# Chambers

GLOBAL PRACTICE GUIDES

Definitive global law guides offering comparative analysis from top-ranked lawyers

# Corporate M&A

**Singapore**
**Trends and Developments**

Lim Wee Hann, Lawrence Tan, Sandy Foo and Favian Tan
Rajah & Tann Singapore LLP

practiceguides.chambers.com

2021

# Trends and Developments

***Contributed by:***
*Lim Wee Hann, Lawrence Tan, Sandy Foo and Favian Tan*
***Rajah & Tann Singapore LLP*** ***see p.9***

## Overview of the Landscape

The year 2020 has been unprecedented. The COVID-19 outbreak has had a profound impact on the global economy, throwing stock markets in flux and causing overall growth to shrink by approximately 3.5% as estimated by the International Monetary Fund (IMF). Compared to 2019, global M&A activity dropped by 6.6%. Nonetheless, robust M&A performance in the latter half of 2020 showed signs of economic recovery, and the IMF predicts a 5.5% growth in the economy in 2021.

Asian economies were hit hard by the pandemic, with M&A activity in the region falling to a seven-year low at the end of the first quarter of 2020. However, they were also the first to bounce back and are now reported to be recovering faster than the rest of the world. In 2020, Asia-Pacific accounted for 32% of global M&A values, being the region's highest share of contribution over the past five years, and overall deal value increased by 26.1% despite a 6.7% decrease in the number of transactions. In Singapore, M&A activity in 2020 totalled approximately USD59.2 billion (compared to USD72.4 billion in 2019), with a total deal volume of 482 deals. Private equity and venture capital saw a deal volume of 149 investments, valued at approximately USD5.2 billion.

Entering 2021, analysts remain optimistic that the introduction of vaccines will accelerate the global recovery. Investor optimism is clearly demonstrated by the strong start to the stock market in Singapore, with the total market capitalisation of 687 stocks increasing by 3% to SGD838.1 billion.

## Significant Trends

### *Market trends*

#### *Technology and fintech*

Technology has played a pivotal role in the fight against COVID-19, from the introduction of contact tracing to remote working and learning arrangements, with videoconferencing applications such as Zoom and Cisco Webex being the clear beneficiaries, and it is no surprise that growth in the industry has been robust. The pandemic has spurred the growth of e-commerce, online media and food delivery sectors. Southeast Asia currently has a USD100 billion internet economy, and this value is expected to triple by 2025.

Surveys show that most private equity funds in the Asia-Pacific region have plans to invest in technology sectors such as software as a service, B2B internet, online services and e-commerce.

Deals involving companies in the educational technology, digital finance and healthcare technology are prevalent. Ventures for the use of blockchain and distributed ledger technology (DLT) have also accelerated in growth and momentum. For example, in January 2021, SGX and Temasek announced their joint venture as Asia-Pacific's first exchange-led digital asset venture focused on capital markets workflows through smart contracts, ledger and tokenisation technologies. The Monetary Authority of Singapore, Singapore's central bank and financial industry regulator, has also announced and implemented a number of initiatives which are expected to spur growth in investments and dealmaking in the digital and fintech space (for example, commercial ventures for the use of DLT in clearing and settlement of payments and securities).

Whilst many of the deals and investments in this space remain modest and "start-up" in size, there are also a number of high profile, high value transactions. Singapore-incorporated Grab Holdings Inc is Southeast Asia's leading on-demand transportation, food delivery and payment services platform. As of 30 November 2020, Grab was valued at USD14.9 billion, and has raised USD10.3 billion through fundraising since its incorporation in 2012, making it the highest valued and highest funded unicorn in Southeast Asia.

In December 2020, the consortium between Grab and Singtel was awarded one of two Digital Full Bank licenses issued by the Monetary Authority of Singapore. Gojek, the second largest unicorn in Southeast Asia and Grab's rival in the ride-hailing industry, was valued at USD12.5 billion and has received a total of USD6.2 billion in funding. Gojek is now in discussions with another Indonesian powerhouse, Tokopedia, for a potential parallel merger that would create a merged entity worth USD18 billion.

