Healthcare M&A
2019

Contributing editors
Warren Taylor, Philippa Chatterton and Charlotte Beston

LEXOLOGY®
Getting The Deal Through

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Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

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CMS

Lexology Getting The Deal Through is delighted to publish the first edition of *Healthcare M&A*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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Erwan Barre and Richard Tan
RHTLaw Taylor Wessing LLP

TRANSACTIONAL ISSUES

Structures

1 What is the typical structure of a healthcare-related business combination in your jurisdiction?

In Singapore, healthcare-related business combinations are generally structured as either a sale and purchase of shares in a target company (share sale) or the sale and purchase of business and assets (business sale). Aside from the two key methods of business combinations, an investment by a venture capital in one or a series of funding in a healthcare-related business may effectively result in a business combination. Statutory mergers are not used to implement acquisitions in Singapore. The discussion below will focus on the two key methods of business combinations – share sale and business sale.

In a share sale, the purchaser acquires the shares in the target company such that the target company will become a subsidiary of the purchaser post-completion. The primary benefit is that it is relatively straightforward and procedurally less cumbersome as the purchaser will not be required to specifically transfer each of the assets and liabilities of the target company. In public companies, a share sale may also be carried out by way of a scheme of arrangement pursuant to section 210 of the Companies Act (Chapter 50) (Companies Act). A scheme must be approved by a majority of the members representing three-fourths in value of that class who are present and voting at such meeting and once the approval has been obtained, the court must sanction the scheme before it becomes effective.

A share sale will not be feasible if the target is not a company limited by shares. Public hospitals and healthcare institutes in Singapore are often incorporated as companies limited by guarantees or non-profit societies. In these cases, a business combination would be carried out by way of a business sale.

In a business sale, the purchaser will be able to deliberately avoid undertaking unknown business liabilities that belong to the target company. To effect a business sale, the purchaser will need to ensure that there is proper passing of title of each asset from the target company to the purchaser by way of different conveyances, assignments or novation.

Timeline

2 How long do healthcare business combinations usually take, and what factors tend to be most significant in determining the timing to completion?

A healthcare combination may take anywhere between six and 18 months to complete. The timeline varies depending on the complexity of the transaction, the main factors influencing the transaction timeline including the (i) requirement to obtain regulators' consents; (ii) requirement to obtain third parties' consents; (iii) requirement to obtain shareholders' consent where applicable; and (iv) requirement to consult with the Competition Commission of Singapore (CCS) where there is a competition concern.

In a hypothetical scenario where a private hospital is selling its healthcare business and assets to a third-party purchaser by way of a business sale, the acquisition is likely to require:

- the purchaser to obtain a licence issued under the Private Hospital and Medical Clinics Act (Chapter 248) (PHMCA);
- landlord's consent for the novation of the lease agreement; and
- shareholders' approval pursuant to section 160 of the Companies Act approving the sale of all or substantially all the company's undertaking and property.

Representations and warranties

3 What are the typical representations and warranties made by a seller in healthcare business combinations? What areas would be covered in more detail compared with a more general business combination?

Given that the healthcare industry is a heavily regulated industry, a common representation and warranty is that the seller has been conducting the business in compliance with all applicable laws and regulations and that it holds all requisite licences and permits in relation to its healthcare business.

In the pharmaceutical and biotechnology industry, it is critical to ensure that the definitive agreements include representations and warranties relating to the intellectual property rights of the target company.

Representations and warranties also include in prominent part a full disclosure of the material contracts of the target company, which are increasingly important in healthcare transactions, such as: research collaboration agreements, distribution agreements, joint-venture agreements, licensing agreements, etc.

Another prevalent representation and warranty in healthcare business combinations, regardless of whether it relates to a hospital, clinic, elder care, pharmaceutical company or biotechnology company, is for the seller to represent and warrant that there are no material litigation against the target company.

Due diligence

4 Describe the legal due diligence required in healthcare business combinations. What specialists are typically involved? What searches would typically be carried out?

