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PARTNERS BEYOND BOUNDARIES

Singapore Code on M&A Transactions

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A. Fundamental rules/laws and regulatory authorities relevant to M&A

The following are the key rules and regulations related to M&A in Singapore, as well as the regulatory authorities responsible for enforcing them-

- Companies Act 1967 of Singapore (Companies Act)
- Insolvency, Restructuring, and Dissolution Act 2018 of Singapore (IRDA)
- Securities and Futures Act 2001 of Singapore (SFA)
- Singapore Code on Take-overs & Mergers (Take-over Code)
- Competition Act 2004 of Singapore (Competition Act)

B. The steps an acquirer of a target company can take to guarantee deal exclusivity

In private mergers and acquisitions, parties are generally free to agree to any deal protection measures they deem appropriate. Break fee arrangements and exclusivity agreements are examples of these agreements. However, a break fee arrangement in a Singapore private M&A transaction is relatively uncommon.

Public M&A transactions involving a target company subject to the Take-over Code are governed by specific rules governing break fee arrangements. Break fees should be minimal, usually not more than 1% of the offer price divided by the target company's value. It is also required under the Take-over Code that the target company's board of directors and its independent financial adviser provide the Securities Industry Council (SIC) with certain written confirmations, such as confirming (i) that the break fee arrangements were agreed to as a result of normal commercial negotiations and (ii) that the board of the target company and the IFA each believe that such arrangements are in the best interest of the shareholders of the target company of the target company believe that such arrangements are in their best interest. The Board of the target company and the IFA must also provide a description of the basis (including appropriateness) and the circumstances under which the break fee becomes payable. Also, the offer announcement and offer document must fully disclose the break fee arrangement. Any proposal for a break fee or similar arrangement should be discussed with the SIC as soon as possible.

C. How are private companies, businesses, and assets acquired and disposed of in the jurisdiction?

In most cases, parties involved in acquiring shares or assets of a privately held company enter into a sale and purchase agreement. It is also possible to structure acquisitions as put-and-call arrangements, but these are less frequent.

A 'contractual offer' can also be used to acquire privately owned companies, although it is rare. There are three options for structuring the acquisition of privately held companies: a minority squeeze-out (under section 215 of the Companies Act 1967), a scheme of arrangement under section 210, or a statutory amalgamation procedure.

Transaction processes vary depending on the transaction structure (including restructuring prior to completion), the complexity of the issues, the type of business the target operates, the number of parties involved, and whether they involve bilateral negotiations or auction sales.

An acquisition transaction typically involves the parties entering a confidentiality or non-disclosure agreement.

During the preliminary negotiation phase of bilateral acquisition deals, the parties often enter into a preliminary arrangement (for instance, a head of agreement, a term sheet, a memorandum of understanding, or a letter of intent). The parties' understandings and principal commercial terms will be outlined in a preliminary agreement often titled 'subject to contract.' A preliminary arrangement is usually followed by due diligence (typically legal, financial, tax, and accounting due diligence), followed by the drafting, negotiation, and execution of the definitive transaction documents (such as the sale and purchase agreement, the disclosure letter, and, where applicable, the shareholders' agreement).

Acquisitions take time depending on factors such as the target company's size or international presence, as well as the complexity of the deal. For example, it usually takes three to six months for an acquisition to close, and it may take longer when multijurisdictional regulatory approvals are required, such as antitrust clearances. In addition, it may take longer to complete a bilateral acquisition transaction since there is no controlled and competitive process (unlike a formal auction sale process).

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