SINGAPORE

CNPLaw LLP

1. Foreign Direct Investment (Greenfield Investment)

1.1. What are the principal laws and regulations applicable to FDI in Singapore? Are there special rules for certain foreign investors, including state-owned enterprises (SOEs)?

Generally, the Singapore government does not impose foreign ownership restrictions on direct investments in Singapore businesses. However, FDI may be restricted in certain industry sectors such as real estate, banking or media being areas which may have an impact on Singapore nationally, and which are therefore more stringently regulated or subject to licensing.

With one of the world's most clearly delineated legal systems and regulatory regimes, business-friendly tax regimes, companies setting up in Singapore are eligible for various business and tax incentives that can help reduce their final corporate income tax rate and provide other non-directly monetary benefits. However, applicants must fulfil firm requirements, which include committing to certain levels of investments, introducing leading-edge skills, technology, as well as contributing to the growth of research and development and innovation capabilities.

1.2. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

Singapore has no separate law specifically governing foreign direct investment. Foreign investment is governed by sector-specific laws and regulators. However, for industry specific sectors mentioned above, including real estate agencies, banking, media and also the construction industry, there are specific laws and regulations.

1.3. Are there any industry sector controls on foreign investment?

For real estate, the main regulatory bodies for this sector are the Singapore Land Authority, the Housing and Development Board ("**HDB**") and the Jurong Town Corporation, depending on the type of real estate involved. Generally, specific legislative restrictions on foreign ownership apply to certain types of residential property including vacant land; land zoned for residential purposes; landed residential properties; public residential units known as HDB housing, and other real estate such as workers'dormitories.

Financial services and banking related activities are primarily regulated by the Monetary Authority of Singapore ("**MAS**") under several pieces of legislation including, but not limited to, the Monetary Authority of Singapore Act, Securities and Futures Act, Payment Services Act, Trust Companies Act, Banking Act and Finance Companies Act.

Specific legislative restrictions on foreign ownership apply to broadcasting companies in Singapore, pursuant to the Broadcasting Act ("**BCA**"). Under the BCA, a broadcasting license will not be granted if the company is controlled by foreign sources or if foreign sources hold more than 49% shares or voting power of the company. Specific legislative restrictions on foreign ownership also apply to newspaper companies in Singapore in which ownership of companies in the newspaper publishing industry in Singapore is regulated by the Newspaper and Printing Presses Act.

1.4. Are there any government free carry interest requirements for special industry sectors?

There are none.

1.5. Are there any localization requirements (e.g., minimum ratio of local employees, minimum ratio of local procurement) for FDI in Singapore?

Although there is no strict minimum ratio for local employees outside of the S Pass/ work permit regime, companies are expected to abide by the fair hiring rules of the Tripartite Alliance for Fair & Progressive Employment Practices ("**TAFEP**") in considering hiring locals.

1.6. Are there any exchange control restrictions in terms of remittance of capital, profits and dividends?

There are no exchange control restrictions in terms of remittance of capital, profits and dividends.

1.7. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entity, please introduce the internal corporate governance structure. What types of corporate legal entities are recommended for partially or wholly foreign owned corporate legal entities?

The most common and most preferred type of entity among entrepreneurs in Singapore is the Private Limited Company. The shares of a Private Limited Company are not made available to the general public, all of its shares are held privately. The number of shareholders in a Private Limited Company must not be more than 50. In Singapore, the names of this type of entity have the suffix "Private Limited" or "Pte Ltd". This is

the most popular entity type because besides limiting the liability of shareholders, it also provides greater control of ownership. The ownership is easily transferable, either as a whole or part, by simply transferring the shares. Assets, licenses and permits can be easily transferred in the case of a change in ownership. It is relatively easy to raise capital by issuing shares to new shareholders or by issuing additional shares to existing shareholders. This facilitates growth and expansion of the business. It also improves the access to financial assistance from banks and other financial institutions. The death or insolvency of shareholders will not impede the existence of the company. It has legal perpetuity until it is taken off the register.

- The Private Limited Company is the recommended corporate legal entity to be established for FDI as it is a legal entity separate from its shareholders. A Private Limited Company can enter into contracts and own assets in its own name. It can sue and be sued in its own name. The liability of a Private Limited Company is limited to its share capital and each member's liability is limited to the share capital subscribed by the member (shareholder). The shareholder(s) can be an individual or a corporation. The shareholders are not personally liable for the liabilities of the company nor are the assets of the shareholders subject to being seized by creditors to satisfy the liabilities of the company.

