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Technology M&A 2022

Singapore: Law & Practice and Trends & Developments

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SINGAPORE

Law and Practice

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1. TRENDS

1.1 Technology M&A Market

M&A activity in Singapore has experienced significant increases over the past 12 months. After an initial lull due to the onset of the COVID-19 pandemic, M&A activity has rebounded strongly over the past year.

There is significant volume in technology M&A in Asia, driven mainly by private equity and venture capital investments in both start-ups and more established companies. As Singapore is host to a significant number of holding companies who have business activities in South-East Asia, as well as companies with business operations in Singapore, M&A activity has been decidedly strong and will continue to be so for the foreseeable future.

1.2 Key Trends

General

In line with the general focus on technology and healthcare trends that have been accelerated by the pandemic, there is significant investor interest in technology, medical technology and pharmaceutical investments. In Singapore, early-stage financing transactions are highly prevalent. Furthermore, as Singapore start-ups mature and scale up their operations across the region, it is increasingly common to see late-stage or pre-IPO funding rounds.

Public Companies

In relation to public companies, further to the general trend of delistings on the Singapore Exchange ("SGX") over the past few years, there have been notable delistings of certain manufacturing companies involved in tech-intensive industries, such as semiconductors and manufacturing equipment, even though these companies are relatively stable in their outlook. Although this trend of delisting companies from the SGX is expected to continue, the recent introduction of the relevant rules by the SGX in September 2021, to allow listings of special purpose acquisition companies (SPACs), is expected to increase investor interest and deal-making activity in the Singapore public equity markets, especially in respect of high-growth companies, many of which are in the technology space.

2. ESTABLISHING A NEW COMPANY, EARLY-STAGE FINANCING AND VENTURE CAPITAL FINANCING OF A NEW TECHNOLOGY COMPANY

2.1 Establishing a New Company

New start-ups based in Singapore typically incorporate a private company in Singapore. Some South-East Asian start-ups incorporate a Singapore private company to function as the holding company and use the Singapore company to conduct fundraising, while wholly owned subsidiaries are incorporated in the relevant countries to conduct operations. This is due to the ease of access to debt and equity funding in Singapore, given the exponential growth in the number of family offices, private equity and venture capital funds setting up in Singapore.

Requirements

The process of incorporating a private company can be completed in one day, as electronic filings are made with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). However, prior to the incorporation, corporate secretarial providers require the directors and shareholders to prepare certain documents, including know-your-customer checks. Post-completion, in addition to the electronic register of members, companies are also required to privately maintain a Register of Registrable Controllers, which sets out information about their controllers, including their names and identifying

details, as well as information on their citizenship or place of registration in the case of legal entities.

The minimum paid-up capital required to incorporate a private company is SGD1 or its equivalent in foreign currency. However, licensing conditions in specific industries may impose a higher paid-up capital requirement.

2.2 Type of Entity

For start-ups, private companies limited by shares are the most commonly incorporated entities in Singapore due to the advantage of a separate legal personality. Investors, advisers and service providers are also most familiar with private companies limited by shares, allowing for ease of administration at the early stages of growth.

Other options available to start-ups include companies limited by guarantee, general partnerships, limited partnerships and limited liability partnerships. However, these have other specific uses, and are not generally relied upon by entrepreneurs.

2.3 Early-Stage Financing

The profile of seed investors in early-stage financing varies, as it includes friends and family and angel/seed investors at the seed stage, and family offices and venture capital financing (both foreign and local venture investors) at series A and beyond. There is no particularly dominant source of financing.

Sovereign wealth funds may take stakes in start-ups, even in the early stages, if their business or technology would fulfil a national goal, such as food security, health and technological innovation, or financial services. Government-sponsored funds may provide early-stage financing through matching investments (either debt or equity) with certain venture capital investors. Other forms of government support include grants to fund operating costs and projects. However, government sponsorship is usually conditional on certain requirements being fulfilled, such as nationality requirements for ownership and a focus on certain areas, such as advanced manufacturing, medical technology and agriculture/food technology.

Investments and government grants are well documented through subscription agreements, debentures and warrants. These investments are private contracts and are usually kept confidential.

2.4 Venture Capital

Venture capital from both foreign and local venture investors is readily available. Investments by government-linked corporations are also common and available. In particular, for foreign venture capital funds, there is keen interest from funds globally, including those from Asia, the United States and Europe.

2.5 Venture Capital Documentation

Law firms in Singapore are typically experienced in handling various types of documentation typically seen in venture investments in start-ups, such as subscription agreements and shareholders' agreements. Depending on the transaction structure, option agreements and warrant agreements can be entered into to meet the commercial objectives of the investment.

A Typical Investment

A typical investment would involve the investor(s) subscribing for shares using a subscription agreement, and the shareholders of the start-up company entering into a shareholders' agreement to govern the rights of the investors. Shares subscribed by investors are typically preference shares which confer additional rights over ordinary shares, such as dividend and liquidation preferences and conversion rights.

VIMA Documentation

For early-stage investments, investors and founders may consider using a Venture Capital Investment Model Agreement (VIMA), which is a set of model documentation. The VIMA documentation aims to reduce the transaction costs and time taken in negotiation, and was drafted with input from investors, law firms and other parties, including the Singapore Venture Capital & Private Equity Association. The VIMA documentation includes templates for non-disclosure agreements, convertible loans, term sheets, subscription agreements and shareholders' agreements for a Singapore-incorporated private company and is governed by Singapore law.

2.6 Change of Corporate Form or Migration

Start-ups typically continue to remain in the same corporate form. One restriction Singapore-incorporated private companies need to be aware of is the limit to the number of shareholders if that company wishes to remain private, which is 50 (subject to certain exceptions in the count to 50). Singapore-incorporated private companies would typically convert to a public company (which has no restrictions on the number of shareholders) prior to an IPO or where they have more than 50 shareholders.

There has also been an uptick in inversions, where start-ups primarily based in other Asian jurisdictions restructure to become a Singapore holding company.

Start-ups intending to explore a listing or a merger with a SPAC (or a de-SPAC) may also incorporate a holding company one level up in a jurisdiction such as Singapore or the Cayman Islands. The operating companies, peppered across the various jurisdictions the business is involved in, tend to remain in place and in the same corporate form.

3. INITIAL PUBLIC OFFERING (IPO) AS A LIQUIDITY EVENT

3.1 IPO v Sale

Investors in start-ups are generally open to both options and these are drafted accordingly in the transaction documents for venture capital investments. If a listing is chosen, Singapore-based start-ups have several options for securities exchanges, including Singapore, Hong Kong and New York. If a trade sale occurs, it is not uncommon for Singapore-based start-ups to be acquired by foreign buyers looking to gain quick access to the regional market or to bolster their technology and intellectual property assets.

Depending on the size of the company, both options of an IPO and a trade sale would be considered. Typically, larger companies with growth and expansion plans would opt for an IPO.

3.2 Choice of Listing

The SGX is one option for Singapore companies looking to raise capital and list on an exchange. Other common options include the Australian Securities Exchange, Stock Exchange of Hong Kong, the New York Stock Exchange and the Nasdaq Stock Market.

Typically, the SGX has attracted companies based in traditional sectors, such as property and manufacturing. Technology companies, on the other hand, have mostly chosen to list on foreign exchanges, due to the better valuations available. However, now that the SGX allows the listing of SPACs, there may be increased interest by high-growth companies in a listing in Singapore.

3.3 Impact of the Choice of Listing on Future M&A Transactions

In relation to Singapore-incorporated companies, there is presently a squeeze-out under the

Companies Act (Chapter 50 of Singapore). This should be applied to all Singapore-incorporated companies by operation of the law, irrespective of the choice of the listing jurisdiction.

