Top Tips for Doing Private M&A Deals (Singapore)

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A Practice Note setting out top tips from Singapore counsel for conducting private share or asset acquisitions in Singapore. It highlights particular issues lawyers from outside Singapore should be aware of when undertaking cross-border private M&A deals in Singapore.

This Note outlines Singapore-specific top tips that Singapore counsel would give non-Singapore qualified counsel when conducting private M&A transactions where the target company or business is based in Singapore. It is also relevant for regional M&A transactions where operations are held through a Singapore (private) holding company, which is a common and attractive option for various reasons, including:

- Tax considerations.
- The ease and efficiency of disposals and restructuring enabled by Singapore's robust legal system.
- The availability of investment treaty protection.
- The protection afforded by Singapore's reputable and well-regulated corporate legal regime.

While the legal position and related recommendations may vary according to the sector in which the target operates, Singapore is generally regarded as foreign-investment friendly.

Companies in Singapore can be in the form of private companies or public companies. This Note addresses private limited companies only.

Early Stage and Structuring Considerations

Engage Suitable Advisers

Many M&A transactions involving Singapore targets have a cross-border element. In such instances, it is particularly important to engage legal, tax, and financial advisers with the relevant cross-border and Singaporean law experience early on, to ensure the structure of the transaction is most suitable for the particular deal. It is also key to ensure that relevant multi-jurisdictional advice is obtained in early-stage due diligence to identify any legal or regulatory approvals required and any key issues that could affect the deal or prevent it from going ahead.

Availability of Treaty Protection

At the outset of the transaction process, investors and buyers should consider the ability to structure their investment to benefit from the protections afforded by Singapore's extensive network of bilateral investment treaties (BITs) and multilateral investment treaties (MITs). These typically provide safeguards such as fair and equitable treatment, protection against expropriation without compensation, access to neutral international arbitration, and enforcement of awards, offering additional protection when contractual safeguards may not suffice.

Treaty protection can be particularly attractive for investors and buyers targeting underlying assets located in certain other Asian countries where political or regulatory risks are a concern. In such circumstances, investors and buyers should assess:

- The ability to use a Singapore holding structure to route their investments into the higher-risk jurisdictions.
- Whether the proposed structure and related operational arrangements will be eligible to benefit from available treaty protection to help mitigate the risks associated with foreign investment in higher-risk jurisdictions.

Key relevant treaties include the following:

- ASEAN Comprehensive Investment Agreement.
- EU-Singapore Investment Protection Agreement.

- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
- US-Singapore Free Trade Agreement.
- Singapore-Indonesia Agreement on the Promotion and Protection of Investment.

It is important to review the specific treaty terms to determine if the intended M&A transaction can benefit from treaty protection and meet any related requirements such as (if required) ensuring the Singapore entity has sufficient economic substance, which may include having local employees, office space, and active business operations in Singapore.

Financial Assistance

The prohibition on financial assistance under sections 76 and 76A of the Companies Act 1967 (Companies Act) only applies to public companies and their subsidiaries. Accordingly, Singapore private companies are not restricted from providing financial assistance for the acquisition of their own shares or those of their holding company and, therefore, have greater flexibility compared to private corporate entities in some other jurisdictions that are so restricted.

Protecting Parties' Rights During the Transaction Process

NDAs and Exclusivity

It is common practice in Singapore for parties to enter into legally binding non-disclosure agreements (NDAs) at the outset of negotiations. NDAs frequently grant exclusivity rights to the potential buyer, with the seller agreeing not to engage in discussions with any other parties during the agreed exclusivity period.

NDAs should include provisions requiring compliance with Singapore's Personal Data Protection Act 2012 (PDPA) when exchanging information, especially if personal data is involved.

See Practice Note, Key Documents for Acquiring a Private Company (Singapore): Confidentiality (or Non-Disclosure) Agreement and Exclusivity (or Lock-Out) Agreement.

