

The International Comparative Legal Guide to:
Mergers and Acquisitions 2009

A practical insight to cross-border Mergers and Acquisitions



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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Merger and acquisition activities in Singapore involving public listed companies are regulated by the following legislative provisions and regulations:

(1) The Singapore Code on Takeovers and Mergers (the “Takeover Code”)

The Takeover Code is issued by the Monetary Authority of Singapore (the “MAS”) under the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”).

The Takeover Code does not have the force of law. A breach of any provision of the Takeover Code does not give rise to criminal proceedings. The Securities Industry Council (the “SIC”), which administers and enforces the Takeover Code may, however, take action against an offender to deprive it temporarily or permanently of its ability to enjoy the facilities of the securities market, or may issue a public censure or private reprimand against the offender.

(2) The SFA

The primary legislative provisions relating to takeover offers are provided in Part VIII of the SFA.

The SIC is set up pursuant to the SFA. The Takeover Code is also issued by the MAS, in consultation with the SIC, under the SFA.

The SFA lists the criminal offences relating to takeover offers. It is an offence for a person to give notice or publicly announce that he intends to make a takeover offer if he has no intention to make one. It is also an offence to make a takeover offer if he has no reasonable or probable grounds for believing that he will be able to perform his obligations pursuant to the takeover offer being accepted or approved.

(3) Companies Act, Chapter 50 of Singapore (the “Companies Act”)

In the context of mergers and acquisitions, the Companies Act provides for the procedures to carry out schemes of arrangement or amalgamations to facilitate corporate acquisitions and mergers. The compulsory acquisition of shares of minority shareholders of a target company is governed by the Companies Act.

In addition, the Companies Act restricts a Singapore company from providing financial assistance to any person for the purpose of acquiring its shares or shares in its holding company.

(4) Listing Manual of the Singapore Exchange Securities Trading Limited (the “Listing Manual”)

The Listing Manual applies to a takeover transaction where either the acquiring company or the target company is a company listed on the Singapore Exchange Securities Trading Limited (the “SGX-ST”).

(5) Competition Act, Chapter 50B of Singapore (the “Competition Act”)

The Competition Act prohibits mergers that have resulted, or may be expected to result in, a substantial lessening of competition within any market for goods or services in Singapore. The Competition Act is administered and enforced by the Competition Commission of Singapore (the “CCS”).

Parties who are unsure whether their anticipated takeover or merger raises competition concerns may apply to the CCS either for guidance or for a decision.

1.2 Are there different rules for different types of public company?

The Takeover Code applies to takeovers of:

- corporations, including foreign-incorporated companies, with a primary listing on the SGX-ST; and
- registered business trusts, including foreign-registered business trusts, with a primary listing on the SGX-ST.

Unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and net tangible assets of S\$5 million or more must also observe the letter and spirit of the general principles and rules set out in the Takeover Code, wherever it is possible and appropriate.

A Singapore incorporated public company means a company other than a private company. A private company is one where its memorandum or articles of association contain a restriction on the right to transfer shares and a limitation on the number of members to not more than 50.

The SIC has also extended, by way of a practice statement, the Takeover Code to takeovers of Real Estate Investment Trusts.

1.3 Are there special rules for foreign buyers?

The Takeover Code and the statutory provisions in the SFA governing takeover transactions apply to all offerors, whether or not they are Singapore residents or citizens (if they are natural persons), or whether or not they are incorporated or carrying on business in Singapore (if they are corporations or unincorporated bodies).

1.4 Are there any special sector-related rules?

Takeover activities affecting certain types of Singapore incorporated companies are subject to prior regulatory approval for share ownership in these companies. Examples of such types of companies include:

- banks and finance companies;
- insurance companies;
- newspaper and broadcasting companies;
- designated telecommunication companies;
- approved exchanges, namely, the SGX-ST and the Singapore Exchange Derivatives Trading Limited;
- designated clearing houses, namely, The Central Depository (Pte) Limited and the Singapore Exchange Derivatives Clearing Limited;
- holding company of an approved exchange or a designated clearing house, namely, the Singapore Exchange Limited;
- trust companies;
- designated postal licensees;
- designated electricity companies; and
- designated gas companies.

