The Private Equity Review

Eighth Edition

Editor
Stephen L Ritchie

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THE PRIVATE EQUITY REVIEW

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PREFACE

The eighth edition of *The Private Equity Review* follows an extremely active 2018. While the number of global private equity deals completed declined from 2017, the total value of such deals was the highest since 2007, and the third-highest of all time. Deal activity was weighted towards the upper end of the market, and included several large take-private transactions. Fundraising activity was also strong, as institutional investors remained extremely interested in private equity as an asset class because of its strong performance relative to public markets. As a result, private equity funds have significant amounts of available capital, leading to very competitive transactions being completed at increasing purchase price multiples. This has caused private equity firms to become even more creative as they seek opportunities in less competitive markets or in industries where they have unique expertise. Given all of this, we expect private equity will continue to play an important role in global financial markets, not only in North America and western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa. In addition, we expect the trend of incumbent private equity firms and new players expanding into new and less established geographical markets to continue.

While there are potential headwinds – including trade tensions, a slowing Chinese economy, Brexit and an eventual end to one of the longest-running recoveries in US history – on the horizon for 2019 and beyond, we are confident that private equity will continue to play an important role in the global economy, and is likely to further expand its reach and influence.

Private equity professionals need practical and informed guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. This review has been prepared with this need in mind. It contains contributions from leading private equity practitioners in 25 different countries, with observations and advice on private equity deal-making and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to this complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

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I want to thank everyone who contributed their time and labour to making this eighth edition of *The Private Equity Review* possible. Each of these contributors is a leader in their respective markets, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
April 2019

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Part II

INVESTING

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Chapter 17

SINGAPORE

Andrew Ang, Christy Lim and Quak Fi Ling[1]

I OVERVIEW

i Deal activity

The year 2018 was another record one for M&A activity in Singapore, largely driven by high-value outbound deals from Singapore sovereign wealth funds (SWF). According to a report by corporate finance adviser Duff & Phelps,[2] the banking, financial services and insurance sector was the most active, followed by the real estate sector. Examples of significant outbound M&A activities include SWF GIC Private Limited's (GIC) participation in a Blackstone-led consortium that acquired a majority stake in the financial and risk business of news group Thomson Reuters at an overall valuation of US$20 billion,[3] and the US$14 billion investment by SWF Temasek Holdings, GIC and other investors in Ant Financial.[4] The non-SWF M&A deals include Walmart's acquisition of a 77 per cent stake in Flipkart Pvt Ltd (a Singapore-incorporated company with India-based operations) for US$16 billion,[5] and the merger of Viva Industrial Trust and ESR-Reit, which is the first merger of two real estate investment trusts in Singapore through a trust scheme.[6]

Private equity (PE) and venture capital (VC) investments in Singapore remain strong and according to Ernst & Young's private equity briefing report, such investments in Singapore contributed to 56 per cent of the overall value of PE deals completed in South East Asia for the second quarter in 2018.[7] South East Asia continues to attract the interest of western PE funds owing to more investment opportunities, a strong growth forecast by the International Monetary Fund and widespread capital market reforms following the financial crisis.[8] Sectors such as consumer products and technology are the top sectors receiving such PE and VC

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1 Andrew Ang, Christy Lim and Quak Fi Ling are partners at WongPartnership LLP.

2 Duff & Phelps, 'Transaction Trail: Annual Issue 2018'.

3 'GIC joins Blackstone consortium buying stake in Thomson Reuters' financial, risk business' (31 January 2018): https://www.businesstimes.com.sg/government-economy/gic-joins-blackstone-consortium-buying-stake-in-thomson-reuters-financial-risk.

4 'GIC, Temasek participate in Ant Financial's US$14b Series C funding round' (8 June 2018): https://www.straitstimes.com/business/invest/gic-temasek-participate-in-ant-financials-us14b-series-c-funding-round.

5 'Walmart acquires Flipkart for $16 billion in world's largest ecommerce deal' (10 May 2018): https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/walmart-acquires-flipkart-for-16-bn-worlds-largest-ecommerce-deal/articleshow/64095145.cms.

6 'ESR-Reit unitholders approve Viva Industrial Trust merger' (31 August 2018): https://www.businesstimes.com.sg/companies-markets/esr-reit-unitholders-approve-viva-industrial-trust-merger.

7 Ernst & Young, 'Private equity briefing: Southeast Asia – September 2018'.

8 'How private equity is shaking up Southeast Asia' (27 June 2018): https://asia.nikkei.com/Spotlight/Cover-Story/How-private-equity-is-shaking-up-Southeast-Asia.

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investments. Global investment houses have increased their investment volume in South East Asia; for example, in Singapore alone, KKR has invested S$500 million for a significant stake in Singapore-headquartered V3 Group Limited,[9] S$200 million in Singapore-based real estate portal PropertyGuru,[10] and S$45 million in Barghest Building Performance, a Singapore provider of energy-saving solutions.[11] Other notable PE and VC deals in Singapore are the acquisition by Bain Capital Private Equity of Singapore-headquartered DSM Sinochem Pharmaceuticals for US$698 million,[12] the US$312 million privatisation of crane supplier Tat Hong Holdings by Standard Chartered Private Equity and the family of chief executive Roland Ng,[13] and the US$85 million close of Carousell's Series C round led by Rakuten Ventures and EDBI, the corporate investment arm of Singapore's Economic Development Board.[14]

PE exits, on the other hand, have declined and the more significant reported exit is the sale of Singapore hard-drive component maker MMI Holdings Ltd by KKR for about US$645 million.[15]

ii Operation of the market

Because of the lacklustre performance of the capital markets in recent years, the traditional public flotation of target company shares is no longer viewed as the preferred PE exit strategy. Increasingly, more PE exits are carried out through a trade sale of the target company, redemptions and secondary sales.

A trade sale process by way of a controlled auction has the advantage of creating competition among bidders, thereby encouraging higher prices and more favourable terms for the vendors. The controlled auction process also provides a greater degree of confidentiality and allows for greater control of the data room.

Depending on the management of the process and complexity of the sale assets, a controlled auction process in Singapore may take anywhere from five months to a year to complete. While the specific mechanics differ, a standard sale by way of controlled auction would generally involve a few stages.

9 'V3 Group Limited Welcomes Investment from KKR' (4 December 2018): https://media.kkr.com/news-releases/news-release-details/v3-group-limited-welcomes-investment-kkr.

10 'PropertyGuru Doubles Down on Southeast Asia with S$200M Funding Round' (31 October 2018): https://media.kkr.com/news-releases/news-release-details/propertyguru-doubles-down-southeast-asia-s200m-funding-round.

11 'Singapore energy-saving firm wins S$45m KKR investment' (13 December 2018): https://www.businesstimes.com.sg/energy-commodities/singapore-energy-saving-firm-wins-s45m-kkr-investment%C2%A0.

12 'U.S. Bain Capital nears deal to buy Singapore-based DSP for $696.1 mln' (2 July 2018): https://www.investsize.com/en/us-bain-capital-to-acquire-dutch-chemicals-firm-dsm--and--china%E2%80%99s-sinochem-kr.

