Healthcare M&A 2021

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the third 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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Singapore

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TRANSACTIONAL ISSUES

Structures

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

In Singapore, the structure of healthcare-related business combinations depends on several considerations that include the target's existing assets and liabilities, the tax implications of the various structures and the stage of development of the target company.

For target companies at their early development stage, the business combination may take the form of an investment by venture capital in a series of funding in a healthcare-related business or a joint venture between the target and the investor.

For target companies at their later development stage (LDS) that are revenue-generating, the 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). Statutory mergers are not usually used to implement acquisitions in Singapore.

The discussion below will focus on the two key methods of business combinations used in relation to LDS targets – 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 asset and liability of the target company. The secondary benefit is stamp duty is only payable on the transfer of shares, as there is no capital gains tax in Singapore.

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) https://sso.agc.gov.sg/Act/CoA1967 (Companies Act). A scheme must be approved by a majority of members representing three-fourths in value of that class who are present and voting at such meeting. 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 institutions 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. The taxes that may be incurred in a business sale include Goods and Services Tax (GST) payable on supplies transferred and stamp duty incurred on the sale and purchase of real property.

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 main factors influencing the transaction timeline include:

- the subsector of healthcare industry involved (eg, biotech company, hospital);
- the target company's size;
- whether the target, vendor or purchaser is a listed company;
- the requirement to obtain consents from regulators, third-parties and shareholders; and
- the requirement to consult with the Competition and Consumer Commission of Singapore (CCCS) 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 (PHMCA) (Chapter 248) https://sso.agc.gov.sg/Act/PHMCA1980 (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?

The typical representations and warranties generally observed across all subsectors of the healthcare industry are:

- full disclosure of the material contracts of the target company such as: research collaboration agreements distribution agreements, joint-venture agreements, licensing agreements, etc;
- the target company has sufficient insurance to cover the negligence of its employees;
- there is no material litigation against the target company;
- the premises and equipment used are suitable for carrying out the target company's business;
- the target company has been conducting the business in compliance with all applicable laws and regulations, including personal data protection laws and environmental laws; and
- the target company holds all requisite licences and permits in relation to its business.

Some of the more salient subsector-specific representations and warranties made by a seller are as follows:

- in the pharmaceutical and biotechnology sectors;
  - the target company is the owner or licensee of all intellectual property rights and has the freedom to operate;
  - all activities conducted (eg, clinical trials, research and development and promotion activities) are in compliance with all applicable laws;
  - the products comply with good manufacturing practices; and
  - there have not been any product recalls; and
- for healthcare providers (hospitals, clinics, etc) – that the personnel (doctors, physicians, physiotherapists, etc) have all necessary certificates required and the key personnel have entered into the requisite service agreements with the 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 entity will be able to operate its business in compliance with all necessary licences and permits. Other key areas a purchaser would typically examine include:

- whether there is any litigation involving the target company;
- whether employees required to hold licences (eg, doctors) have all such licences;
- real estate; and
- IT and data security measures in place.

For target companies that are healthcare providers, as they collect a significant amount of personal data of their patients, it is important to examine whether its practices comply with the Personal Data Protection Act 2012 (No. 26 of 2012) https://sso.agc.gov.sg/Act/PDPA2012 (PDPA).

Whenever the target company implements an innovative business model (eg, telemedicine, digital health), due diligence includes an assessment of regulatory trends. 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, regardless of the subsector of the healthcare industry involved, a key risk that buyers might inherit is that the target 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 which case the authorities may impose fines and other sanctions.

In addition, risks that a purchaser may be exposed to include medical negligence, intellectual property rights infringement, product liabilities, excessive product returns, loss of product authorisations and reputational damage. 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.

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 due diligence. Typically, these risks are addressed in the representations and warranties, conditions precedent that require the risks identified to be addressed and solved by the seller prior to completion and specific indemnifications. For investments, in particular, indemnification may be in the form of the issuance of new shares at nominal value to the investor, instead of a cash payment.

Nonetheless, 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.

In healthcare business combinations, common and non-controversial pre-closing conditions include the requirement to obtain necessary regulatory or governmental approvals, including CCCS approval, and third-party consents.

In a business sale, third-party consents 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 the 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 typically included is 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 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 completion, the purchaser often negotiates for covenants requiring the target company to undertake corrective measures based on the legal due diligence findings and 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 purchaser often covenants to take all necessary measures to secure all necessary licences and permits.

Where filings are required to be made or the target company is required to correspond with third-parties such as regulators, insurers and patients, the purchaser typically negotiates for covenants that require the seller to involve the purchaser in such filings and to send copies of all communications with third-parties to the purchaser.

Specifically, where the target company is in the business of selling healthcare products, the purchaser often negotiates for covenants requiring the seller to be financially responsible for returned products sold by the target company on or before completion.