1.5 What are the principal sources of liability?

Insider trading

If an offeror is in possession of confidential price-sensitive information regarding the target company, it cannot deal in the target company's shares until the information has become public or is no longer price-sensitive. In the context of a takeover, being in possession of price-sensitive information would prevent the offeror from making the bid unless the information is disclosed to all the shareholders of the target company as well.

Market manipulation

It is an offence under the SFA to carry out any securities transactions that manipulate the price of securities of a corporation on a securities market with intent to induce investors to deal in securities of the corporation or its related corporation. In the context of a takeover offer, the associates of an offeror or a target company who acquire shares of the offeror or target company respectively, for the purpose of raising artificially the prices of the offeror's or target company's shares, may be committing the market manipulation offence.

Liability for insider trading and market manipulation

A person who contravenes the insider trading and market manipulation provisions in the SFA may be subject to criminal prosecution, to a civil action maintained by an aggrieved investor, as well as to a civil action taken by the MAS.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Control of a Singapore-incorporated public company may be effected in the following ways:

(1) Takeover offer

Takeover offers generally take one of the following three forms under the Takeover Code:

- mandatory offers which are triggered by the offeror acquiring shares which result in the shareholdings of the offeror and parties acting in concert with it in the target company crossing certain thresholds;
- voluntary offers which are made on a voluntary basis by the offeror; and
- partial offers where voluntary offers are made for some (but not all) shares in the target company.

(2) Scheme of arrangement

In a scheme of arrangement, which is between the target company

and its shareholders, the target company cancels its existing shares and issues new shares in the target company to the acquirer, in consideration of the acquirer paying cash or issuing new shares in the acquiring company to shareholders of the target company. Alternatively, outstanding shares in the target company may be transferred from the shareholders of the target company to the acquiring entity.

A scheme of arrangement is effected through the procedures set out in Section 210 of the Companies Act. A scheme of arrangement is initiated by the target company and requires the approval of members of the target company. A scheme that is sanctioned by the court is binding on all shareholders of the target company.

All schemes of arrangement must comply with the Takeover Code unless exempted by the SIC.

(3) Amalgamation

As an alternative to a scheme of arrangement, Sections 215A to 215J of the Companies Act also provide for an acquisition through an amalgamation process. Such process may comprise either two or more companies amalgamating and continuing as one company, or two or more companies amalgamating and forming a new company.

An amalgamation must be approved by members of each amalgamating company. Unlike a scheme of arrangement, an amalgamation does not require the court's sanction.

All amalgamations must comply with the Takeover Code unless exempted by the SIC.

(4) Reverse takeover

In a reverse takeover, the acquiring entity transfers to the target company its assets and business in exchange for new shares in the target company. The acquiring entity then makes a takeover offer for all the remaining shares in the target company that it does not own.

An acquiring entity which gains control of a SGX-ST-listed company through a reverse takeover is required to comply with the requirements stipulated by the SGX-ST.

2.2 What advisers do the parties need?

The principal advisers in a takeover transaction are the financial adviser, legal adviser and accountant.

Financial adviser

An offeror would typically engage a financial adviser for advice on financial matters relating to a takeover bid and the strategy to effect a successful acquisition. The financial adviser is also generally responsible for managing the takeover team and the preparation and reviewing of the documentation required in a takeover offer.

The board of directors of a target company is required under the Takeover Code to obtain competent independent advice from a financial adviser on a takeover offer, except in the case of a partial offer for less than 30% of the voting rights of the target company. Such financial adviser would be known as the independent financial adviser (the "IFA").

Legal adviser

For an offeror, the legal adviser is typically engaged to undertake due diligence on a target company, to advise on the legal and regulatory requirements in relation to its offer, to obtain relevant regulatory approvals or confirmations and to draft the documentation required in a takeover bid. For a target company, the legal adviser would be engaged to provide similar services, save for having to undertake due diligence.

Accountant

An accountant may be engaged to assist in financial due diligence and the preparation of any financial information required in the

relevant documentation for a takeover bid.