13 'Tat Hong boss, StanChart PE intend to take crane supplier private with 50 cents per share offer' (12 January 2018): https://www.straitstimes.com/business/companies-markets/tat-hong-boss-stanchart-pe-intend-to-take-crane-supplier-private-with.

14 'Singapore most active in private equity, venture capital activity in region in Q2: EY report' (30 October 2018): https://www.businesstimes.com.sg/companies-markets/singapore-most-active-in-private-equity-venture-capital-activity-in-region-in-q2.

15 'KKR said to sell Singapore's MMI Holdings, its oldest Asian investment, for $645m' (19 September 2018): https://www.dealstreetasia.com/stories/kkr-singapore-mmi-exit-106884/.

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The process usually commences with the circulation of a teaser or fact sheet about the sale assets to potential bidders. Sufficient information has to be provided (i.e., business model, strategy for growth, principal assets and limited financial information) to generate interest and elicit meaningful bids. Upon execution of non-disclosure agreements, potential bidders who have expressed interest will be provided with an information memorandum and process letter setting out the bid process rules, timeline and parameters for indicative proposals. Bidders who are shortlisted to progress to the next phase of the sale process will be allowed access to the data room (although there may still be black box items, in some cases depending on whether the bidder is a strategic bidder or another financial sponsor); scheduled management presentations and interviews with the management; and participation in site visits. When dealing with bidders who are competitors of the target company, precautions should be taken to prevent the sharing of commercially sensitive information and where necessary, such bidders may have to establish a 'clean team' to undertake the due diligence.

The bidders will be required to submit a final proposal and proposed markups on the definitive agreements by the end of this phase. In selecting the final bidders for final negotiations on the definitive agreements, the PE sponsor will weigh the bid price offered against the terms each bidder is seeking (especially with regard to retention sums, warranties and indemnities). The use of warranty and indemnity insurance to mitigate deal risk for PE firms is more common now. The auction process concludes with the selection of the winning bidder and the execution of the definitive agreements.

One important factor that drives a successful exit for a PE sponsor is the ability to effectively retain the management of the portfolio company that it invests in, and to align the interests of the management with its financial objectives. Therefore, it is fairly common for a PE sponsor undertaking a Singapore going-private transaction to offer incentive plans to the management of the target company to ensure that they are retained and incentivised to achieve the exit desired by the PE sponsor.

If the management holds shares in the target company, they are typically expected to reinvest a portion of their proceeds from the transaction to subscribe for shares in the bidding vehicle. In cases where the target company is subject to the Singapore Code on Take-overs and Mergers (the Take-over Code), this may give rise to special deals that require consultations with the Securities Industry Council of Singapore (SIC), which administers the Take-over Code. The PE sponsor may also set aside a portion of its shareholding in the bidding vehicle to establish a share incentive scheme where the shares are offered to management upon fulfilment of stipulated performance targets. Some PE sponsors may also make a distinction between classes of management personnel (i.e., between key management, who are instrumental to the operations and success of the target group, and the more rank-and-file management personnel, who are in charge of the day-to-day running of the business). The former would typically have a greater equity stake in the target group (through rollover arrangements and share option schemes) and may be delegated the discretion to administer the equity incentive programmes for the latter, who might not be allocated equity stakes but might have some other form of reward-sharing (for instance, through bonus payouts or phantom share option schemes).

It is not uncommon for the PE sponsor to impose a moratorium or restrictions on transfers of equity held by the management in the target company or to subject the incentives received by the management to 'good-leaver' and 'bad-leaver' provisions in the event that the management leaves the employment of the target company. Such a moratorium or restrictions would usually be at least for a period that coincides with the anticipated time management

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would take to enhance the value of the target group and achieve an exit for the PE sponsor. The PE sponsor would normally also reserve the right to require the management to co-sell its shares in the target company to procure the sale of the entire share capital of the company in an exit event. Other additional terms that are commonly built into the employment contracts of the management are non-compete and non-solicitation provisions.

II LEGAL FRAMEWORK

i Acquisition of control and minority interests

The transaction structure in an M&A transaction will depend on various factors, such as the eventual stake that the PE sponsor wishes to hold in the target company, timing and conditionality of the transaction. If the intention is to privatise a target company listed on the Singapore Exchange Securities Trading Limited (SGX), the transaction is likely to be structured either as a general offer subject to the Take-over Code or a scheme of arrangement (SOA) subject to both the Take-over Code and the Companies Act (Chapter 50 of Singapore) (the Companies Act). Briefly, the two structures differ in terms of timing, thresholds and outcomes.

In the case of a general offer under the Take-over Code, there is a timeline prescribed under the Take-over Code, to be adhered to once a firm intention to make an offer is announced by the bidding vehicle. This announcement triggers the obligation of the bidding vehicle to despatch the offer document to the target company's shareholders (no earlier than day 14 and no later than day 21 after the offer announcement) and the target company is then obliged to respond with an offeree document (within 14 days of the despatch of the offer document). The Take-over Code also stipulates how long the offer can be kept open and the circumstances under which the offer can be extended. Depending on whether the general offer is made subject to specific conditions that are permitted by the SIC, the offer will either lapse as a result of the conditions not being satisfied, or close successfully.

An SOA generally involves a longer transaction timeline, mainly on account of the documentation required and the steps involved in the implementation of the SOA. Unlike the general offer process, where the offer document is driven by the offeror and is not subject to any review process, an SOA involves the preparation of a scheme document that requires the cooperation of the target company, as well as review by the SGX. The documentation and the SGX review process may take up to eight weeks following the joint announcement by the bidding vehicle and the target company of the proposed scheme. Once the scheme document is cleared by the SGX, the target company will have to apply to the High Court of Singapore (the High Court) for leave to convene a meeting of the shareholders to consider the scheme (the scheme meeting) and to give notice to shareholders to convene the scheme meeting. After the requisite approval is obtained at the scheme meeting, the target company will have to apply to the High Court again to sanction the SOA. The SOA will only become effective after the relevant court order is lodged with the Accounting and Corporate Regulatory Authority. Unless an objection is raised at the court hearing, an SOA is likely to take effect approximately four months after the initial joint announcement was made.

Except in the case of a partial offer, a general offer must be conditional upon an offeror receiving acceptances in respect of more than 50 per cent of the voting rights in the target company (although the acceptance threshold may be set at a higher level in a voluntary general offer, such as 90 per cent to achieve the right of compulsory acquisition under

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Section 215(1) of the Companies Act). An SOA is subject to the approval of a majority in number of shareholders representing 75 per cent in value of the members or class of members present, and voting either in person or by proxy at the scheme meeting.

