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Corporate M&A

Singapore: Trends & Developments

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2020

Trends and Developments

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Overview of M&A Activity in Singapore and the Region

As South East Asia's major financial hub, Singapore's M&A activity is typically measured by both domestic and regional activity in South East Asia (SEA).

M&A activity in SEA increased by almost one-third in value in 2019 as compared to 2018, reaching its second highest annual level since 2001. In Singapore, M&A activity in 2019 totalled approximately USD35.3 billion (with a total deal count of 134), up approximately 125.6% from a year ago, according to a Mergermarket report.

The start of 2020 sees an unprecedented challenge in the form of the COVID-19 outbreak. Global markets have slumped, tracking heavy losses on Wall Street as the COVID-19 pandemic triggered a sharp global economic downturn. In Singapore, the stock market has fallen to a ten-year low as of mid-March 2020, following the global rout that saw the US stock market recording their biggest one-day loss since the 1987 stock market crash.

The COVID-19 pandemic has dampened the growth prospects of China, which in turn will have a knock-on impact on global economies, through lower outbound tourism from China, disruption to supply chains and overall lower consumption across all sectors, especially tourism, aviation and retail.

Whilst this appears to have slowed the momentum in SEA M&A activity, dented valuations amid the virus spread and economic downturn may in fact offer M&A opportunities for those with the cash and liquidity.

Key Trends in the M&A Space

Market trends

Singapore saw significant private equity and venture capital deal activity in 2019 as buyout deals increased, and technology remained the most active sector in 2019.

The ballooning venture capital market in SEA (aggregate deals surpassed USD10 billion in value for the first time in 2018 according to the Global Venture Capital Perspectives report by Preqin and Vertex) coupled with unprecedented levels of private equity "dry powder" saw the emergence of a trend where big gun private equity names moved into early-stage investing. For example, KKR backed aCommerce, a Bangkok-based start-up, TPG invested in Singapore property website PropertyGuru, and

Singapore's sovereign wealth fund, Temasek Holdings, bought stakes in fashion supply chain platform Zilingo.

Singapore's start-up eco-system is now flourishing with over 220 venture capital deals per year worth close to USD4.2 billion, and more than 150 global venture capital funds, incubators, and accelerators based in Singapore, as stated in the 2019 Budget Speech by Singapore's Finance Minister.

Private equity and venture capital funding fuelling M&A activity in the SEA region is expected to continue and grow.

Significant M&A transactions

Temasek Holdings led the way for significant M&A transactions in Singapore in 2019. In June 2019, Temasek Holdings completed the sale of Ascendas-Singbridge to CapitaLand Ltd at an enterprise value of approximately SGD10.9 billion, resulting in the creation of one of Asia's largest diversified real estate groups with assets worth over SGD123 billion under management. Less than a week after, the merger of Ascott Residence Trust and Ascendas Hospitality Trust was announced in July 2019 (further details below).

In October 2019, Temasek Holdings announced the proposed acquisition of an additional 30.55% stake in Keppel Corporation for approximately SGD4.1 billion to acquire majority control by way of a partial offer. The partial offer is currently ongoing and is subject to the fulfilment of certain pre-conditions, including domestic and foreign regulatory approvals being obtained. Both deals by Temasek Holdings are registered as the third and fourth largest M&A transactions in Asia-Pacific (APAC) excluding Japan in 2019 by Mergermarket.

Temasek Holdings' partial offer for Keppel Corporation comes amid consolidation in South Korea's and China's shipbuilding and marine sector in the last few years and has sparked industry watchers to speculate and comment of a possible consolidation of Singapore's offshore and marine industry.

Cross-border transactions which made the headlines last year include the largest private real estate deal in history to date involving the USD18.7 billion acquisition by Blackstone Group LP of a portfolio of US industrial assets from GLP, the Singapore-based logistics provider which was privatised and delisted from the Singapore Exchange Securities Trading Limited (SGX-ST) in 2017.