Break Fees

Break fees are not common practice in private M&A transactions in Singapore, although they do exist. There is a risk that such provisions may be unenforceable if the Singapore courts construe them as penalties rather than a genuine pre-estimate of loss. If the parties consider including a break fee, the directors of the target must ensure that agreeing to it is consistent with their fiduciary and statutory duties (see Practice Note, Directors' Duties and Liabilities (Singapore)).

Duty of Good Faith

Under Singapore law, there is no general obligation to negotiate in good faith. However, if the parties expressly agree to such a duty, the Singapore courts will uphold and enforce the parties' express agreement to negotiate in good faith. This contrasts with some other jurisdictions, where a duty of good faith may be implied by law even in the absence of an express agreement.

Due Diligence Considerations

Scope of Legal Due Diligence

In M&A transactions, legal due diligence is vital to:

- Assess the target's legal and financial situation.
- Identify any risks.
- Identify any legal or regulatory approvals (see Regulatory Considerations).
- Identify third-party change of control requirements.
- Determine how to structure the transaction (see Determine Transaction Structure).

In Singapore, similar to other jurisdictions, the extent of legal due diligence, and how it is carried out, depends on the type and nature of the transaction. Typically, most buy-side due diligence in Singapore is conducted on a "red-flag" exceptions-only basis, commonly focusing on material issues such as third-party change of control restrictions and regulatory approvals. Sellers in Singapore are increasingly conducting vendor-side due diligence, commonly in auction and bidding processes.

For more information on legal due diligence investigation for the purchase of a private company or business in Singapore, see Practice Note, Due Diligence for Private Acquisitions in Singapore.

Multi-jurisdictional and Family Business Issues

Many Singapore targets in M&A transactions are holding companies for subsidiaries incorporated and operating outside Singapore, often in other Asian jurisdictions. Therefore, due diligence on a Singapore target will frequently involve multi-jurisdictional issues and coordinating due diligence conducted by local counsel in other jurisdictions.

In Singapore and more generally across the wider region, it is not uncommon to find that family-owned businesses have legacy issues resulting from historical failures to properly delineate the target company's business and asset ownership from the family's affairs. For example, intellectual property (IP) rights are often registered in the name of an individual shareholder (who may be a family member) rather than that of the target.

Employment and Foreign Employee Compliance

As Singapore companies commonly have a significant number of foreign employees across all sectors, due diligence on a Singapore target should address whether:

- The target complies with its legal obligations regarding foreign employees.
- Any particular requirements apply to the transfer of foreign employees in the event of a business sale.

These obligations and requirements differ depending on the type of "work pass" held by the foreign employee.

For information on key employment law issues to consider when acquiring a private company or a business in Singapore, see Practice Note, Employees: Cross-Border Private Acquisitions (Singapore).

Use of Virtual Data Rooms

In Singapore, due diligence is almost invariably conducted electronically through virtual data rooms (VDRs). VDRs professionally managed by a reputable service provider can assist with the smooth running of the transaction process and can be particularly important when dealing with less sophisticated sellers and targets with regional operations in jurisdictions with less developed legal systems. In practice, failure to engage reputable professional VDR providers can significantly delay the M&A process and increase all parties' costs. Parties should not underestimate the time required to properly populate a VDR and the importance of starting this process sufficiently early on, in particular from a disclosure perspective.

Personal Data Protection and PDPA Exemptions

When populating a VDR, sellers must ensure compliance with the PDPA, including taking necessary steps to safeguard personal data and obtaining required consents. The PDPA's "business asset transaction" exemption set out in Part 4 of the First Schedule to the PDPA generally allows personal data to be shared during due diligence without an individual's consent, provided certain conditions are met, including:

- Notifying affected individuals after the transaction has taken place.
- Limiting data use to the transaction.
- Disclosing only necessary data.
- Ensuring there are reasonable security arrangements for the protection of the information.

For a list of resources that address Singapore's privacy and data protection laws, see Data Protection Toolkit (Singapore).