2.3 How long does it take?

Under the Takeover Code, a takeover offer commences from the announcement of an offeror’s intention to make a takeover offer for shares of a target company. The offeror is required to post the offer document to the shareholders of the target company not earlier than 14 days but not later than 21 days from the date of the announcement.

The target company is required to post an offeree document to its shareholders within 14 days of the posting of the offer document.

A takeover offer has to remain open for at least 28 days after the date on which the offer document is posted.

An indicative takeover timetable based on the requirements of the Takeover Code is as follows:

Stage	Time	Event
1	T	Announcement of takeover offer
2	Around T+ 1	Target company releases holding announcement
3	Around T+ 2	Target company appoints the IFA for the takeover offer
4	T+ 21 or earlier (but not earlier than 14 days and not later than 21 days after T)	Offeror posts offer document to shareholders of target company and submits a copy to the SIC
5	T+ 35 or earlier (not later than 14 days after 4)	Target company posts offeree circular to its shareholders which contains: (a) advice of the IFA; and (b) recommendation of the target company’s directors on the takeover offer. A copy of the offeree circular is submitted to the SIC.
6	T+ 49 (not earlier than 28 days after 4)	Close of takeover offer, unless extended
7	T+ 81 (60 days from 4)	Latest closing date of takeover offer

2.4 What are the main hurdles?

The principal milestones for a takeover transaction under the Takeover Code are set out in the timetable in question 2.3 above.

An offeror should also consider the following prior to the announcement of a takeover offer:

- seeking (where required) the relevant approvals or confirmations from the SIC;
- assessing whether the takeover offer could raise competition concerns and whether to notify the CCS of the takeover offer or to apply to the CCS for guidance or for a decision; and
- gathering irrevocable undertakings to accept the takeover offer from certain shareholders of the target company.

2.5 How much flexibility is there over deal terms and price?

Minimum level of acceptance

The Takeover Code requires a takeover offer to be conditional on a minimum level of acceptance:

- **Mandatory offer:** except with the consent of the SIC,

conditional upon an offeror obtaining acceptances which will result in the offeror and parties acting in concert with it holding shares carrying more than 50% of the voting rights of the target company.

- **Voluntary offer:** conditional upon an offeror and parties acting in concert with it acquiring more than 50% of the voting rights of the target company, or, with the consent of the SIC, a higher level of shareholding of the target company.
- **Partial offer:** a partial offer which could result in an offeror and its concert parties holding more than 50% of the voting rights of the target company must be conditional on a specified number or percentage of acceptances being received and approved by the target company’s shareholders.

Minimum offer price

The minimum offer price stipulated for each type of takeover offer under the Takeover Code is as follows:

- **Mandatory offer:** the highest price paid by the offeror or any of the parties acting in concert with it for any shares carrying voting rights in the target company during the offer period and within six months prior to the commencement of the offer period.
- **Voluntary offer and partial offer:** the highest price paid by the offer or any of the parties acting in concert with it for any shares carrying voting rights in the target company during the offer period and within three months prior to the commencement of the offer period.

Restrictions on conditions attached to takeover offers

- **Mandatory offer:** save as set out below, no other conditions should be imposed apart from the condition on the minimum level of acceptance.
- **Voluntary offer:**
 - conditions, the fulfilment of which is dependent upon a subjective interpretation or discretion of the offeror, may not be attached;
 - conditions concerning the level of acceptance, approval of shareholders for the issue of new shares and the SGX-ST’s approval for listing may be attached without reference to the SIC; and
 - the SIC should be consulted where any other conditions are proposed to be attached.
- **Exceptions:** in the case of takeover offers which may also fall within the ambit of the Competition Act, if such takeover offers are announced without the prior clearance by the CCS or while the CCS’ decision as to whether the merger provisions of the Competition Act will be infringed is pending:

- The takeover offer (whether mandatory or voluntary) must be subject to the condition that the takeover offer lapses when the CCS either decides to pursue a more detailed review of the transaction, or issues a direction that prohibits the offeror from acquiring voting rights in the target company, before the first closing date or the date when the takeover offer becomes or is declared unconditional as to acceptances, whichever is the later. This condition is an exception to the rule that a mandatory offer can be subject only to the condition on the minimum level of acceptance.