A key area a purchaser would examine during a legal due diligence exercise is the target's compliance with relevant laws and regulations. The healthcare sector being heavily regulated, the legal due diligence seeks to identify all necessary licences and permits for the conduct of the target's business to ensure that following the acquisition, the continuing

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entity will be able to operate its business in compliance with all necessary licences and permits.

Whenever the target company implements an innovative business model (telemedicine, digital health...), due diligence includes an assessment of regulatory trends, including in particular when the target participates in the Singapore regulatory sandbox initiative.

Specifically for healthcare business combinations involving pharmaceutical or medtech companies, the legal due diligence often places great emphasis on the examination of the intellectual property rights and the product's regulatory approvals on its key markets.

Risk exposure

5 | If due diligence is not correctly undertaken, what specific healthcare risks might buyers inherit?

In both a share sale and a business sale, a key risk is that the purchaser (or the target in a share sale) does not own the assets (including intellectual property) that it should or that it does not have all the regulatory approvals to operate the business.

In addition, risks that a purchaser may be exposed to include medical negligence, intellectual property rights infringement and product liabilities. For example, a public hospital in Singapore was recently sued for medical negligence for failing to have in place a proper system to ensure adequate follow-up of a cancer patient's case, resulting in a delay in diagnosing her with lung cancer. Similarly, a Singapore importer and distributor of a China-manufactured slimming drug has been sued by a consumer who had suffered liver failure from consumption of the drug.

Specific diligence issues

6 | How do buyers typically approach specific material diligence issues in healthcare business combinations?

Provisions must be drafted into the definitive agreements to address the specific material due diligence issues highlighted during the due diligence exercise. Typically, these risks are addressed in the representations and warranties, conditions to closing and specific indemnifications.

However, given that indemnification caps typically represent a low percentage of the purchase price, due diligence is always a key aspect of healthcare business combinations.

Conditions before completion

7 | What types of pre-closing conditions are most common in healthcare business combinations?

Pre-closing conditions are highly dependent on the transaction in question and are often heavily negotiated, given that the failure to meet the conditions precedent would typically allow the purchaser to abort the acquisition and is a major execution risk for the seller.

In healthcare business combinations, common and non-controversial pre-closing conditions include the requirement to obtain necessary regulatory or governmental approvals and third-party consents. In a business sale, third-party consent would typically include consent from the key business partners to novate their respective agreements or consent of the landlord to novate the lease agreement; whereas in a share sale, third-party consent would typically include consent of counterparties of contracts with change of control provisions disallowing transfer of shares without their permission (eg, lending banks and key business partners).

Specifically for healthcare combinations relating to hospitals or clinics, a pre-closing condition is often that the doctors and key management executives sign an employment or service agreement setting out clear terms on their respective duration of service, incentives and termination rights. Hospitals and clinics are dependent upon the availability of qualified human resources, and ensuring their key management stays on to operate the business is often essential for their business continuity post-completion.

Another usual pre-closing condition is the absence of a material adverse change in the financial condition or the business of the target until closing. For instance, there should be no changes in the statutes or regulations that will materially affect the operation of the healthcare business.

Pre-closing covenants

8 | What sector-specific covenants are usually included to cover the period between agreement and completion in healthcare business combinations?

Where there is a time gap between the signing of the agreement and the completion of the healthcare business combination, the purchaser often negotiates for covenants requiring the target company to carry on the ordinary and usual course of its business.

In addition, healthcare transactions often include covenants to amend the leases of the premises of the business to ensure their continuing validity and effect. Similarly, the buyer often covenants to take all necessary measures to secure all necessary licences and permits.

W&I insurance

9 | What specific provisions are commonly seen in warranty and indemnity insurance policies for healthcare business combinations compared with general business combinations?

At this point, warranty and indemnity insurance policies are seldom used in healthcare combinations.

Specific documentation

10 | Is there any sector-specific documentation typically used in healthcare business combinations? Does this differ depending on the structure of the transaction?

In a share sale, the purchaser and vendor enter into a share purchase agreement to document the terms and conditions governing the sale and purchase of shares. To effect the share transfer, the transferor and transferee will sign a separate share transfer form.