- Since sole-proprietorship and partnership involve unlimited liability to the sole proprietor and to the partners respectively, if the sole proprietor or the partners respectively is/are not physically present in Singapore to manage the business, they may not be able to adequately control and monitor the business. This may lead to the business failing in certain obligations and being personally vulnerable to creditors and for statutory or regulatory derelictions, thereby drawing unwarranted risks to one's personal assets. The Private Limited Company is a safe and practical choice of entity which limits one's liability and further, the foreigner may apply for an Employment Pass or Entrepass to be present in Singapore and manage the business.

- A Limited Liability Company ("**LLC**") is a company incorporated by registering with the Accounting and Corporate Regulatory Authority (ACRA) of Singapore under the Companies Act. It is a separate legal entity from its shareholders, meaning there is a corporate veil legally separating the shareholder from the entity. An LLC can enter into contracts and own assets in its own name. It can sue and be sued in its own name. The liability of the company is limited to its share capital and each member's liability is limited to the share capital subscribed by the member (shareholder). The shareholders can be an individual or a corporation. The personal assets of the shareholders are insulated from the liabilities of the company.

- A Limited Liability Partnerships ("**LLP**") integrates some of the main features of

partnerships and companies. Two or more partners (individuals, corporations, or another LLP) enter into an agreement to conduct business under specific terms and conditions that are mutually agreed by all partners. The liability of each partner is limited to the extent of his or her contribution. Like a company, it is a separate legal entity. Although the partners are not personally liable for the debts and losses of the LLP, the partners become personally liable in case of debts and losses arising from their own actions. The partners are not personally liable for the debts incurred by the other partners. The LLP has perpetuity and does not cease with changes in the partnership resulting from death, bankruptcy, resignation etc. Compliance requirements are minimal therefore the compliance cost is also low. This is generally suitable for professional practices such as doctors, lawyers, engineers, architects etc.

- A Variable Capital Company ("**VCC**") is a relatively new corporate entity structure regulated under its own legislation, the Variable Capital Companies Act 2018. With the VCC, several collective investment schemes may be gathered under the umbrella of a single corporate entity and yet remain ring-fenced from each other. This structure allows segmented investment portfolios in which sub-funds, assets and liabilities can be clearly separated and ring-fenced. Investors have the flexibility to enter and exit the fund as computation of their investment value is straightforward with the capital of the VCC being equal to the net assets. The VCC also promotes cost efficiencies by having a single administrator, fund manager, custodian, auditor and compliance officer managing the main and sub funds as opposed to juggling multiple funds. It also allows distribution of dividends from the capital to meet dividend obligation as opposed to only being allowed to distribute from the profits for a traditional corporate vehicle.

1.8. What is the procedure of registration and incorporation of foreign-owned companies?

Regarding the process for incorporating a subsidiary or local company, it will involve procedures such as application to ACRA and registration of company name.

Other modes of setting up operations in Singapore for foreign companies include (1) transfer of Registration, (2) setting up a Representative Office and (3) registering a branch of a Foreign Company. Information regarding each of the said ways can be found on the ACRA website. (https://www.acra.gov.sg/how-to-guides/registering-a-foreign-company). However, it must be noted that since the aforementioned three options of registering a presence in Singapore are not incorporation, there is thus no creation of a separate legal entity and so they would be more limited in terms of the activities that can be undertaken.

1.9. What are the documents and materials that the foreign investors need to prepare for that purpose? Is notarization or certification required?

To incorporate a company in Singapore, foreign investors should observe the following requirements:

- Have a minimum of one shareholdern (100% Foreign shareholding is permitted, and the shareholder can be either an individual or a corporate entity).
- At least one Singapore resident director (Singapore residents and foreign resident individuals can be directors of a Singapore company. Corporate directors are not permitted. Singapore resident can be a Singapore citizen, a Singapore permanent resident or an Employment Pass holder, the appointment of appropriately qualified nominee directors are also permitted for this purpose of meeting this requirement).
- At least one Singapore resident company secretary.
- Minimum initial paid-up share capital of S$1.00.
- A local registered office address which cannot be a post office box.

1.10. How long does it normally take to complete the entire registration and incorporation process?

According to ACRA, the application is usually processed within 15 minutes after the name application fee is paid. It may take between 14 days to 2 months if the application needs to be referred to another agency for approval or review. For example, if the intention of the branch of a foreign company is to carry out activities involving the setting up of a private school, the application will be referred to the Ministry of Education.

2. M&A Laws and Regulations & Regulatory Approvals

2.1. What are the principal laws and regulations applicable to M&A transactions in relation to listed and private company in Singapore? What are the major issues dealt with in such laws and regulations?

