

Singapore's Proposed Significant Investments Review Bill – A Targeted Approach to National Security Screening

The Ministry of Trade and Industry (**MTI**) has announced that it will introduce a new investment management regime to ensure the continuity of critical entities which are not currently adequately covered under other existing sectoral legislation.

The introduction of the Significant Investments Review Bill (**SIR Bill**), which is scheduled to be read for the first time in Parliament on 6 November 2023, follows remarks made in August 2023 by Minister for Trade and Industry Mr Gan Kim Yong indicating that Singapore is exploring “new tools” to “manage significant investments into critical entities”, which comes as Singapore faces “significant challenges” in the global economy.

Unlike foreign investment / national security frameworks which have increasingly been introduced in other jurisdictions (see our last update on these developments [here](#)), the initial details of the SIR Bill (as set out in the MTI's press release) reflect a measured approach to national security screening and strike a balance between the Singapore Government's interest in regulating ownership and control of critical entities and maintaining Singapore's position as an open and investor-friendly jurisdiction.

This note outlines the key features of the SIR Bill, how it compares against other foreign investment / national security frameworks, and our initial thoughts and key takeaways.

Designated Entities Under the SIR Bill

The SIR Bill will give the Government the power to designate any entity (**Designated Entity**) which:

- is incorporated, formed, or established in Singapore;
- carries out activities in Singapore; or
- provides goods and services to persons in Singapore.

Becoming a Designated Entity triggers the application of various approval and notification requirements to potential acquirers, owners / sellers, as well as the Designated Entity itself (see next section below).

This designation approach will be welcome by most stakeholders as it provides certainty on the scope of application of the key provisions of the SIR Bill. In this regard, Minister Gan has also stated that the MTI expects only a handful of critical entities to be designated under the SIR Bill, given that the Singapore Government already has powers to manage ownership and control of many critical sectors under existing sectoral legislation. It also stands in contrast to the more general and broad-reaching scopes of other foreign investment / national security frameworks, for example:

- Australia's Foreign Acquisitions and Takeovers Act 1975, where approval of the Treasurer may be required for foreign investments into any business as long as prescribed value thresholds are crossed; and

- The UK's National Security and Investment Act 2021 (as well as the regimes in many European Union Member States), where a list of sensitive sectors / business activities is prescribed, with investments into entities that are active in such sectors / activities being subject to screening.

Provisions of the SIR Bill that Apply in respect of Designated Entities

Ownership and control requirements

Prospective acquirers and sellers of Designated Entities, and the Designated Entity itself, will be subject to various ownership and control related notification / approval requirements:

- Prospective acquirers would need to notify the Minister after becoming a 5% controller, and seek prior approval from the Minister before becoming a 12%, 25%, 50% or indirect controller, or acquiring as a going concern (parts of) the business or undertaking, of the Designated Entity;
- Existing owners of Designated Entities will need to seek prior approval from the Minister before ceasing to be a 50% or 75% controller of a Designated Entity; and
- Designated Entities will be required to notify the Minister of changes in ownership and control which trigger the abovementioned requirements, after they become aware of the same.

Transactions which are effected in breach of the applicable approval requirements will be rendered void, although the MTI has indicated that the regime will allow for "materially affected parties" to apply for "validation notices". At this point, there are no details on the requisite criteria for a party to apply for such a validation notice, or on the potential effect of such notice.

While the text of the SIR Bill is not yet available, the reference to 5%, 12%, 25%, 50% and indirect controllers mirrors terms used in other existing sectoral legislation with similar ownership and control requirements, which may indicate that similar statutory definitions will be used in the SIR Bill. These terms, where used in other existing legislation, generally include both direct and indirect changes in shareholding interests, and the "indirect controller" concept typically catches situations where an acquirer obtains *de facto* control *via* other means (e.g., contractual rights, control over directors) without acquiring a shareholding interest.

The requirement for existing owners of Designated Entities to seek approval before selling down their interest below the prescribed 50% and 75% thresholds is noteworthy. Owners of Designated Entities will need to be mindful that a partial sale of their interests may place the onus solely on them to obtain regulatory approval – for example where an existing 75% owner of a Designated Entity proposes to sell a less than 5% interest to a prospective acquirer.