Public Searches and Limitations

It is administratively easy and quick, and usual practice, to conduct public searches against private limited companies incorporated in Singapore in M&A transactions. Most of the relevant registers maintained by the authorities and the Singapore courts are available online and are generally regarded as reliable and up to date, subject to standard disclaimers.

Key corporate information can be obtained within minutes through an online search of the Accounting and Corporate Regulatory Authority's (ACRA) Bizfile database, which contains information on all companies registered in Singapore. ACRA maintains an electronic register of members for every Singapore private company that provides prima facie evidence of share ownership. However, the database does not disclose details of beneficial ownership (see Registers and Ownership Transparency).

In Singapore M&A transactions, it is standard practice to conduct corporate, insolvency, litigation, and IP searches as part of due diligence, and to repeat these searches shortly before signing and closing. The extent of public searches depends on the nature of the target's business.

Registers and Ownership Transparency

Singapore companies must maintain a register of registrable controllers (that is, beneficial owners), which should be reviewed during due diligence. It is also important to identify nominee shareholding or directorship arrangements and ensure these are properly updated and disclosed to ACRA following an acquisition. See Practice Note, Incorporating a Private Company Limited by Shares (Singapore): Beneficial Ownership Disclosure.

While ACRA searches offer reliable information on Singapore companies, they do not disclose beneficial ownership or nominee details to the public, nor do they reveal certain charges registered outside Singapore. Therefore, these details should be obtained directly from the target.

Determine Transaction Structure

In Singapore, most private M&A transactions are structured as share sales, which are generally regarded as less cumbersome than asset sales. Asset sales are typically preferred when the buyer wishes to cherry pick specific assets to avoid inheriting the target's liabilities. For further detail, see Practice Note, Acquisition Structures: Comparing Asset and Share Purchases (Singapore).

There has been a recent increase in auction sales, driven by fewer but larger deals and the availability of private equity capital, the latter being, in part, due to the increase in family offices in Singapore in recent years. An auction sale can be a competitive and effective tool for sellers in larger deals.

Employment Law Considerations

The key employment law considerations in Singapore M&A transactions depend primarily on whether the transaction is structured as a share sale or an asset sale:

- **Share sale.** There is no change in the employment status of the target's employees. Underlying employment contracts and benefits will, likely, not be affected by the change of control of the target.
- **Asset sale.** The extent of the employment law considerations depend on whether, or not, the transfer of assets qualifies as a "business transfer" for purposes of the Employment Act 1968 (Employment Act) (that is, a transfer of a business undertaking or part thereof as a going concern):
  - on a business transfer, employment contracts of all "eligible employees" (that is, employees affected by the transfer or who may be affected by measures taken in connection with the transfer and who are covered by the Employment Act) automatically transfer to the buyer on existing terms, with continuity in the employees' period of employment preserved (section 18A, Employment Act); and
  - on a transfer of assets that does not constitute a business transfer (for example, a sale of individual assets which, together, do not suffice to operate as a going concern), there is no automatic transfer of employees on their existing employment terms.

Therefore, if a buyer contemplates acquiring only certain assets (rather than shares), it should, from the outset carefully consider whether this could constitute a business transfer and trigger the automatic transfer of all eligible employees.

If the M&A transaction may involve any retrenchment of employees (that is, dismissals due to redundancy or by reason of any reorganisation of the target's business), this may require mandatory notification to the Singapore Ministry of Manpower (MOM).

For more information, see Practice Note, Employees: Cross-Border Private Acquisitions (Singapore): Unlawful Dismissal: Employee Rights and Protection.

Tax Considerations for Choice of Structure

Stamp duty is payable on share transfers in Singapore at a rate of 0.2% of the higher of the purchase price or the net asset value of the shares. This is a Singapore-specific cost consideration that should be factored into transaction planning. It is also important to consider whether stamp duty relief may be available, depending on the nature of the proposed transaction.