A general offer under the Take-over Code does not necessarily result in privatisation, as that would depend on whether the offeror is able to invoke the right of compulsory acquisition under Section 215(1) of the Companies Act to 'squeeze out' the minority shareholders. On the other hand, an SOA offers an all-or-nothing result and may be the preferred route for PE sponsors who wish to acquire 100 per cent of the target company through a single transaction rather than end up with a majority stake in a listed entity (which is still subject to issues of potential minority oppression challenges, listing rules and other compliance requirements). If the target company is not a Singapore-incorporated company, the provisions in the Companies Act relating to SOAs and compulsory acquisition will not be applicable, in which case it will be necessary to examine the applicable legislation in the jurisdiction of incorporation of the target company to determine the appropriate take-private structure.

A going-private transaction in Singapore may also be structured as a voluntary delisting by the listed target company from the SGX pursuant to the listing rules of the SGX (the SGX Listing Rules), coupled with an exit offer typically made by an existing major shareholder of the target company. This structure may be preferred over a general offer if the primary objective is to delist the target company from the SGX (so that it is no longer subject to the SGX Listing Rules) regardless of whether 100 per cent of the target company is acquired by the close of the exit offer. However, a voluntary delisting transaction in 2018 that was opposed by its minority shareholders sparked a debate on whether there are sufficient safeguards for minority interests and triggered a review of the existing voluntary delisting regime by the regulator (see Section IV).[16] Until there is clarity on the new regime, it is unlikely that many will adopt the voluntary delisting and exit-offer route for a take-private transaction.

The framework for acquisition of private companies by PE sponsors is dependent on the requirements or restrictions in the company's constitution (the constitution) or the shareholders' agreements between existing shareholders. The presence of pre-emption rights, tag-along or drag-along rights might hinder the speed, ease and flexibility with which the PE sponsor may implement the acquisition, as much would depend on whether the relevant consents or waivers can be obtained, or upon the timing in which these processes are carried out.

Tax-related issues tend to drive the deal structure (in particular, the holding structure and domicile of an acquisition vehicle) on a cross-border going-private or PE transaction, as parties seek to minimise the tax costs of the acquisition as well as tax leakages in the existing operations. Specifically, the impact of withholding taxes on dividends, local taxes, distributions and interest payments, and restrictions on the PE sponsor's ability to repatriate earnings should be taken into account when structuring such cross-border transactions.

A PE sponsor looking to implement a leveraged transaction would also have to consider the laws in the jurisdiction where the target company and its assets are located, as these may prohibit or restrict companies in the relevant jurisdictions from providing financial assistance in the form of security arrangements or guarantees for the acquisition financing. These

16 'Voluntary delisting offer: SGX Regco proposing shift of voting power to minorities' (10 November 2018): https://www.businesstimes.com.sg/companies-markets/voluntary-delisting-offer-sgx-regco-proposing-shift-of-voting-power-to-minorities.

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limitations may compel the PE sponsor to procure separate bank financing in a jurisdiction outside where the bidding vehicle is incorporated to provide the lenders with an appropriate security arrangement to support the credit assessment.

ii Fiduciary duties and liabilities

As a general rule, a PE sponsor is entitled to act in its own interest in its capacity as a shareholder. The exceptions to this general principle are circumstances where the sponsor's acts breach the provisions of the constitution (usually the minority protection provisions) or constitute minority oppression under Section 216 of the Companies Act. Section 216 of the Companies Act allows minorities to seek recourse in the courts where there is 'oppression' of a member; where a member's interests are 'disregarded'; or where there is a resolution or act that 'unfairly discriminates' against or is otherwise 'prejudicial' to a member. The common thread underlying Section 216 of the Companies Act is the element of unfairness and the court, in determining whether to grant relief under this provision, may take into consideration whether there was any disregard of the legitimate expectations of a member (which may arise otherwise than from the constitution). The court has wide powers under Section 216 of the Companies Act to remedy or put an end to the matters complained of.

The directors of a Singapore-incorporated company have fiduciary duties to act in the best interests of the company. If the company is listed on the SGX, its directors are also required to comply with the SGX Listing Rules, and with the principles and guidelines of the Code of Corporate Governance (the CG Code). The CG Code was revised in August 2018 and seeks to promote high levels of corporate governance in Singapore, as having good management practices will help to build investor and stakeholder confidence.[17] Companies are required to describe their corporate governance practices with reference to the revised CG Code and how they conform to its principles (see Section IV).

When a PE sponsor appoints representatives as officers of portfolio companies, it should remind its representatives not to gain an advantage for themselves or any other person, or to cause detriment to the companies by virtue of their position as an officer of the companies. Such representatives should also not neglect the interests of minority shareholders while discharging their duties towards their appointer, and be especially careful not to be seen to abuse their position regardless of whether they have obtained information from the portfolio companies.

Under the Companies Act, the board of directors is also permitted to allow the disclosure of company information, whether by general or specific mandate, subject to the overarching consideration that there should not be any prejudice caused to the company. Thus, a director of a portfolio company who is a representative of a PE sponsor should be careful to obtain the board's authorisation before he or she discloses the relevant information to the PE sponsor.

Where the portfolio company is listed on the SGX, the PE sponsor would be subject to the disclosure regime in the Securities and Futures Act (SFA) upon becoming a substantial shareholder of the company (i.e., upon acquiring 5 per cent or more of the voting rights of the company) and when there is any change in the percentage level in its substantial shareholding, and the disclosure must be in a form prescribed by the MAS. As the disclosure regime seeks

17 Code of Corporate Governance, 6 August 2018.

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to flush out the ultimate controllers of those voting rights, PE sponsors should note that their fund set-up (including layers of holding companies, general partners, investment managers and even the founders) may become public information.

Under Singapore's insider-trading laws, if a party is in possession of price-sensitive information (PSI) in relation to a company that is not generally available, that party is prohibited from trading (and from procuring another person to trade) in the company's securities. A contravention of these laws may give rise to both civil and criminal liabilities. PSI is essentially non-public confidential information that, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the company's securities (i.e., the information would or would be likely to influence parties that commonly invest in securities in deciding whether to trade or invest in the company's securities). Given this broad definition, it is difficult to exhaustively list the types of information that would be regarded as PSI for the purposes of insider trading laws. One obvious example would be a profit forecast or financial projections of the target company that have not been made known publicly. Thus, where a PE sponsor is conducting due diligence on a potential target company, it should be circumspect in requesting information and mindful not to obtain PSI, unless the target company is prepared to disclose that PSI in the public domain before the PE sponsor deals in the securities of the target company.

III YEAR IN REVIEW

i Recent deal activity

Singapore has maintained its status as the region's leading dealmaker, with transactions and deal values surpassing figures in Malaysia and Indonesia.[18] A list of high-profile M&A deals in Singapore in 2018 includes:

a Walmart's acquisition of a 77 per cent stake in Flipkart Pvt Ltd for US$16 billion;[19]
b merger of Viva Industrial Trust and ESR-Reit;[20]
c KKR's S$500 million investment in V3 Group Limited;[21]
d KKR's S$200 million investment in PropertyGuru;[22]

18 Duff & Phelps, Transaction Trail: Annual Issue 2018.

19 'Walmart acquires Flipkart for $16 billion in world's largest ecommerce deal' (10 May 2018): https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/walmart-acquires-flipkart-for-16-bn-worlds-largest-ecommerce-deal/articleshow/64095145.cms.

