Public mergers and acquisitions in Singapore: overview

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M&A ACTIVITY

1. What is the current status of the M&A market in your jurisdiction?

2016 was a relatively buoyant year for mergers and acquisitions in Singapore. Data compiled by corporate finance advisory firm Duff & Phelps revealed that the M&A market registered 684 deals, valued at a total of US$82.7 billion (as at November 2016) (Source Transaction Trail, Duff & Phelps 2016). While deal volumes grew 16% in 2016, deal values declined by 18% compared to the previous year.

More M&A deals were reportedly made in Singapore than in any other country in Southeast Asia in 2016. The continued momentum in deal volume was mainly fuelled by sizable M&A transactions by the sovereign wealth funds in Singapore, GIC and Temasek Holdings, in consortium as well as through stand-alone investments. This was in addition to other significant deals such as

- CMA CGM’s acquisition of Neptune Orient Lines, Singapore Telekom’s stake acquisition in Intouch Holdings and Bharti Telecom, Qatar Investment Authority’s acquisition of Asia Square Tower 1, and Avago Technologies’ acquisition of Broadcom, and Alibaba Group’s purchase of a controlling stake in Lazada South East Asia Pte Ltd. There has also been an increasing trend of

- privatisation of companies listed on the Singapore Exchange Securities Trading Limited (SGX).

2. What are the main means of obtaining control of a public company?

The main methods of obtaining control of a Singapore public company include general offers, schemes of arrangement and reverse takeovers. Where the offeror and target company are both incorporated in Singapore, the amalgamation process under the Companies Act, Chapter 50 of Singapore can also be used, although this approach is not common.

General offers

General offers take one of the following forms (Singapore Code on Takeovers and Mergers (Takeover Code)):  

- Mandatory offers. These are triggered by the offeror acquiring shares which result in the shareholdings of the offeror in the target company, together with those of parties acting in concert with it, crossing certain thresholds (see Questions 13 and 18).

- Voluntary offers. These are made on a voluntary basis by the offeror. A voluntary offer must always be conditional on the offeror and its concert parties acquiring more than 50% of the target company. An offeror can stipulate a higher percentage acceptance threshold with the consent of the Securities Industry Council (SIC) (see Question 13).

- Partial offers. This is where voluntary offers are made for a portion of the target company’s shares (see Question 13).

Schemes of arrangement

Schemes of arrangement are provided for in section 210 of the Companies Act.

A scheme is typically structured so that the outstanding shares in the target company are transferred from the shareholders of the target company to the offeror, in consideration for the offeror paying cash or issuing new shares in the acquiring company (or a combination of both cash and shares) to the shareholders of the target company. An alternative structure, which is used less often, is where the target company cancels its existing shares and issues new shares in the target company to the offeror.

A scheme requires:

- The approval of a majority of the number of shareholders of the target company, unless the High Court of Singapore orders otherwise, present and voting in person or by proxy, with that majority representing at least 75% in value of the shares voted at the scheme meeting.

- The sanction of the High Court.

Once an order for a scheme has been approved by the High Court, it binds all shareholders, including those who objected to the scheme at the scheme meeting or in the High Court.

Amalgamation proposals

In a reverse takeover transaction, the acquirer transfers to the target company assets and/or businesses in exchange for new shares in the target company. The acquirer may then be required to make, or may decide to make, a takeover offer for all the remaining shares in the target company that it does not own.

The effect of a reverse takeover is that the acquirer gains control of a listed company. Such transactions are subject to additional approvals and requirements by the SGX as well as the approval of shareholders. Among other things, the SGX requires that the enlarged group consisting of the acquirer and target company re-comply with the SGX listing requirements.

HOSTILE BIDS

3. Are hostile bids allowed? If so, are they common?

It is possible to undertake hostile bids in Singapore. However, they are not common, due to the relatively concentrated shareholding structure of many Singapore public companies.
REGULATION AND REGULATORY BODIES

4. How are public takeovers and mergers regulated, and by whom?

The takeover of a Singapore public company is regulated by the following key legislation.

Securities and Futures Act of Singapore, Chapter 289 of Singapore

The primary legislative provisions relating to takeover offers are set out in Part VIII of the Securities and Futures Act. Section 138 provides for the establishment of the Securities Industry Council (SIC). The SIC is the regulator which oversees the Takeover Code and is part of the Monetary Authority of Singapore.

