

MERGER AND ACQUISITION UPDATE – SIGNIFICANT INVESTMENTS REVIEW ACT 2024 OF SINGAPORE

I. INTRODUCTION

1. The Significant Investments Review Act 2024 (“SIRA”) establishes an investment management regime to review and regulate significant investments into entities critical to Singapore’s national security interests. This has noteworthy implications for multinational corporations who wish to acquire or divest assets in such entities.
2. This need to carefully safeguard national security interests arises from the growing sensitivity surrounding foreign investments. From a national security standpoint, the acquisition of nationally important assets by foreign investors may potentially grant foreign entities control over crucial domestic assets.
3. In response to this, an increasing number of countries, including Australia, China, the United Kingdom and the United States, have introduced regulatory frameworks to screen investments for national security reasons. The global proliferation of such regulatory initiatives underscores the urgency for Singapore to establish its own framework.
4. As such, the Significant Investment Review Bill was passed by Parliament on 9 January 2024, before the SIRA came into effect on 29 March 2024.
5. This article aims to offer guidance to multinational corporations on navigating through mergers and acquisitions. As the SIRA has introduced an additional procedural step, parties should carefully consider this in their timeline for proposed acquisitions or divestments.

II. SCOPE OF APPLICATION UNDER THE SIRA

6. The scope of regulation under the SIRA extends to investments into entities, whether local or foreign, that are critical to Singapore’s national security interests. This definition of “national security” is deliberately kept broad to address the rapidly evolving challenges in this area.¹

A. *Designated Entities*

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¹ Gan Kim Yong, Minister of Trade and Industry, “Speech by Minister Gan Kim Yong during the Round-Up Speech for the Significant Investments Review Bill” (9 January 2024) <<https://www.mti.gov.sg/Newsroom/Speeches/2024/01/Speech-by-Minister-Gan-Kim-Yong-during-the-Round-Up-Speech>> (“Speech by Minister”) at para 21.

7. The SIRA applies to any entity incorporated, formed or established in Singapore, carrying on business in Singapore, or providing goods and services to people or entities in Singapore, if the Minister for Trade and Industry (the “**Minister**”) considers such designation to be necessary in the interest of Singapore’s national security (“**Designated Entity**”).
8. Recently, The Straits Times has announced nine entities from various industries that have been designated as Designated Entities, as published in the Singapore Government Gazette on 31 May 2024.² These include:
 - (a) Shell and ExxonMobil, Singapore-based subsidiaries of leading multinational oil companies;
 - (b) Sembcorp Specialised Construction, a wholly-owned subsidiary of Sembcorp Industries;
 - (c) Singapore Refining Company, a joint venture between Singapore Petroleum Company and Chevron;
 - (d) ST Logistics, a defence and supply chain solutions company; and
 - (e) Subsidiaries of ST Engineering such as ST Engineering Marine, ST Engineering Land Systems, ST Engineering Defence Aviation Services, and ST Engineering Digital Systems.

B. General “Calling-in” Powers to Review Transactions of Any Entity

9. Notwithstanding this, the scope of the SIRA is not solely limited to investments in Designated Entities.
10. The Minister also has the authority to review ownership or control transactions of any entity, even if the entity is a non-Designated Entity, that acted against Singapore’s national security interests within a two-year period.
11. Among other prerogatives, the Minister can direct the transacting party to divest their equity interest in the entity.

III. APPROVAL AND NOTIFICATION OBLIGATIONS FOR DESIGNATED ENTITIES

12. Prospective buyers and sellers of Designated Entities, and the Designated Entities themselves are subject to notification and approval obligations under the SIRA, as elaborated under this section below.

A. Proposed Transactions Involving Ownership or Control Changes

13. Prospective buyers who become a 5% controller in Designated Entities must notify the Minister within 7 days of completing the acquisition.

² Ovais Subhani, “S’pore names Shell, ExxonMobil among 9 entities critical to national security under new investment law”, *The Straits Times* (31 May 2024) <<https://www.straitstimes.com/business/singapore-names-shell-exxon-among-9-entities-critical-to-national-security-under-new-investment-law>> at para 2-5.

14. Both prospective buyers and sellers of Designated Entities require Ministerial approval for transactions exceeding certain thresholds. Otherwise, these transactions will be rendered void.
15. The thresholds for transactions requiring Ministerial approval are where:
 - (a) Prospective buyers who wish to become (together with their associates, if applicable) a 12%, 25% or 50% controller, an indirect controller, or acquire the business, or parts of it, as a going concern in Designated Entities (“**Significant Prospective Buyers**”); and
 - (b) Prospective sellers who wish to cease to be (together with their associates, if applicable) a 50% or 75% controller in Designated Entities (“**Significant Prospective Sellers**”).
16. Designated Entities must notify the Minister within 7 days of becoming aware of the aforementioned changes in ownership or control upon the conclusion of transactions exceeding these thresholds.

