

SINGAPORE PASSES LAW TO MANAGE SIGNIFICANT INVESTMENTS INTO CRITICAL ENTITIES

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On 9 January 2023, parliament passed the Significant Investments Review Bill (the “Bill”) for the Significant Investments Review Act (the “Act”) to manage significant investments into and control of entities that are critical to Singapore's national security interests. Entities can be designated "critical" if they provide vital functions without alternatives and are tied to national security (the “Designated Entities”).

1. Why the Act was introduced

The Act was introduced due to the increasing global uncertainty in the economic environment as illustrated by the several financial crises in recent years and supply shortages caused by the COVID-19 pandemic. Further, an increasing number of countries are tightening their investment management regime, with 37 nations having already implemented screening laws.

The Act will complement existing sectorial legislation and govern entities that are not already covered – such as telecommunications, banking, utilities. Hence it is likely that only a handful of entities will be designated. The list of Designated Entities will be gazetted once the Act comes into force. Designated Entities may be removed from the list if they no longer meet the relevant criteria.

The Minister can designate the following types of entities

incorporated, formed or established in Singapore
carries out any activity in Singapore
provides any goods and services to any person in Singapore,

if the Minister considers that the designation is necessary in the interest of Singapore's national security.

2. What the Act covers

i. Ownership and control requirements

Designated Entities will be required to notify or seek approval from the authorities for ownership or control changes above 5%, 12%, 25% and 50% thresholds. Sellers are also required to seek the approval when ceasing to be a 50% or 75% controller. Transactions that occur without the necessary approvals will be rendered void. Additionally, the Designated Entity cannot be voluntarily wound up or dissolved without the Minister's consent.

ii. Appointment of key officers

The Designated Entity is also required to seek approval for the appointment of key officers such as the chief executive officer, directors, and the chairperson of the board. Such officers may be removed if they have been appointed without approval or if conditions of approval are breached. The Minister may also remove key officers in the interest of national security.

iii. General powers to review transactions

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The Act also empowers the Minister to review ownership or control transactions of any entity, including those not designated, that has acted against Singapore's national security interests within a period of two years after the relevant transaction. A certificate issued by the Minister, stating that that Minister is satisfied that the entity mentioned in the certificate has acted against Singapore's national security interests is conclusive evidence that the entity has so acted. The Act also provides an exhaustive list of the relevant transactions, which are as follows:

A person acquires any equity interest in the entity

A person acquires control of any voting power in the entity

A person disposes of any equity interest in the entity

A person disposes of control of any voting power in the entity

A person becomes an indirect controller of the entity

A person acquires the business or undertaking or any part of the business or undertaking of the entity

Following this, the Minister will need to publish a notice in the Gazette within a period of two years and 30 days after the transaction describing the relevant transaction, stating the name of the transacting party and entity, and the fact that the Minister is reviewing the relevant transaction. The Minister has the power to direct the transacting party to transfer or dispose of its equity interest in the entity, direct the entity to restrict the disclosure of any information relating to the entity's affairs to any person, or make any other direction that the Minister considers appropriate.

iv. Special Administration Order

The Minister may make a special administrative order to direct that the affairs, business and property of that Designated Entity be managed by a person appointed by the Minister if the Minister considers it to be in the interest of Singapore's national security or in the interest of the security and reliability of carrying on the business of a Designated Entity.

Failure to comply with the special administration order is an offence. The Designated entity shall be liable to a fine not exceeding the higher of (a) 10% of the annual turnover of the offender's business or (b) S\$1 million; and in the case of a continuing offence, a further fine not exceeding S\$100,000 a day.

v. Appeals and requests

Affected entities can seek reconsideration of decisions by appealing to an independent reviewing tribunal. The reviewing tribunal will consist of 3 individuals appointed by the President on the advice of the Cabinet. The chairperson of the reviewing tribunal must be a Supreme Court judge.

A party may apply to the Minister for reconsideration of an initial decision within 14 days from the date on which the initial decision was made. The Minister may wholly cancel his initial decision, substitute the initial decision with another decision or affirm the initial decision. No further reconsideration requests can be made after the Minister's subsequent decision, but such party may make an appeal to the Reviewing Tribunal.

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3. Issues arising from the Act

Despite the concept of national security interest being fundamental to the Act, it has not been defined, contributing to a lack of clarity around what defines national security interest. However, Trade and Industry Minister Gan Kim Yong (“Mr Gan”) has stated that “Providing a specific definition of national security or specific examples of such threats would not only constrain our ability to act quickly to address new risks that may emerge over time, but also expose Singapore’s vulnerabilities”.

The Act also seems to give extensive uncontested powers to the Minister to issue binding orders. Another issue is the potential dampening impact on foreign investments. The lack of clarity surrounding “national security interest” causes a lack of transparency and could deter foreign investors who prefer clarity and predictability. Mr Gan however noted that the new provisions are “largely similar” to those found in overseas investment regimes, and consistent with international trade obligations. They are also similar to existing sectorial guidelines in Singapore and thus investors would already have to meet and be familiar with the requirements.

4. Moving forward

The Ministry of Trade and Industry has reached out to all the entities being considered for designation as critical entities over the last few months, and is discussing ways to mitigate the regulatory impact of being so designated. An Office of Significant Investments Review will also be set up under the Ministry of Trade and Industry as a dedicated one-stop touchpoint for stakeholders.

Should the Bill pass the third reading in the Singapore Parliament and receive the President's assent to become law, it will come into operation on a date that the Minister appoints by notification in the Gazette.

Reference material:

The Bill is available at

<https://www.parliament.gov.sg/docs/default-source/default-document-library/significant-investments-review-bill-38-2023.pdf>

Press release by the Ministry of Trade and Industry at

<https://www.mti.gov.sg/Newsroom/Press-Releases/2023/10/Introduction-of-the-Significant-Investments-Review-Bill>

“Minister” means the Minister charged by the Prime Minister with the responsibility for the Act

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