Section 140 lists the offences relating to takeover offers. It is an offence for a person to give notice or publicly announce that he or she intends to make a takeover offer if he or she has no intention of making one. It is also an offence for a person to make, give notice, or publicly announce an intention to make a takeover offer, if that person has no reasonable or probable grounds for believing that he or she will be able to perform his or her obligations if the offer is accepted or approved.

The Singapore Code on Take-overs and Mergers

The Takeover Code applies to the acquisition of voting control of:

- Corporations (including corporations not incorporated under Singapore law) with a primary listing of their equity securities in Singapore.
- Registered business trusts with a primary listing of their units in Singapore.
- Real estate investment trusts.

The Takeover Code was drafted with listed public companies, listed registered business trusts and real estate investment trusts in mind. However, wherever possible and appropriate the letter and spirit of the Takeover Code, as set out in its General Principles and Rules, must also be observed by unlisted public companies and unlisted registered business trusts that have:

- More than 50 shareholders or unitholders.
- Net tangible assets of $55 million or more.

The Takeover Code does not have the force of law and non-compliance does not give rise to criminal proceedings. Breaching the Takeover Code, however, may result in the SIC imposing sanctions. Sanctions include:

- Private reprimands.
- Public censure.
- Where the breach is flagrant, further action as the SIC thinks fit, such as:
  - actions designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market;
  - compensating existing and former shareholders of the Singapore public company.

In the case of advisers, the SIC can also require the adviser to abstain from taking on Takeover Code-related work for a stated period.

Companies Act

Section 21D of the Companies Act provides for schemes of arrangement, which is one of the methods used to privatise a Singapore-incorporated listed company (see Question 2).

Singapore-incorporated companies can also use the amalgamation process in sections 215A to 215K to facilitate the combination of such companies.

Section 215 governs the compulsory acquisition of the shares of dissenting shareholders once an offeror (who can be either a company or an individual) has acquired 90% of the target company’s shares through a takeover offer (excluding those shares held at the date of the offer by, or by a nominee for, the offeror or its related corporations).

Listing Manual of the Singapore Exchange Securities Trading Limited

The Listing Manual applies to a takeover transaction where either the offeror or the target company is a company listed on the SGX.

The Listing Manual sets out the continuing listing requirements and corporate disclosure policy with which a Singapore listed company must comply. It is also relevant where a listed offeror offers new shares as consideration in its takeover offer or where a listed target company is the subject of a reverse takeover.

PRE-BID

Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

There is no legal obligation imposed on a target company to assist an offeror with its enquiries. The directors of the target company may authorise the disclosure and in deciding whether to do so, must take into account their fiduciary duty to act in the best interests of the target company and all its shareholders.

Any disclosure of information in the due diligence process by the target company is subject to the restrictions on disclosure set out in the Listing Manual of the SGX. Under the Listing Manual, a listed company is subject to continuing disclosure requirements which require it to keep its shareholders informed of all material information relating to it. Likewise, a listed company cannot provide any information to a person which would put that person in a privileged dealing position. Any such disclosure by the target company may give rise to insider dealing concerns under the Securities and Futures Act, given the requirement to maintain absolute secrecy before the announcement of an offer (see Question 8).

Recommended bid

A target company will usually provide a recommended offeror with due diligence access. The level of information and documents provided varies depending on the nature of the transaction and the parties involved. However, it would not include forward-looking information or other price-sensitive information, unless the target company is willing to also release the same information publicly.

Offerors usually make due diligence enquiries relating to some of the following:

- Corporate secretarial records.
- Material contracts.
- Real estate assets.
- Accounts.
- Employment and insurance contracts.
- Finance documents.
- Licences and permits (if required).
- The number and nature of litigation claims pending and in progress, whether by the target company as plaintiff or
defendant, and whether any foreseeable claims are threatened (if any).

- A list of shareholders and shareholdings.

Hostile bid

A target company is highly unlikely to provide due diligence access to a hostile bidder. However, if a target company provides information to an offeror, the Takeover Code requires that the same information must be provided to any other bona fide offeror (including a hostile offeror) who later emerges if the competing offeror makes a request for such information.

Information in public domain

For companies incorporated in Singapore, information available from its filings with the Registrar of Companies, which can be obtained from the Accounting and Corporate Regulatory Authority of Singapore, includes:

- Details of the company's directors.
- The company's issued share capital and shareholders.
- Copies of the company's constitutional documents.

Other public information may be accessible through the target company's website, and in any prospectus, announcement or shareholders' circular which the company has released.