SINGAPORE TRENDS AND DEVELOPMENTS

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Closer to home, Japanese bank Mitsubishi UFG Financial Group Inc, TIS Inc. and certain other Japanese investors grabbed headlines for their USD850 million investment in Singapore-based ride-hailing company, Grab. The latest funding into Grab is likely to be a welcome investment given Grab's recent foray into digital banking (further details below).

REITs/business trusts consolidation

The merger of ESR-REIT and Viva Industrial Trust in 2018 opened the floodgates and the trend continued in 2019 with a good number of sizable mergers among Singapore-listed real estate investment trusts (REITs)/real-estate trusts.

The year 2019 started with the merger of OUE Commercial REIT and OUE Hospitality Trust to create one of Singapore's ten biggest REITs, followed by the merger of Ascott Residence Trust and Ascendas Hospitality Trust announced in July 2019 (and which completed in December 2019) to create the largest hospitality trust in APAC. The year ended with the announcement of the merger of Frasers Logistics & Industrial Trust and Frasers Commercial Trust.

The wave of consolidation of Singapore's REITs/business trusts is expected to continue in 2020 with the first being the proposed merger of CapitaLand Commercial Trust and CapitaLand Mall Trust, announced on 22 January 2020, which, if completed, is expected to give rise to the largest REIT in Singapore and the third largest REIT in the APAC region.

Tech trends

(1) Fintech

In the inaugural Global Fintech Index City Rankings 2020 report, Singapore came in fourth in the global index and emerged as the fintech leader of APAC. Fintech investments in Singapore more than doubled to USD861 million in 2019 as compared to 2018 (with a total deal count of 108 v 71 in 2018), and Singapore is now the fifth largest fintech market by funds in APAC based on a report by the Singapore Business Times. The majority of the total funds raised (approximately 39%) went into payment start-ups, followed by insurtechs (approximately 25%), and fintechs in the business of lending came in third (approximately 13%).

The year 2019 saw many of the top deals in Singapore fintech history, including the USD100 million raised by cloud-based software company Deskera in an extended Series A funding round concluded in May 2019, approximately USD90 million each raised by FinAccel Pte Ltd, a credit provider to Indonesian online shoppers and Singapore Life, a wealth tech and life insurance provider, and the USD80 million bagged by GoBear, a financial supermarket platform.

Pre-COVID-19, fintech investments were highly anticipated in M&A in 2020 as financial institutions will be looking for much larger deal sizes and partnerships in joint ventures into these spaces.

(2) Digital Banking Licences

In June 2019, the Monetary Authority of Singapore (MAS) announced that it would issue up to five new digital bank licences, which is in addition to the digital banks that the Singapore banking groups may also establish under the existing internet banking framework. The move, which extends digital bank licences to non-bank players, received strong interest from the market with a total of 21 applications received.

Seven applications were for the up to two digital full bank licences, which allow for the provision of a wide range of financial services and can serve both retail and corporate customers, and 14 applications were for the up to three digital wholesale bank licences, which allow for services to small and medium-sized enterprises (SMEs) and other non-retail segments in Singapore.

The digital full bank licences will be granted in stages and licensees must eventually have a minimum paid-up capital of SGD1.5 billion, must be based in Singapore, and controlled by Singaporeans. Licensees for the digital wholesale bank licences must have a minimum SGD100 million in paid-up capital and can be majority owned by foreign entities.

The digital full bank licence applicants include a solo application from the internet group SEA, a Grab-Singtel consortium, a consortium led by Razer comprising Sheng Siong Holdings, FWD, LinkSure Global, Insignia Venture Partners and Carro, and a consortium led by V3 Goup and EZ-Link comprising Far East Organisation, Singapore Business Federation, Sumitomo Insurance and Heliconia Capital Management (a Temasek Holdings subsidiary). The digital wholesale licence applicants include Ant Financial (Alibaba Group's fintech arm), Arival, a consortium comprising iFast Corporation, Yillion Group and Hande Group, a consortium led by AMTD comprising Xiaomi, SP Group and Funding Societies.

MAS is expected to announce the results of the application in June 2020 and successful applicants are expected to commence operations by the middle of 2021.