4. SALE AS A LIQUIDITY EVENT (SALE OF A PRIVATELY HELD VENTURE CAPITAL-FINANCED COMPANY)

4.1 Sale Process

While considerations for the type of sale process differ in each situation, for the sale of relatively large venture capital-financed companies, bid processes are increasingly favoured, which ostensibly helps with price discovery.

There have also been several instances of bilateral acquisitions initiated by business partners of targets, after having worked with the founders and management team for a number of years.

4.2 Transaction Structure

In a trade sale (as opposed to an IPO), it is more typical for the existing venture capital investors to make a clean exit. As trade sales are typically entered into by the buyer for strategic reasons, it is not common for other venture capital investors to remain as shareholders in a company that is the target of a trade sale.

4.3 Form of Consideration

Most transactions are done on a cash basis.

However, where the transaction involves the founders or management remaining in the target company to work in a certain capacity, it is possible for these individuals to receive earn-out shares from the buyer as part of the purchase consideration, particularly when the buyer is a public or soon-to-be public company.

4.4 Certain Transaction Terms

Founders are commonly expected to provide representations and warranties, and in certain cases indemnities, to a buyer. While the use of an escrow or holdback depends on the particular risks identified by the buyer during the course of its due diligence, this is not generally seen in Singapore transactions, as most venture capital investors would want a clean exit (indeed, most would *need* a clean exit, in order to wind up the fund and provide returns to their limited partners or LPs).

Warranty and indemnity insurance (more commonly known as W&I insurance) is increasingly popular in Singapore, especially for larger transactions involving private equity and venture capital investors who want to ensure a clean exit from their investment with little or no residual liability.

5. SPIN-OFFS

5.1 Trends

Spin-Offs

Spin-offs involving the sale of assets or the sale of shares of a subsidiary company are possible. The usual considerations in relation to an asset sale would apply, which would allow the buyer to choose the assets it acquires and leave the rest of the assets and liabilities with the seller. Tax and regulatory considerations on the part of both the seller and buyer would also be relevant when parties are structuring the transaction.

Sale of Shares

Generally, the sale of shares is a more straightforward process, allowing a buyer to take over an entire business with minimal impact on the business operations. As historical liabilities are being transferred, the warranties and indemnities for a share sale would be heavily negotiated. In a share sale, sellers are expected to provide warranties in relation to the company and the

business, and specific indemnities for known liabilities and for other potential breaches. It is common to give an indemnity or tax covenant to specifically cover tax issues, with a different limit on the indemnified amount and the time period in which to make a claim against a seller.

5.2 Tax Consequences

Depending on the structure of the transaction and the profile of the seller and buyer, various forms of tax would be applicable.

Stamp Duty

For the sale of a private company to a third-party buyer, instruments relating to shares in a Singapore-incorporated company and immovable property would be subject to stamp duty.

Stamp duty is payable in relation to a transfer of shares in a private company incorporated in Singapore. In practice, the common instrument attracting stamp duty that falls under the First Schedule to the Stamp Duties Act (Chapter 312 of Singapore) is the share transfer form for the transfer of shares in a Singapore-incorporated company. The amount of stamp duty payable arising from the transfer of shares in a private company incorporated in Singapore is 0.2% of the higher of (i) the actual consideration paid, or (ii) the net asset value of the shares. Unless it is contractually agreed between the parties, the buyer is liable to pay the stamp duty.

Typically, shareholders of the parent company that will receive shares in the spun-off company, will be liable to pay stamp duty. Stamp duty relief may be applicable in instances where the shares are transferred between associated entities. However, one of the main conditions under a relief application is the need for there to be valuable consideration for the transfer of shares. Where the shares in the spun-off company are distributed to shareholders of the parent company without valuable consideration, stamp duty relief is unlikely to apply.

In relation to asset transfers, buyer's stamp duty is payable by the buyer in a transfer of immovable property located in Singapore. The stamp duty is calculated on the higher of (i) the actual consideration paid, or (ii) the market value of the property. The current rates are:

- 1% on the first SGD180,000;
- 2% on the next SGD180,000; and
- 3% on the remainder.

Where the buyer is not an individual and the immovable property being transferred is a residential property or has a residential component in the property located in Singapore, additional buyer's stamp duty is also payable at the rate of 25% on the higher of (i) the actual consideration paid, or (ii) the market value of the gross floor area of the property attributable to the residential component of the property.

In a sale of industrial immovable property, which some relatively mature technology companies may own and occupy, the seller may be subject to seller's stamp duty if the property is disposed of within three years of purchase. The stamp duty rate (calculated on the higher of (i) the actual consideration paid, or (ii) the market value of the property) is up to 15%.

As with the stamp duty payable for the transfer of shares, the responsibility to pay the stamp duty in an asset sale can be contractually allocated.

No stamp duty is payable where new shares are issued and allotted to the subscribers. Hence, spin-offs that are structured to involve minimal transfers of shares or assets would reduce the liability to pay stamp duty at the corporate and shareholder level.

Goods and Services Tax (GST)

Generally, GST is charged at the prevailing rate (currently 7%) by GST-registered businesses on all sales of goods and services in Singapore. However, in a transfer of a business as a going concern ("TOGC"), the transfer of the assets can be treated as an excluded transaction and GST is not chargeable, if certain conditions are met. The seller or the buyer may claim input tax for the GST incurred on certain expenses relating to the TOGC.

Tax Considerations of the Buyer and Seller

Depending on the tax residency of the buyer and seller, the asset or share purchase may be treated as revenue or capital. There is no capital gains tax in Singapore. There may also be an issue of calculating the balancing allowance or balancing charge when fixed assets on which capital allowances have previously been claimed are involved in an asset purchase. Factors such as allowances and exemptions should be considered by each party, and it is common for tax advisers to be engaged by both the seller and the buyer in a transaction.

5.3 Spin-Off Followed by a Business Combination

A spin-off followed by a business combination is possible and while there is no fixed structure as to how it may be effected, one possibility would be to effect the business combination by way of a scheme of arrangement pursuant to Section 210 of the Companies Act. A scheme of arrangement requires the approval of a majority in number of shareholders of the target company, representing at least 75% in value of the shares voted, present and voting in person or by proxy.

If the company is listed or regulated, this would have to be done in line with the relevant legislation and listing rules.

5.4 Timing and Tax Authority Ruling

The timing of a spin-off depends on the transaction structure and the time needed to fulfil the required conditions and to obtain consents, which are particular to each transaction.

While a tax ruling is not mandatory, parties may apply to the Comptroller of Income Tax (or Good and Services Tax) for an advance ruling, to obtain certainty about how a proposed arrangement is treated for tax purposes. An advance ruling only applies to the applicant and the particular arrangement that is the subject of the ruling. The Comptroller is legally bound to apply the tax treatment detailed in the advance ruling to the person and the arrangement stated in the ruling in respect of the period for which the ruling is valid.

Generally, depending on the complexity of the matter, the Comptroller aims to provide a ruling within eight weeks. Where the ruling request is a complex one, the Comptroller will inform the applicant that additional time is required and provide a general timeframe within which the ruling will be issued. In exceptional circumstances where the Comptroller agrees to the request for an express ruling, the ruling can be issued within six weeks.

6. ACQUISITIONS OF PUBLIC (EXCHANGE-LISTED) TECHNOLOGY COMPANIES

6.1 Stakebuilding

The Singapore Code on Takeovers and Mergers (the "Takeover Code") is issued by the Monetary Authority of Singapore, and it applies to takeovers of:

- corporations and business trusts with a primary listing in Singapore;

- Singapore-incorporated companies or Singapore-registered business trusts with a primary listing overseas;
- unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unit-holders and net tangible assets of SGD5 million or more; and
- real estate investment trusts.