20 'ESR-Reit unitholders approve Viva Industrial Trust merger' (31 August 2018): https://www.businesstimes.com.sg/companies-markets/esr-reit-unitholders-approve-viva-industrial-trust-merger.

21 'V3 Group Limited Welcomes Investment from KKR' (4 December 2018): https://media.kkr.com/news-releases/news-release-details/v3-group-limited-welcomes-investment-kkr.

22 'PropertyGuru Doubles Down on Southeast Asia with S$200M Funding Round' (31 October 2018): https://media.kkr.com/news-releases/news-release-details/propertyguru-doubles-down-southeast-asia-s200m-funding-round.

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e Bain Capital Private Equity's acquisition of DSM Sinochem Pharmaceuticals for US$698 million; and[23]

f the privatisation of Tat Hong Holdings by Standard Chartered Private Equity and the family of chief executive Roland Ng for US$312.0 million.[24]

ii Financing

Financing structures – debt financing

Acquisition financing for PE transactions in Singapore continues to be achieved primarily by way of debt financing, with equity investment by management and investors and other forms of financing taking on a less prominent role. On balance, debt financing provides greater certainty of funding (primarily through the use of 'certain funds' provisions in debt financing agreements) and also a means for acquisition even where an acquirer does not possess sufficient funds or does not wish to pay the entire price out of its own funds up front. The certainty offered by debt financing is usually preferred in light of the requirement of confirmation of financial resources and (relatively limited) financing conditions in acquisition facility agreements (see below for further discussion of this requirement of confirmation of financial resources). The continued use of debt financing is also reflective of the continued liquidity and availability of funds from traditional lending sources. Therefore, despite the varied forms of financing available, debt financing nonetheless remains dominant in the acquisition financing space.

The typical debt-financing technique used by PE firms to finance an acquisition is the leveraged buyout. The debt is usually expected to be senior and secured by the assets of the target company and the target company's subsidiaries, and repayments of the debt are made by the target company through its own resources or future debt refinancing.

Given the involvement of the target company in the financing structure, financial assistance restrictions in Singapore present additional issues for leveraged buyouts and other financing arrangements that are secured by assets, or expected to be repaid from the cash flow, of the target company or its subsidiaries if the target company is, or remains, a public company or a subsidiary of a public company. These financial assistance restrictions and their continued application in certain situations are discussed further below.

Security

Financiers typically look to the assets of the target group in seeking to maximise its collateral pool. The scope of the security package is fundamentally premised on the availability of the target group's asset pool and the feasibility of taking security over those assets (bearing in mind the legal prohibitions and restrictions applicable to the relevant security providers and assets in question across each relevant jurisdiction, including financial assistance issues). Therefore, the feasibility and practicability of taking security over the target group's asset pool must be carefully considered, especially if the target group's assets are located across multiple

23 'U.S. Bain Capital nears deal to buy Singapore-based DSP for $696.1 mln' (2 July 2018): https://www.investsize.com/en/us-bain-capital-to-acquire-dutch-chemicals-firm-dsm--and--china%E2%80%99s-sinochem-kr.

24 'Tat Hong boss, StanChart PE intend to take crane supplier private with 50 cents per share offer' (12 January 2018): https://www.straitstimes.com/business/companies-markets/tat-hong-boss-stanchart-pe-intend-to-take-crane-supplier-private-with.

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jurisdictions (as issues of dealing with multiple local law requirements arise). Financiers may also require additional safeguards in the form of provision of corporate or individual guarantees or support arrangements from parties related to the acquirer.

Although financial assistance prohibitions in Singapore have been relaxed, security or guarantees from the target group are generally expected to be in place only after funding and completion of the acquisition, as the acquirer would typically not have control over the target group prior to that stage and financial assistance restrictions may (to the extent that the target company remains a public company or a subsidiary of a public company) still apply. As such, depending on the security matrix, clean-up periods may still feature in financing documentation, to allow time for the provision of security and guarantees by the target group. However, this timing has generally been shortened where the target is taken private or was already a private company such that financial assistance restrictions do not apply and where the acquirer has sufficient visibility over the target's assets to be able to appraise them prior to completion.

Where security or guarantees are expected to be provided shortly after the completion of the acquisition, the form of the security documents would also have been negotiated and, if possible, agreed prior to the completion of the acquisition. The feasibility of this approach would depend on the extent to which the acquirer has been able to appraise the assets of the target group and the restrictions (legal, contractual or otherwise) and encumbrances thereon. To the extent that such an appraisal is not practicable, the provision of security and guarantees by the target group must be assessed and clean-up periods adjusted accordingly. Where the target's assets cannot be perfected within a practical time frame (which may be the case if the assets are situated in multiple jurisdictions with differing legal systems), bridging guarantees or indemnities are sometimes sought from the sponsor to protect the financiers against any losses due to the non-perfection of security, with the guarantees or indemnities released once all security comprising the security package has been perfected.

Confirmation of financial resources and certain funds

In a transaction governed by the Take-over Code, the financial adviser to the acquirer is required to issue a confirmation of financial resources. Hence, in the context of debt financing (which is typically subject to an extensive list of conditions precedent), conditions precedent to the utilisation of any bridge loan used to finance an acquisition, and particularly a takeover offer, must be kept to a minimum to ensure certainty of funding (e.g., that funds are available, when required, to satisfy settlement of acceptances of the offer). Clauses or conditions that could constitute a draw-stop and allow the financier to walk away from its commitment may also not be feasible in these circumstances.

Financing structures – other financing methods

Several alternative types of financing structures that have been utilised in acquisition financing (involving a larger quantum) include the following.

Mezzanine debt and direct lending

Apart from senior debt that has typically formed the greater share of the entire debt package, the introduction of a mezzanine tranche is not uncommon and, if advanced, is typically provided by a financial institution or direct lending arms of funds. The mezzanine tranche may be subordinated in terms of priority of repayment and security, and may also be structurally subordinated to the senior tranche. In return, mezzanine lenders and direct lenders expect

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a higher margin and incentives via equity kickers such as options to subscribe for shares in the acquirer or offeror at prescribed points. Payment-in-kind tranches of mezzanine debt may also be adopted where interest is capitalised during the life of the facility, resulting in higher and more attractive returns to mezzanine lenders. Further, financial covenants in mezzanine debt may be more relaxed and, when employed in a debt package alongside senior debt, allow for breaches of senior debt financial covenants to be resolved in collaboration with senior lenders without unnecessary interference by the mezzanine tier.[25] The use of mezzanine tranches or mezzanine financing terms may be seen in acquisition deals where senior debt is not readily available from traditional lending sources or where the quantum of senior debt is insufficient for the purposes of the acquisition, hence necessitating further alternatives in financing structures.