Where the target company is listed, the company has a continuing obligation under the Listing Manual to keep the public informed of major developments, including significant acquisitions and disposals and material developments. The listed company must also publish quarterly financial information and other routine information such as results of meetings and dividend details. Such information is available from the website of the SGX (i).

Where available, information on a target company can be gathered from published research material conducted on the target company by analysts of investment banks and broking houses.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

The Singapore Code on Take-overs and Mergers requires that absolute secrecy must be maintained before an announcement of a takeover offer is made. Information relating to a bid should only be passed to another person on a need-to-know basis. In this regard, a listed entity that is temporarily refraining from publicly disclosing information concerning a takeover offer must maintain a list of persons that are privy to the information. The listed entity must be able to provide the list expeditiously to the SGX on request.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

It is common for an offeror to seek irrevocable undertakings from key shareholders to accept its proposed offer and thereby increase the likelihood of the offer being successful.

Information about undertakings (including stating what circumstances, if any, under which such undertakings will cease to be binding) must be set out in the offer announcement and the offer document. The document evidencing an irrevocable undertaking to accept the offer must be made available for inspection.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply?

An offeror is not prevented from building a significant stake in a target company outside of the offer process, subject to the substantial shareholder disclosure obligations and the insider trading prohibitions. The offeror should, however, be mindful of the thresholds which trigger a mandatory offer (see Question 14) and the minimum offer price rules under the Takeover Code (see Question 15).

Disclosure obligations

Shareholders of listed companies must disclose to the company:

- When they become or cease to become a substantial shareholder of the company. A substantial shareholder is one who owns not less than 5% of the total votes attached to all voting shares in a company.
- Where there is a percentage level change in their substantial shareholding.

This information must be disclosed within two market days from the event occurring. The listed company must then publicly release these disclosures.

Insider trading prohibitions

The provisions relating to insider dealings are found in the Securities and Futures Act. If an offeror is in possession of price-sensitive information regarding the target company (which an offeror may come into possession of, for example, while conducting due diligence on the target company), it cannot deal in the target company's shares until such information has become public or is no longer price-sensitive. In the context of a takeover, being in possession of price-sensitive information would prevent the offeror from making the bid unless the information is disclosed to all the shareholders of the target company as well. However, an offeror does not breach the insider trading prohibitions by acquiring shares in a target company merely because the offeror is aware that he is going to make a takeover offer for the target company.

An insider dealer may be subject to:

- Criminal prosecution.
- A civil action brought by an aggrieved investor or taken by the Monetary Authority of Singapore.

Derivatives

Under the Takeover Code, people who acquire or write any option or derivative which causes them to have a long economic exposure to changes in the price of securities will normally be treated as having acquired those securities. Any person who would breach the thresholds which trigger a mandatory offer as a result of acquiring such an option or derivative must consult the Securities Industry Council beforehand to determine if a mandatory offer is required.
Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Agreement between bidder and target company

The parties to a recommended bid can agree on the process for releasing a joint recommended offer announcement and certain mutual covenants. These mutual covenants can include, for example:

- Exclusivity undertakings.
- Commitments to co-operate in satisfying regulatory clearance.

However, apart from schemes of arrangement, parties do not typically enter into implementation agreements for takeover offers.

Duties of target board

Under common law, a company's directors owe fiduciary duties to the company to act in good faith and in the best interests of the company. The Companies Act also imposes a statutory duty on a director to act honestly and use reasonable diligence in the discharge of the duties of his office at all times.

Directors of a target company who agree on its behalf to enter into an agreement with an offeror, where doing so would prevent the target company from soliciting or encouraging proposals or enquiries from other potential offerors, must ensure that in doing so, they are acting in good faith in the best interests of the company and its shareholders.

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

An offeror or potential offeror can negotiate break fees with the target company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail, for example, where the board of the target company recommends a higher competing offer.

The Securities Industry Council (SIC) must be consulted at the earliest opportunity in all cases where a break fee or any similar arrangement is proposed.

In all cases where a break fee is proposed, certain safeguards must be observed, including:

- The fee must be minimal, and normally must not exceed 1% of the value of the target company, calculated by reference to the offer price.
- The board of the target company and its financial adviser must provide written confirmation to the SIC that, among other things, the break fee is in the best interests of the target company's shareholders and was agreed as a result of normal commercial negotiations. It must also provide to the SIC a written explanation of the basis, appropriateness and circumstances in which the break fee becomes payable.

Any break fee arrangement must be fully disclosed in the offer announcement and the offer document.