In the context of an acquisition of a public company to which the Takeover Code applies, a buyer is not prohibited from building a stake in the target company prior to making an offer. However, the buyer would generally be subject to substantial shareholder disclosure obligations, which require the substantial shareholder to disclose to the target company (in a prescribed form) when the following occur:

- the shareholder becomes or ceases to become a substantial shareholder of the company (a "substantial shareholder" is a person who has an interest of at least 5% of the total voting shares in a target company); and
- there is a change in the percentage level of interests in voting shares of the target company.

The substantial shareholder has to inform the target company within two business days of the buyer becoming aware of the change, and the target company will then disseminate the information through an announcement on the SGX. In terms of stake-building, the buyer need not state the purpose of the acquisition of its stake.

However, where the buyer has not yet approached the target company, but the target company is the subject of rumour or speculation about a possible offer, or there is undue movement in the share price or trading volumes of the target company, and the buyer has reasonable grounds to believe that its actions (whether through inadequate security, purchase of the target company's shares or otherwise) have directly contributed to the situation, the responsibility for making an announcement will normally rest with the buyer.

Should the buyer announce its plans or intentions with respect to the target company without a firm intention to make an offer for the target company, the Securities Industry Council (SIC) may require that the buyer clarify its intentions within a specific period of time.

6.2 Mandatory Offer

Under the Takeover Code, unless a waiver from the SIC is obtained, a mandatory offer is required to be made to all shareholders of a target company in either of the following situations:

- if a buyer acquires shares (aggregated with the shares held or acquired by persons acting in concert with the buyer) that carry 30% or more of the voting rights of the company; or
- if a buyer, together with persons acting in concert with the buyer, holds between 30% and less than 50% of the voting rights in a company, and the buyer (or any person acting in concert with the buyer) acquires in any six-month period additional shares carrying more than 1% of the voting rights.

6.3 Transaction Structures

Typical transaction structures to acquire a public company include the following.

General Offers

Briefly, takeovers can be mandatory (ie, where the buyer is obliged to do so under the Takeover Code) or voluntary (ie, where they occur in the absence of such obligation). An offer can or (in the case of a mandatory offer) *must be* for all the outstanding voting capital of the target company, or for only part of such capital by way of a partial takeover offer. Different rules apply to the different types of offers, as detailed below.

Schemes of Arrangement

A scheme of arrangement is a court process which allows a company to agree on matters with shareholders which might include an agreement to transfer shares to a bidder in exchange for cash. The process is target company-driven (ie, the target company makes the application to the court) and is thus dependent on a co-operative target company. As mentioned above, a scheme of arrangement requires a majority in number representing 75% in value of those members who attend (in person or by proxy) and vote at the meeting to approve it, following which, application is made to the court for sanction. Once the court has made the order sanctioning the scheme and it has been lodged with the ACRA, it binds all the target company's shareholders regardless of whether they attended the scheme meeting and whether they voted in favour of or against the scheme of arrangement.

Generally (but with some exceptions), a scheme of arrangement involving a public company is also subject to the Takeover Code. However, the SIC may, subject to conditions, exempt the scheme from specific provisions of the Takeover Code.

6.4 Consideration; Minimum Price

Acquisitions involving public companies involve cash offers, which may not necessarily be unique to the technology industry.

Mandatory General Offer

In particular, in a mandatory general offer, the offer must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with the offeror for voting rights in the target company during the offer period, and within six months prior to its commencement.

Voluntary Offer

In respect of a voluntary offer, the consideration can be in cash or securities, or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with the offeror for voting rights in the target company during the offer period, and within three months prior to its commencement.

Rule under the Takeover Code

Notwithstanding the above, there is a rule under the Takeover Code that requires offers to be in cash or accompanied by a cash alternative where the offeror and its concert parties have bought for cash, during the offer period and within six months before its commencement, shares of any class under offer in the target company carrying 10% or more of the voting rights of that class; or where the SIC is of the view that a cash offer is necessary. In such cases, the offer price must be not less than the highest price paid by the offeror and persons acting in concert with the offeror for shares in the target company during the offer period and within six months prior to its commencement.

6.5 Common Conditions for a Takeover/Tender Offer

Mandatory Offer

Except with the consent of the SIC, a mandatory offer must be conditional upon the buyer receiving acceptances that would result in the buyer, and parties acting in concert with the buyer, from receiving acceptances holding more than 50% of the voting rights in the target company.

Conditions may be imposed to make the offer subject to approval by the Competition and Consumer Commission of Singapore (CCCS) in relation to antitrust considerations.

Voluntary Offer

A voluntary offer must be conditional upon the buyer receiving acceptances that would result in

the buyer, and parties acting in concert with the buyer, receiving acceptances holding more than 50% of the voting rights in the target company.

Should the buyer wish to impose a condition requiring a higher level of voting rights in the target, or to impose other conditions, approval from the SIC must be obtained. These conditions cannot depend on the subjective interpretation or judgement of the buyer, or be conditions that lie in the buyer's hands.

A pre-conditional voluntary offer may be used, where there is an announcement of a firm intention to make an offer, subject to the fulfilment of certain pre-conditions. As with the mandatory offer, such conditions should be objective and reasonable.

Partial Offer

All partial offers require the prior consent of the SIC. Consent will normally be given for a partial offer which will not result in the offeror, and parties acting in concert with the offeror, holding 30% or more of the voting rights in the offeree. Consent will not be given for offers for between 30% and 50%. Consent will not be given for offers for more than 50%, unless a number of conditions are met, including the offer being made conditional on approval by the offeree's shareholders.

6.6 Deal Documentation

In typical public takeover scenarios where a buyer wishes to acquire a target company by way of a general offer (whether mandatory, voluntary or otherwise), there is no requirement for a transaction agreement to be entered into with the target company. In the context of a scheme of arrangement, an implementation agreement is typically entered into between the buyer and the target company to set out the terms and conditions under which the transaction will be implemented, conditions precedent, representations and warranties, and certain prescribed occurrences which would allow either the buyer or the target company to terminate the implementation agreement, where such termination right has the consent of the SIC.

It is not unusual for substantial shareholders of the target company to enter into irrevocable undertakings to accept the offer by the buyer. Such undertakings must be disclosed at the time of the offer announcement.

6.7 Minimum Acceptance Conditions

As described in **6.5 Common Conditions for a Takeover/Tender Offer**, mandatory general offers are conditional upon the buyer receiving acceptances that would result in the buyer, and the parties acting in concert with the buyer, receiving acceptances holding more than 50% of the voting rights in the target company.

For voluntary offers, the offer may be conditional upon receipt of a higher level of acceptance with the consent of the SIC and a typical threshold is assets at 90% of the total number of shares in the target company. This is due to the use of the compulsory acquisition mechanisms described in **6.8 Squeeze-Out Mechanisms**.

6.8 Squeeze-Out Mechanisms

Under the Companies Act, the power of compulsory acquisition arises where a scheme or contract involving the transfer of all the shares (or all the shares in any particular class) in the offeree company to the offeror has been approved, within four months after making the offer, by the holders of not less than 90% of the total number of shares involved in the transfer (other than those shares already held at the date of the offer by the offeror, the offeror's related corporations, or by a nominee of the offeror or its related corporations, and excluding any shares held as treasury shares).

6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer

Private Takeovers

For private takeovers, a financing condition is subject to negotiations between the buyer and the seller but it is not typically included in transaction documentation.

Public Takeovers

For public takeovers, the firm intention to undertake an offer requires an unconditional confirmation by the financial adviser to the buyer, or by another appropriate third party, that the buyer has sufficient resources available to satisfy full acceptance of the offer. As such, an offer cannot be conditional upon the buyer obtaining financing and "certain funds" provisions will be included in financing documents entered into in connection with the offer.