For asset sales, goods and services tax (GST) at 9% may apply, unless the transaction qualifies as a transfer of a going concern, which is exempt from GST. It is advisable for buyers to confirm the GST status of the transaction at an early stage to ensure accurate budgeting and compliance.

For more information on tax law issues to consider when acquiring a private company or a business in Singapore, see Practice Note, Tax: Private Company Acquisitions (Singapore).

Regulatory Considerations

Foreign Investment Restrictions

Singapore broadly maintains an open and liberal approach to foreign investment. There are no general umbrella restrictions on foreign investment ownership in Singapore, but there are sector-specific foreign investment restrictions. Restricted sectors include:

- Media.
- Telecommunications.
- Financial services.
- Electricity.
- Real estate.

Certain sectors are subject to statutory foreign ownership restrictions. For example, under the

Broadcasting Act 1994, foreign ownership of a broadcasting company is effectively capped at 49%. In other sectors, foreign ownership is controlled through licensing regimes administered by the relevant regulators, for example:

- The Monetary Authority of Singapore (MAS) licenses financial services and banking.
- The Info-communications Media Development Authority (IMDA) licenses the telecommunications sector.

For more information on the regulation of foreign investment in Singapore, see Practice Note, Regulation of Foreign Investment in Singapore.

Regulatory Approvals and Notifications

Licences, permits, and other regulatory approvals, granted to entities operating in Singapore may contain express change of control or transfer of assets provisions. Such provisions may require:

- Prior approval from the relevant regulator before a change of ownership or control of a licensed entity or certain key assets.
- Post-transaction notification.

For example, under the Securities and Futures Act 2001, it is prohibited for a buyer to acquire effective control of a target holding a capital markets services licence without obtaining prior written approval from MAS. However, certain exempt entities (operating under statutory exemptions) are only subject to a post-completion requirement to notify the MAS of a change in effective control.

Failure to comply with the relevant requirements may result in:

- Suspension or revocation of the relevant licence, permit, or approval.
- The imposition of conditions.
- Directions to unwind or divest the transaction.

Accordingly, it is crucial to ascertain the licences, permits, and approvals held by the target group and determine whether any pre-approvals or notifications to regulatory bodies would be required.

Some regulatory approvals, such as those from the MAS or the IMDA, can take several weeks or even months to obtain. Early engagement with the relevant regulators is recommended to avoid delays.

Significant Investments Review Act

In line with growing global regulatory scrutiny of foreign investment, Singapore introduced the Significant Investments Review Act 2024 (SIRA) with the aim of protecting Singapore's national security interests. SIRA applies to both local and foreign investors and complements existing sectoral legislation.

Under SIRA, entities designated by the Singapore Minister of Trade and Industry (Minister) as critical to Singapore's national security must notify or seek prior approval from the Minister (through the Office of Significant Investments Review (OSIR)) for the following:

- Relevant changes of ownership or control that meet prescribed thresholds.
- The appointment of certain key personnel.
- Winding up or terminating the entity.

The legislation also covers indirect controllers and acquisitions of a business or an undertaking (or part of it) as a going concern. There are currently nine "designated entities" (as published in the Singapore Government Gazette) that operate in areas critical to Singapore's sovereignty and security, including entities operating in the petrochemicals, logistics, and defence sectors.

The Minister has broad powers to designate an entity as a designated entity if they consider this necessary for Singapore's national security. The Minister can designate both:

- Entities incorporated, formed, or established in Singapore.
- Entities carrying out activities in Singapore or providing goods and services to persons in Singapore (even if such entities are not incorporated in Singapore).

In addition, the Minister's powers extend beyond identified designated entities if the Minister reasonably believes that a transaction poses a risk to national security (even if it does not involve any designated entities.

The Minister has the ability to call in a transaction for review if it occurred within the preceding two years, and may nullify or reverse it.

Any M&A transaction subject to approval under SIRA must not be completed without prior clearance. Given the Minister's call-in power to review and potentially unwind transactions, parties should consider seeking informal guidance from

the OSIR if there is any uncertainty about the application of SIRA.