B. Appointment of Key Personnel

17. Designated Entities are also required to seek approval from the Minister for:
 - (a) Appointing key personnel, such as the chief executive officer, directors and the chairperson of the board, in Designated Entities;
 - (b) Removing any key personnel in Designated Entities, should it be deemed necessary for national security; and
 - (c) Voluntarily winding up or dissolution of Designated Entities.

IV. APPLICATION PROCESS FOR APPROVALS AND NOTIFICATIONS

18. In connection with this, the Office of Significant Investments Review (“**OSIR**”) will manage the application process between stakeholders and the Minister. As set up by the Ministry of Trade and Industry, the OSIR handles the administrative matters of the SIRA and serves as a dedicated one-stop touchpoint for stakeholders.

A. Proposed Transactions Involving Ownership or Control Changes

19. To initiate this application process, Significant Prospective Buyers and Significant Prospective Sellers seeking approval for the proposed transaction will need to complete the necessary forms on the OSIR’s website.
20. Applicants, as Significant Prospective Buyers or Significant Prospective Sellers, should take note that the Minister may take into account the following considerations when deciding whether to grant an approval:
 - (a) Whether the Designated Entity would be able to continue providing its critical function following the proposed transaction;

- (b) Whether the proposed transaction is aligned with Singapore's national security interests; and
- (c) For applicants who are Significant Prospective Buyers, whether they (together with their associates) are fit and proper, where criteria include but are not limited to honesty, integrity, reputation and financial soundness;

21. Following this review process, the Minister will issue a decision to either approve or reject the application. If approved, the Minister may impose conditions that one must agree to abide by before proceeding with the transaction or appointment.
22. Applicants, as Significant Prospective Buyers or Significant Sellers, may proceed with the transaction only upon receiving an unconditional approval or complying with the conditions prescribed in the conditional approval.
23. Once the transaction concludes, Designated Entities must notify the Minister within 7 days of becoming aware of the changes in ownership or control.

B. *Appointment of Key Personnel*

24. Similarly, Designated Entities should commence the application process for the appointment of key personnel by completing the necessary forms on the OSIR's website.
25. Designated Entities should take note of the following considerations which the Minister may consider in their application:
 - (a) An assessment of the key personnel on criteria relating to but not limited to honesty, integrity, reputation and financial soundness; and
 - (b) Potential impact on national security interests.
26. In issuing its decision, the Minister will either approve the application, approve the application with conditions, or reject the appointment of the key personnel.
27. Designated Entities may proceed with the appointment only upon receiving an unconditional approval or conditional approval, provided that they have complied with the conditions.

V. RECONSIDERATION AND APPEAL

28. Applicants who are unsatisfied with the decision issued by the Minister can request for a reconsideration of the decision within 14 days from the date of such decision.
29. Should the initial decision be affirmed, applicants can consider a further appeal to an independent tribunal for review ("**Reviewing Tribunal**") within 30 days of the reconsideration decision.
30. Owing to the sensitive nature of national security issues, the Reviewing Tribunal is regarded as the more appropriate forum for this, as compared to the Courts. The Reviewing Tribunal is to consist of three individuals appointed by the President on the advice of the Cabinet, including the chairperson who is a Supreme Court judge.

VI. CONCLUDING REMARKS

31. Currently, as part of a merger and acquisition exercise, prospective buyers of large assets may need to seek approval from the Competition and Consumer Commission of Singapore for the acquisition. Additionally, if the entity being acquired is regulated by the Monetary Authority of Singapore (“**MAS**”), approval from MAS must also be sought.
32. The enactment of the SIRA adds an additional requirement for multinational corporations who plan to enter into conclusive agreements with entities critical to Singapore’s national security, either to acquire or divest stakes in such companies. Together with the other controls on mergers and acquisitions under the Competition Act 2004, parties involved in such deals must now factor in the requirements under the SIRA when planning the timeline for mergers and acquisitions. Crucially, they would need to factor additional time to obtain Ministerial approval when acquiring or divesting significant stakes in Singapore’s critical entities.
33. However, the impact of the SIRA is expected to be relatively limited as the SIRA targets designated-based entities rather than entities under an entire broad sector. At present, the number of security-related companies is not substantial. Moreover, the Minister has provided reassurance that the list of Designated Entities is unlikely to “significantly expand” in future.³
34. At its core, the enactment of the SIRA stands as a testament to Singapore’s commitment to striking a delicate balance between protecting its national interests and cultivating an open and vibrant business hub.
35. Our corporate department has advised many multinational and large local companies over the years in respect of the transactional and regulatory requirements associated with their mergers and acquisitions. Please do not hesitate to reach out to us if you have any questions.

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³ Speech by Minister, *supra* note 1 at para 42.