6.10 Types of Deal Protection Measures

Deal protection measures in private takeovers are a matter of negotiation between the buyer and the counterparty.

Where the Takeover Code applies, the target company's duty under the Takeover Code is to not undertake any deal protection mechanism that 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 the shareholders' approval.

That being said, the Takeover Code does allow for deal protection measures, such as break fees, to be negotiated and agreed to be paid if certain specified events occur, and the SIC will need to approve the break-fee provisions. The break fee must comply with the safeguard provisions under the Takeover Code, such as:

- a break fee must be minimal (normally, no more than 1% of the value of the target company, calculated by reference to the offer price); and
- the board of the target company and its financial adviser must provide written confirmations to the SIC that, inter alia, the break fee arrangements were agreed as a result of normal commercial negotiations, an explanation of the basis (including appropriateness) and the circumstances in which the break fee becomes payable, a confirmation that all other agreements or understandings in relation to the break-fee arrangements have been fully disclosed, and confirmation that they each believe the fee to be in the best interests of the target company.

Other deal protection mechanism measures may be possible and are more commonly seen in public takeovers involving schemes of arrangements, where the target board is supportive of the buyer's offer and is prepared to table the buyer's offer at a scheme meeting to be convened.

6.11 Additional Governance Rights

In the context of a public takeover offer, no additional rights are granted to a shareholder by reason of a significant shareholding. The bidder may seek to nominate and vote for its preferred directors to the board of the target company, subject to the directors having the appropriate qualifications required under listing rules and other applicable laws and regulations.

6.12 Irrevocable Commitments

It is not uncommon to obtain irrevocable commitments from significant shareholders of the target company to accept the offer or vote in favour of the offer in the context of a scheme of arrangement to enhance deal certainty.

It is possible for such undertakings to specify circumstances which then cease to be binding, such as where a better offer is made and

it is a matter of negotiation between the principal shareholder and the bidder. The irrevocable commitment will need to be made available for inspection.

6.13 Securities Regulator's or Stock Exchange Process

Whether the offer needs to be approved by the SIC or the SGX will depend on the nature and structure of the takeover offer. In certain situations specified in the Takeover Code, consultation and/or approval must be sought from the SIC prior to the takeover offer's launch, such as where the offer will be carried out by way of a scheme of arrangement, or where the offer has unusual conditions or is conditional on a high level of acceptances, or where there are certain special-deal arrangements which benefit certain shareholders but not others, and the review period will depend on the nature and complexity of the transaction in question. Normal conditions, such as, level of acceptance, approval of shareholders for the issue of new shares, and the SGX's approval for listing, may be attached without reference to the SIC. As mentioned in **6.5 Common Conditions for a Takeover/Tender Offer**, conditions which can only be fulfilled based on the subjective interpretation or judgement by the bidder, or which lie in the bidder's hands, will not be allowed.

The Takeover Code prescribes certain timelines for an offer. The following is a typical timetable.

- From the date of an announcement of an offer ("T"), the earliest date that the offeror can post the offer document (a requirement under the Takeover Code) is T + 14 days (and no later than T + 21).
- Assuming the offer document was posted on T + 14 days, the offer must be open for at least T + 42 days, as an offer must be open for at least 28 days after the date on which the offer document is posted.
- An offer would usually be closed on T + 74 days, as an offer cannot be kept open for more than 60 days after the date on which the offer document is posted, unless the offer has previously become unconditional as to acceptance.

In a competitive offer, the competing offeror must, by the 53rd day (ie, T + 67 using the above timetable) from the date the first offeror posted its initial offer document, either announce a firm intention to make an offer or make a "no intention to bid" statement. Where the first offeror's offer is being implemented by way of a scheme of arrangement, a trust scheme or an amalgamation, the above deadline for the potential competing offeror to clarify its intention would normally be no later than the seventh day prior to the date of the shareholders' meeting to approve the relevant scheme or amalgamation.

Consequently, the timeline of the offer may be extended as well. If a competitive situation still exists at a later stage of the offer process, and if no procedure has been agreed between the competing offerors, the board of the target company and the SIC, an auction procedure as prescribed in the Takeover Code would typically be announced.

6.14 Timing of the Takeover Offer

If regulatory approvals are required as part of a takeover offer, they would typically be obtained prior to the firm intention to make the offer, as there could be uncertainty as to whether the regulatory approvals may be obtained within the offer timetable. A bidder can announce a pre-conditional offer where the announcement of a firm intention to make an offer is subject to the fulfilment of certain regulatory pre-conditions. The announcement must specify a reasonable period for the fulfilment of the pre-conditions, failing which, the offer will lapse.

The Takeover Code prescribes specific situations where pre-clearance from the CCCS would be required in relation to competition laws. The offer would lapse in certain situations where approval from the CCCS is not obtained.

7. OVERVIEW OF REGULATORY REQUIREMENTS

7.1 Regulations Applicable to a Technology Company

There are generally no requirements to incorporate and operate a technology company. However, licensing requirements would be relevant where the company is involved in specified industries.

Some of the more common licences and relevant regulatory bodies that companies in the technology sector would typically encounter are:

- financial services, including electronic money (or e-money), account issuance money transfer, digital payment tokens, money-changing and capital markets services – Monetary Authority of Singapore;
- insurance, including direct insurance, reinsurance, general insurance and insurance broking – Monetary Authority of Singapore;
- telecommunications including internet access, mobile networks and web hosting – Infocomm Media Development Authority;
- broadcasting – Infocomm Media Development Authority;
- food and agriculture – Singapore Food Agency; and
- life sciences and healthcare – Health Sciences Authority.

The length of time needed to obtain a licence varies widely across the various regulatory bodies and depends on the nature of the licence sought.

7.2 Primary Securities Market Regulators

The SIC is the regulator that supervises takeovers and mergers of public companies, as well as the Takeover Code. The SGX administers the listing rules applicable to public companies.

Competition law concerns under the Competition Act (Chapter 50B of Singapore) are regulated by the CCCS, and the Monetary Authority of Singapore administers the Securities and Futures Act (Chapter 289 of Singapore).

Furthermore, the approval of the relevant government agencies may have to be obtained depending on the industry in which the target company operates, as statutes may limit or require prior regulatory approval for share ownership in certain regulated companies, such as those in the insurance, media, banking and finance industries.

7.3 Restrictions on Foreign Investments

There are generally no restrictions on foreign investment, except in certain regulated sectors as mentioned in **7.1 Regulations Applicable to a Technology Company**, which limit or require prior regulatory approval for control or share ownership in regulated companies, especially where these are critical to national interests.

There is generally no requirement to register or report the investment of foreign capital, loans or technology agreements.

7.4 National Security Review/Export Control

There is no specific national security review process. Such concerns are managed by licensing requirements. Certain licences incorporate a licence review and approval process where there is a change in control or ownership. Apart from general obligations relating to international sanc-

tions laws and other international obligations, there are generally no export control regulations.

7.5 Antitrust Regulations

The relevant provision under the Competition Act (Chapter 50B of Singapore) is Section 54, which prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market in Singapore. As a guide, the CCCS considers that an SLC is unlikely to arise unless post-merger, the "merged entity" has a market share of 40% or more, or the "merged entity" has a market share of more than 20% and the post-merger combined market share of the three largest firms (CR3) in the market(s) is 70% or more.

Antitrust Filing Requirements

Antitrust filings in takeover offers/business combinations in Singapore are voluntary, as Singapore has adopted a voluntary merger regime. Although Singapore has a voluntary regime, the CCCS takes a strict stance, and where the indicative thresholds are crossed or at borderline, it strongly recommends (mandates even) that a notification be made, failing which, the CCCS could investigate the merger. The CCCS has done so on several occasions in the past.