Merger Control

Singapore has a voluntary merger control regime. There is no mandatory requirement to notify acquisitions to the Competition and Consumer Commission of Singapore (CCCS) under the Competition Act 2004 (Competition Act). The merger parties are responsible for assessing whether their proposed merger would substantially lessen competition within any market in Singapore and accordingly consider whether a voluntary notification may be necessary. Where a merger may raise serious anti-competitive concerns, the CCCS has indicated that the parties should apply to the CCCS for a decision as to whether the merger will be infringing. Failure to do so may result in an investigation by the CCCS, which may impose financial penalties or directions (including behavioural undertakings and divestiture orders) if it finds that the merger has resulted in a substantial lessening of competition in Singapore.

The Competition Act does not apply to certain sectors, including telecommunications, media, and energy, which are regulated by sector-specific legislation and authorities.

For more information, see Practice Note, Competition and Consumer Commission (Singapore): Overview: Merger Review.

Absence of Exchange Control

There are no exchange control approval requirements for inward investment into Singapore, the remittance of dividends or profits, or the repatriation of capital outside of Singapore.

Singapore Code on Take-overs and Mergers

The Singapore Code on Take-overs and Mergers does not apply to private companies.

Transaction Documentation Considerations

Key Documents

The key documents to evidence and implement Singapore private M&A transactions are similar to those customarily used in other common law jurisdictions, and typically include:

- An NDA (see NDAs and Exclusivity).
- A term sheet.
- A sale and purchase agreement.
- A disclosure letter.

To legally transfer shares in Singapore:

- The seller and buyer must both sign a share transfer instrument, which is typically witnessed.
- The share transfer instrument must be stamped with the relevant duty payable to the Inland Revenue Authority of Singapore (IRAS).
- The share transfer must be registered with ACRA and the electronic register of members maintained by ACRA must be updated to reflect the share transfer.

For acquisitions of shares where multiple shareholders will remain following completion, a shareholders' agreement is recommended and customary.

For more information, see Practice Notes, Transfer of Shares in a Private Company (Singapore) and Key Documents for Acquiring a Private Company (Singapore).

In asset sales, additional documents may be required in addition to the sale and purchase agreement, such as conveyancing, assignment, or novation agreements. Post-completion steps may be necessary to perfect the transfer, including updating intellectual property registrations and notifying relevant authorities or counterparties to ensure that legal title to the assets is properly transferred. For more information, see Practice Note, Asset Acquisition Documents: Private Acquisitions (Singapore).

Singapore law generally recognises electronic signatures for most documents, which facilitates cross-border transactions and remote closings. However, certain documents (such as deeds) may still require wet-ink signatures. See Practice Note, Contract Execution (Singapore): Electronic Signatures.

Legal Opinions

As many Singapore private M&A transactions involve cross-border aspects, it is not uncommon for non-Singapore parties to request Singapore counsel to issue legal opinions addressing the capacity and authority of Singapore entities, as well as the enforceability of transaction documents governed by Singapore law.

Key Drafting Considerations

The key drafting considerations in Singapore M&A transaction documents are generally broadly similar to those commonly encountered in other common law jurisdictions, subject to some adjustments for local legislation requirements and market practice, as illustrated in the examples below.

Purchase Price

Parties in Singapore are free to determine valuation. Historically it has been common for valuations to be determined based on net asset value (NAV) on a debt-free, cash-free basis or enterprise value, together with a post-completion adjustment mechanism, generally based on the difference between a contractually agreed baseline working capital and the target's actual working capital at completion. However, the market in Singapore is increasingly adopting locked box mechanisms, especially in private equity and auction transactions, to avoid the costs and time spent on post-completion adjustments. Earn-out provisions remain popular, in particular where founders are expected to actively support and develop the business post-closing, which is often the case in acquisitions of family-owned businesses. For more information, see Practice Note, Earn-Out, Locked Box, and Retention: Private Acquisitions (Singapore).