The above rules also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment or are considered to be in the ordinary course of business. These can include:

- Penalties.
- Put or call options.
- Other provisions having similar effects.

In addition to the rules in the Takeover Code, it is necessary to observe the provisions in the Companies Act, which prohibit a target company from providing financial assistance for the acquisition of shares in the target company.

Break fees and/or the reimbursements of expenses are increasingly common in public takeovers in Singapore where the offer is a recommended offer. This might occur, for example, where the takeover proceeds by way of a scheme of arrangement.

Committed funding

11. Is committed funding required before announcing an offer?

Where the offer is for cash or includes an element of cash, the offeror must have sufficient financial resources unconditionally available to allow it to satisfy full acceptances of the offer before it can announce an offer. The Securities Industry Council (SIC) requires the financial adviser to the offeror (that is, a financial institution, such as a bank or investment bank, sponsoring the takeover) or any other appropriate third party (such as the offeror's financing bank) to confirm this unconditionally. An offer announcement and the offer document must include this unconditional confirmation by the financial adviser or other appropriate third party.

ANNOUNCING AND MAKING THE OFFER

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Announcements

Target. A bid must first be notified to the target company's board of directors or its advisers (Singapore Code on Takeovers and Mergers) (Takeover Code). When an approach which may or may not result in an offer is made to the target board, the primary responsibility for making an announcement will normally rest with the target board. The target board must:

- Inform its shareholders without delay upon receiving notification of a firm intention to make an offer from a serious source, whether or not the board views the offer favourably.
- Issue a paid press notice, or, where the bidder has published a paid press notice, an announcement.

The target board must also make an announcement following an approach when:

- Whether or not there is a firm intention to make an offer:
  - the target company is the subject of rumour and speculation about a possible offer;
  - there is undue movement in the target's share price or a significant increase in the volume of share turnover.
- Negotiations or discussions between the offeror and the target company are about to be extended to include more than a very restricted number of people.

In these circumstances, the target company or company concerned may also make a request to the Singapore Exchange Securities
Trading Limited (SGX) to grant a temporary halt in the trading of the securities of the relevant company.

**Bidder/vendor.** Absolute secrecy must be maintained before an announcement of a takeover offer is made. Where there is a leak regarding such a potential transaction, an offeror is expected by the SIC to make an announcement clarifying its position.

Before the board of the target company is approached, a potential bidder or shareholder who holds 30% or more of the target company's voting rights who held negotiations or discussions with a potential bidder must make an announcement where there are reasonable grounds for concluding that it is the potential bidder's or vendor's actions respectively, whether through inadequate security or otherwise, which have contributed to either of the following (Takeover Code):

- The target company becoming the subject of rumour or speculation about a possible offer.
- Undue movement in the target company's share price or a significant increase in the volume of share turnover.

The target company, if listed, may then have to make an announcement to the SGX accordingly, in compliance with the Listing Manual's corporate disclosure policy.

**Hostile and recommended bids.** There is no substantive difference between the announcements made for hostile and recommended bids. In a hostile bid, the respective boards of directors of the offeror and target company would make separate announcements and issue circulars separately. This is also typically the standard procedure in situations where the directors of the target company recommend the offer, although there have been a handful of "recommended" take-over offers in Singapore where announcements and circulars have been jointly issued by the bidder and the target company.

**Timetable**

The timetable under the Takeover Code is as follows:

- **T.** Announcement of a firm intention to make an offer.
- **T + 14.** This is the earliest date the bidder can post an offer document.
- **T + 21.** This is the latest date the bidder can post an offer document.
- **T + 28 (assuming the offer document was posted on T + 14).** The target company has 14 days after posting of the offer document to post an offeree document to its shareholders.
- **T + 42 (assuming the offer document was posted on T + 14).** An offer must be open for at least 28 days after the date on which the offer document is posted.
- **T + 67 (assuming the offer document was posted on T + 14).** A potential competing bidder must clarify its intents by this date, either by announcing a firm intention to make an offer, or by making a no intention to bid statement, except where the first bidder's offer is implemented through a scheme of arrangement or trust scheme or amalgamation (see below, Competitive bids).
- **T + 74 (assuming the offer document was posted on T + 14).** An offer cannot be kept open for more than 60 days after the day on which the offer document was posted, unless the offer has previously become unconditional as to acceptances. An extension of a conditional offer beyond 60 days will normally only be granted by the SIC if there is a competing bid (see below, Competitive bids).