In a business sale, the purchaser and target company enter into a business and asset sale and purchase agreement and other transaction documents to effect the transfer of specific business and assets to the purchaser. Although most tangible assets can typically be transferred to the purchaser under the business and assets sale and purchase agreement, separate instruments may be required to effect the transfer of other assets such as real property, leases, intellectual property and contracts. Typically, the purchaser, vendor and relevant third parties will enter into a tripartite novation agreement to novate existing contracts from the target company to the purchaser.

Post-completion undertakings

11 | Which post-completion undertakings are common in healthcare business combinations? Which undertakings are common?

In the context of healthcare combinations, as part of post-completion undertakings, a vendor may be required to agree to a restraint of trade preventing it from re-entering the market as a potential competitor, and all potential acquirors are typically required to enter into non-solicitation agreements with respect to the target's employees. These agreements are commonly justified as necessary to maintain the quality of care in

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the target company, by preventing its trained doctors or specialists from being freely poached by rival hospitals. Such undertakings are also typically found with respect to key scientists or managers of drug developments and digital health companies.

However, section 34 of the Competition Act (Cap. 50B) provides that 'agreements between undertakings, decisions by associations of undertakings or concerted practices that have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited.'

In relation to mergers, the Singapore courts have indicated that they will take a more liberal approach when considering restraint of trade clauses in the sale of a business (ie, the non-solicitation agreement may not infringe the section 34 prohibition if it is reasonably necessary for the merger). The CCS Guidelines on the Substantive Assessment of Mergers (CCS Merger Guidelines) provide that a restriction is likely to be necessary to the implementation of the merger where, in its absence, the merger would not go ahead or could only go ahead at substantially higher costs, over an appreciably longer period, or with considerably greater difficulty. (These CCS Merger Guidelines apply to all types of combinations, including through share sales or asset sales.)

However, the CCS Merger Guidelines also make clear that 'any restriction must relate only to the goods and services of the acquired business and apply only to the area in which the relevant goods and services were established under the previous/current owner.' Where the restricted period of trade is defined, reasonable and not excessive, the restrictions have a higher chance of being held as necessary to the merger and cleared by the regulator.

Venture capital funds typically refuse to enter into such clauses, or negotiate them so as not to impede their investment activities.

REGULATION

Laws and regulations

12 What are some of the primary laws and regulations governing or implicated in healthcare-related business combinations? Are healthcare assets subject to specific regulation that would be material in a typical transaction? Is law and regulation of healthcare national or subnational?

One of the primary healthcare laws is the PHMCA. The government intends to replace it with a new Healthcare Services Bill (the HS Bill) in late 2019. Presently, the PHCMA is designed to ensure patient safety through the licensing of physical premises delivering healthcare, such as hospitals, medical clinics, clinical laboratories and other healthcare establishments.

The HS Bill is intended to better safeguard patient safety in an increasingly technological healthcare environment, while enabling the development of new and innovative services. The key changes include service-based licensing, regulation of new and alternative medicines, mandatory contribution of patient records to the National Electronic Health Record (NEHR), and other measures to enhance patient protection.

The Medical Registration Act governs the licensing of doctors in Singapore, and requires that all medical practitioners register themselves with the Medical Council of Singapore and hold a practising certificate to work as doctors in Singapore. The Singapore Medical Council has issued an Ethical Code and Ethical Guidelines (Ethical Code) that promulgate principles-based guidelines and values for doctors. The Ethical Code states that doctors should act in their patients' best interest when giving them advice and offering treatment and when faced with financial interests that compete with the doctor's professional duty towards the patient, the conflict must always be resolved in the best interests of the patient.

For regulation of pharmaceutical products, the Health Products Act (Cap. 122D) (HPA) is the consolidated legislation for laws governing licensing, marketing and selling of all health products, including medicinal products.

Healthcare assets are subject to specific regulation that would be material in a typical transaction and it depends on the type of healthcare company, and the type of products or services offered.