CCCS Investigation

If the CCCS commences an investigation and determines at the end of it that the merger results in an SLC, it may impose on the parties any direction it considers appropriate to bring the infringement to an end including, for example, a direction to divest part of the assets, unwind the merger and/or financial penalties of up to 10% of the infringing parties' turnover in Singapore for the period of the infringement, up to a maximum of three years. The CCCS may also issue interim directions as it investigates a merger, including a direction preventing the parties from implementing their proposed merger.

7.6 Labour Law Regulations

Buyers involved in the acquisition of a business undertaking (as opposed to a share transaction) should note that the Employment Act (Chapter 91 of Singapore) provides the following.

- All the seller's rights, powers, duties and liabilities in connection with the affected employees are transferred to the buyer. In this connection, the buyer will become liable for all acts or omissions in respect of the employee prior to the transfer. Likewise, the employee will become liable to the buyer for any acts and omissions committed by them in respect of the seller prior to the transfer. However, the liability of any person for having committed a criminal offence prior to the transfer is not affected by, and does not transfer as a result of, these provisions.
- There must be no break in employment during the transfer, and the past years of service with the seller will have to be recognised by the buyer for the purposes of calculating any compensation or benefits linked to duration of service.
- The terms and conditions of service of the employee will be the same as those enjoyed by them immediately prior to the transfer, but this does not preclude the buyer and the affected employees from negotiating changes to their contracts. If new terms are proposed by the buyer for the purposes of harmonisation with other local employees, the compensation and benefits offered must, on balance, be no less favourable than the terms of employment prior to the transfer.

Due Diligence

Given the transfer of liability to the buyer, it is imperative that due diligence in respect of employment matters is thoroughly conducted to uncover any related liabilities, and for appropriate indemnities to be extracted from the seller where necessary.

Duties to Employees and Their Union

Prior to the transfer of the business undertaking, the affected employees and their union will have to be informed of the impending transfer of employment within a reasonable time prior to completion, unless the timeframe for the consultation process is otherwise stipulated in the existing collective agreement between the union and the seller. As a baseline, the buyer must notify the employees and the trade union (if any) of the transfer, the approximate date on which it is to take place, the reasons for such transfer, the implications of the transfer and the measures to be taken by the seller and the buyer (or, if no measures will be taken, this must be stated).

Where the target company has a unionised workforce, it would be prudent to analyse the union agreement to assess the impact of the transaction on the union agreement.

In transactions where there are intentions to make employees redundant, the retrenchment process should be carefully managed in line with guidance from the Ministry of Manpower to minimise the impact on the future operations of the target company. From 1 November 2021 onwards, employers with at least ten employees had to notify the Ministry of Manpower of all retrenchments.

Foreign Employees

Post-acquisition, buyers should also be aware of the regulations around the hiring of foreign employees. There are specific quotas and levies for the hiring of certain categories of work-permit holders (semi-skilled migrant workers), which vary depending on the industry sector involved.

While the hiring of employment pass-holders (generally for professionals, managers and executives) is not subject to any specific quota, businesses are expected to implement fair and progressive workplace policies, and maintain a healthy balance of both local and foreign hires.

7.7 Currency Control/Central Bank Approval

There are no foreign exchange or currency restrictions in Singapore, and no central bank approval is required for M&A transactions.

8. RECENT LEGAL DEVELOPMENTS

8.1 Significant Court Decisions or Legal Developments

Specific to technology M&As, a number of well-known and highly valued Singapore-based companies have reached the required level of maturity to begin listing on public markets. These include Sea Limited, a South-East Asian-focused technology company which listed on the NYSE in 2017, and Grab, a ride-hailing start-up which is expected to list in the United States at the end of 2021 through a merger with a SPAC.

Due to the rapid growth of SPACs in the United States, a significant number of SPACs are looking to Singapore-based companies as an acquisition target. In September 2021, after a consultation process, the SGX introduced a listing framework so SPACs could list on the SGX. As a result, several SPACs are expected to list on the SGX, which is expected to increase the IPO activity on the SGX.

9. DUE DILIGENCE/DATA PRIVACY

9.1 Technology Company Due Diligence

It is up to the directors of the target company to allow any disclosure and the conduct of due diligence, on the basis of their duty to act in the best interests of the target company. The level

of information and documents provided will depend on the nature of the transaction and the process conducted.

Disclosure Restrictions

Furthermore, any disclosure of information in the due diligence process by the target company would be subject to the disclosure restrictions set out in the *Listing Manual of the Singapore Exchange Securities Trading Limited* ("Listing Manual of the SGX-ST") and a target company's continuing disclosure requirements. The target company would also have to ensure that this would not raise insider dealing concerns under the Securities and Futures Act. However, price-sensitive information (including forward-looking information or projections) will not typically be produced as part of the due diligence exercise, unless the target company is willing to disclose such information publicly prior to the consummation of the transaction in question.

Sharing of Information

If there is a competing bid, the Takeover Code requires that any information given to one bidder must, on request, be furnished equally and promptly to any other bona fide bidder, if the bidder requests such information.

9.2 Data Privacy

While there is a general prohibition in the data protection laws of Singapore – the Personal Data Protection Act 2012 (PDPA) and other industry-specific regulatory frameworks such as the Banking Act (Chapter 19 of Singapore) and the Insurance Act (Chapter 142 of Singapore) – against the disclosure of personal data without consent, there is an exception under the PDPA which allows for disclosure of personal data solely for purposes related to a business asset transaction. This so-called "business asset transaction" exception (which is defined widely to include both share and business/asset acquisitions, mergers and amalgamations) is, however, subject to limitations and imposes certain obligations on both the potential buyer and seller.

10. DISCLOSURE

10.1 Making a Bid Public

The Takeover Code requires absolute secrecy before an announcement of a takeover offer is made. Information relating to a bid should only be passed to another person when it is necessary to do so, and that person should be made aware of the need for secrecy. A list containing persons privy to the information will need to be maintained and provided to the SGX on request.

Under the Takeover Code, the offeror has an obligation to make an announcement to the SGX if, before the target company's board is approached, the target company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds to conclude that it is the potential offeror's actions which have directly contributed to the situation. Where the offeror makes an acquisition of shares which gives rise to making a mandatory offer under the Takeover Code, the offeror should also make an announcement to the SGX.

After the approach by the potential offeror to the board of the target company, the obligation to make the announcement to the SGX lies primarily with the target company. The target company has an obligation to make an announcement under the Takeover Code, which includes the following situations:

- when it receives notification of a firm intention to make an offer from a serious source;
- when, following an approach to the target company, the target company is the subject of rumour or speculation about a possible

offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;
- when negotiations or discussions between the bidder and the target company are about to be extended to include more than a very restricted number of people; or
- when it is aware of negotiations or discussions between a potential bidder and the shareholders holding 30% or more of the voting rights of the target company, or when the target company's board is seeking potential bidders, and:
  (a) the target company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or
  (b) more than a very restricted number of potential bidders are about to be approached.

10.2 Prospectus Requirements
Generally, a prospectus is not required for a takeover done in accordance with the Takeover Code.

There is no requirement for the listing of the buyer's shares on a specified exchange, either local or overseas. The buyer's shares can be in an unlisted company as well. However, under the Takeover Code, certain offers are required to have a cash alternative, or to be in cash only. The Listing Manual of the SGX-ST also requires a cash alternative to be the default alternative, provided that the target is seeking to delist from the SGX.

10.3 Producing Financial Statements
Under the Takeover Code, the offer document must contain specified information on the offeror, regardless of whether the offer consideration is in cash or stock. This information includes details of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share, and a statement of the assets and liabilities shown in the last published audited accounts. In a stock-for-stock transaction (or securities exchange offer), additional information relating to shareholdings in the offeror will need to be included in the offer document.