- A voluntary offer may be further subject to the condition that the CCS issues a favourable decision to allow the voluntary offer to proceed on terms satisfactory to the offeror. This is an exception to the rule that conditions - the fulfilment of which depend on the subjective judgment of the offeror - may not be attached.

2.6 What differences are there between offering cash and other consideration?

For mandatory offers, the offeror must offer cash or a cash alternative of at least equal value, which must be determined by an

independent valuation, for the shares of the target company. For voluntary and partial offers, the offeror may offer cash or securities or a combination of the two as consideration for the shares of the target company. Irrespective of whether cash, securities or a combination thereof is offered as consideration, the minimum offer price rules set out in question 2.5 above would be applicable. The offeror would typically consult with the SIC in advance in relation to the basis of valuation for the consideration being offered, if such consideration is offered in the form of securities or a combination of securities and cash or includes a cash alternative.

2.7 Do the same terms have to be offered to all shareholders?

It is a general principle under the Takeover Code that an offeror must treat all shareholders of the same class in a target company equally. Except with the SIC's consent, an offeror or parties acting in concert with it may not make any arrangements with selected shareholders of the target company, either during the takeover offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

2.8 Are there any limits on agreeing terms with employees?

In general, there are no employee consultation and approval requirements before a change of control and there are no restrictions on agreeing to a deal-related package of benefits for employees, save that any arrangements agreed with employees who are also shareholders of the target company are subject to the rules on special arrangements set out in question 2.7 above. In addition, the offer document would have to disclose (or where appropriate, contain negative statements on):

- details of any payment or other benefit which will be made or given to any director of a target company or its related corporations (including a director who is also an employee of such corporation) as compensation for loss of office or otherwise in connection with the takeover offer; and
- whether and in what manner the emoluments of the directors of an offeror (including a director who is also an employee of the offeror) will be affected by the acquisition of the target company.

2.9 What documentation is needed?

The documents that are typically required in a takeover process are:

- offer announcement;
- offer document and acceptance forms; and
- offeree circular containing the advice of the IFA and the recommendation of independent directors of the target company whether or not to accept the takeover offer.

The Takeover Code prescribes the information that has to be included in the documents set out above.

2.10 Are there any special accounting procedures?

Financial disclosures

An offer document and offeree circular must contain, among other things, the following financial information about the offeror or the target company, as the case may be:

- details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share, and details relating to the foregoing in respect of any interim statement or preliminary announcement made since the last published audited accounts;

- a statement of the assets and liabilities shown in the last published audited accounts;
- particulars of all known subsequent material changes (or where appropriate, a negative statement) in the financial position of the offeror or the target company, as the case may be;
- significant accounting policies together with the notes of the accounts which are of major relevance for the interpretation of the accounts; and
- where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

Any material change (together with particulars of such change) in the financial position or prospects of a target company since the date of the last balance sheet which was laid before the target company in a general meeting, that is known to an offeror, must also be disclosed in an offer document.

Separately, when a profit forecast appears in any document addressed to the shareholders in connection with the takeover offer, the following reports are required (except for a forecast made by an offeror offering solely cash):

- a report by the auditor or reporting accountant on the accounting policies and calculations for the forecast;
- a report by the financial adviser, if he is mentioned in the document containing the forecast, on his view as to whether the forecast has been made after due and careful enquiry; and
- where revenue or profit from land and buildings is a material element in the forecast, a report by an independent valuer.

2.11 What are the key costs?

Apart from any financing costs which may be incurred, the key costs in a takeover offer under the Takeover Code include the fees of the professional advisers, and the printing and despatch costs in relation to the documentation required in connection with the takeover offer. In addition, there are certain lodgement fees which are scaled according to the value of the takeover offer which are payable by an offeror to the SIC when the offer document is lodged with the SIC.

2.12 What consents are needed?

SIC

The SIC's approval must be sought for different issues depending on the type of the acquisition:

- **Takeover offer:** parties should seek the approval of the SIC for any waiver sought from the rules of the Takeover Code.
- **Scheme of arrangement and amalgamation:** parties should seek the approval of the SIC for the exemption from certain provisions of the Takeover Code.