**Competitive bids**

Where an offeror has announced a firm intention to make an offer and a potential competing offeror becomes the subject of a possible offer announcement, the potential competing offeror must normally clarify its intentions by the 53rd day from the date the first offeror despatches its initial offer document, either by announcing a firm intention to make an offer, or by making a "no intention to bid" statement (see above, Timetable). Where the first bidder's offer is being implemented by way of a scheme of arrangement, a trust scheme or an amalgamation, the deadline for the potential competing offeror to clarify its intention would normally be no later than the seventh day prior to the date of the shareholders' meeting to approve the relevant scheme or amalgamation.

If a competing bid is announced while an existing offer is open for acceptance, the first offeror's offer period may be extended past the 60-day period from the posting of its offer document, subject to approval from the SIC. In such cases, all existing offers will normally be bound by the timetable established by the despatch of the offer document of the latest competing offeror.

If a competitive situation continues to exist in the later stages of the offer period, the SIC will normally require revised offers to be announced in accordance with the auction procedure set out in Appendix 4, Takeover Code where no alternative procedure has been agreed between the competing offeror(s), the board of the target company and the SIC. Such a situation arises where a competitive situation continues to exist at 5.00pm on the 46th day following the despatch by the second competing offeror of its offer document or, if the second competing offeror is proceeding by means of a scheme or arrangement, on a date to be determined by the SIC.

**Offer conditions**

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

**Minimum level of acceptance**

A takeover offer must be conditional on a minimum level of acceptance (Takeover Code):

- **Mandatory offer.** Except with the approval from the SIC, a mandatory offer must be conditional on an offeror obtaining acceptances which will result in the offeror, and parties acting in concert with it, holding shares carrying more than 50% of the voting rights of the target company.
- **Voluntary offer.** A voluntary offer must be conditional on an offeror, and parties acting in concert with it, acquiring more than 50% of the voting rights of the target company, or, with the approval from the SIC, a higher level of shareholding of the target company.
- **Partial offer.** A partial offer which could result in an offeror, and its concert parties, holding more than 50% of the voting rights of the target company must be conditional on a specified number or percentage of acceptances being received and approved by the target company's shareholders.

**Restrictions on conditions attached to takeover offers**

In the case of a mandatory offer, no conditions can be imposed apart from the condition on the minimum level of acceptance, except for merger control clearance by the Competition Commission of Singapore.

Conditions cannot be attached in the case of a voluntary or partial offer where satisfying them depends on a subjective interpretation or the discretion of the offeror. Conditions concerning the level of acceptance, approval of shareholders of the issue of new shares and the approval of the SGX for listing can be attached without reference to the SIC. However, the SIC should be consulted where any other conditions are proposed to be attached.
Pre-conditions
An offeror can announce a pre-conditional voluntary offer where the announcement of a firm intention to make an offer is subject to the fulfilment of certain pre-conditions. In such cases, the pre-conditions should be stated clearly in the pre-conditional offer announcement and be objective and reasonable. The announcement of the pre-conditional offer must specify a reasonable period for the fulfilment of the pre-conditions, failing which the offer will lapse.

No pre-condition should be relied on to cause the offer to lapse unless the offeror has demonstrated reasonable efforts to fulfil the conditions within the time period specified and the circumstances that give rise to the right to rely on the conditions are material in the context of the proposed transaction.

Bid documents

14. What documents do the target’s shareholders receive on a recommended and hostile bid?

The documents that are typically required in a takeover process include all of the following:

- Offer announcement.
- Offer document and acceptance forms.
- The offeree document or circular. This contains:
  - an opinion from the independent financial adviser to the target company as to whether the offer is fair and reasonable;
  - the recommendation of independent directors of the target company as to whether or not to accept the takeover offer.

The Takeover Code sets out the information that must be included in the above documents. As a general principle, it requires that the shareholders in the target company must be put in possession of all the facts necessary for the formation of an informed judgment as to the merits or demerits of an offer.

Following the publication of the initial offer document or offeree circular and until the end of the offer period, the relevant company must promptly announce:

- Any changes in information it has already disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement.
- Any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

Employee consultation

15. Are there any requirements for a target’s board to inform or consult its employees about the offer?

In general, there are no statutory or regulatory requirements for employee consultation and approval in relation to a takeover, save that the offeror must not enter into any arrangements with employees who are also shareholders of the target company that extend favourable conditions not granted to all shareholders.