Public companies are required to adopt the Singapore Financial Reporting Standards (International), the Singapore equivalent of the IFRS.

10.4 Disclosure of Transaction Documents
Copies of all public announcements made and all documents that have a bearing on a public takeover transaction must be lodged with the SIC at the same time as they are made or despatched.

11. DUTIES OF DIRECTORS

11.1 Principal Directors' Duties

Common Law and Statutory Duties
Directors have fiduciary duties under common law and statutory duties under the Companies Act. Generally, under Singapore law, directors' duties are owed to the company, to act in good faith and in the best interests of the company. In addition, the Companies Act provides that directors should consider the interests of the company's employees generally, the interests of its members, as well as the rulings of the SIC on the interpretation of the principles and rules under the Takeover Code.

Duties under the Takeover Code
Directors have an obligation under the Takeover Code to ensure compliance with the code. Every director of the target company has an obligation to fulfil their duties under the Takeover Code, even if conducting the offer is delegated to individual directors or a committee of direc-

tors. Under the Takeover Code, the board of the target company must not take any action that could result in any offer being frustrated and the shareholders of the target company being denied an opportunity to decide on the merits of the offer. Furthermore, directors have a duty to obtain competent advice on any offer and make such advice known to their shareholders.

11.2 Special or Ad Hoc Committees

While it is common for the executive directors of the target company to take a more active role in managing the takeover process, all directors have an obligation to ensure compliance with the Takeover Code during the takeover process. It is not necessary for boards to establish special or ad hoc committees, but it is becoming increasingly common, especially in the case of management buyouts, so as to address conflict-of-interest issues.

Furthermore, the board is allowed to delegate the day-to-day conduct of an offer to a committee but must continue to take responsibility for every document, advertisement or announcement that is published by the target company relating to an offer. Directors who have an irreconcilable conflict of interests may be exempted by the SIC from making recommendations to shareholders but they must, however, still assume responsibility for every document, advertisement or announcement that is published by the target company relating to an offer.

11.3 Board's Role

Depending on the structure of the transaction and whether the offer is an unsolicited offer, the board of a target company may not always be involved in the negotiations of a takeover offer. Apart from schemes of arrangement, target companies in Singapore do not typically enter into implementation agreements or conduct bid agreements for takeover offers.

As mentioned previously, the Takeover Code does, however, specifically provide that the board of the target company may solicit for a competing offer or run a sale process, as a better offer is in the interests of the target company's shareholders and would still allow shareholders to consider the merits of the first offer.

It is not common for shareholders to challenge the recommendation of the directors of a target company, having regard to the advice and recommendation of the independent financial adviser appointed to advise on the offer, although shareholder activism in respect of takeovers of public companies has been on the rise in recent times.

11.4 Independent Outside Advice

The board of a Singapore-incorporated offeror must obtain competent independent advice on any offer and the substance of this advice must be made known to its shareholders. Furthermore, the Listing Manual of the SGX-ST provides that where the target company is seeking to delist from the SGX, the issuer must appoint an independent financial adviser to advise on the exit offer and to assess whether the exit offer is fair and reasonable.

The analysis of the independent financial adviser, the opinion of the financial adviser on the offer and the recommendation of the directors who are considered independent for the purposes of the offer are to be published in a circular issued by the target company for the shareholders' consideration.

Rajah & Tann Singapore LLP is a leading full-service law firm and member of Rajah & Tann Asia, one of the largest regional networks, with over 800 fee-earners in South-East Asia and China. With a thriving tech M&A practice representing investors and enterprises involved in all facets of the data and digital economy, the team has acted frequently in acquisitions/divestments and investments into growth-stage companies operating in blockchain, cryptocurrency, agrifood tech, fintech, deep tech, legal tech and medtech, alongside social networking, gaming and e-commerce. The team is highly adept at providing practical advice on complex issues that often arise in tech M&A transactions, from conducting intellectual property and cybersecurity due diligence to drafting transitional service agreements, invention assignment agreements and designing data protection policies. The firm has offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand, the Philippines and Vietnam, and dedicated desks focusing on Brunei, Japan and South Asia.

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Overview of the Landscape

Unexpectedly, in a COVID-19 stricken year, an unprecedented record was established in 2020 when technology-related M&A spending skyrocketed to new heights since the dot-com bubble. The aggregate value of technology and telecommunications transactions across the globe in 2020 reached USD600 billion, with USD485 billion of spending on technology and telecommunications acquisitions being attributed to the second half of 2020, exceeding most of the full-year aggregates since 2002 (with the exception of two years). This shocking recovery in tech M&A even outperformed the bull market rebound of the stock market.

According to Dealogic, in the Asia-Pacific (APAC) region alone, tech M&A doubled year on year, reaching USD136.2 billion in 2020, and it accounts for 28% of the region's total M&A transactions (being the largest share in at least the past decade), which stands at USD482.4 billion as of May 2021. Mergermarket data further highlights the APAC M&A recovery in 2020 in a year-on-year global comparison – APAC transaction values increased by 29%, in contrast to the global average fall of 6%, and APAC transaction volume decreased by a minimal 4%, compared to the global average fall of 14%.

In the first quarter of 2021, the technology sector continued to overshadow the other sectors, achieving a total of 1,237 deals, amounting to a total of USD344.8 billion in value, which accounted for 29.7% of total deal value. In terms of deal activity by value, internet technology and healthcare deals make up the majority of APAC deals. For nine consecutive years, internet technology has reigned as the largest sector, with USD77 billion in deal value, rising 12% over the preceding five-year average and making up 42% of deal activity. In Q1 2021, M&A activity in APAC (excluding Japan) produced USD163 billion from 861 deals, which is a 28.7% increase over the previous year. In particular, the deal value in the technology sector almost tripled from USD11.9 billion over 117 deals in Q1 2020 to USD35 billion over 155 deals in Q1 2021.

The technology sector also remains the greatest contributor of M&A value for private equity/venture capital deals and investments, leading with 56% of the M&A value in Singapore in 2020, representing 66% for the region, and approaching 80% in Indonesia. Globally, while most industry sectors suffered lower transaction deal values in 2020, the technology sectors increased by 23%. This is not unforeseen, due to the spike in demand for technology-related investments during the pandemic as the world moves towards a more digital economy.

In recent times, leading businesses have certainly placed great importance on technological improvements, but COVID-19 served as the stimulant that propelled the digitalisation of products and services, and endorsement of digital tools. A poll has revealed that 72% of Singapore firms reported that the pandemic has accelerated their digital revolution "a great deal", 84% of companies enlarged their budget for digital transformation, and 60% of 272 Singapore firms mentioned that their digital communications plan has been expedited by five or more years. While strategic planning and capable management have been known to be success indicators during revolu-

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tions and disruptions, technology has played a distinctive role during this COVID-19 crisis.

As technology permeates every industry, we are noticing the convergence of conventional industry borders as well as the merging of various technologies, leading to new M&A opportunities. Technological disruptions and new competitors are reinventing business models and changing customer needs, as evidenced by the growing maturity and new services in sectors such as healthtech, fintech and cleantech. The urgency for digital transformation became imperative for the consumer sector, as due to the COVID-19 pandemic, the closure of brick-and-mortar consumer businesses was unavoidable and many had to turn to e-commerce opportunities to stay afloat. This pivotal move to e-commerce, stimulated by the pandemic, is predicted to continue due to the shift and need for release of stifled consumer demand.

There is also growing interest from non-technology companies and private equity investors in the technology space, who are seeking to capitalise on digital disruptions. Despite the existing low-growth conditions, certain industries such as digital media, pharmaceuticals, technology and telecommunications have experienced exponential growth and increased valuations due to COVID-19. Conversely, industries such as retail and energy have seen their valuations impaired. Technology sellers published multibillion-dollar transactions that would have been inconceivable previously.