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. Nevertheless, when such policies are used in healthcare combinations involving products (eg, pharmaceutical companies), there is usually considerable negotiations over coverage of representations and warranties relating to product liability.

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 would 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 would 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, contracts and permits. 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, three post-completion undertakings are common.

First, 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 the target company, by preventing its trained doctors or specialists from being 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 (Chapter 50B) https://sso.agc.gov.sg/Act/CA2004 (Competition Act) provides that agreements between undertakings that have the objective or effect of 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 a business sale (ie, the non-solicitation agreement may not infringe the section 34 prohibition if it is reasonably necessary for the merger). The CCCS Guidelines on the Substantive Assessment of Mergers 2016, which apply to all types of healthcare combinations, 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.

However, the CCCS Guidelines on the Substantive Assessment of Mergers 2016 also make clear that any restriction must be confined to the goods and services of the acquired business. Therefore, 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 therefore cleared by CCCS.

Second, arrangements for the provision of interim or transitional services for a specified period post-completion may be put in place, depending on the subsector involved.

Third, in the context of a business sale, if transfers of all third-party approvals to the purchaser have not been completed by closing, post-completion obligations that require parties to cooperate to operate the business until all transfers have been completed are typically included.

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 in Singapore is the Private Hospital and Medical Clinics Act (PHMCA). In early 2020, the Healthcare Services Bill (HS Bill) was passed in Parliament. Intended to repeal the PHMCA, the HS Bill will be implemented in three phases from late 2021 to early 2023. Presently, the PHMCA, which is under the purview of the Ministry of Health (MOH), 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. Licensees are required to comply with all guidelines and directives issued by MOH. The HS Bill is intended to better safeguard patient safety, welfare and continuity of care in an increasingly technological healthcare environment while enabling the development of new and innovative services. The key changes include service-based licensing instead of the current licensing of physical premises, regulation of new and alternative medicines and other measures to enhance patient protection.

Healthcare assets are subject to specific regulation that depends on the type of healthcare company and the type of products or services offered.

In relation to the personal data of patients, the Personal Data Protection Act 2012 (PDPA) governs the collection, use and disclosure of such data and compliance is essential. The target company must also make reasonable security arrangements to prevent unauthorised access, use or disclosure and ensure that any medical information they transfer outside of Singapore is similarly protected. The importance of this regulation has been emphasised by a publicised hacking of personal data in Singapore.

Further, under the Cybersecurity Act 2018 (No. 9 of 2018) https://sso.agc.gov.sg/Act/CA2018, 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 or compromise will 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.

The Medical Registration Act (Chapter 174) https://sso.agc.gov.sg/Act/MRA1997 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. When faced with financial interests that compete with the doctor's professional duty towards the patient, the conflict must always be resolved in the patient's best interests.

For regulation of pharmaceutical products, medical devices and clinical trials, the Health Products Act (Chapter 122D) https://sso.agc.gov.sg/Act/HPA2007 (HPA) is applicable. Under the HPA, companies must obtain a licence before manufacturing, importing, supplying or advertising all such products.

The laws and regulations governing the healthcare sector in Singapore are national. There is no subnational legislation.

For clarification, there is minimal legislation at the Association of Southeast Asian Nations (ASEAN) level. There are a few ASEAN Directives applying to Singapore, for example, 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?

The types of third-party filings, consents and approvals differ depending on the deal structure and on the subsector of healthcare industry involved.

For share sales, in particular, the share transfer has to be filed with the Accounting and Corporate Regulatory Authority of Singapore (ACRA) electronically. In Singapore, transfers of shares are only effective upon successful lodgement with ACRA and when the name of the transferee is reflected on the electronic register of members of the target company.

For a business sale, regulatory approval may also be required, in particular, because a business sale may involve the transfer of licenses.

Additionally, where there is a competition concern, voluntary notification to the Competition and Consumer Commission of Singapore (CCCS) should also be made.

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. However, given that the healthcare industry is highly regulated, purchasers should ensure that all required licenses, permits and approvals have been obtained.

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. Nonetheless, there are general restrictions in the Companies Act, which 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?

Three domestic regulatory issues might arise for a company in Singapore operating healthcare businesses overseas.

First, the 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 necessary safeguards to ensure that PDPA obligations are met.

Second, telemedicine, which relates to the provision of remote clinical services from a foreign jurisdiction, though presently unregulated in Singapore, will be regulated under the HS Bill. Therefore, pending the implementation of the HS Bill, 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.

Third, for pharmaceutical and biotech companies which base their manufacturing facilities overseas, adverse events that occur during the manufacturing process overseas may trigger recall procedures in jurisdictions in which these manufactured products are sold.