Fund-level financing

A development in recent years has been the increased use of debt financing at the PE fund-level, primarily to complement the use of debt at the level of the portfolio company. Motivations that PE funds have for turning to debt financing at the PE fund-level include lower cost of debt (as lenders find greater comfort in multiple income streams and a diversified pool of collateral by virtue of taking security over the PE fund's multiple portfolio companies), the ability to draw on the debt facility quickly (as this obviates the need to arrange for debt facilities at the portfolio company level contemporaneously with the anticipated acquisition and circumvents the complex issues that may arise from the taking of security at the target level) and possible decreased transaction costs from arranging only one debt facility per PE fund (as opposed to target-level debt facilities being arranged each time an acquisition takes place).

A PE fund that wishes to take up fund-level financing can look to either net asset value (NAV) debt facilities or subscription debt facilities. While lenders of the former look downwards to the investments of the PE fund as the primary source of repayment, those of the latter look upwards to the unfunded capital commitments of the PE fund for assurance. A hybrid of both structures has also been explored, where the proportion of the borrowing base made up of unfunded capital commitments as against NAV changes over time; as capital commitments are called upon and the capital contributions are used to acquire investments, the NAV of those investments may potentially enhance the borrowing base. One consideration that may arise in a subscription debt facility is that of the confidentiality of the partners in the PE fund: if the fund is structured as a limited partnership, perfection of security over the unfunded capital commitments of the fund would, under Singapore law, require notices to be delivered to each limited partner and evidence of the delivery would invariably be required by the financiers. Therefore, where confidentiality is paramount, NAV debt facilities may be the more suitable option.

Bonds

In larger financing transactions, mezzanine debt may be replaced or refinanced by high-yield bonds. As the minimum size of a high-yield bond issue usually falls within the higher region to create sufficient liquidity within the issue, the use of this method of financing has been restricted to higher-valued buyouts. In the Singapore market, except for situations where

25 PLC, 'Mezzanine finance in leveraged transactions'.

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institutional acquirers or strategic investors utilise bond issuances as a method to raise financing to fund acquisition war chests, bond issuances have also been used in the context of going-private transactions where the target company is known in the market and has existing bond issuances or other debt that has to be refinanced, whether as a result of maturity or as a result of change-of-control triggers.

Bond issuances have not been as prevalent for the purposes of funding the actual acquisition and purchase consideration because of the fluctuating and changing nature of the bond market (which may be insufficient to satisfy certainty of funding requirements) and are commonly utilised as a post-acquisition or refinancing option. However, where the market is favourable, bond issuances, which are traditionally less restrictive than debt financing, have been seen as a viable alternative.

Composite financing structures

In recent years, certain take-private deals involving a larger quantum of acquisition debt have been structured with a composite of various financing sources, coupled with the flexibility to incur additional debt that may then be brought within the existing acquisition financing structure. A typical composite structure involves a senior facility coupled with either one or more other facilities (mezzanine or otherwise), bond issuances and the ability to either increase borrowing limits or bring new facilities into the existing structure. In such structures, security sharing, subordination and intercreditor terms are pertinent issues that form the subject of fairly involved negotiations. As a practical measure, the target group's existing financiers may also be invited to participate in the composite structure to, among other things, manage the risk of those existing lenders triggering prepayment or default provisions as a result of the acquisition.

Financial assistance

Financial assistance restrictions continue to apply to, and remain live and key issues in, acquisition deals involving public companies and their subsidiaries, despite the relaxation of the restrictions on private companies (that are not subsidiaries of a public company) in 2015. The relaxation has eased debt pushdowns and the provision of security by targets and their subsidiaries that are successfully taken private after completion of the acquisition, as private companies (and companies that are taken private) no longer have to undergo whitewash procedures to provide such financial assistance. As such, traditional challenges in structuring deals for PE investors, such as processing time and cost, may be addressed to some extent.

With the abolishment, financiers have endeavoured to obtain security and guarantees at the target level promptly upon the completion of the acquisition or within shorter clean-up periods. This, however, remains restricted to deals where the target company is a private company (which is not a subsidiary of a public company) and is subject to the acquirer's appraisal of the target group's assets.

Another whitewash procedure was also introduced to allow a public company or its subsidiary to provide what would otherwise be unlawful financial assistance. Section 76(9BA) of the Companies Act was introduced as part of the 2015 amendments to the Companies Act as an alternative to the existing conventional whitewash procedures, which are subject to cumbersome limitations such as the imposition of personal liability for solvency statements, extended timelines and shareholder approval. Adapted from Section 260A(1)(a) of the Australian Corporations Act 2001, Section 76(9BA) of the Companies Act allows financial assistance to be provided if, among other requirements, the following are fulfilled:

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a the provision of financial assistance does not materially prejudice the company's or its shareholders' interest, or the company's ability to pay its creditors; and
b the company's board of directors resolve that the company should provide financial assistance and that the terms for doing so are fair and reasonable to the company.

Singapore case law has yet to provide definitive guidance on when PE investors and their financiers may rely on this exception, especially in the context of leveraged buyouts where the issue of financial assistance is most pertinent, but, given the origins of Section 76(9BA), Australian case law is instructive.

It has been suggested (in line with the approach taken by some Australian authorities) that the target company must be prepared to show an absence of material prejudice if it wishes to provide financial assistance to the acquirer.[26] Whether or not financial assistance is given depends on where the net balance of the financial advantage lies, as determined on an assessment of all its interlocking elements.[27] The elements of 'financial assistance' and 'material prejudice' are thus linked:[28] financial assistance to the acquirer is effected by transferring net value to the acquirer, which may (as suggested by Australian authorities) *ipso facto* be prejudicial to the company whose shares are being acquired, its shareholders or its creditors. That said, Australian authorities suggest that the following non-exhaustive assessments may be taken into consideration in determining the question of whether material prejudice exists:

a a qualitative assessment of the impact of the transaction, taking into account:
- the purpose of the transaction; and
- the nature of the transaction, in particular, whether it involves any actual or contingent depletion of the company's assets;

b a quantitative assessment (based on the company's financial statements, etc.) of the impact of the transaction on the company's assets, future profitability, future cash flow and balance sheet;
c the opinion of the directors or any independent experts on the impact of the transaction; and
d the financial consequences of the transaction on the interests of the company, its shareholders or its creditors.

The disjunctive reference in the statutory provision to 'the company or its shareholders' necessarily involves a consideration of the company's position independent of that of the shareholders, but in scenarios where the interests of the company and its shareholders are not aligned, Australian case law suggests that little heed is paid to the interests of the shareholders when determining if material prejudice exists. That said, shareholder interest is not completely ignored; dicta from a more recent Australian case suggests that a dilution of shareholder equity would constitute material prejudice to shareholders even if the company's

26 *Slea Pty Ltd v. Connective Services Pty Ltd* [2018] VSCA 180 at [72].

27 *Charterhouse Investment Trust Ltd v. Tempest Diesels Ltd* [1986] BCLC 1, 10; followed in *Intraco Limited v. Multi-Pak Singapore Pte Ltd* [1994] SGCA 143; *Slea Pty Ltd v. Connective Services Pty Ltd* [2018] VSCA 180.

28 *Kinarra Pty Ltd and Another v. On Q Group Ltd* (2008) 216 FLR 89 at [28].