CCS

When parties to a potential merger, whether by way of a takeover offer, a scheme of arrangement or an amalgamation, conduct a self-assessment to ascertain whether the Competition Act may be infringed, and the potential merger:

- meets or exceeds the market share thresholds prescribed by the CCS; or
- could otherwise raise competition concerns,

parties are encouraged to consider notifying the CCS of the potential merger and applying for a decision as to whether the Competition Act will be infringed.

Where the decision of the CCS is sought, parties must take into

account the CCS process in the offer timetable.

SGX-ST

The SGX-ST's approval is required for the listing of new shares that are issued pursuant to an acquisition.

A scheme of arrangement document and an amalgamation proposal concerning a company listed on the SGX-ST must be cleared by the SGX-ST.

Regulatory approval in specific industry

Regulatory approvals must be sought for share ownership in the companies set out in question 1.4 above.

Singapore High Court

A scheme of arrangement must be sanctioned by the courts.

2.13 What levels of approval or acceptance are needed?

Takeover offer

The Takeover Code requires a takeover offer to be conditional on a minimum level of acceptance as set out in question 2.5 above.

Scheme of arrangement

A scheme of arrangement must be approved by a majority in number of members of a target company present and voting, representing at least 75% in value of the shares voted at a scheme meeting.

Amalgamation

An amalgamation proposal requires the approval of members of each amalgamating company at a general meeting by special resolution. A special resolution is passed with the approval of a majority of not less than 75% of members of the amalgamating company present and voting at the general meeting.

2.14 When does cash consideration need to be available?

Unless the SIC otherwise permits, a cash offer is required where:

- the offeror and any person acting in concert with it has bought for cash, during the offer period and within 6 months prior to its commencement, shares of any class under offer in the target company carrying 10% or more of the voting rights of that class; or
- the SIC is of the view that there are circumstances which render such a course necessary.

3 Friendly or Hostile

3.1 Is there a choice?

There is no substantive difference between the procedures for making a hostile or a friendly takeover offer under the Takeover Code.

However, a hostile takeover cannot be effected through a scheme of arrangement under Section 210 of the Companies Act which is essentially an arrangement between a company and its members. Only a target company may initiate a scheme of arrangement.

3.2 How relevant is the target board?

When a takeover offer under the Takeover Code has been announced, the target company's board of directors must procure competent independent advice from the IFA and inform the shareholders of the substance of this advice accordingly. The target company's board of directors would have to disclose in the offeree circular whether or not it recommends the acceptance or rejection

of the takeover offer. It is then left to shareholders of the target company to decide whether to accept or reject the takeover offer.

3.3 Does the choice affect process?

Please refer to question 3.1 above.

4 Information

4.1 What information is available to a buyer?

The following sources of publicly available information in respect of a target company that is incorporated in Singapore or listed in Singapore are available:

(1) The Accounting and Corporate Regulatory Authority (the "ACRA")

The ACRA is able to provide, inter alia, the following information on a company incorporated in Singapore:

- capital amount, issued share capital and paid-up share capital;
- particulars of officers and shareholders;
- particulars of liquidators, receivers and judicial managers (if any); and
- outstanding complaints on the company or directors of the company (if any).

The memorandum and articles of association of a Singapore-incorporated company may also be obtained from the ACRA.

(2) The SGX-ST

A company listed on the SGX-ST has a continuing obligation under the Listing Manual to announce any material information and certain specific information, which are available from the website of the SGX-ST.

(3) Research by investment banks and broking houses

Where available, information on a target company may be gathered from published research conducted on the target company by analysts of investment banks and broking houses.

4.2 Is negotiation confidential?

A company listed on the SGX-ST is generally required to announce immediately any material information relating to the company. However, an exception is provided in the Listing Manual where such information would not have to be announced if a reasonable person would not expect the information to be disclosed, if the information is confidential and if the information relates to an incomplete proposal or negotiation.

If, during the course of negotiations, an offeror is provided confidential price-sensitive information from the target company, the offeror would have to take note of the insider trading prohibitions discussed in question 1.5 above. In addition, a target company is required under the Takeover Code to provide, on request, information given to one offeror, equally and promptly, to any other bona fide offeror or potential offeror. This duty to provide information to all competing offerors also extends to persons seeking to acquire all or materially all of the assets or business of the target company.