- The Companies Act is relevant where the target company is incorporated in Singapore. Section 210 specifically deals with schemes of arrangements, Section 215 deals with compulsory acquisition of shares in a takeover (which provides for the power to acquire shares of shareholders dissenting from a scheme or contract that is approved by 90% majority), and Sections 215A to 215J deal with amalgamations.

- The Securities and Futures Act contains legislative provisions relating to take-overs, including giving the the Securities Industry Council (the "**SIC**") the power to administer and enforce the Singapore Take-over Code, stipulating the potential offences and dealing with compulsory acquisition in relation to Real Estate Investment Trusts.

- The Business Trusts Act deals with compulsory acquisition in relation to a business trust.

- The SGX-ST Listing Manual provides for obligations that companies must observe to remain listed on the Singapore Exchange, as well as rules on take-over activities.

- The Singapore Code on Take-overs and Mergers is a non-statutory set of rules administered by the Securities Industry Council which applies to all offerors (individual or company, Singapore resident or not) and all acts done or omitted to be done in and outside Singapore. It does not apply to private companies. While the Singapore Take-over Code does not have the force of law, compliance should be observed seriously or there will be sanctions by the SIC including private reprimand, public censure or in a flagrant case, the SIC may take other or further action against the errant entity as the SIC thinks fit, such as barring the entity from dealing in the Singapore Exchange. For criminal offences under the Companies Act, Securities and Futures Act or any other laws, the SIC would refer the matter to the appropriate authorities and the errant entity (and in many instances, its directors) may face liability and be charged for certain offence(s) under the said laws including being subject on conviction, to fines, penal liability and disqualification penalties.

2.2. Are there any foreign investment review required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

No. Foreign investment is governed by sector-specific laws and regulators.

2.3. Are there any merger control required in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

The Competition Act and its subsidiary legislation and various related guidelines and practice statements prohibits anti-competitive behaviors.

Section 54 of the Competition Act seeks to intervene with mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods and services.

Petition concerns could arise in a merger situation where the merged entity has or will have a market share of 40% or where the post-merger combined market share of the three largest firms is 70% or more. Another consideration would be whether the merged entity would affect the competition landscape in the market, such as giving rise to coordinated behaviors among firms or leading to increased market power such that the merged entity is able to raise prices or reduce output or quality after the merger.

A merger clearance filing to the Competition and Consumer Commission of Singapore ("**CCCS**") is voluntary but recommended by the CCCS if a merger may potentially result in a substantial lessening of competition in a relevant market. It is advisable for an offeror to conduct a proper self-assessment as to whether the merger would fail within the merger control provision in the Competition Act.

There is no statutory period within which the CCCS must conclude its assessment of a notified merger. However, as set out in the Procedural Guidelines 2012, the first phase of review is expected to be completed within an indicative timeframe of 30 working days. After the first phase, the CCCS will decide whether to issue a favourable decision to permit the merger situation to proceed or to continue to the second phase of review. The indicative timeframe for the second phase of review to be completed within is 120 working days.

2.4. Are there any other governmental and regulatory approvals required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

- It depends on sector-specific laws and regulators. Several examples are set out below:
- Real Estate - Singapore Land Authority, the Housing and Development Board (HDB) and the Jurong Town Corporation (depending on the type of real estate involved)
- Broadcasting - Info-communications Media Development Authority (IMDA)
- Domestic Media - Info-communications Media Development Authority (IMDA)
- Financial Services and Banking - The Monetary Authority of Singapore (MAS)
- Professional services (e.g., Legal Services Regulatory Authority (LSRA), Accounting and Corporate Regulatory Authority, Board of Architects, Professional Engineers Board)

3. M&A for Listed Companies

3.1. What are the principal methods of acquisition?

The principal methods of acquisition are acquisition of shares and acquisition of assets. A reverse takeover is the acquisition of a public listed company by a private company, so that the private company can become publicly traded without an initial public offering.

3.2. In what circumstances (if any) is a mandatory bid obligation incurred?

Under Rule 14 of the Singapore Take-over Code, an offeror must make an offer for all shares of Target Company when certain trigger thresholds stipulated in the Take-over Code are reached.

Rule 14.1(a) provides for the first threshold whereby an offeror acquires shares, which taken together with shares held or acquired by persons acting in concert with it ("**Concert Parties**"), amount to 30% or more of shares carrying voting rights of Target Company. Rule 14.1(b) provides for the second threshold whereby an offeror and Concert Parties hold between 30% and 50% of the target company's shares carrying voting rights and acquire in aggregate more than 1% of the target company's shares carrying voting rights in any rolling 6-month period.