Significant Trends

Medtech

Technology-based health services and care providers are an area of growth opportunity identified by leading businesses. The healthcare sector has gained traction due to the ongoing worldwide health situation, raising awareness of the need for better medical care and facilities. The application of technology solutions to enhance current health facilities is also becoming increasingly popular and is expected to last, as digital health firms are gaining a stronger foothold due to the existing health and economic difficulties as a result of the COVID-19 pandemic.

In 2020, there were 300 local medtech companies, which is double the number in 2014. The pandemic has incentivised many firms and industries to undergo digital transformations, and the healthcare industry is no exception. Globally, healthcare infrastructures have been stressed to breaking point in many countries by the pandemic and, in Singapore, this necessitated a transformation of the healthcare industry to cater to the present needs. Doctor Anywhere, a local telehealth platform start-up, raised USD27 million (approximately SGD36 million) in 2020 in its second investment funding round and expressed its intentions for regional expansion. In 2021, it more than doubled the last raise to USD65.7 million (approximately SGD88 million) in its series-C funding round. Healthcare companies are utilising digital tools and applications to boost productivity – for example, intra-oral scanners provide a more detailed diagnosis for patients and reduced treatment time. Enterprise Singapore has also backed more than 60 dental firms to take up such digital solutions. Other digital solutions in the medtech space include the provision for remote supervision of patients and servicing of medical facilities, and the use of artificial intelligence to aid radiologists in examining chest images.

According to Deloitte, China represents 20% of the worldwide medtech market, and healthcare innovation was established as a major determinant of growth in China's 14th Five-Year Plan, commencing this year. The pandemic has also influenced people to be more conscious of their own health, and more receptive to technology-

supported preventative and predictive healthcare systems.

However, investing in the medical industry has its own distinct issues, which include the length of time needed to market medical technology due to reasons including complications in getting regulatory approval. There is also a potential minefield to navigate in relation to patient privacy, as it is crucial to implement a risk-management procedure to protect patients' privacy while maintaining feasible use of patient information. This remains a balancing act between information security and open data.

Telecommunications

Despite a sharp decline in global telecommunications M&A activity in 2019, global deal value rebounded by nearly 50% in 2020. It has become evident that telecommunications operators have a pivotal function in our economy and society in the COVID-19 environment, where consumers are becoming more reliant on online connectivity, content and services. This increased repositioning towards online mediums, for example, virtual learning and remote working, has accelerated the growing need for connectivity services to unrivalled levels. Furthermore, the swift transformation of the internet into effectively handheld devices has also altered user behaviours and digital consumption tendencies. Users expect digital services to be ubiquitous and readily available on any platform, signalling telecommunications operators to accept the integration of digital innovations in their services to offer enhanced comprehensive solutions for users.

The innovation capabilities of telecommunications operators are being tested to meet the rising need for faster and better connection and communication services in this changing online scene, ranging from entertainment to virtual banking and e-commerce. As such, telecoms company M1 Limited (M1) has collaborated with various prominent technology service providers, including Microsoft, to establish a new technology solution that will integrate various systems onto a single online platform. The platform will be supported by Microsoft Azure to allow M1 to utilise cloud platform capabilities to consolidate its operations through automation.

The APAC region is progressing well with the roll-out of 5G. South Korea, Taiwan, Japan and China are the forerunners in this region, with Singapore and Thailand following closely behind. In 2020, the biggest Singapore telecoms companies, namely SingTel and a joint venture between M1 and Starhub, obtained approval from the regulator to operate 5G networks, rolling out plans to provide 5G coverage across Singapore within the next five years.

There is a shift towards consolidation and divestment efforts in the telecommunications industry, as some firms are withdrawing their unconventional investments and streamlining their investment portfolios, ensuring sufficient liquidity to cater for investments in 5G. In the United States, Verizon and AT&T stripped off certain non-core businesses in 2020; and in 2021, in Canada and in Spain, major telecommunications firms are merging in preparation to fend off competition.

Deal activity in the telecommunications space is likely to persist, as companies take advantage of improved cashflows to further focus on their key businesses or vertical growth, which may include investing in telecommunications facilities, such as towers and data centres, or the expansion of 5G capabilities through acquisitions. M1 has recently announced that it has unlocked value from SGD580 million's worth of network assets by transferring its network assets to a newly incorporated company that is co-invested by M1 and Keppel DC Reit. Similarly, Singtel has reported employing a strategic overhaul to streamline its business by separating

off infrastructure assets, such as its data centre business, satellites, sub-sea cables and its towers in Australia, to concentrate on the provision of 5G and online services.

This is a momentous manoeuvre to recalibrate the business and exploit the propagation of technology and digital transformation. Other examples in Asia include Singapore data centre operator, Digital Edge, acquiring data centre assets from Sejong Telecom to expand into the Korean market, and SK Telecom having disclosed intentions to divide its business in two, while retaining its data centre portfolio.

Agrifood tech

The Singapore government announced back in 2019 the visionary "30 by 30" goal, with the aim of raising Singapore's local food production levels to meet 30% of its total nutritional needs by 2030. Singapore, which is heavily reliant on food imports (making up more than 90% of its food supply), recognises the urgency to be less susceptible to the unpredictability of the global food market, and is exploring agrifood technology solutions. This has been accentuated by the COVID-19 pandemic, which exposed the serious need for food resilience and robust supply chain solutions, hence making investment flows into agritech and foodtech increasingly noticeable. Most tellingly, Singapore's sovereign wealth fund, Temasek, reinforced its commitment to accelerating and managing agricultural and food investments in a big push into the market, by setting up a new multibillion-dollar agrifood investment platform.

Based on statistics, investments in the agrifood technology industry in the first half of 2021 alone reached USD24 billion (also reaching USD30.5 billion for the whole of 2020, which was in itself a 34.5% rise year on year from 2019). Specifically, investments in creative foodtech have doubled from last year to reach USD2.3 billion, with a 60% increase in deal activity. This has been induced by the escalating interest in alternative protein companies and innovative animal-free products, notably due to increased consumer awareness of food sources, safety and sustainability. Impossible Foods' USD500 million series-F round in 2020 (with a further USD200 million series-G in 2021) puts it close to a USD4 billion post-money valuation with indications that it is eyeing an initial public offering (IPO) at a valuation of USD10 billion. Meanwhile in Singapore, Next Gen Foods, which specialises in plant-based chicken products, raised USD30 million in a seed round valued at USD180 million, which was extended and closed in July 2021, making it the largest-ever seed round globally for a plant-based start-up.

Buy now, pay later

Due to the pandemic, buy now, pay later (BNPL) services boomed in 2020, through the provision of an alternative line of credit for consumers as e-commerce and virtual transactions rose sharply. BNPL companies allow consumers to pay in (typically) three separate interest-free monthly instalments instead, and such services are available in online stores of companies which benefited greatly from the pandemic-induced remote working trend, such as Secretlab and Omnidesk. According to Business Wire's BNPL Q4 Survey, BNPL payment is tipped to increase by 52.1% year on year to hit USD564 million in 2021.

BNPL has also benefited from the steep increase in demand for e-commerce, as several BNPL companies reported considerable investment rounds in 2020 – Klarna raised USD650 million, clinching the record deal of the year, followed by Affirm's funding of USD500 million, and others such as Laybuy, Sezzle and Splitit. Square's USD29 billion acquisition of Australia-based BNPL global giant Afterpay is symptomatic of this trend. According to the Bank of America, the BNPL market is expected to grow ten to 15

fold by 2025, and will ultimately handle approximately USD650 billion to USD1 trillion in transaction value. The BNPL industry has thrived, but cynical views remain that BNPL services may pose a danger to both users and banks if they are not managed properly. Nonetheless, BNPL is a viable substitute to credit cards for large segments of users, and BNPL firms will continue to threaten conventional financial services providers. In 2020, acquisitions in the BNPL space were concentrated on expanding the network or increasing coverage to reach more regions. This may, however, change in 2021, as it is envisaged that banks and card networks may begin to invest in fintech or such lending services to streamline their solutions.