Form of Consideration

In private M&A transactions in Singapore, cash is typically the preferred form of consideration. However, alternatives such as share consideration or a combination of cash and shares, are also commonly used. The choice of consideration depends on several factors, including the buyer's access to financing and the tax consequences associated with each payment method.

Warranties and Indemnities

Warranties and indemnities are often the most heavily negotiated terms in a Singapore sale and purchase agreement. Warranties in Singapore are provided by the seller to give the buyer assurances about the target company and its business, while indemnities are sought to address specific, identified risks. In Singapore, it is unusual for warranties to be given on an indemnity basis.

While the precise scope of these terms depends on the nature of the deal, it is standard to insist on a minimum set of warranties covering:

- Capacity, title, and authority.
- Corporate information.
- Financial and accounting information.
- Employees and pensions.
- Tax.
- Compliance with laws.
- Litigation.

Depending on the business or industry, additional warranties may cover, for example, compliance with specific regulatory or licensing requirements.

It is common to limit the scope of warranties by qualifying them by materiality, knowledge, or including time limits on bringing claims. The statutory limitation period in Singapore for contractual claims is six years from the date on which the cause of action accrued (section 6, Limitation Act 1959). The length of time limits is a matter of negotiation between the parties, however, in practice, there are typically six years for tax warranties, four to six years for fundamental warranties (typically relating to title and capacity), and one to three years for commercial warranties.

Singapore-specific tax warranties should cover GST, stamp duty, and compliance with the Income Tax Act 1947. Employment-related warranties should cover compliance with the Employment Act 1968, Central Provident Fund contribution requirements, and work pass requirements for foreign employees. In certain industries, environmental warranties regarding compliance with the Environmental Protection and Management Act 1999 should also be considered.

For more information on warranties and indemnities, see Practice Notes, Asset Acquisition Documents: Private Acquisitions (Singapore): Representations and Warranties and Warranties and Indemnities, and Key Documents for Acquiring a Private Company (Singapore): Warranties and Indemnities.

Payment of Stamp Duty

Unless there is an agreement to the contrary, the Stamp Duties Act 1929 requires the buyer to be responsible for paying stamp duty, and in practice the buyer typically bears this cost. Stamp duty must be paid electronically via IRAS's e-Stamping Portal before the share transfer is registered.

Post-Closing Covenants

It is common for Singapore private M&A agreements to include post-closing covenants such as non-compete and non-solicitation clauses. These provisions typically require the seller to

refrain from engaging in competing business activities and not to solicit certain employees, suppliers, or customers.

Under Singapore law, post-closing restrictive covenants, such as non-compete and non-solicitation clauses, are generally enforceable only if they protect a legitimate business interest and are reasonable in scope. To be upheld, these covenants are typically limited to the geographic area in which the target company operates at closing and are restricted to a reasonable duration. What is considered "reasonable" depends on the specific facts of each case. Singapore courts take a strict approach in evaluating the reasonableness of such clauses and may strike down restrictions that are overly broad or go beyond what is necessary to protect the parties' legitimate interests.

Governing Law and Dispute Resolution

Singapore law does not prescribe any particular governing law or dispute resolution mechanism for M&A transactions.

As Singapore law, the Singapore courts, and the Singapore International Arbitration Centre (SIAC) are widely recognised as efficient, reliable, and commercially pragmatic, it is common for parties to M&A transactions in Singapore to opt for the transactional documentation to be governed by Singapore law and, irrespective of whether Singapore is the governing law or not, for disputes to be resolved by arbitration administered by SIAC in accordance with the SIAC Rules. SIAC awards are enforceable in over 160 countries under the New York Convention, providing parties with significant certainty and global reach. Where a SIAC arbitration is desired by the parties as the preferred dispute resolution process, it is recommended that the SIAC model clause arbitration agreement is included in the transaction documents.

In addition, the Singapore International Commercial Court (SICC) offers a dedicated forum for resolving complex cross-border commercial disputes and is increasingly chosen in M&A-related matters.