Distressed M&A

Given the well documented and protracted challenges facing the oil and gas (O&G) industry as well as strong headwinds in 2019 resulting from, for example the US-China trade wars, many had expected a strong wave of restructuring and insolvencies facing South East Asian companies in vulnerable sectors. To date, com-

pared to post-Asian Financial Crisis, this has not materialised to the same scale and extent but restructuring and distressed M&A opportunities remain on the radar of many market analysts who remain expectant of a stronger trend.

A number of restructuring deals have already emerged involving companies in the O&G sector including, for example Swiber Holdings Limited and Kris Energy Limited, both listed on the SGX-ST. Water treatment firm, Hyflux Ltd, once an SGX-ST darling and one of Singapore's most successful business stories, filed for creditor protection in mid 2018 and the many twists and turns involving its restructuring efforts have hogged the headlines in 2019.

The COVID-19 pandemic has also put a strain on businesses, with many companies utilising their credit lines to conserve cash and pay for their ongoing expenses as consumer demand comes to a halt with travel restrictions imposed and social distancing policies in place at the time of writing. Those companies with liquidity problems due to exhausted credit lines, or in default due to breaches of financial covenants under their existing financing documentation, are likely to look to restructure and/or seek new investors.

As such, many market observers also believe the grim market environment amid the COVID-19 pandemic might be a good time for opportunistic cash rich buyers such as private equity firms to acquire amidst dented valuations, as well as for strategic buyers to expand through well-timed and well-valued acquisitions.

Warranty and indemnity insurance

The trend of utilising warranty and indemnity insurance (W&I) to facilitate M&A deals has increased markedly in recent years and this trend has continued in 2019 in the region, including Singapore.

A number of the real estate transactions in Singapore, completed in 2019, involved the use of W&I. We are also increasingly seeing the use of W&I in a competitive auction process by a private equity seller looking to exit, with potential bidders agreeing to buy W&I as part of their bid submissions with a view to providing the seller with a clean exit.

W&I appears to also be a viable option in M&A deals involving founders of family-run businesses who are selling their controlling interest and retaining or rolling over a minority interest. In such circumstances, it might not make commercial sense for the buyer to claim against the founders and instead, such transactions utilise W&I to transfer potential liability from the sellers to the third-party insurer.

The increase in the use of W&I can be attributable to the lower premium rates in lower risk jurisdictions such as Singapore, and the increasing familiarity with the use of W&I by corporates and private equity firms, as well as their respective advisers. Average retention rates for W&I policies placed have also fallen as insurers have become more comfortable with the region.

Developments in Singapore Law affecting M&A Transactions

Changes to the Listing Rules

(1) Voluntary Delisting Regime

De-listings have outnumbered listings on the SGX-ST for the past five years, and the number of listed companies on the SGX-ST has dropped from a peak of 782 companies in 2010 to 741 at the end of 2018.

Changes were introduced to the listing rules of the SGX-ST's Mainboard as well as the secondary board Catalist (together, the "Listing Rules") on 11 July 2019 in respect of the voluntary delisting regime, in order to strengthen the protection of minority investors in a public/delisting buyout.

A voluntary delisting now needs to be approved by a majority of at least 75% of the shares held by shareholders of the issuer present and voting, and in order to enhance minority shareholder protection, the offeror and its concert parties are now required to abstain from voting on the delisting resolution. The revised Listing Rules also now require the exit offer to be "fair" in addition to being "reasonable", in the opinion of an independent financial adviser which is required to be appointed by the issuer under the Listing Rules.

In the past, there was no requirement for the offer to be "fair" but with the latest changes, the price offered to the independent shareholders should be reflective of, if not more than, the value of the securities which they hold. The SGX-ST has also codified the requirement of a cash alternative as the default alternative under the exit offer. In arriving at the new delisting framework regime, the SGX-ST was cognisant of the need to ensure that the exit offers are fair and reasonable so as to better align the interests of the offeror and the independent shareholders.