Where the healthcare asset is a private hospital, medical clinic, clinical laboratory or healthcare establishment in Singapore, a licence from the Ministry of Health (MOH) must be obtained by the purchaser to manage or control such institutions. In granting the licence, the MOH will consider relevant factors on the suitability of the applicant (see question 14). Normally, the management of private hospitals (including maternity homes, nursing homes, medical clinics, renal dialysis centres, dental clinics, clinical laboratories and healthcare establishments) will only be granted to individuals or companies experienced in that field.

Licensees are required to comply with all guidelines and directives issued by MOH, and their specific obligations in the Private Hospitals and Medical Clinic Regulations.

Under the HPA, pharmaceutical companies selling pharmaceutical products must apply for a product licence from the Health Sciences Authority before the product can be sold on the market. If product registrants intend to import or wholesale their own registered products, they must apply for an importer's or wholesaler's licence as well.

The law and regulation of healthcare in Singapore is national. There is no subnational legislation.

For clarification, there is minimal legislation at Association of Southeast Asian Nations (ASEAN) level. There are a few ASEAN Directives applying to Singapore, for instance, the ASEAN Cosmetic Directive and the ASEAN Medical Device Directive, which have been subsumed into the relevant local legislation of several ASEAN member states. Singapore has informal understandings with other ASEAN member states, which are captured in memoranda of understanding or letters of intent, but these are not legally binding.

Consents, notification and filings

13 What regulatory and third-party consents, notifications and filings are typically required for a healthcare business combination?

For a share sale, the transfer of shares has to be filed with the Accounting and Corporate Regulatory Authority of Singapore (ACRA) electronically. In Singapore, transfers of shares are only effective upon the successful lodgement with ACRA and when the name of the transferee is reflected on the electronic register of members of the target company. From a regulatory perspective, prior approval from the regulators may also be required before the target company can proceed to transfer shares or control of the company.

For a business sale, regulatory approval and third-party consent may also be required to effect the business sale.

The regulatory approval required depends on the specific type of healthcare business being acquired and the relevant authority issuing the licence for the operation of the business. In some cases, only a notification may be required, or fresh applications for new licences would be required.

Where there is a competition concern, voluntary notification to the Competition Commission of Singapore should also be made. This is further explained in question 18.

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Ownership restrictions

14 | Are there any restrictions on the types of entities or individuals that can wholly or partly own healthcare businesses in your jurisdiction?

There are no general restrictions on the type of entities or individuals that can wholly or partly own healthcare businesses in Singapore.

Under the PHMCA and Private Hospitals and Medical Clinic Regulations, anyone who wishes to manage or control a private hospital, medical clinic, clinical laboratory or healthcare establishment must obtain a licence from the MOH. In granting a licence, the MOH will consider the applicant's (or where a company, its board's) character and fitness, ability to operate and maintain the establishment in accordance with prescribed standards, suitability of proposed premises and adequacy of nursing and other staff.

In terms of medical data protection, there is a growing trend of regulators globally imposing conditions relating to the use of patient data by foreign acquirers of healthcare businesses. This is especially the case where a foreign acquirer is a state-owned enterprise or where there is a risk that it could be subject to state influence.

This is addressed in Singapore by the Personal Data Protection Act, pursuant to which local healthcare institutions are required to ensure that medical information collected is necessary, accurate and complete. They are also required to make reasonable security arrangements to prevent unauthorised access, use or disclosure and ensure that any medical information transferred outside of Singapore is, likewise, protected by a recipient individual or organisation and the importance of this regulation has been emphasised by a recent hacking of sensitive medical data in the country. Purchasers should therefore ensure that such obligations are duly complied with.

When the HS Bill is implemented, contribution of patient data to the NEHR will be mandatory for all healthcare service providers, who may only access patient data for providing healthcare services, or with approval by the government. Third parties such as employers and insurance providers will not have access to the data unless the patient grants access.

Foreign acquirers should also note that under the Cybersecurity Act (No. 9 of 2018), cybersecurity obligations may be imposed on owners of critical information infrastructure that are used to provide essential services. If acquirers inherit a computer system in a local target company, whose loss would systemically affect the availability of that healthcare service in Singapore, the system may be designated as a critical information infrastructure. Parties notified as critical information infrastructure owners will be required to conduct regular checks and audits for cybersecurity vulnerabilities and report incidents to the authorities.