In addition, an offer document has to disclose (or where appropriate, contain negative statements on):

- Details of any payment or other benefit which will be made or given to any director of a target company or its related corporations (including a director who is also an employee of such corporation) as compensation for loss of office or otherwise in connection with the takeover offer.
- Whether, and in what manner, the emoluments of the directors of an offeror (including a director who is also an employee of the offeror) will be affected by the acquisition of the target company.

Mandatory offers

16. Is there a requirement to make a mandatory offer?

A mandatory offer is triggered when either of the following occurs:

- An offeror acquires, whether by a series of transactions over a period of time or not, shares which, taken together with shares held or acquired by persons acting in concert with it, amount to 30% or more of the voting rights of the target company.
- An offeror, and persons acting in concert with it, holds between 30% and 50% of the target company’s voting rights, and acquires in aggregate more than 1% of the target company’s voting rights in any rolling six-month period.

For these purposes, a person who acquires or writes any option or derivative which causes that person to have a long economic exposure to changes in the price of securities will normally be treated as having acquired those securities.

Any person who would breach the thresholds which trigger a mandatory offer as a result of acquiring such option or derivative must consult the SIC beforehand to determine if a mandatory offer is required and, if so, the terms of the offer to be made.

Consideration

17. What form of consideration is commonly offered on a public takeover?

For voluntary and partial offers, the offeror can offer cash or securities or a combination of the two as consideration for the shares of the target company, save for certain limited instances under the Takeover Code where a cash offer is required.

For mandatory offers, the offeror must offer cash or a cash alternative for the shares of the target company.

18. Are there any regulations that provide for a minimum level of consideration?

The minimum offer price stipulated for each type of takeover offer is as follows (Takeover Code):

- Mandatory offer. The highest price paid by the offeror, or any parties acting in concert with it, for any shares carrying voting rights in the target company during the offer period and within six months prior to the commencement of the offer period.
- Voluntary and partial offers. The highest price paid by the offeror, or any parties acting in concert with it, for any shares carrying voting rights in the target company during the offer period and within three months prior to the commencement of the offer period.

The offeror would typically consult with the SIC in advance in relation to the basis of valuation for the consideration being offered, where consideration is in the form of securities, a combination of securities and cash, or includes a cash alternative.
19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

There are no additional restrictions or requirements on the consideration that a foreign offeror can offer to shareholders of a Singapore listed target company.

POST-BID
Compulsory purchase of minority share holdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

An offeror who acquires at least 90% of the issued shares in the target company pursuant to a takeover offer (excluding those shares held at the date of the offer by, or by a nominee for, the offeror or its related corporations) is entitled to compulsorily acquire any remaining target company shares under section 215 of the Companies Act. Dissenting shareholders of the target company have a right to be bought out by the offeror if the offeror, its related corporations and their respective nominees hold 90% or more of the issued shares in the target company.

To compulsorily purchase the shares, the offeror must deliver a notice of the compulsory acquisition to the dissenting shareholders of the target company. Those shareholders then have the right to request for the list of dissenting shareholders. The dissenting shareholders have one month from the date of notice, or 14 days from the date on which the list of dissenting shareholders is provided (whichever is the later), to object to the compulsory acquisition by filing an application with the High Court of Singapore. If there is no objection or any objection is dismissed, all the share certificates in the target company in the name of the dissenting shareholders are cancelled and new share certificates are issued in the name of the offeror. The target company will hold the consideration for the acquisition on trust for dissenting shareholders until claimed by them or, where consideration is not claimed by dissenting shareholders within a stipulated period of time, transfer such consideration to the Official Receiver.

Restrictions on new offers

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

A takeover offer is unsuccessful if the offer does not become unconditional in all respects. Except where the SIC provides approval, the offeror and its concert parties cannot (Takeover Code):

- Within 12 months from the date on which an offer, other than a partial offer, does not become unconditional in all respects and is withdrawn or lapses, either make an offer for the target company or acquire shares in the target company if the offeror or its concert parties would thereby become obliged to make a mandatory offer for the target.
- Within six months of the close of an offer, other than a partial offer, where the offeror and its concert parties hold more than 50% of the target company following that offer, either make a second offer for the target company or acquire shares from any shareholder of the target company at a price higher than the offer price.

In the case of partial offers, any person who intends to make a partial offer for the same target company within 12 months from the date of the close of a previous partial offer (whether successful or not) must seek the SIC’s prior consent. The SIC will not normally grant its consent unless the subsequent partial offer is, as would be normally required, recommended by the board of the target company and proposed to be made by a person not acting in concert with the previous offeror.