Singapore is riding on the BNPL trend by permitting online consumers to buy products instantaneously without having to pay the entire price in advance, and consumers are incentivised to do so, as the majority of BNPL services are provided at 0% interest. BNPL companies in Singapore are aggressively competing for customers whose consumption expenses have pivoted from travel spending to retail expenditure. Singapore start-ups, such as Atome, hoolah and Rely Installment, saw tremendous take-up in their BNPL offerings in 2020 and 2021. Grab, the South-East Asian superapp, also provides similar services in the form of PayLater Instalments, a post-paid service for online purchases. In May 2021, Citibank introduced the Instalment Payment Plan – a bespoke BNPL service for credit card members who purchase from certain vendors. Payments app Fave followed suit by announcing FavePay Later, and convertCASH unveiled a model focusing on monthly payments.

The growth trajectory of the BNPL scene in Singapore appears to remain resilient in the long run. It is predicted that the endorsement of BNPL payment will continue to have sustained growth, reaching a compound annual growth rate of 18.4% from 2021 to 2028, and the BNPL gross merchandise value will surge from USD370.8 million in 2020 to attain USD1.84 billion by 2028.

Significant transactions

Riding on the tailwinds of significant investor confidence and activity, we are also seeing a number of ground-breaking deals. Grab, one of the biggest start-ups in South-East Asia, secured a valuation of approximately USD40 billion in its potential merger announced in April 2021 with Altimeter Growth Corp, a special purpose acquisition company (SPAC), as compared to earlier deals last year which set its valuation at USD16 billion. This is the largest deal with a blank-cheque company, underscoring the craze in the markets as US shell companies raised about USD99 billion in 2021 after reaching USD83 billion in 2020. This raises the level of competition in Indonesia, a major market for Grab, as local superapp rival Gojek also formed a merger with the e-commerce leader, Tokopedia. The Gojek-Tokopedia merger to form GoTo Group is Indonesia's largest business combination deal to date. S&P Global Market Intelligence estimates that GoTo Group has an aggregate valuation of roughly USD20 billion and this continues to grow with the USD400 million investment into the GoTo Group led by Abu Dhabi Investment Authority in the latest pre-IPO fundraising round. The merged entity will be one of the leading private technology companies in the region, offering a wide range of services including ride-hailing, food delivery and e-commerce, and will further be seeking to focus on payments and financial services.

Carro, Singapore's online car sales platform start-up, has attained unicorn status after securing a USD360 million funding round led by SoftBank, that placed its valuation at over USD1 billion. This seals Carro's position as the first automotive sales platform from the South-East Asian region to join the unicorn club in five years.

Singapore's online property listing company, PropertyGuru, made the decision to go public via a merger with a blank-cheque company, supported by billionaires Richard Li and Peter Thiel, capitalising on opportunities to stimulate growth as the domestic housing market cools down. The combined entity is estimated to have a market value of approximately USD1.78 billion. Singapore's Sea Ltd, South-East Asia's most valuable company, has also purchased Indonesia's Bank Kesejahteraan Ekonomi as it ventures into fintech.

Tech M&A Due Diligence

In order to adapt and remain competitive in the changing landscape and position themselves in preparation for the future, companies will have to adapt their M&A approach seeking value generation. Both technology and non-technology purchasers will also need to re-evaluate the process of sourcing deals, managing diligence and consolidating acquired assets, and refine their M&A strategies.

In particular, companies will need to change the way that they conduct due diligence in tech M&A deals in order to better evaluate the specific technology companies and assets that they are purchasing. The old due diligence practice of merely conducting standard IP searches will simply not be sufficient. For example, when investing in technology companies that are in the business of, or purchasing technology assets that relate to, proprietary software, applications and platforms, it is important to conduct open-source due diligence into such proprietary software, applications and platforms to ascertain:

- what source code is used by the company to build its software, applications and platforms;
- whether the company has created any derivative works from such source code and/or embedded such source code in its software, applications and platforms; and
- whether the source code used by the company is subject to any "copyleft" licences.

When the target company deals with personal data, it is important to conduct due diligence into the cybersecurity policies and practices of the company, as well as to ascertain if the company has suffered any data breaches.

With new data protection and cybersecurity/data security laws being enacted across the region, increased enforcement against data breaches and increased penalties, breaches of data protection/cybersecurity laws may attract severe penalties and/or severely restrict the way that such companies are able to process personal data, not to mention the reputational risk of being exposed as having inadequate cybersecurity policies and practices.

When dealing with transactions involving non-fungible tokens (NFTs), it is important to note the intellectual property issues arising from the purchase and sale of NFTs. When buying or selling NFTs, the rights that are being traded may be different from platform to platform or even from NFT to NFT. Buying an NFT does not necessarily mean that the buyer will own the right to display the underlying digital asset or the right to use it for commercial purposes. Sellers of NFTs may retain certain rights to the digital asset.

Outlook for 2022

The potential for M&A value generation beyond 2021 remains promising. The massive opportunities provided by digital revolutions and technological disruptions, coupled with high levels of investor activity sparked by IPOs and SPACs, pave the way for booming M&A activity beyond 2021.

APAC's internet and technology industry had already garnered strong private equity interest before the COVID-19 pandemic, having experi-

enced the greatest growth in deal value across all sectors for five consecutive years. With the extended lockdowns in response to the pandemic, digital businesses and marketplaces have further flourished, leading to elevated investor activity in the sector. Governments have had to implement measures to shift towards remote working and, as people are forced to stay at home, changes in consumer behaviour have becoming increasingly evident with the spike, and continuing growth, in online sales.

China has the most robust venture capital environment, providing the majority share (74.3%) of venture capital and institutional private equity for investments focused in the APAC region. However, its position is affected by external circumstances both globally, in terms of geopolitical strain with the US, and locally, with the clampdown on digital services. On the flip side, the budding South-East Asian environment, with supporting policies in terms of regulations and governance, is becoming more attractive. Alibaba's investment in Indonesia's Tokopedia and Tencent's investment in India's Swiggy are a testament to the shift in investor activity to the region.

South-East Asia is positioned well to further increase its reputation in the global technology space, due to its track record of exit potential and beneficial geopolitical stability. South-East Asia has a young and mobile-savvy population with an average age of 27, and research shows that the annual growth of internet users is predicted to outpace other regions such as China, South Asia and the US. South-East Asia is also currently at the initial developmental phase of its digital economy, which represents 3.7% of its entire economy, and is likely to double by 2025. At this level, there will still be considerable opportunities available for further development, in contrast to the internet penetration levels in other markets.

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Rajah & Tann Singapore LLP is a leading full-service law firm and member of Rajah & Tann Asia, one of the largest regional networks, with over 800 fee-earners in South-East Asia and China. With a thriving tech M&A practice representing investors and enterprises involved in all facets of the data and digital economy, the team has acted frequently in acquisitions/divestments and investments into growth-stage companies operating in blockchain, cryptocurrency, agrifood tech, fintech, deep tech, legal tech and medtech, alongside social networking, gaming and e-commerce. The team is highly adept at providing practical advice on complex issues that often arise in tech M&A transactions, from conducting intellectual property and cybersecurity due diligence to drafting transitional service agreements, invention assignment agreements and designing data protection policies. The firm has offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand, the Philippines and Vietnam, and dedicated desks focusing on Brunei, Japan and South Asia.

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