4.3 What will become public?

Please see questions 1.5 and 4.2 above.

4.4 What if the information is wrong or changes?

Under the Takeover Code, any document or advertisement addressed to shareholders in connection with a takeover offer, or any announcement issued in connection with a takeover offer, must satisfy the highest standard of accuracy and present the information contained adequately and fairly. In the event the information contained in such document or advertisement is not accurate or is not presented adequately and fairly, then the relevant party should take steps to rectify or update the information.

For an offeror to lapse its takeover offer on the basis that information provided by the target company is inaccurate, such basis must be set by the offeror at the outset as a condition to the takeover offer. However, please see question 2.5 for the restrictions on the types of conditions that may be attached to a takeover offer.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Subject to the rules on mandatory offers under the Takeover Code, the substantial shareholder disclosure requirements under the Companies Act (as set out in question 5.2 below) and the insider trading prohibitions (as set out in question 1.5 above) in relation to confidential price-sensitive information which an offeror may come into possession, for example, whilst conducting due diligence on the target company, an offeror is not prevented from building a significant stake in a target company. Please also see question 2.5 for the minimum offer price rules under the Takeover Code. In relation to the insider trading prohibitions, an exception is provided in the SFA whereby an offeror would not be breaching the insider trading prohibitions by acquiring shares in a target company merely by reason that the offeror is aware that he is going to make a takeover offer for the target company.

5.2 What are the disclosure triggers?

Disclosure by offeror

During the offer period, the Takeover Code requires the parties to a takeover transaction and their associates to disclose any dealings in the relevant securities for their own accounts or for discretionary clients to the SGX-ST, the SIC and the press. Dealings in the relevant securities by parties to a takeover transaction and their associates for the account of non-discretionary investment clients must be privately disclosed to the SIC.

Disclosure by shareholders of target company

A shareholder of a company listed on the SGX-ST is required to disclose to the company and the SGX-ST when he becomes or ceases to become a substantial shareholder of the company, or where there is a percentage level change in his substantial shareholding.

A substantial shareholder is one who owns not less than 5% of the total votes attached to all voting shares in a company.

5.3 What are the limitations?

Please see questions 5.1 and 5.2 above.

6 Deal Protection

6.1 Are break fees available?

Rules governing break fees were introduced in the Takeover Code with effect from 1 April 2007. Parties must observe certain safeguards for break fee arrangements, including:

- a limit to the amount of the break fee, normally no more than 1% of the offer value; and
- a written confirmation by the target company's board of directors and its financial adviser to the SIC that, among others, the break fee is in the best interest of the target company's shareholders.

In addition to the rules in the Takeover Code, the provisions in the Companies Act which prohibit a target company from providing financial assistance for the acquisition of shares in the target company must be observed.

The rules in the Takeover Code on break fees also apply to:

- any other favourable arrangement with an offeror or potential offeror which has a similar or comparable financial or economic effect, even if such arrangement does not involve the payment of cash. For example, penalties, put or call options, or other provisions having similar effects, are caught by the rules, regardless of whether such arrangements are considered to be in the ordinary course of business; and
- the payment of an inducement fee in the context of a whitewash transaction.

6.2 Can the target agree not to shop the company or its assets?

Under common law, a director of a company owes a fiduciary duty to the company to act in good faith in the best interests of the company. The Companies Act also imposes a statutory duty on a director to, at all times, act honestly and use reasonable diligence in the discharge of the duties of his office.

Directors of a target company who are entering into arrangements with an offeror which would prevent the target company from actively soliciting or encouraging proposals or inquiries from other potential bidders would have to ensure that in so doing, they are acting in good faith in the best interests of the company.

6.3 Can the target agree to issue shares or sell assets?

Under the Takeover Code, the board of directors of the target company must not, without the consent of the target company's shareholders, take any steps that will result in either the frustration of the takeover offer or the denial of the target company's shareholders' opportunity to decide on the merits of the takeover offer. Such steps would include the issue of shares, the sale or acquisition of assets of a material amount, or the entry into contracts otherwise than in the ordinary course of business.

