

November 2023

Guidelines on the Proposed Significant Investments Review Bill

Overview

This memorandum sets out the outline of the new legislation proposed by the Ministry of Trade and Industry (the “**Ministry**”) on imposing investment controls over entities in Singapore, the Significant Investments Review Bill (“**Bill**”).

The Bill has been introduced in the Parliament of Singapore on 6 November 2023 and will be due for a second reading in the next sitting of parliament that is expected to occur in January 2024. The draft contents of the Bill (“**Draft Bill**”) have been uploaded to the parliament’s website and will be referenced throughout the memorandum.

The New Proposed Legislation and its Rules

A. Designated Entities

Singapore will propose a new law to manage significant investments into entities that are critical to national security interests. The proposed Bill will grant authority to the Minister to identify and specify certain entities as “designated entities” that will

have to comply with ownership and specific control requirements (“**Designated Entities**”). The list of designated entities will be published on the Gazette that is publicly accessible, which will be updated from time to time.

The Bill will cover all entities that have or conduct business activities in Singapore. The Draft Bill has defined its application to any entity that:

- is incorporated, formed or established in Singapore; or
- carries out any activity in Singapore; or
- provides any goods and services to any person in Singapore.

Designated Entities will have the following ownership and control requirements:

- Changes in ownership or control:
 - i. Investors looking to acquire an equity interest where their shareholding will amount to 5% will be required to notify the Minister.
 - ii. Investors that are looking to acquire an equity interest where their shareholding will amount to 12%, 25% and 50% will have to obtain prior approval from the Minister before the transaction can be completed.

iii. Investors that currently hold a significant shareholding in Designated Entities and would like to dispose of their interests, resulting in them ceasing to be a 50% or 75% controller of the Designated Entities, will have to obtain prior approval from the Minister before the transaction can be closed.

- Appointment and removal of key officers: Designated Entities will have to seek prior approval for the appointments of their key executive positions, such as the chief executive officer, directors and chairperson of the board. Also, the Minister may remove key officers of Designated Entities at any point in the interest of national security.

B. Protection of National Interest

The Bill will further grant the Ministry powers to review and unwind corporate transactions, such as acquisitions of equity interest and acquisitions of control of voting power etc, with respect to any entity which has acted against Singapore's national security interests within two years after the transaction. This power will apply to all entities in Singapore beyond the Designated Entities.

The Difference from the Current Rules

There are currently no express investment restrictions in Singapore except for specific sectors such as media, utilities, and financial institutions. As mentioned by the Minister of Trade and Industry (the "**Minister**"), the Bill will target specific entities that will be identified by the Ministry, and are not within these industries. The Minister commented that he does not expect that more than a handful of critical entities will be designated under the Bill.

Apart from sector-specific regulations, there is currently no need for companies in other sectors to obtain prior approvals for any acquisition or disposal of equity interests in a company unless the acquisition triggers any anti-competition concerns.

Process

According to section 17 of the Draft Bill, after a specific entity has been identified to be a Designated Entity under the regime, the Ministry must give notice of the Minister's intention to designate that entity under the regime.

Following this, the Minister will have to give the entity fourteen days to make written representations on the proposed designation. The written representations will be considered, and the Minister will have to provide his/her decision.

The entity will be able to make an application to the Minister to appeal against his/her decision in relation to the designation if they so wished. Following this, the entity can make a second appeal if they do not agree with the Minister's decision after their initial appeal, to an independent tribunal, called a Reviewing Tribunal.

Impact on Transactions

Until the list of Designated Entities is published, investors should assess whether their investee company may be designated, as any further transactions (including disposals) could require prior approval, which would likely have an impact on the liquidity of the investment and transaction timelines and costs. Once the initial list of Designated Entities is published on the government Gazette, it will be easier to analyse the scope of the regulations and assess the risk of additional companies being included.

Regarding non-designated entities targeted by the Bill, the threshold for unwinding a transaction is very high, given Singapore's reiterated commitment to remaining open to international trade and foreign investment. This reform does not signal a change of strategy in this respect. However, given that any "act against the national interest of Singapore" will be assessed for two years following the transaction, prior clearance from the government will be impossible to obtain. One can only expect that the powers granted to the Ministry under this new legislation will not be wielded lightly by the government and will be a measure of last resort.

As the Bill is still in its introductory stages at this moment, we will continue to monitor developments and analyse further guidelines to be published to aid investors in the understanding of this new legislation.

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