At the time of writing, the pre-conditional exit offer for the proposed voluntary delisting of CITIC Envirotech Ltd (which was completed in January 2020) was the first and only successful voluntary delisting since the SGX-ST implemented changes to the voluntary delisting regime on 11 July 2019.

(2) Enhanced Continuous Disclosure Requirements

The Listing Rules were further revised on 7 February 2020 to fine tune key disclosure requirements as part of the SGX-ST's continuing efforts to safeguard investors' interests, while at the

SINGAPORE TRENDS AND DEVELOPMENTS

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same time being mindful to not overburden issuers with rules and regulations.

Changes include the adoption of a risk-based approach on quarterly reporting which will replace the current market capitalisation threshold approach.

Changes which may impact on M&A transactions (or the financing thereof) include the expansion of Chapter 10 of the Listing Rules, which used to govern only acquisitions and realisations, to cover the provision of financial assistance by an issuer, save for those in or in connection with the issuer's ordinary business.

Financial assistance includes the lending of money, guaranteeing or providing security for a debt incurred or indemnifying of a guarantor, and the forgiving or releasing of a debt obligation. The provision of financial assistance to an issuer, its subsidiary or associated company are excluded. To reflect this wider scope, the chapter has been amended to "Significant Transactions" as opposed to "Acquisitions and Realisations".

Valuation requirements for transactions under Chapter 10 of the Listing Rules have also been enhanced. The appointment of a competent and independent valuer is now compulsory for a disposal of assets where there is a significant disposal of assets (ie, where any of the relative figures as computed as set out in the chapter exceeds 75%), as such disposal will have a significant impact on the issuer and should therefore be subject to greater scrutiny. If no valuation is available for an acquisition or disposal of assets that is considered as a major transaction under the chapter, the issuer must provide an explanation on why it did not commission a valuation.

Employment Act

Amendments introduced to the Employment Act (Chapter 91 of Singapore), with effect from 1 April 2019, also have significant implications on the M&A front in respect of business transfers.

Section 18A of the Employment Act has been amended to provide that in a transfer of "undertaking", which includes any trade or business, the contract of service of any employee in the undertaking shall continue to be effective after the transfer.

Prior to the 2019 amendments, all who were employed in a managerial or an executive position with a monthly salary of more than USD4,500 were excluded from the operation of Section 18A. Under the new Employment Act regime, this group is now considered as "employees" for Section 18A purposes.

For parties considering an acquisition through a business sale (as opposed to a share sale), this means that all employment

contracts, including those for high-earning management-level employees, will be automatically transferred to the buyer. This could be good news to the buyer, as it helps to expedite the business sale process by removing the need to renegotiate and/or novate the employment contracts for managerial personnel. However, it also takes away the buyer's freedom to cherry-pick the number and type of executive employees it wants to keep.

Singapore Government measures in 2020

The 2020's Budget Statement, made on 18 February 2020, provided for tax incentives to aid the commercial sector affected by the current near-term economic uncertainty, with sectors directly affected by COVID-19 getting additional support. These five sectors are: tourism, aviation, retail, food services, and point-to-point transport services, with packages ranging from property tax rebates, bridge loans to direct rental waivers. To aid companies with cash flow concerns, a corporate income tax rebate of 25% of tax payable, capped at SGD15,000, will be granted for the year of assessment 2020. However, given the amount capped, this is likely to be of a bigger benefit to the SMEs in Singapore.

(1) Extended M&A Scheme

On the M&A front, the M&A scheme which was introduced in 2010's Budget Statement to encourage companies in Singapore to grow their businesses through mergers and acquisitions was extended to 31 December 2025 in the 2020's Budget Statement. Under the M&A scheme, an M&A allowance will be granted to an acquiring company that acquires the ordinary shares of another company during the period 1 April 2010 to 31 December 2025 (both dates inclusive).