Directors

15 | Are there any restrictions on who can be director of healthcare businesses in your jurisdiction?

There are no specific restrictions on who can be a director of a healthcare business in Singapore. The Companies Act stipulates that a director must have attained the age of 18, has full legal capacity and must not be an undischarged bankrupt (whether adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy).

Operating outside the home jurisdiction

16 | What domestic regulatory issues might arise for a company based in your jurisdiction operating healthcare businesses in other jurisdictions?

The Personal Data Protection Act (PDPA) provides that where the healthcare institution engages a data intermediary to process personal data, it must ensure that the data processed by the intermediary is protected as if it were processed by the healthcare institution itself, in line with the PDPA obligations. The intermediary itself will also be subject to the Protection Obligation and Retention Limitation Obligation under the PDPA. Therefore, where a Singapore healthcare company acquires a data centre overseas, it should do an audit of the foreign data centre's data protection capabilities and implement safeguards where necessary to ensure that PDPA obligations are met. This may have adverse consequences on the business model of the group once the combination has occurred.

Another potential issue is telemedicine, which relates to the provision of remote clinical services from a foreign jurisdiction. Presently, this is an unregulated area in Singapore, as all medical practitioners in Singapore require a licence to practise under the Medical Registration Act, and the National Telemedicine Guidelines do not provide for a licensing regime for overseas doctors. Therefore, Singapore-based healthcare companies that own hospitals or clinics overseas and work closely with their overseas doctors should be cautious where Singapore patients request the advice of such doctors in the course of their treatment here.

Cross-border acquirers

17 | What domestic regulatory issues arise when the acquirers of healthcare businesses are based outside the jurisdiction?

According to the PHMCA, any foreign acquirer taking control of a private hospital, medical clinic, clinical laboratory or healthcare establishment in Singapore must obtain a licence from the MOH. See question 14.

Foreign acquirers should note that there are strict confidentiality requirements on the handling of patients' information collected by their Singapore subsidiaries. Under the PDPA, healthcare institutions are required to ensure that medical information collected is necessary, accurate and complete. They are also required to make reasonable security arrangements to prevent unauthorised access, use or disclosure of patient data, and ensure that medical information transferred outside of Singapore is, likewise, protected by a recipient individual or organisation (see question 14). However, no specific control of foreign acquisitions is carried out on that basis.

Competition and merger control

18 | What specific competition or merger control issues may arise in healthcare business combinations?

There are no specific competition or merger control issues applicable to healthcare business combinations in Singapore. In Singapore, the merger regime is governed by the Competition Act (Chapter 50B) which is administered by the Competition and Consumer Commission of Singapore (CCS). The CCS conducts investigations, makes decisions and has the powers under the Competition Act to impose sanctions and financial penalties.

Under section 54 of the Competition Act, mergers, acquisition of control and certain joint ventures that have or are expected to result in a substantial lessening of competition within any market in Singapore for goods and services supplied are prohibited. Entities involved in a combination are not legally obliged to notify the CCS of any merger or acquisition but they may choose to voluntarily submit merger notification to the CCS should they have competition concerns. For companies deciding whether to notify the CCS of a proposed combination, the CCS Guidelines on the Substantive Assessment of Mergers 2016 set out relevant factors and circumstances for determining whether or not a merger infringes section 54.

The CCS endeavours to issue a decision within 30 to 120 working days. The CCS Guidelines on Merger Procedures 2012 further state

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that not notifying a merger situation that potentially raises competition concerns carries risks since CCS can investigate mergers on its own initiative and require the merger to be dissolved or impose financial penalties, where it finds that the merger leads to a substantial lessening of competition.

In 2015, the CCS decided to block a proposed acquisition by Parkway Holdings Ltd (Parkway) of Radlink-Asia Pte Limited (Radlink) on the ground that the proposed transaction would result in the substantial lessening of competition. Radlink operates a radio diagnostic imaging business in Singapore. Notably, the CCS found that in the provision of radiology and imaging services for private outpatient in Singapore, Parkway and Radlink were each other's closest competitors prior to the proposed acquisition.