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assets remain unchanged. As for creditors' interests, it is suggested that a likelihood that the company's ability to pay its creditors will be reduced, even if the company remains solvent, would be materially prejudicial.

Given the state of flux in the law in this respect, it bears mentioning that some Australian banks have refused to lend on the basis of the no-material-prejudice exception other than in very limited circumstances. While the no-material-prejudice whitewash method has been used in Singapore since its introduction, it remains to be seen whether this regime will gain traction or whether target companies will still seek to utilise the conventional whitewash methods for the purposes of the provision of security and the incurrence of debt in relation to its acquisition, pending greater clarity and guidance on the applicability of the new whitewash method.

Exit strategies in the financing context

Recent years have seen PE investors holding on to acquisitions for a longer period and financing strategies, options and terms have generally evolved in line with the longer exit strategies. In particular, given the restrictive terms of debt financing, there has been a greater volume of amend-and-extend transactions for existing debt facilities and refinancing of debt facilities with less restrictive financing options such as bond issuances.[29]

This greater volume could also be a result of the impending maturity of existing debt financings consummated during the spate of acquisitions in the early part of this decade. Debt financing terms that have seen increasing scrutiny and amendments include extension of maturity dates, pricing, financial covenants and prepayment events. These are usually renegotiated should more time be needed before exiting the investment, to allow the PE investor to achieve a partial exit or return from the investment or, in the case where the target group has or intends to tap the bond market, to bring the debt financing terms in line with the bond terms (which are generally more favourable) as much as possible.

iii Key terms of recent control transactions

As more countries develop their own merger control regime and with potential targets having globalised businesses, antitrust and merger control issues are usually one of the first few important issues that PE investors have to consider when assessing the viability of a take-private transaction. The merger control analysis is heavily dependent on access to the target's data and a lengthy merger control review can present significant delays for the transaction timeline and challenges for certainty of transaction. Because of the potentially lengthy process of merger control filings, takeovers of listed companies have to be structured as an SOA or a pre-conditional general offer (where a formal offer is made only upon fulfilment or waiver of certain pre-conditions). A long execution period will in turn translate into higher financing cost because financial resources confirmation has to be provided at the time of announcement of the SOA and pre-conditional general offer (though this is not strictly required under the Takeover Code).

Another increasingly common issue is whether the transaction is subject to approval from Committee on Foreign Investment in the United States (CFIUS), an arm of the US government that reviews certain corporate transactions to determine if the transaction

29 Ernst & Young, 'Credit Markets 2015–16': www.ey.com/Publication/vwLUAssets/EY-Credit-Markets-2015-2016/%24FILE/EY-Credit-Markets-2015-2016.pdf.

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results in 'control' of a US business by a non-US entity and whether the transaction raises national security concerns. Though filing with CFIUS is a voluntary regime, CFIUS may unilaterally initiate a review of a transaction even after it has closed. If a contemplated transaction falls within CFIUS's review jurisdiction, parties would have to weigh the costs and benefits of filing a voluntary notice with CFIUS versus not filing one. The former approach results in higher costs and delays but achieves the certainty that the transaction will be free from future CFIUS interference while the latter avoids the costs and delay but faces the risk that if CFIUS initiates a review in the future, the transaction may be blocked or that a consummated transaction be unwound.

In making an exit, a PE sponsor that is seeking to exit in line with its investment time frame would be likely to prioritise certainty of closing. If the sale is conducted by way of an auction, a bidder that is able to commit to a 'sign and close' would be expected to be a front runner in the process. In these circumstances, the only closing conditions that are likely to be acceptable would be those related to regulatory approvals (e.g., merger control) that are truly essential, and even then, only when it is fairly certain that the approvals would be forthcoming.

If a takeover offer is for a publicly listed company in Singapore, the offeror may decide to revise the offer price to encourage more acceptances especially if the independent financial adviser of the target company has opined that the offer price is not fair. Besides that, the offer price may also be adjusted for dividends declared or paid during the offer period. Post-completion audits and consequential purchase-price adjustments are more common in the sale of private companies, especially where there is a reasonable time gap between the evaluation of the deal consideration (which may be earlier than the date of signing of the purchase agreement) and completion of the transaction. A PE sponsor that is seeking to exit its investment and return the proceeds to its investors would be concerned about the certainty and finality of closing; it may not be too keen on post-completion purchase price adjustments, and thus may prefer a 'locked-box' approach to the purchase price. However, it may not be able to insist on such a preference if the purchaser is also in a fairly equal bargaining position, and this should not be a deal-breaking issue, especially if there is a potential upside adjustment for the PE sponsor (for instance, where the performance of the company is seasonal and the period in respect of which post-completion audit takes place falls during the months when the target company traditionally performs better).

IV REGULATORY DEVELOPMENTS

Generally, the oversight of regulatory bodies such as the SIC and the SGX is relevant when the target company is listed on the SGX. The MAS is also relevant with regard to the regulation of fund management companies.

i Securities and Futures (Amendment) Act 2017

The Securities and Futures (Amendment) Act 2017 (SF(A)A) passed by the Parliament of Singapore on 9 January 2017 introduced major changes to the Singapore capital markets regulatory framework to keep pace with market developments and to align with international

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standards and best practices. Most of the amendments in the SF(A)A came into effect in October 2018. Some of the key amendments to the SFA that are more relevant to M&A activities include the following:

a The clarification that the prohibition in Section 199 of the SFA (in relation to the making of statements or dissemination of information that is false or misleading in a material particular manner) applies regardless of the effect on price. This allows the MAS to take enforcement action against a material false or misleading disclosure that may wrongly influence persons to trade in the market, whether or not it has a significant price effect.

b The introduction of a statutory definition of 'persons who commonly invest' (as referred to in Sections 215(b)(i) and 216 of the SFA) that will be used as the reference point in insider trading cases to assess whether a particular piece of information is generally available and is likely to have a material price impact by influencing the behaviour of common investors. The new statutory definition will strengthen the MAS's ability to pursue insider trading cases without having to meet an unrealistically high standard for persons who commonly invest, and the MAS will issue guidelines on the interpretation of the statutory definition.

It is important that parties to an M&A transaction are well aware of Singapore's insider-trading and market misconduct laws, given the potential civil and criminal liabilities that may follow a breach of these laws.

ii SGX – Dual-class shares structure

The SGX joined New York Stock Exchange and Nasdaq Stock Market, and more recently, the Hong Kong Stock Exchange, in permitting the listing of companies with dual-class shares (DCS) structures. This puts Singapore in a position to help support high-growth companies and battle for blockbuster listings.[30] The DCS structure as contained in the SGX Listing Rules refers to a share structure of an issuer that gives certain shareholders voting rights disproportionate to their shareholding. Shares in one class carry one vote (OV shares), while shares in another class carry multiple votes (MV shares). MV shares are typically held by the company's founders and their families, or other key executives, empowering them with voting control without the corresponding financial investment risk,[31] and have been embraced by companies such as Facebook, LinkedIn and high-value tech start-ups known as 'unicorns',[32] to protect their founders' influence after an IPO. To guard against the risk of potential abuse of MV shares by company insiders, certain safeguards have been put in place, such as capping each MV share at 10 votes and limiting the holders of MV shares to named individuals or permitted holder groups whose scope must be specified at the time of the IPO, with

30 'Singapore details rules for listing of dual-class shares' (26 June 2018): https://www.channelnewsasia.com/news/business/singapore-exchange-rules-listing-dual-class-shares-10471876.