The following benefits are available under the M&A scheme:

- a five-year writing down of an M&A allowance based on 25% of the value of a qualifying acquisition, subject to a cap of SGD40 million on the value of all qualifying acquisitions per year of assessment;
- stamp duty relief on the instruments for the acquisitions of the ordinary shares under an M&A deal, capped at SGD80,000 of stamp duty per financial year;
- 200% tax deduction on transaction costs incurred on qualifying M&A deals, subject to an expenditure cap of SGD100,000 per year of assessment; and
- waiver on a case-by-case basis, that the acquiring company must be held by an ultimate holding company that is incorporated in and a tax resident of Singapore.

This M&A scheme will remain unchanged for acquisitions except for the following: stamp duty relief will not be available for instruments executed on or after 1 April 2020; and for acquisitions on or after 1 April 2020, waivers will no longer be granted

for the condition that the acquiring company must be held by an ultimate holding company that is incorporated in and a tax resident of Singapore.

(2) Extension and refinement of non-taxation of companies' gains on disposal of ordinary shares

The Income Tax Act (ITA) exempts companies from tax on gains from the disposal of ordinary shares if the divesting company holds at least 20% shareholding in the target company for at least 24 months prior to the disposal of the shares. The exemption does not apply to gains from the disposal of unlisted shares of a target company that is in the business of trading or holding Singapore immovable properties (unless the target company is in the business of property development).

The exemption scheme which was to lapse has been extended to 31 December 2027. However, for consistency in the tax treatment for property-related businesses, the exemption will not apply to disposals of unlisted shares in a target company that is in the business of trading, holding or developing immovable properties in Singapore or abroad. The tax treatment of such share disposals will be based on the facts and circumstances of the case. These changes are to apply to shares disposed on or after 1 June 2022 and the Inland Revenue Authority of Singapore is expected to provide further details by end-June 2020.

Venture Capital Investment Model Agreements

Deal documentation in the booming venture capital market saw a welcome change when the Singapore Academy of Law and the Singapore Venture Capital and Private Equity Association introduced a set of Venture Capital Investment Model Agreements (VIMA) as a standard form for start-up financing.

The VIMA includes the key documents used in a Series A financing round, such as the Term Sheet, the Non-Disclosure Agreement, the Subscription Agreement and the Shareholders' Agreement. Notably, the Convertible Agreement Regarding

Equity (CARE), the Singapore version of the United States-originated Simple Agreement for Future Equity, is meant to provide a more efficient and cost-effective alternative to traditional convertible bonds. The VIMA was drafted with a view to balance the interests of both the start-up and the investor, and thereby reducing the range of open issues requiring negotiation - an intention which has been tested and confirmed by industry practitioners.

Apart from providing a useful starting point for negotiation and documentation, the Singapore-law-governing VIMA is also intended to complement the greater national efforts of making Singapore the "regional hub" of venture capital investments and related dispute resolution.

Outlook for 2020

Developments in Singapore corporate law in 2019 has kept Singapore abreast with the developments in other jurisdictions, with Singapore maintaining its status as a relevant safe haven for international investors. There continues to be market activity in the first quarter of 2020, mostly from the spill-over of transactions which commenced in the second half of 2019, but deal flow has slowed considerably as investors conserve liquidity and take stock of the impact which the COVID-19 pandemic has on the global economy.

In its latest estimates, at the time of writing, the Ministry of Trade and Industry of Singapore revised its economic growth forecast to "-0.5% to 1.5%", with growth expected to come in at around 0.5%, the mid-point of the forecast range, after news of the COVID-19 outbreak broke in late January 2020.

The impact of COVID-19 is likely to continue into the second half of 2020 and, whilst there may be M&A opportunities, this is expected to be an extremely challenging year in which to successfully complete transactions given the credit crunch and the global "lockdown" restricting travel and deal momentum.

SINGAPORE TRENDS AND DEVELOPMENTS

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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 has experience covering a wide range of transactions, including acquisitions and divestments; takeovers, mergers, schemes of ar-

rangements and amalgamations; delistings and privatisations; and 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 Japan and South Asia.

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Sandy Foo is a versatile specialist who successfully straddles her chosen practice areas of corporate/M&A and finance. Sandy 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 in Asia. Sandy is a well-respected practitioner who has earned accolades and high praise from clients and peers alike.



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