*Real estate*

The real estate investment sector in Singapore slowed during the pandemic and faced a 56.8% drop from 2019, which is the lowest investment sales volume since the financial crisis in 2009. However, real estate remained the top sector in Singapore, contributing about SGD30 billion (a 38% share) to the total M&A deal value in 2020. This is a testament to the underlying strengths of investors' confidence and demand.

Further, 2020 saw Alibaba's acquisition of a half-stake in AXA Tower for SGD840 million in June and Frasers Centrepoint Trust's SGD1.06 billion takeover of AsiaRetail Fund Limited which translates to a 63.11% stake in five retail malls. Notable outbound acquisitions included GIC Private Limited's SGD1.6 billion acquisition of the LG Twin Towers in February 2020, as well as Mapletree Industrial Trust's acquisition of a portfolio of data centres in the US and Canada worth approximately SGD1.9 billion.

The growth of Singapore real estate investment trusts (REITs) has continued in 2020, with the IPO of Elite Commercial REIT and United Hampshire US REIT in the first quarter of the year. The commercial real estate sector has also continued to see considerable activity from private equity funds, which are attracted to Singapore's business-friendly environment and favourable tax regime, as well as the easy access to capital and talent.

*SPACs*

Special purpose acquisition companies (SPACs), or blank-cheque companies, contributed a total of USD83 billion of IPO proceeds on US exchanges in 2020. Interest in SPACs is now spreading across the globe, with many SPACs looking to Asia for takeover targets. SGX is hoping to be the first major Asian stock exchange to list SPACs this year, and has launched a market consultation on 31 March 2021. There is increasing interest in SPAC deals in Southeast Asia as companies look towards achieving the first mover advantage and striking whilst SPACs are drawing keen interest.

***Consolidation***

The trend of mergers among Singapore REITs has continued in 2020. The merger of CapitaLand Mall Trust and CapitaLand Commercial Trust to form CapitaLand Integrated Commercial Trust in October was valued at SGD8.3 billion and it is now the largest REIT in Singapore, and the third largest REIT in the Asia-Pacific region.

The trend of consolidation of Singapore's REITs/ business trusts is said to be a natural evolution of Singapore's maturing market and is expected to continue in 2021 although it remains to be seen how much more consolidation can be expected.

### *Delistings and privatisations*

2020 has seen many delistings and takeovers in the Singapore market. Analysts believe that this is likely due to the target companies' low-trading liquidity and suppressed valuations attracting cashed-up investors. Privatisation also gives companies which have limited necessity for access to equity capital markets the opportunity to restructure and streamline their operations to generate cost-savings, without worrying about meeting shareholders' short term demands at the same time. Notable examples of privatisations set to occur in 2021 include the voluntary conditional offer by GuocoLeisure Holdings for GL Limited, the voluntary conditional offer for Penguin by a consortium comprising Penguin's Chairman and Managing Director with Dymon Asia, and the proposed acquisition and privatisation of Soilbuild Business Space REIT by Soilbuild's executive chairman and Blackstone Real Estate.

The average premium offered to shareholders in privatisation deals has increased, from around 10% to 20% over the last transacted market price in 2016 to 2018, up to an average of around 38% to 40% in 2020. The privatisation offer for Elec & Eltek in September 2020 (which was dual listed in Singapore and Hong Kong) was at a 99% premium over the stock's last transacted price on the SGX-ST. Some advisers are of the view that the pandemic has created a number of challenges for valuation, as it is more difficult to predict the materiality and duration of the impact caused on businesses. The assumptions made when determining long-term projections as to future cash flows, revenue and profits, would be a key point of contention between parties.

A notable privatisation offer which had lapsed was the voluntary conditional partial offer for Keppel Corporation. In August 2020, Temasek invoked the material adverse change (MAC) clause and pulled out of the SGD4 billion deal after Keppel Corporation announced a SGD697.6 million net loss for the second quarter of the year. This is one of the rare examples where a MAC clause has been successfully invoked, and ties in with the ongoing discussion on whether the COVID-19 pandemic constitutes a MAC. The issue has not yet arisen in Singapore courts but the final analysis would ultimately depend on the specific drafting of the MAC clause in question.