31 'SGX introduces Primary Listing Framework for Dual Class Share Structures' (July 2018): https://www.wongpartnership.com/index.php/files/download/2838/20180706_legiswatch-sgx-introduces-primary-listing-framework-for-dual-class-share-structures.pdf.

32 See footnote 30.

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'sunset' clauses that require mandatory automatic conversion of MV shares to OV shares; and requiring an enhanced voting process where all shares, including MV shares, carry one vote each for certain corporate actions.[33]

iii SGX – Voluntary delisting

Singapore witnessed unprecedented shareholder activism when minority shareholders objected to a voluntary delisting of a target company because the exit offer price was deemed too low but they were nonetheless unable to prevent the voluntary delisting resolution (VDR) from being passed as the controlling shareholders of the company were not precluded from voting on the VDR. This prompted SGX to seek public feedback on proposals to enhance the voluntary delisting regime. In its consultation paper,[34] the SGX proposed changes to two key aspects of a voluntary delisting, namely the VDR and the exit offer. The current SGX Listing Rules provide that a VDR must be approved by a majority of at least 75 per cent and must not be voted against by 10 per cent or more of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting at the meeting. The company's directors and controlling shareholders need not abstain from voting on the VDR. In addition, an exit offer must be reasonable and should normally be in cash. To strike a balance between ensuring that minority shareholders are not unduly prejudiced and the power accorded to minority shareholders is not unduly disproportionate, it is proposed that the existing approval threshold for a VDR be reduced from 75 per cent to a simple majority of 50 per cent, and to remove the 10 per cent threshold, and that an offeror and its concert parties must abstain from voting on the VDR. The SGX has proposed enhancing the exit offer requirements such that the exit offer must not merely be reasonable, but must also be fair. It is also proposed to codify the existing practice that the exit offer must include a cash offer as the default consideration. The new proposals, if adopted, will make voluntary delisting coupled with exit offer a less attractive option for a PE sponsor acting in concert with the existing controlling shareholders of the company to privatise the company. An issue on which the SGX must provide more clarity is a situation where the offeror is unable to exercise any right of compulsory acquisition following a general offer and the free float of the target company is lost, which results in suspension of trading in the shares of the target company. If the SGX does not permit the target company to be delisted in such a situation and the free float is not restored, the offeror and the target company will be left in limbo.

iv Code of Corporate Governance

In August 2018, the MAS announced the adoption of a new CG Code along with a new Practice Guidance, and consequential amendments were also made to the SGX Listing Rules. The revised CG Code comprises principles (which are overarching and non-disputable statements that embody the fundamentals of good corporate governance with which companies must comply) and provisions (which are actionable steps to guide companies in complying with the substance of the principles). Compliance with the principles is made compulsory under the amended SGX Listing Rules, while variations from the provisions

33 Ibid.

34 SGX, 'Proposed Amendments to Voluntary Delisting Regime' (9 November 2018): https://api2.sgx.com/sites/default/files/2018-11/Consultation%20Paper%20-%20Proposed%20Amendments%20to%20Voluntary%20Delisting%20Regime.pdf.

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are acceptable to the extent that companies explicitly state and explain how their practices are consistent with the intent of the relevant principle. Some of the key changes are that the re-appointment of independent directors who have served beyond nine years will be subject to a two-tier vote to be approved by the majority of (1) all shareholders; and (2) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates); a majority of the board (instead of 'at least half' as previously) should comprise independent directors where the chairman is not independent; non-executive directors must make up a majority of the board. Certain core corporate governance practices stipulated in the revised CG Code are also contained in the SGX Listing Rules, rendering compliance with these requirements mandatory.

v New structure for funds – Singapore variable capital companies

In a bid to strengthen Singapore's position as an Asian hub for fund domiciliation and management, MAS introduced a new corporate structure for investment funds, the Singapore Variable Capital Company (S-VCC), following public consultation in March 2017. The Variable Companies Bill (2018) was approved by the Singapore Parliament in late 2018 and is expected to come into force sometime in 2019.

The new S-VCC legislative framework provides for the establishment of a S-VCC as a stand-alone structure, or an umbrella structure with multiple sub-funds that may have different investment objectives and investors, as well as assets and liabilities. The umbrella structure creates economies of scale, as sub-funds can share a board of directors and have common service providers, such as the same fund manager, custodian, auditor and administrative agent. Certain administrative functions, for instance the holding of general meetings and preparation of prospectuses, can also be consolidated. While sub-funds have their own set of investors, they do not have separate legal personalities.[35] To address the risk that the assets and liabilities of one sub-fund could be commingled with those of another sub-fund, assets and liabilities of each sub-fund are to be segregated, such that the assets of one sub-fund may not be used to discharge the liabilities of another sub-fund, or of the umbrella fund, including in the event of insolvency.[36] This would allow sub-funds under the same S-VCC to pursue differing investment objectives while ensuring that investors in each sub-fund are shielded from liabilities in respect of other sub-funds. S-VCCs would also be able to avail themselves of Singapore's competitive tax regime.

V OUTLOOK

In its effort to position Singapore as the leading enterprise and infrastructure financing hub in the region, the MAS announced in late 2018 certain initiatives to enhance the private markets financing channels, including a programme to place up to US$5 billion for management with PE and infrastructure fund managers. The US$5 billion private markets programme

35 '"Variable Capital Companies Bill (2018)" – Second Reading Speech by Ms Indranee Rajah, Second Minister for Finance, on 1 October 2018)' (1 October 2018): http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2018/Variable-Capital-Companies-Bill-2018.aspx.

36 'MAS introduces new corporate structure to enhance fund ecosystem in Singapore' (10 September 2018): http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-introduces-new-corporate-structure-to-enhance-fund-ecosystem-in-Singapore.aspx.