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.

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. 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. Singapore's merger regime is governed by the Competition Act which is administered by the CCCS. The CCCS 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 CCCS of any merger or acquisition but they may choose to voluntarily submit merger notifications to the CCCS should they have competition concerns. In this regard, the CCCS Guidelines on the Substantive Assessment of Mergers 2016 set out relevant factors and circumstances for determining whether a merger infringes section 54 of the Competition Act.

The CCCS endeavours to issue a decision within 30 to 120 working days. The CCCS Guidelines on Merger Procedures 2012 further state that not notifying a merger situation that potentially raises competition concerns carries risks since CCCS 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 CCCS 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 CCCS 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.

Based on recent cases in Singapore, it does not seem that regulators differentiate healthcare acquisitions based on whether the target company's clientele is primarily state-funded or private clients. The CCCS appears to be more concerned with whether the proposed transaction would result in a 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.

Alternatively, some purchasers may choose to secure their interest by placing a portion of the purchase price in escrow and releasing it only upon the fulfilment of pre-agreed conditions.

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 in violation of the financial assistance rules will be rendered void or voidable.

However, a company may 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) are free to provide financial assistance, subject to the condition that the transactions cannot be 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?

Pricing structures are heavily negotiated and can take several forms, including:

- a locked-box mechanism that fixes the purchase price, and that private investors sometimes prefer;
- purchase price with price adjustments based on net cash and net debt at completion; and
- purchase price with price adjustments based on inventory levels and product returns.

In Singapore, price adjustments are more common than the locked-box mechanism.

Further, profit guarantees are payment structures where payments of consideration are 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. However, in 2017, the Singapore Medical Association stated that profit guarantees are incompatible with the medical profession's ethical guidelines and are therefore discouraged. As such, parties should avoid such payment structures in any acquisition.

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, relatively lower availability of market data and complex dynamics among patients, healthcare providers and payers. Generally, healthcare businesses are valued using multiple approaches: the income approach, the market approach or the cost or asset approach.

Common methods of valuation for specific businesses include:

- for hospitals, multiples of EBITDA;
- for biotechs and certain pharmaceutical companies, down payments, milestone payments, royalties, valuation of immaterial assets including intellectual property rights and risk-adjusted net present value analysis; and
- for digital health companies, valuation based on discounted cash flow.

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 shares or the net asset value of the shares. As Singapore does not have capital gains tax, the Singapore vendor will generally not be subject to income tax on gains arising from the sale of the shares. Further, tax liabilities of the target company will remain with the target company, subject to the terms of the definitive agreement. Generally, stamp duty payable on the transfer of shares in a company is borne by the purchaser.

For a business sale, GST is generally payable on supplies – the prevailing rate is 7 per cent and is generally borne by the buyer. A 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) https://sso.agc.gov.sg/Act/SDA1929. There will be no transfer of tax liabilities from the seller to the 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. Further, acquirers should determine the tax exemptions that the target company may be eligible for, and work with the target company on restructuring itself to benefit from these exemptions prior to completion.

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 Handbook on Medical Ethics (2016 Edition), 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.

Separately, parties may involve a public relations firm to assist with outreach to the media.

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

Recent developments

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

Despite covid-19, the volume of transactions has not been impaired and some industries, including the healthcare sector, have performed well with a high number of deals. The pharmaceutical industry in Singapore is also expanding as it had grasped the opportunities created by the pandemic – BioNTech, the vaccine maker will be designating Singapore as its regional headquarters for Southeast Asia and start

a manufacturing facility here. This is buttressed by the government's strong support for research, which will enable the growth of health-care assets.

Separately, as the first phase of the Healthcare Services Bill will be implemented in late 2021, prospective buyers in the healthcare sector should familiarise themselves with the needs of the incoming regime to ensure that prospective targets have the necessary measures in place to comply with the new regime.

Coronavirus

30 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The COVID-19 (Temporary Measures) Act 2020 was enacted on 7 April 2020 to provide temporary relief to businesses and individuals who were unable to perform their contractual obligations due to the pandemic. However, most of these contractual reliefs have already lapsed.

The Singapore government had recently tightened workplace restrictions from 16 May 2021 onwards due to an increase in local covid-19 cases. Employers are required to make working from home the default again, which was last implemented during last year's 'circuit-breaker' measures. During 'circuit-breaker', signing and completion took place entirely via electronic means, and this is expected to remain as the norm.

Another area of concern for businesses involved in ongoing (or exploring) potential M&A transactions is the timelines for merger control or other types of clearance review processes. During 'circuit-breaker', the Competition and Consumer Commission of Singapore (CCCS) remained operational although a vast majority of its staff were telecommuting, so review timelines were naturally delayed during that period and the same is expected during this period.

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