6.4 What commitments are available to tie up a deal?

As a takeover offer under the Takeover Code is made to the shareholders of a target company, the target company plays a limited role in the shareholders' decision to accept or reject the takeover offer, apart from the recommendation of the board of directors and the advice of the IFA contained in the offeree circular.

7 Bidder Protection

7.1 What deal conditions are permitted?

Please see question 2.5 above.

7.2 What control does the bidder have over the target during the process?

To the extent that the target company's board of directors is restricted under the Takeover Code from taking any steps to frustrate a takeover offer, as set out in question 6.3 above, the offeror is afforded certain protection. In respect of external events which affect the target company during the offer period, an offeror may seek to include some form of a "material adverse change" condition to the takeover offer which will give the offeror the right not to complete the takeover offer in the event of the occurrence of a material change affecting the target company. Please see, however, question 2.5 for the restrictions on the types of conditions that may be attached to a takeover offer. In addition, even if the offeror is allowed to attach a "material adverse change" condition, the approval of the SIC would have to be sought prior to the offeror invoking any such condition to revoke the takeover offer.

7.3 When does control pass to the bidder?

The target company's board of directors may not resign from the board during the offer period, until the offeror has clearly indicated that the takeover offer will not be revised, and until the later of the date of posting of the offeree circular or the date the takeover offer becomes or is declared unconditional in all respects. Accordingly, the offeror may not replace the target company's board of directors with its own nominees until such time.

7.4 How can the bidder get 100% control?

An offeror who acquires 90% or more of the target company's issued shares pursuant to a takeover offer (excluding those shares held at the date of the takeover offer by, or by a nominee for, the offeror or its holding company, subsidiary or fellow subsidiary) is entitled to compulsorily acquire any remaining target shares under Section 215 of the Companies Act. The offeror would exercise its right of compulsory acquisition by serving a notice in a prescribed format on any dissenting shareholder within two months from the time such right arises.

Dissenting shareholders of the target company, who are served with a notice of the compulsory acquisition, may object to the compulsory acquisition by filing an application with the Singapore High Court.

If there is no objection from the dissenting shareholders or if any objection is dismissed, all the share certificates in the target company in the name of the dissenting shareholders will be cancelled, and new share certificates will be issued in the name of the offeror.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

When the target company's board of directors receives an approach, which may or may not lead to a takeover offer, the target company is required under the Takeover Code to keep a close watch on the

target company's share price and volume for signs of undue movement. The situations in which a target company's board of directors must make an announcement include:

- when it receives notification of a firm intention to make a takeover offer from a serious source;
- when the target company is the subject of rumour about a possible takeover offer or there is undue movement in its share price or a significant increase in the volume of share turnover; or
- when negotiations between the offeror and the target company are about to be extended to more than a very restricted number of people.

8.2 What can the target do to resist change of control?

Please see question 6.3 above.

8.3 Is it a fair fight?

Please see question 4.2 above on the obligation of the target company under the Takeover Code to furnish, equally and promptly, information given to a competing offeror.

In addition, in cases where information on the offeree company's trade and business secrets had been given earlier by the target company to one offeror or potential offeror, the target company should consult the SIC before rejecting a request by any other bona fide offeror or potential offeror for the same information.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The factors that are most likely to influence the outcome of an offer process include the competitiveness of the takeover offer in relation to the offer price and the experience and ability of the advisers in carrying out the offer process.

9.2 What happens if it fails?

An offeror of a failed bid, and parties acting in concert with it, are subject to the following restrictions in relation to further dealing or making of a takeover offer for the target company's shares:

- in the case of an unsuccessful takeover offer (other than a partial offer) which does not become unconditional in all respects, the offeror and parties acting in concert with it may not, except with the consent of the SIC, within 12 months from the date on which such takeover offer is withdrawn or lapses, either announce a takeover offer for the target company or acquire shares in the target company if the offeror or parties acting in concert with it would thereby become obliged to make a mandatory offer for the target;
- in the case where the offeror and parties acting in concert with it hold more than 50% of the target company following a takeover offer other than a partial offer, the offeror cannot, except with the consent of the SIC, make a second offer for the target company or acquire shares from any shareholder of the target company at a price higher than the original offer price within six months of the close of the first offer; and
- in the case of partial offers, the offeror must seek the SIC's prior consent before making a partial offer for the same target company within 12 months from the date of the close of a previous partial offer (whether successful or not).