Singapore's ranking as the least corrupt country in the Asia-Pacific region (according to Transparency International's 2024 Corruption Perceptions Index) contributes to making it a particularly attractive dispute resolution forum for M&A transactions in Singapore and across the region.

Warranty and Indemnity (W&I) Insurance

Sellers generally seek to limit the scope of warranties and indemnities, while buyers typically want these to be broad and unqualified. In private M&A transactions in Singapore, W&I insurance is increasingly being used to bridge this gap, with Singapore serving as a regional hub for W&I insurance. W&I insurance provides cover for losses resulting from breach of warranties and certain indemnities, transferring the risk from the parties to the insurer. It enables sellers to limit their liability and achieve a cleaner exit (which is particularly attractive for private equity sellers), while giving buyers enhanced warranty and indemnity protection.

The increase of W&I insurance availability is especially beneficial in deals involving target groups with regional operations in jurisdictions considered "higher risk" and with less established legal and enforcement frameworks compared to Singapore. While historically W&I insurers tended to be reluctant to offer coverage for operations in certain Southeast Asia jurisdictions, recent market developments have made it possible for parties to obtain W&I insurance for certain M&A transactions involving Singapore holding companies with operations in jurisdictions such as Laos and Vietnam.

The increase in the number of W&I insurers in Singapore, combined with a slowdown in M&A activity, has resulted in increasingly competitive pricing and terms for W&I insurance in Singapore, including:

- Lower premium rates (in certain instances below 1% of the policy limit).
- Lower policy deductibles and de minimis thresholds.
- Enhanced coverage.
- Less onerous underwriting requirements.

For example, there has been a significant reduction in the number of underwriting questions and, in some cases, underwriting calls have been waived, leading to reduced work and costs for the parties. However, as in other jurisdictions, the quality of due diligence is key, as material gaps in due diligence are likely to result in exclusions from W&I insurance coverage.

W&I insurance policies often include jurisdiction-specific provisions. Coverage is usually more extensive in transactions only involving operations in Singapore,

rather than, for example, a target group held through a Singapore holding company with operations in certain other Asian jurisdictions which are generally considered "higher risk" jurisdictions. For example, some insurers are willing to offer anti-bribery and corruption and anti-money laundering W&I insurance coverage for Singapore targets, depending, in part, on the target's management and sector. This coverage may be more challenging to obtain if a Singapore target has regional operations in higher-risk Asian jurisdictions.

The Singapore market has recently seen an increase in sell-side W&I policies and the use of W&I insurance in auction processes, either offered by bidders to increase the attractiveness of their bids or required by sellers as part of the auction process.

W&I insurance can also be a particularly attractive option where the seller or members of the target's management team will remain with the target group post-closing, as it enables buyers to recover losses directly from the insurer, minimising disputes between buyers and sellers. This is often relevant for many Singapore M&A transactions, given the significant number of family-owned businesses, and many buyers' preference to retain at least some key management for business continuity post-closing.

Practical Points

Buyers should be aware of the following Singapore-specific practical considerations in M&A transactions.

Approvals

A Singapore company must pass an ordinary resolution (simple majority) to approve the disposal of "the whole or substantially the whole of the company's undertaking or property" (section 160, Companies Act 1967). Where applicable, this corporate authorisation is typically included as a condition precedent in the sale and purchase agreement.

For the transfer of shares in a Singapore entity, a board resolution of the target company is required to approve and register the transfer of shares. In addition, any pre-emption rights under the company's constitution or shareholders' agreement must be addressed, and waivers of such rights should be obtained from existing shareholders prior to the transfer. These approvals and waivers are standard procedural steps and should be factored into the closing process and timetable. For more information, see Practice Note, Transfer of Shares in a Private Company (Singapore).

Execution of Documents

Singapore law differentiates between the execution of simple contracts and deeds. Typically, when only one party benefits from an agreement, the contract must be executed as a deed so that it is not void for lack of consideration.