De-listing

22. What action is required to de-list a company?

Subject to obtaining the approval of the SIC, the offeror can request that the target company apply to the Singapore Exchange Securities Trading Limited (SGX) to be de-listed if it satisfies all of the following requirements under the Listing Manual of the SGX:

- The target company has convened a general meeting of the shareholders of the target company to seek their approval for the delisting.
- The delisting resolution has been approved at a general meeting by shareholders holding at least 75%, and has not been voted against by 10% or more, of the total number of issued target company shares voted at the general meeting. The directors and controlling shareholders of the target company are not precluded from voting on the resolution.
- A reasonable exit alternative, which is normally in cash, has been offered to the shareholders.
- The target company has appointed an independent financial adviser to advise on the exit offer.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre-and post-bid)?

The Takeover Code prevents a target company from frustrating a bona fide offer. When a target company’s board of directors has been notified of a bona fide offer, or after its board has reason to believe that a bona fide offer is imminent, the board cannot, without shareholders' approval, take any steps which could effectively result in either the offer being frustrated, or denial of the target company shareholders' opportunity to decide on the merits of the offer. Such steps would include the:

- Issue of shares.
- Sale or acquisition of assets of a material amount.
- Entry into contracts otherwise than in the ordinary course of business.

The SIC will not normally treat actions by the target company’s board of directors in soliciting a competing offer or running a sale process for the target company as actions which frustrate the original offer.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

Stamp duty is payable on transfers of shares at a rate of 0.2% on the higher of the actual price or the net asset value. This is typically borne by the offeror, unless otherwise agreed. Transfers of interests for restructuring purposes (including transfers of assets between associated companies and on the reconstruction and

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amalgamation of companies) may qualify for stamp duty relief, subject to the satisfaction of certain conditions.

Stamp duty is not payable where no documents are executed for the transfer of scriptless shares.

**OTHER REGULATORY RESTRICTIONS**

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Securities Industry Council (SIC)

In any takeover of a Singapore public company, if the parties require any waiver or exemption from the Takeover Code or clarification on the application of the Takeover Code, they must consult and apply for that waiver, exemption or clarification from the SIC beforehand.

**Competition Commission of Singapore**

Parties to a potential merger, whether by way of a takeover offer, a scheme of arrangement or an amalgamation, must conduct a self-assessment to ascertain whether the Competition Act, Chapter 50B of Singapore may be infringed, for instance whether the potential merger either:

- Meets or exceeds the market share thresholds prescribed by the Competition Commission of Singapore; or

- Could otherwise raise competition concerns.

If the parties are concerned that the merger has infringed, or is likely to infringe, the Competition Act, they should consider notifying the Competition Commission of Singapore (CCS) of the potential merger and applying for a decision as to whether the Competition Act will be infringed. Parties can enter into pre-notification discussions with CCS to facilitate an expedient merger review process.

The formal merger notification procedure involves two phases:

- **Phase 1.** This is an initial review phase, which generally lasts no more than 30 working days. A Phase 1 review entails a quick assessment and allows the CCS to give a favourable decision concerning merger situations that clearly do not raise any competition concerns.

- **Phase 2.** This is a more detailed assessment for mergers that cannot be cleared in Phase 1, and is generally completed within 120 working days.

If a takeover offer is made without prior clearance by the CCS by way of a pre-conditional offer it must be subject to the condition that it lapses if the CCS does either of the following:

- Initiates a Phase 2 review.

- Prohibits the offeror from acquiring voting rights in the target company before the cut-off date, which is the later of:
  - the first closing date of the offer;
  - the date on which the offer becomes or is declared unconditional as to acceptances.

However, despite the fact the original offer has lapsed, certain provisions of the Takeover Code will continue to apply during the Phase 2 period.

If the CCS permits the merger to proceed following a Phase 2 review, the consequences of such a ruling on an offer which had earlier lapsed due to the CCS initiating a Phase 2 review or prohibiting the offeror from acquiring voting rights in the target company (as described above) depends on whether the offer is mandatory or voluntary:

- **Mandatory:** the mandatory offer must be reinstated on the same terms and at no less than the same price as the offer which had earlier lapsed.

- **Voluntary:** the offeror may, but is not obliged to, reinstate the offer.

**Singapore Exchange Securities Trading Limited (SGX)**

The SGX’s approval is required for the listing of new shares that are issued pursuant to an acquisition.

A scheme of arrangement document and an amalgamation proposal concerning a company listed on the SGX must be cleared by the SGX before it can be sent to shareholders.