### *Shareholder activism*

Shareholder activism has been playing a greater role in the Singapore market. The offer price for Sunningdale Tech was raised by 6.5% to SGD1.65 per scheme share, from SGD1.55 previously. This was sparked by Quarz Capital Management's statement that the initial offer price was too low and significantly undervalued the company.

In December 2020, ESR-REIT and Sabana REIT's proposed merger was voted down by Sabana REIT's unitholders, which is a rare instance where a proposed merger had been voted down. Unitholder activists led by Quarz Capital Management and Black Crane Capital were concerned that Sabana REIT had been undervalued, as the offer price was 29.3% below Sabana REIT's net asset value as at 30 June 2020.

The Securities Investors' Association (Singapore) (SIAS) is one of the largest investor lobby groups in Asia, and has mediated many high-profile shareholder issues involving listed companies. In June 2020, the SIAS called for the directors of Hyflux to step down, citing their poor credibility and inability to close a deal, and stated that they had been approached by investors to initiate legal action against Hyflux's directors. Hyflux has since been placed under judicial management and its judicial managers are currently in the process of negotiating with potential investors.

### *Distressed M&A*

The economic downturn caused by COVID-19 will undoubtedly provide greater opportunities for investors to purchase underperforming companies or companies with underperforming assets under distressed conditions. Distressed M&A would be particularly attractive to private equity funds with substantial under-deployed capital. Such funds reportedly have a dry power of USD400 billion in Asia alone as of March 2020, and USD1.5 trillion worldwide as at the start of last year.

Some of the notable distressed M&A targets in Singapore include Swiber Holdings Limited, who recently announced the entry into an investment agreement with a Saudi Arabian energy services player for USD200 million. As mentioned above, Hyflux is in the midst of conducting a bidding process for potential investors, and has received several letter of intents over the course of 2020.

However, none of the big distressed M&A deals has actually succeeded as at the time of writing, and some have even fallen through. Hin Leong had conducted a sales process in 2020 to attract bids for the company, but it was subsequently announced that the potential bidders have walked away, and that the Singapore High Court approved the winding-up of the collapsed oil training firm. Eagle Hospitality Trust, which was Singapore's largest IPO in 2019, has since been suspended from trading, and its proposed change of manager was voted down at an extraordinary general meeting held in December 2020. The Trust has since filed for Chapter 11 bankruptcy protection in the United States and are looking to divest a majority of its hotels through a Chapter 11 led process.

### *Sustainability and impact investing*

Alongside "SPAC", "sustainability" looks set to be the other big buzz word.

Given the evolving attitudes, businesses and fund managers worldwide have been integrating environmental, social and governance (ESG) strategies into their practices and assessment of investments. Fund managers are increasingly aligned in stating that focusing their investment strategies in line with ESG factors can drive positive change and generate attractive returns, as such concepts inherently build more resilient businesses. Due diligence on targets increasingly factor in ESG guidelines.

Impact investments which set out to generate positive, measurable social and environmental impact alongside a commercial financial rate of return has also grown steadily in recent years – sustainable agriculture, renewable energy, micro-finance, housing, healthcare and education are some notable sectors. For example, while the energy industry overall was hit hard by the pandemic, the renewable energy sector accounts for a growing share of activity in the sector, as companies look to achieving carbon-neutral targets. In the latter half of 2020, SunPower Corporation completed the spin-off of its international solar cell and panel manufacturing business into Singapore-based Maxeon Solar Technologies, which was then listed on NASDAQ.

Alongside the growing demand for ESG investments are calls for regulators to introduce more safeguards against greenwashing. In December 2020, the Monetary Authority of Singapore published a series of guidelines on environmental risk management for banks, asset managers and insurers. However, there is still a lack of standardised regulations setting out what exactly constitutes sustainable investments, which increases the risk of funds marketing themselves as having better ESG credentials than they actually possess.

#### *Growth of family offices*

As of October 2020, there are approximately 200 single-family offices in Singapore, whilst multi-family offices are likely in the region of 100 to 150. According to data from the Monetary Authority of Singapore, this number quintupled between 2017-19. Most of these family offices have traditionally invested in funds, or co-invested as shadow capital alongside managers. Some of the larger family offices however, are now pursuing, executing and managing direct investments in varying asset classes.

