparing for this new tax regime in the coming year.

Amongst other implications, this will also influence structure and taxation considerations in M&A as well as the valuation of target companies. For example, tax due diligence in M&A transactions may grow increasingly critical as buyers will have to scrutinise the tax position of target companies more deeply. Deal structures may also need to be reassessed as companies evaluate tax-efficient mechanisms while ensuring compliance with the new regulations. These considerations in the evolving tax landscape and its implications on overall transactions will play an increasingly central role.

Outlook for 2024

In light of the significant uncertainty in the global outlook arising from wars, high inflation and continued high interest rates, economists have predicted that global economic expansion will decrease to 2.8% in 2024, down from 3% in 2023. Accordingly, economies and investor sentiment appear to be sensitive to further shocks.

That said, Singapore and the South-East Asia region maintain a brighter outlook when compared to the rest of the world. HSBC has forecast collective growth for the major economies of Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam to reach 4.6% in 2024, up from 4% in 2023. Additionally, Singapore's Ministry of Trade and Industry expects Singapore's economy to grow between 1% to 3% in 2024 as trade-related sectors improve modestly.

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