State and private healthcare combinations

19 | Are there any differences for healthcare business combinations if the transaction relates solely to businesses servicing private clients rather than state-funded clients?

In Singapore, state-funded clients are serviced by public hospitals, polyclinics, as well as intermediate and long-term care providers (ie, government-funded home-based elderly care services) who provide government-subsidised services to patients. Private clients are serviced by private hospitals and private clinics, some of which offer premium amenities and are more involved in medical tourism than public facilities.

Based on recent cases in Singapore, it does not seem that regulators differentiate healthcare acquisitions on the basis of whether the target company's clientele are primarily state-funded or private clients. The CCS appears to be more concerned with whether the proposed transaction would result in the substantial lessening of competition in the particular industry.

FINANCING AND VALUATION

Financing

20 | How do buyers typically finance healthcare-related business combinations?

Buyers would typically finance their healthcare-related business combination through usual equity or debt financing. Biotechnology companies may, however, have difficulty in sourcing financing in the debt market as the banks would generally require the borrowers to have adequate operating business and cashflow.

Security

21 | Describe the typical security structures in healthcare business combinations, including confirmation of any registration or notary fees in respect of the security documents.

Security structures in healthcare business combinations apply when the acquisition is financed by debt. A common form of debt financing in healthcare acquisitions is sponsor-based borrowing, which is based on the creditworthiness and covenant of the sponsor to reimburse the loan. This is usually structured as a standard format term or revolving loan using corporate or commercial basic documentation, supplemented by additional requirements for sponsor participation.

Another form of debt financing is asset-based financing, which is primarily based on the value and liquidity of the assets of the target. The asset-based loan is structured to identify and control ownership and disposition of the assets which form the subject matter of the loan. The two primary forms are a term loan against fixed assets and revolving loans against current assets. Asset based loans usually differ from commercial term or revolving loans because of the covenant and control focus on specified assets.

Financial assistance

22 | Are there any financial assistance rules that arise in healthcare business combinations?

There are no specific financial assistance rules for healthcare business combinations.

Under the Companies Act, a public company or its subsidiary is prohibited from giving financial assistance (which covers the making of a loan, provision of security or giving a guarantee for a loan made and release of an obligation or a debt), whether directly or indirectly, for the purposes of acquiring any shares in itself or in its holding company. Further, it is not allowed for any such company to acquire its own shares, or purport to acquire shares in itself or its holding company, or lend money on the security of the shares in itself or its holding company. Any contracts or transactions entered into in violation of the financial assistance rules will be rendered void or voidable.

However, a company may also adopt 'whitewash procedures' (as prescribed in section 76(10) of the Companies Act) to provide financial assistance. This relates to the company getting shareholder approval, via a special resolution at a general meeting, where the notice specifying the intention to propose the resolution is issued according to the stipulated procedure in the Companies Act.

Private companies (who are not subsidiaries of public companies) will be free to provide financial assistance, subject to a 'no material prejudice' condition. This means that they may only do so if the transactions are not materially detrimental to the interests of the company or its shareholders, and do not diminish the company's ability to pay its creditors.

Price and consideration

23 | What pricing and consideration structures are typical in healthcare business combinations?

Earn-outs, or profit guarantees, are payment structures where payments of consideration are deferred and payable based on the future performance of the target company. Profit guarantees were relatively common in healthcare business combinations on the Singapore market and particularly where it relates to the acquisition of clinical chains.

The Singapore Medical Council, in its *Handbook on Medical Ethics* (2016 Edition) (Guidelines) advised doctors to avoid agreeing to any financial arrangement that commits them to give a revenue or profit revenue to influence how patients are managed, on the grounds that the pressures to meet such financial obligations would be too great. The Singapore Medical Association went further to state in 2017 that profit guarantees and its corresponding financial imperative were incompatible with the Guidelines.

Given the unfavourable perception of profit guarantees by the medical bodies in Singapore, potential buyers should proceed with caution and avoid having such payment structures in any acquisition transaction, to not fall afoul of medical ethical obligations.

Enterprise value

24 | How are healthcare-related businesses typically valued?