Based on a report by FINTRX, 41% of family offices now invest directly (across asset classes), with close to 60% of these in Asia. Family offices are generally well connected enough to have first looks at smaller to medium ticket private equity transactions, with these assets being snapped up before seeing light of day. The mid-market sector where the bulk of managers operate in is likely to see direct competition from family offices.

### Key Legal Developments

#### *VCC*

A new type of corporate structure, the variable capital company (VCC) was introduced by the Variable Capital Companies Act which came into effect in the start of 2020. The VCC structure complements the existing suite of investment fund structures that are available in Singapore. It allows several collective investment schemes (either open-ended or close-ended) to gather under the umbrella of a single corporate entity, while keeping each scheme's assets and liabilities segregated and separate from each other.

The tax-efficient VCC structure has the potential to be used to re-domicile existing overseas investment funds with comparable structures by transferring their registration to Singapore as VCCs. The Variable Capital Companies Grant Scheme was established and is available for a period of three years to subsidise the costs involved in registering and incorporating a VCC. As of September 2020, there were more than 120 VCCs already set up, with an average of 15 funds being registered each month.

#### *Changes to the insolvency regimes*

The legislative changes relating to the insolvency regime have provided more flexibility for insolvent companies to seek protection. The Simplified Insolvency Programme provides eligible micro and small companies with a simpler, faster and lower-cost procedure to undertake a restructuring or winding up, and is available from 29 January 2021 to 28 July 2021. The regime consists of:

- the Simplified Debt Restructuring Programme, for the restructuring of debts and potential rehabilitation of viable businesses; and
- the Simplified Winding Up Programme, for the orderly winding up of non-viable businesses.

Furthermore, the new Section 94 of the Insolvency, Restructuring and Dissolution Act allows companies to be placed under judicial management with the approval of its creditors at a creditors' meeting, without requiring a court order. The judicial management process will then continue under the supervision of the court in the same manner as a court-ordered judicial management process. These changes would help minimise expenses and expedite the process for distressed businesses looking to change their focus, or to liquidate and pivot to something else, and would thereby create more opportunities for investors in the distressed M&A market.

***COVID-19 orders***

The Singapore government has introduced a number of COVID-19 related reliefs to help businesses tide over the pandemic.

*Higher debt thresholds for all*

The existing bankruptcy and insolvency legislation was temporarily amended on 7 April 2020 to increase the debt thresholds for bankruptcy and insolvency, from SGD15,000 to SGD60,000 and SGD10,000 to SGD100,000 respectively, as well as to lengthen the statutory period to respond to demands from creditors from 21 days to five months. The relief period lasted for six months from 20 April 2020 to 19 October 2020.

*Targeted help for tech-based companies and start-ups*

On 8 April 2020, the Monetary Authority of Singapore announced a SGD125 million support package for financial institutions and fintech firms to strengthen their long-term capabilities. This was followed by an additional SGD6 million FinTech Solidarity Grant Scheme launched on 13 May 2020 to support Singapore-based fintech firms. These packages aim to support training for employees, accelerate the digitisation and operational resilience of businesses, and include a business sustenance grant for day-to-day expenditures and a business growth grant for proofs of concept with financial institutions.

There has also been a number of grants given to start-ups in Singapore. So far, SGD4.5 billion of loans have been provided through Government financing schemes (for example, the Temporary Bridging Loan Programme and the Enterprise Financing Scheme). SGD285 million of additional financing support will be provided for promising start-ups by co-investing with the private sector. This is on top of the SGD300 million set aside under the Unity Budget for deep-tech start-ups.

*Reliefs for listed companies*

In April 2020, the SGX RegCo introduced the enhanced share issue mandate for Mainboard issuers, allowing such issuers to seek a general mandate for an issue of pro-rata and convertible securities of up to 100% of its share capital (previously capped at 50%), enabling the acceleration of fund-raising efforts for listed companies. The enhanced share issue mandate is available to issuers from 8 April 2020 to 31 December 2021.

***Changes to the Listing Rules***

SGX RegCo introduced changes to the Listing Rules which came into effect on 12 February 2021. These changes deal with enhancing the regulatory regime for property valuation and auditors, and the SGX RegCo expects the quality of the market and investor protection to improve as a result. The amendments to the property valuation regime bring it in line with other overseas exchanges.