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will enhance Singapore's private markets ecosystem and strengthen the value proposition of Singapore's asset management industry as a gateway for investors to tap the region's growth opportunities.[37] One other significant development in 2018 was the launch of the Venture Capital Investment Model Agreements (VIMA), a set of standardised and easily accessible documents that investors and enterprises can use and adapt. The VIMA was intended to reduce transaction cost and friction in the negotiation process, and was jointly developed by various key industry participants, including Temasek and the authors' firm.[38]

In the macroeconomic setting, the threat of an escalating trade war between the United States and China creates uncertainty for M&A activity in the coming year. However, there is optimism expressed by certain groups of investors. Private equity firms such as KKR see a multitude of opportunities both because and in spite of the ongoing trade war.[39] It believes that this situation will accelerate China's shift away from being an export economy dependent on global trade towards becoming a more self-reliant consumer services economy – a shift that is gaining prominence, particularly within Asia.[40] South East Asian countries that offer cheap blue-collar manufacturing labour, such as Vietnam, Indonesia and Thailand, will be the biggest beneficiaries as manufacturers shift out of China, as part of efforts to keep costs low. This shift will also help to drive the development of local automotive, information and communications technology, and apparel sectors in South and South East Asia, bringing in more advanced equipment and technical expertise.[41] Moreover, the recently agreed Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which Malaysia, Singapore and Vietnam are part of, represents the latest iteration of this trend.[42]

However, for a majority of the countries involved, the impact of these changes will not be felt overnight and it is likely to take at least two to three years for the effects of the US–China trade war to be fully realised.[43] Moving into 2019, Asia's M&A activity will continue to grow, with most Asia-Pacific, or APAC, emerging economies better insulated against hikes by the US Federal Reserve than in the past but remaining vulnerable to US protectionist trade policies.[44] While Singapore will not be spared from the headwinds facing the global economy, the level of M&A activity is likely to be sustained by virtue of its unique position as a hub for investment into the South East Asia region. The future of Singapore's economy will depend very much on the success of the government in pushing through economic reforms and the population's ability to embrace innovation and digitisation, and to reinvent themselves to meet the ever-changing demands of the job market.

37 'MAS to place up to US$5 billion with private equity and infrastructure fund managers' (13 November 2018): http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-to-place-up-to-US5-billion-with-private-equity-and-infrastructure-fund-managers.aspx.

38 Venture Capital Investment Model Agreements: https://www.singaporelawwatch.sg/About-Singapore-Law/VC-Investment-Model-Agreements.

39 'Private equity giant KKR sees "significant" opportunity for "outsized" returns in China amid trade war' (9 August 2018): https://www.cnbc.com/2018/08/09/private-equity-giant-kkr-outsized-returns-in-china-off-trade-war.html.

40 Ibid.

41 The Economist Intelligence Unit, 'Creative disruption: Asia's winners in the US-China trade war', 1 November 2018.

42 Ibid.

43 Ibid.

44 Baker Mckenzie and Oxford Economics, 'Global Transactions Forecast 2019: Dealing with the uncertainty'.

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Appendix 1

ABOUT THE AUTHORS

ANDREW ANG

WongPartnership LLP

Andrew Ang is the head of the firm's corporate and M&A practice, and is a partner in the private equity practice.

His main practice areas are local and cross-border M&A, corporate restructurings, joint ventures, privatisations and private equity investments.

Andrew has been involved in high-profile private equity transactions, having acted for Dymon Asia Private Equity (SE Asia) Fund II Pte Ltd in relation to its investment in Meiban Corporation, a leading injection moulding company, Nesta Investment Holdings Limited (which is controlled by a consortium comprising HOPU, Hillhouse Capital, BOCGI, Vanke and the CEO of Global Logistic Properties Limited) in the acquisition of Global Logistic Properties Limited by way of a scheme of arrangement.

He also advised ESR Funds Management (S) Limited (the manager of ESR-Reit) in the proposed merger with Viva Industrial Trust by way of a trust scheme of arrangement. The merger will create Singapore's fourth-largest industrial REIT, with approximately S$3 billion in assets.

Andrew graduated from the University of Nottingham and is admitted as a barrister-at-law (Gray's Inn) and to the Singapore Bar.

Andrew is recognised as a leading corporate and M&A lawyer in *Chambers Global*, *Chambers Asia-Pacific*, *IFLR1000*, *The Legal 500*, *Asialaw Profiles* and *Asialaw Leading Lawyers* as a leading Singapore practitioner in the area of corporate and M&A law.

Andrew was recognised as the *Best Lawyer*s 'Lawyer of the Year' for private equity law in Singapore in 2018 and is endorsed for both corporate and M&A, and for private equity.

CHRISTY LIM

WongPartnership LLP

Christy Lim is a partner in the firm's banking and finance practice.

Her main practice areas are banking and finance, syndicated loans and cross-border financing transactions, with a strong focus in acquisition financing involving takeover offers, schemes of arrangement, delisting proposals and exit offers.

She has been recognised as a leading lawyer in the banking and finance arena by *Chambers Global* and *Chambers Asia-Pacific* since 2009. In the Chambers publications, she is recommended for being 'sharp and articulate' and her 'effective negotiating style' has earned her 'particular plaudits'. She is also praised for her 'skills and proficiency' and commended

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as 'someone you would always want to have on your side' and as someone 'whose strong grasp of securities, acquisitions and debt restructurings makes her a lawyer of choice for a number of major private equity houses and investment banks', with an ability to 'highlight key commercial points for clients'. Known for her ability to 'handle the counsel on the other side very well, so that a reasonable outcome can be struck', she has earned praise for her ability to 'breeze through otherwise lengthy negotiations and appreciate commercial realities on transactions'.

Appreciative clients have also commended her as a practitioner who is able to 'come to an agreement with the other side of the table to effectively resolve issues without compromising our position', and they have asserted that they 'would recommend her' and declared her to be a 'very tough lawyer'.

Christy Lim is also identified as a leading practitioner in various other publications: *IFLR1000* for financial and corporate law; *The Legal 500 Asia Pacific*; *Asialaw Profiles*, the guide to Asia-Pacific's leading law firms; *Who's Who Legal: Banking*; and *Best Lawyers*.

She graduated from the National University of Singapore and is admitted to the Singapore Bar.

QUAK FI LING

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Quak Fi Ling is a partner in the firm's corporate and M&A practice and private equity practice. Her main practice areas are public and private M&A, private equity investments and corporate and commercial transactions.

Fi Ling has acted for private equity firms in both public and private M&A transactions. Her recent public M&A transactions include acting for a consortium comprising HOPU, Hillhouse Capital, BOCGI, Vanke and the CEO of Global Logistic Properties Limited (GLP) in the privatisation of GLP; and advising Baring Private Equity Asia in the sale of its stake in Courts Asia Limited. The GLP acquisition deal was awarded 'Deal of the Year' and 'Best Leveraged Finance Deal' at *FinanceAsia*'s 2017 Achievement Awards, 'M&A Deal of the Year: Southeast Asia' at *The Asian Lawyer*'s 2018 Asia Legal Awards, and 'M&A Deal of the Year (Premium)' at the *Asian Legal Business* 2018 SE Asia Law Awards.

In the private M&A space, Fi Ling has acted as Singapore counsel to Bain Capital Private Equity in the acquisition of DSM Sinochem Pharmaceuticals (a joint venture between Dutch chemicals firm Royal DSM NV and China's Sinochem Group); and to a Canadian pension fund in its acquisition, from an Alpha Investment Partners managed entity, of Cape Investments II Pte Ltd, which owns the commercial property located at 78 Shenton Way, Singapore.

Fi Ling is recognised as a recommended lawyer in the area of corporate and M&A by *The Legal 500 Asia Pacific*, in which she has been described as 'commercial and calm under pressure', and she is recommended as a notable practitioner in M&A and private equity by *IFLR1000*.

Fi Ling graduated from the National University of Singapore and is admitted to the Singapore Bar.

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