**Regulatory approval in specific industries**

In certain industries in Singapore, statutes may limit or require prior regulatory approval for share ownership in companies. Those industries are generally industries perceived to be critical to national interests, for instance, banking, finance, insurance and media. Examples of such statutes include the:

- Banking Act, Chapter 19 of Singapore.

- Finance Companies Act, Chapter 108 of Singapore.

- Insurance Act, Chapter 142 of Singapore.

- Newspaper and Printing Presses Act, Chapter 206 of Singapore.

In these situations, the offeror usually makes a pre-conditional offer where the announcement of a firm intention to offer is subject to the fulfilment of certain pre-conditions, for example, obtaining the required regulatory approvals.

**High Court of Singapore**

A scheme of arrangement must be sanctioned by the High Court of Singapore.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

There are generally no restrictions on the foreign ownership of shares in a Singapore public company, although restrictions on ownership of shares in specific sectors (see Question 25) that are applicable to all persons (whether Singapore or foreign) may apply.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

There are no restrictions on repatriation of profits or exchange control rules for foreign companies.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

The Takeover Code provides that parties to a takeover transaction and their associates are free to trade in the target company’s shares but are subject to additional disclosure obligations during the offer period and, in the case of the offeror and its concert parties, the minimum offer price rules (see Question 18). The parties to a takeover and their associates must disclose shares, convertible securities, warrants, options or derivatives purchased or sold by them on their own account on a daily basis. The term
“associate” will normally include a holder of 5% or more of the equity share capital of the offeror or target company.

Disclosure of such dealings must be made public through the website of the SGX or, in certain instances, privately to the SIC. Dealings by an offeror or the target company or by an associate may be disclosed by the party concerned or by an agent, for instance, an investment bank or stockbroker, who acts on its behalf. Where there is more than one agent, particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is not overlooked or duplicated.

**REFORM**

**29. Are there any proposals for the reform of takeover regulation in your jurisdiction?**

There are no ongoing public consultations in relation to the reform of takeover regulations in Singapore.

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**THE REGULATORY AUTHORITIES**

- **Securities Industry Council (SIC)**
  - [www.mas.gov.sg](http://www.mas.gov.sg)
  - **Main area of responsibility.** The SIC administers and enforces the Singapore Code on Take-overs and Mergers. In addition, the SIC is available for confidential consultation on points of interpretation of the Singapore Code on Take-overs and Mergers. The SIC is part of the Monetary Authority of Singapore.

- **Monetary Authority of Singapore (MAS)**
  - [www.mas.gov.sg](http://www.mas.gov.sg)
  - **Main area of responsibility.** The MAS functions as a central bank, and is the main financial regulator in Singapore. It administers Chapter 289, Securities and Futures Act of Singapore and regulates the financial and insurance industries.

- **Singapore Exchange Securities Trading Limited (SGX)**
  - [www.sgx.com](http://www.sgx.com)
  - **Main area of responsibility.** The SGX administers and enforces the listing rules applicable to companies listed on the SGX.

- **Accounting and Corporate Regulatory Authority (ACRA)**
  - [www.acra.gov.sg](http://www.acra.gov.sg)
  - **Main area of responsibility.** The ACRA administers and enforces the Companies Act of Singapore.

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**ONLINE RESOURCES**

- **The Singapore Code on Take-overs and Mergers**
  - [www.mas.gov.sg](http://www.mas.gov.sg)
  - **Description.** The Singapore Code on Take-overs and Mergers sets out the standard of conduct to be observed and how fairness can be achieved in a take-over transaction.

- **Listing Manual of the Singapore Exchange Securities Trading Limited**
  - [http://rulebook.sgx.com](http://rulebook.sgx.com)
  - **Description.** The Listing Manual sets out the continuing listing requirements and corporate disclosure policy which a Singapore listed company has to comply with.

- **Singapore Statutes Online**
  - [http://statutes.agc.gov.sg/aol/home.w3p](http://statutes.agc.gov.sg/aol/home.w3p)
  - **Description.** The latest editions of Singapore statutes can be found at the Singapore Statutes Online, the official website for Singapore's legislation.
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Publications

Recent transactions
- Asahi Group Holdings Ltd's, US$7 million acquisition of Permanis Sdn Bhd, PepsiCo Inc's bottler in Malaysia.
- Abraaj Capital Ltd's divestment of a stake in Turkish hospital chain Acibadem Saglik Yatirimlari Holding AS and affiliated companies, to Integrated Healthcare Holdings Sdn Bhd and Khazanah Nasional Bhd.

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