Property valuers appointed by issuers must meet minimum qualification criteria specific by SGX, which is consistent with the requirements for other types of professionals engaged by issuers. Valuations must be performed in accordance with acceptable valuation standards recognised in Singapore, and disclosures of summary property valuation reports should contain the information set out in the Singapore Institute of Surveyors and Valuers Practice Guide. These changes would be important for transactions such as the IPO of a property investment firm or developers, business trusts or REITs, and any company contemplating an acquisition or disposal of property assets.

All issuers must now appoint an auditor that is registered with ACRA. SGX RegCo introduced this requirement to address situations where there are problems with the issuer's financial statements and the issuer has appointed foreign auditors. With ACRA oversight, SGX would be able to deal with the issues in a timely and effective manner. Additionally, the appointment of a second auditor is required to review the issuer's financial statements under exceptional circumstances, so that uncertainties in the market may be addressed in a timely manner.

### Outlook for 2021

Amid the global uncertainty, the strong performance in the second half of 2020 is a testament to the resilience among Asian businesses, and analysts believe that M&A will be at the forefront of the economy recovery. As vaccines become increasingly accessible, investor optimism has grown, and strong deal activity in the region is anticipated as it recovers from the effects of the COVID-19 pandemic.

**Rajah & Tann Singapore LLP** is a leading, full-service law firm and a member of Rajah & Tann Asia, one of the largest regional networks, with 800 fee earners in South-East Asia and China. The M&A practice fields a highly regarded team with depth of experience in many significant, complex and challenging transactions in Singapore and the region. The team is consistently involved in a vast range of transactions, including acquisitions and divestments; takeovers, mergers, schemes of arrangements and amalgamations; delistings and privatisations; as well as private equity investments. Clients include multinational corporations, financial institutions, accounting firms, investment banks, listed and unlisted companies, government-linked entities, funds, private equity investors and high net worth individuals. The firm has offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam, as well as dedicated desks focusing on Brunei, Japan and South Asia.

## AUTHORS

**Lim Wee Hann** is the co-head of the M&A practice at Rajah & Tann Singapore LLP, and has almost three decades of experience in advising companies on multi-jurisdictional cross-border investments, private M&A, sale and purchase of companies and businesses and other corporate transactions. His expertise also includes advising numerous biotechnology, health and pharmaceutical global leaders on cross-border acquisitions and divestments. Wee Hann was a recipient of the ASEAN Scholarship for his pre-university studies at Hwa Chong College in Singapore.

**Lawrence Tan** is the co-head of the M&A practice, and a partner in the capital markets practice at Rajah & Tann Singapore LLP. He has more than two decades of experience in M&A, capital markets and general corporate work. Lawrence has in-depth experience and a strong track record in handling takeovers, privatisations and M&A, having been involved in many of the competing takeover offers of public listed companies in Singapore and other significant and award-winning M&A deals.

**Sandy Foo** is a versatile specialist who successfully straddles her chosen practice areas of corporate/M&A and finance, and is trusted by many "blue chip" clients, including financial institutions, listed companies, multinational corporations, private equity firms and sovereign wealth funds. She has vast experience in corporate and finance matters from years in practice as a lawyer in Singapore and London, and as legal counsel in BNP Paribas covering South-East Asia and India. With over 20 years' practice, Sandy has led numerous significant and award-winning deals and is a well-respected practitioner who has earned accolades and high praise from clients and peers alike.

**Favian Tan** is a partner who specialises in M&A and has in-depth experience in local and cross-border corporate transactions involving both private and public listed companies. With an established background in share and asset acquisitions and disposals, privatisations, joint ventures and private equity investments, he has represented private equity firms, government-linked entities and listed companies in significant local and cross-border transactions.

## Rajah & Tann Singapore LLP

9 Straits View #06-07
Marina One West Tower
Singapore 018937

Tel: +65 6535 3600
Fax: +65 6225 9630
Email: info@rajahtannasia.com
Web: www.rajahtannasia.com

RAJAH & TANN ASIA

LAWYERS
WHO
KNOW
ASIA