10 Updates

10.1 Please provide a summary of any new cases, trends and developments in M&A Law in Singapore.

The SIC has issued a practice statement on treasury shares, which provides clarification on the treatment of treasury shares under various provisions in the Takeover Code. The issues which are addressed by the practice statement include:

- the exclusion of treasury shares from the calculation of percentages of voting rights, shareholdings, etc. under the Takeover Code;
- the transfer or sale of treasury shares by a target company will, except in certain circumstances, constitute a frustrating action which is not permitted under the Takeover Code; and
- the prohibition against selling or transferring of treasury shares to the offeror until the offer is unconditional as to acceptances.

In addition, the SIC issued a practice statement dated 3 October 2008 in relation to mergers or privatisations of business trusts or real estate investment trusts via a trust scheme which involves an amendment to the trust deed to include provisions that will allow a

specific merger or privatisation to take place. The practice statement provides that the SIC is prepared to exempt a trust scheme from certain specific provisions within the Takeover Code, for example, the rules relating to mandatory offers, voluntary offers, partial offers, and the type of consideration required if the trust scheme is approved by:

- the requisite majority of unitholders at a meeting convened to approve the trust scheme; and
- the High Court of Singapore under Order 80 of the Rules of Court.

Separately, certain amendments are currently being proposed to the SFA and the Financial Advisers Act, Chapter 110 of Singapore (the "FAA"), one of which is a requirement for a person to obtain the prior approval of the MAS before entering into an arrangement that would result in him obtaining effective control of a capital markets services or financial advisers licence holder. A person would be regarded as having effective control if such person alone or acting together with any connected person, control 20% or more of the voting power in the licence holder or hold interests in 20% or more of the issued share capital of the licence holder. As of September 2008, the proposed amendments to the SFA and the FAA were being tabled for consideration in Parliament.

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Lucien Wong is the Managing Partner of Allen & Gledhill LLP. He was called to the Singapore Bar in 1979. Specialising in banking, corporate and financial services work, Lucien has extensive experience in debt and equity issues, mergers and acquisitions, banking transactions, and securitisations. Having been involved in some of the largest and most high profile corporate and commercial transactions undertaken in recent years in Singapore, Lucien has also established a considerable reputation for his involvement in international transactions.

Lucien is a board member of the Monetary Authority of Singapore and Maritime and Port Authority of Singapore. He is a member of the Board of Trustees for SingHealth Foundation and the National University of Singapore. He also sits on the Board of Directors of Cerebos Pacific Limited, Hap Seng Plantations Holdings Berhad and Singapore Airlines Ltd.

Over the years, Lucien has sat on several law review committees in Singapore, which reviewed amendments to Singapore company and securities law. He is regularly cited as a leading lawyer in banking, finance, mergers and acquisitions and corporate governance in publications including *Chambers Global*, *Chambers Asia*, *The Asia Pacific Legal 500*, *IFLR 1000* and *Asialaw Leading Lawyers*.

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His transaction experience includes the acquisition of United Test and Assembly Center Ltd by Global A&T Electronics Ltd; the establishment of The Islamic Bank of Asia Limited, the first universal bank incorporated in Singapore dedicated to providing Islamic financial services; the acquisition of Foster's brewing assets in Vietnam by Asia Pacific Breweries Limited; the voluntary unconditional cash offer by Oversea-Chinese Banking Corporation Limited for Great Eastern Holdings Limited; and offerings of non-cumulative non-convertible Hybrid Tier 1 preference shares by Oversea-Chinese Banking Corporation Limited and United Overseas Bank Limited respectively.

Christopher was seconded to Linklaters, London for six months from September 2003 to March 2004 where he worked on private equity transactions and corporate reorganisations. Christopher graduated from the National University of Singapore with an LL.B (Hons) degree in 1999 and obtained an LL.M from Columbia University in 2002, where he was a Harlan Fiske Stone Scholar. He was called to the Singapore Bar in 2000 and is a member of the New York State Bar Association.

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