Persons acting in concert are parties who have an agreement or understanding to (whether formal or informal) and co-operate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company. The Take-Over Code provides for certain relationships wherein parties will be presumed to be acting in concert, for example, between close relatives.

3.3. Is there a minimum price at which the offer must be made?

Rule 14.3 of the Take-over Code provides that the offer price must be in cash or accompanied by a cash alternative, at not less than the highest price paid by Offeror or any Concert Party for any voting shares during the period of the Offer and in the 6 months leading up to the date of the announcement of the Offer. The minimum offer price determined by, calculating the highest price paid by the offeror and its Concert Parties for voting shares acquired during the offer period.

3.4. How can the function of the board of directors of the target impact a proposed acquisition?

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/her office at all times. Directors of a target who agree on its behalf to enter into an agreement with a bidder, where doing so would prevent the target from soliciting or encouraging proposals or enquiries from other potential bidders, must ensure that in doing so, they are acting in good faith in the best interests of the company and its shareholders. If a target's board has reason to believe that a bona fide offer is imminent, the board should not, except pursuant to a binding contract entered into earlier, take any action which could effectively result in any bona fide offer being frustrated or the target's shareholders being denied an opportunity to decide on its merits, without shareholders' approval.

3.5. What key documentation is needed in the acquisition?

The following key documents are involved in share acquisitions:

- Share purchase agreement typically prepared by the buyer
- Disclosure letter, prepared by the seller
- Share transfer form
- Resolution of the board of the seller and buyer approving the transaction
- Other documents, such as board and/or shareholder resolutions, announcements, stamp duty documents and any ancillary side agreements

The following key documents are involved in asset acquisitions:

- Asset purchase agreement
- Novation or Assignment agreements (if applicable)

3.6. Do acquisition documents require pre-approval by any regulatory body prior to publication?

No. Notification of the acquisition is on a voluntary basis. However, it is recommended that the M&A be notified to the Competition and Consumer Commission of Singapore if it is expected to result in a substantial lessening of competition in Singapore.

4. M&A for Private Companies

4.1. Are there any special rules in relation to the transferring of a business (compare with the simple share or asset acquisition)?

While some assets can be transferred by simple delivery, others (such as intellectual property and land) must be formally transferred in accordance with the relevant law and/or regulation and in the case of land and real property, the transfer must also be filed with the relevant authority (viz. the Land Titles Registry) and duly recorded. As all assets and liabilities of a company are acquired in a share purchase, the legal and the financial due diligence process is often more onerous and appropriate contractual protection through warranties and indemnities in the relevant principal agreement will generally be negotiated and included.

4.2. Do labor unit, works councils and other stakeholders (other than the vendors of the target) play a role in M&A?

There is generally no statutory or regulatory requirement for employees to approve of or be consulted on M&A transactions. However, where the target has adopted an employee share option scheme or where its employees are parties to the shareholders' agreement, there may be further contractual considerations and consequent obligations to be complied with.

4.3. What are the principal minority shareholder rights given by law?

- **Special resolutions.** If the minority shareholder(s) hold(s) more than 25% of the company's shares, it has the power to block certain decisions requiring a special resolution or supermajority of 75% shareholder approval pursuant to Section 184(1) of the Companies Act.

- **Right to call for meeting.** Under Section 176(1) of the Companies Act, upon the request of members holding at least 10% shareholding in the company, the directors of a company shall immediately proceed duly to convene an extraordinary general meeting within 2 months of receiving the request. Under Section 177(1) of the Companies Act, two or more members holding at least 10% shareholder may call a meeting of the company.

- **Statutory derivative action.** Under Section 216 of the Companies Act, the minority shareholder(s) can apply to the court to initiate a statutory derivation action on behalf of the company if the director has breached their duty.

- **Oppression remedy.** Under Section 216A of the Companies Act, the minority shareholder(s) can apply to the court to seek remedy for unfair prejudicial conduct by the majority. The primary element of oppressive action under this provision is commercial unfairness and a single act is sufficiently constituted oppression if sufficiently serious.

- **Right to information.** A minority shareholder possesses the statutory right to information such as inspection of minute books under Section 189 of the Companies Act and the ability to seek formal regulatory investigations in certain limited circumstances.

- **Right to seek winding up of company.** A minority shareholder has the right to seek the just and equitable winding up of the company pursuant to Section 254(1) of the Companies Act.

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Authors:

QUEK Li Fei
Partner

Lorraine Liew
Senior Associate

Victoria Lynn Chin
Associate

From CNPLaw LLP in Singapore.