Most M&A share sale and purchase agreements governed by Singapore law are simple contracts. A simple contract can be executed by the signature of an authorised representative of the company. By contrast, certain asset transfer agreements, such as deeds of assignment of IP, are executed as deeds and require additional formalities. A deed can be executed by affixing the company seal or, in the absence of seal, having the document signed by any of the following:

- Two directors.
- A director and the company secretary.
- A director in the presence of a witness who attests the signature.

(Section 41B, Companies Act.)

Deeds executed by a natural person are usually executed in the presence of a witness. Failure to comply with any applicable execution formalities may render the document invalid and unenforceable.

Singapore law does not include specific requirements for the execution of deeds by foreign companies. These companies must comply with the execution formalities prescribed by the laws of their home jurisdiction.

While electronic signatures are generally accepted for most documents in Singapore, there remains uncertainty regarding their validity for deeds. Consequently, the prevailing market practice is to execute deeds using wet-ink signatures to ensure their enforceability and avoid any potential legal challenges.

For an overview of the execution requirements for contracts in Singapore, see Practice Note, Contract Execution (Singapore).

Closing

Due to the efficiency with which stamp duty may be paid and filed in Singapore and how the transfer of legal ownership in shares effected, it is possible for signing and closing of M&A transactions involving the transfer of shares in a Singapore company to take place simultaneously. However, a split signing and closing is common when regulatory or third-party approvals are required before closing. As

many Singapore M&A transactions involve parties from multiple jurisdictions and targets often have operations in multiple jurisdictions, it is becoming increasingly common to see a gap between signing and closing due to increasing complexity of cross-border reviews and regulatory scrutiny.

Escrow arrangements are not commonly used for receipt of purchase monies in Singapore M&A transactions. This is largely due to the efficiency and reliability of simultaneous signing and closing mechanics, where the purchase price is paid directly at closing, often with a SWIFT MT103 bank transfer used as proof of payment in cross-border deals. Unlike some other jurisdictions, Singapore law firms do not act as escrow agents or hold purchase monies as stakeholders, and solicitors' undertakings are not used for this purpose. Strict regulatory requirements and market practice favour direct payment, with risk allocation typically managed through retention amounts or holdbacks rather than escrow.

Under Singapore law, stamp duty on share transfers must be paid within 14 days of executing the share transfer document (if executed in Singapore) or 30 days (if executed outside Singapore). However, in practice, company secretaries do not proceed with effecting the share transfer until stamp duty has been paid, meaning that stamp duty is typically paid before closing.

For more information on the mechanics of signing and closing share or asset acquisitions, see Practice Note, Signing and Closing: Private Acquisitions (Singapore).

Additional Considerations for Buyers

Buyers in Singapore M&A transactions should be aware of the following Singapore-specific company law requirements and factor them into their pre and post-closing timetable or actions.

Resident Director Requirement

A Singapore company must have at least one resident director at all times. A "resident director" is an individual ordinarily resident in Singapore. This typically includes Singapore citizens, Singapore permanent residents, and non-Singapore citizens who hold a valid employment pass and are living in Singapore. Buyers must ensure that any post-closing board changes comply with this requirement.

See also Practice Note, Appointing a Director of a Private Company: Checklist (Singapore).

Company Secretary Requirement

The target company must have a company secretary, who can be an individual or a corporate entity. If the company secretary is not a director of the company and is providing corporate secretarial services as a business, they must be a registered corporate service provider (CSP) with ACRA (Corporate Service Providers Act 2024).

Beneficial Ownership and Nominee Arrangements

Unless the company is exempt, buyers must ensure that any change in beneficial ownership or nominee arrangements resulting from the M&A transaction are properly recorded and filed within the relevant time periods. This includes:

- Updating the Singapore company's register of registrable controllers, register of nominee directors, and register of nominee shareholders.
- Making the required filings with ACRA (although this information is not publicly available).

See Practice Note, Incorporating a Private Company Limited by Shares (Singapore): Beneficial Ownership Disclosure.