A healthcare company valuation is different from that in other industries because of the highly regulated environment, the relatively lower availability of market data, and the complex dynamics between patients, healthcare providers and payers. Generally, healthcare businesses are valued using a multiple approach, the income approach, the market approach or the cost or asset approach.

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Common methods of valuation for specific businesses include multiples of EBITDA for hospitals, down payments, milestone payments or royalties for drug development companies, and valuation based on discounted cash flow for digital health companies.

TAX

Typical issues in combinations

25 What are some of the typical tax issues in healthcare business combinations and to what extent do these typically drive structuring considerations? Are there certain considerations that stem from the tax status of a target?

For a share sale, stamp duty is payable on the transfer of shares, calculated at 0.2 per cent of the higher of the consideration paid for the transfer of shares or the net asset value of the shares. Singapore does not have capital gains tax, so the vendor of shares will not be subject to income tax on gains arising from the sale of the shares unless the shares are regarded as trading stocks in its hands. Further, tax liabilities of the target company will remain with the target company, subject to the terms of the acquisition agreement.

For a business sale, GST (equivalent to VAT) is generally payable on supplies. The GST exemption is applicable on the sale and purchase of business and assets if the following conditions are met:

- the sale involves a transfer of all or part of the business as a going concern;
- the assets being sold as part of the business will be used by the purchaser in carrying on the same kind of business as that carried on by the company; and
- the purchaser is already or immediately becomes, as a result of his acquisition of the business, a 'taxable person' in Singapore.

If the asset sale includes the sale and purchase of real property, the transferee is liable to pay stamp duty under the Stamp Duties Act (Chapter 312). There will be no transfer of tax liabilities from the seller to purchaser.

Tax risks for healthcare businesses

26 What are the typical tax risks that are associated with healthcare businesses? What measures are normally taken to mitigate those typical tax risks in healthcare business combinations?

Acquirers should be aware that certain medical clinics have sometimes been known to engage in 'creative' tax planning, including by incorporating several companies in order to lower their tax burden. For this reason, acquirers should get professional tax consultants to scrutinise the tax affairs of a potential target company in the course of their due diligence.

PUBLIC RELATIONS AND GOVERNMENT POLICY

Public relations

27 How do the parties address the wider public relations issues in healthcare business combinations?

The Singapore Medical Council, in its Guidelines, has advised doctors to avoid agreeing to any financial arrangement which commits them to give a revenue or profit revenue to influence how patients are managed, on the grounds that the pressures to meet such financial obligations would be too great. The Singapore Medical Association went further to state in 2017 that profit guarantees and its corresponding financial imperative were incompatible with the Guidelines.

RHTLaw Taylor Wessing LLP

Erwan Barre
erwan.barre@rhtlawtaylorwessing.com

Richard Tan
richard.tan@rhtlawtaylorwessing.com

Six Battery Road #10-01
Singapore 049909
Singapore
Tel: +65 6381 6868
Fax: +65 6381 6869
www.rhtlawtaylorwessing.com

Policy

28 How do parties address the wider political issues in healthcare business combinations?

Singapore is known for its political stability and it is not expected that any political issues would affect healthcare business combinations.

UPDATE AND TRENDS

Current trends and developments

29 What are the current trends, and what developments are expected in healthcare business combinations in your jurisdiction in the coming year?

Singapore is looking to host many healthcare deals in the coming year. There is significant venture capital fund investment activity within South East Asia, with healthcare investments flowing to Singapore, owing to its investor-friendly regime.

In addition, strong support for research by the government has allowed growth of healthcare assets, which can be acquired.

In particular, Singapore is set to be a hub for digital healthcare investments, as demonstrated by laws it has passed recently in light of advancements in medical and health technologies, through the HC Bill. These include the switch to a services-based licensing regime to adapt to the growing supply of non-traditional, non-brick-and-mortar healthcare services and the adoption of a cloud-like system, the NEHR, to provide seamless access to patient records.

The HC Bill will be implemented later this year to replace the current laws. Prospective buyers in the healthcare sector should familiarise with the needs of the incoming regime to ensure that prospective targets have the necessary measures in place to comply with the new regime.

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