Appointment of key officers

Designated Entities will be required to seek prior approval for the appointment of key officers such as the chief executive officer, directors and the chairperson of the board. Such appointees may be removed by the Minister if they were appointed without approval or if any approval conditions are breached. Such requirements currently already apply to regulated entities in other sectors, e.g., financial institutions, and will come as no surprise. In addition, however, the Minister will also have the power to remove such key officers in the interest of national security.

Security and reliability of critical functions

Designated Entities will also be subject to other provisions under the SIR Bill to ensure the security and reliability of their critical functions, for example:

- Any voluntary winding-up or dissolution of a Designated Entity cannot be effected without the Minister's consent; and
- The Minister may make orders relating to the assumption of control over the Designated Entity's affairs, business, and property, to ensure their continuity in the event that the delivery of essential services is disrupted, or other national security issues arise. Again, we do see such powers accorded to sectoral regulators under other sectoral regimes, e.g., the Monetary Authority of Singapore's power to assume control over certain prescribed financial institutions under the Financial Services and Markets Act 2022.

Remedial directions

The SIR Bill will also give the Minister the power to issue remedial directions under certain circumstances. For example, an acquirer of a Designated Entity which has breached its conditions of approval may be ordered to transfer or dispose of its interest in the Designated Entity.

General National Security Powers in respect of Any Entity (Including Non-Designated Entities)

The SIR Bill does not apply solely in respect of Designated Entities. The MTI has indicated that the SIR Bill will also allow the Minister to review ownership or control transactions involving any entity that has acted against Singapore's national security interests.

Practically speaking, this means that the Minister will retain a residual power to review:

- Any transaction involving any non-Designated Entity; and
- Any transaction involving a Designated Entity, even if it falls below the prescribed shareholding thresholds for which approval or notification is required,

if any entity involved has acted against Singapore's national security interest.

Such general powers to review and intervene in transactions where national security concerns arise are not unusual and are also seen in other foreign investment / national security frameworks. For example, the relevant regime in the US allows the Committee on Foreign Investment in the United States (the executive agency that reviews foreign investment in the US, more commonly known as CFIUS) to review any transaction if it takes the view that it raises national security concerns.

Investors Who Are Subject to the SIR Bill

The SIR Bill will apply to all investors, both local and foreign. This is consistent with the nature of the regime, which is focused on managing investments into critical entities from a national security perspective rather than on screening foreign investment *per se*.

The same approach is adopted by the UK in its National Security and Investment Act 2021, which also applies to all investors, whether foreign or domestic.

Reconsideration Requests and Appeals

Parties affected by the Minister's decisions made under the SIR Bill will be able to request the Minister to reconsider the decision, and also to lodge an appeal against the decision. Given that the nature of the Minister's decisions under the SIR Bill will involve sensitive matters of national security, appeals of such decisions will be made to an independent Reviewing Tribunal consisting of three individuals appointed by the President on the advice of the Cabinet, including a chairperson who is a Supreme Court judge.

Other Notable Points

The MTI has indicated that the SIR Bill will not have retrospective effect and the ownership and control provisions that apply to Designated Entities will take effect only after an entity is so designated. This provides existing owners of any entity that is subsequently designated under the SIR Bill a degree of assurance that their prior transactions *vis-à-vis* the Designated Entity would not be subject to retrospective review (although other requirements, e.g., approvals required for appointment of key officers, would still apply upon designation). Not all foreign investment / national security frameworks have taken the same position – e.g., the UK National Security and Investment Act 2021 allows the UK Government to retroactively call-in transactions completed up to almost 14 months before the regime came into force.

The MTI has also announced that a new Office of Significant Investments Review will be set up within the MTI as a dedicated one-stop touchpoint for stakeholders in respect of matters involving the regime under the SIR Bill.

Takeaways

With the introduction of the SIR Bill, Singapore joins many other (and an increasing number of) jurisdictions with regimes that allow for review of transactions involving entities which may raise national security related concerns.

In contrast with other jurisdictions, however, the SIR Bill adopts a targeted designation-based approach – this provides certainty with respect to its application and signals Singapore's commitment to remain, in Minister Gan's words, "a trusted hub for businesses to invest with confidence".

Entities involved in activities that could potentially be considered critical in Singapore, particularly businesses which are not currently subject to sectoral regulation, as well as investors (and prospective investors) in such businesses, should keep an eye on further developments in this area.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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