

COVID-19: Impact on M&A and corporate in Singapore

21 April 2020

Overview of mergers and acquisitions (M&A) market in Singapore

Singapore was one of the first countries outside of China to encounter the virus. Whilst deal activity was down on the prior year, M&A transactions were still happening with sectors such as e-commerce and renewable energy appearing attractive. The impact on M&A activity for the second quarter of 2020 isn't clear at present but restricted mobility will certainly impact transactions, with site visits being all but impossible.

Whilst M&A activities continue, it is clear that transaction parties are focused on the COVID-19 situation and potential impact on the transaction. We are already seeing clients introducing COVID-19 Material Adverse Change (MAC) clauses into their contracts where there is a period of time between signing and completion.

Issues for implementing transactions

Introduction of COVID-19 (Temporary Measures) Act 2020

In April 2020 the Singapore government introduced a set of 'circuit breaker' measures to apply from 7 April 2020 to 4 May 2020 (with potential for extension). The COVID-19 (Temporary Measures) Act 2020 (the Act)¹ was passed on 7 April 2020 pursuant to which:

- a) All nonessential activities are suspended.
- b) Relief is granted to businesses that are unable to fulfil certain contractual obligations as a result of the COVID-19 outbreak.
- c) The monetary thresholds and time limits for insolvency and bankruptcy are increased.

Impact on M&A transactions

Given it is envisaged that the COVID-19 situation may result in delays in transaction timelines, parties should consider the appropriate long-stop date and the allocation of risks in the event that the COVID-19 situation continues to persist for projected periods of time.

¹ The Act has retroactive effect, applying to relevant contractual obligations that are to be performed on or after 1 February 2020 for contracts entered into or renewed before 25 March 2020. The measures will apply for a period of six months from the commencement of the Act and parliament will be able to extend the measures for a further six months if necessary.

Restricted mobility not only impacts site visits but also the ability to successfully execute transaction. Parties have to think outside the box, particularly where transactions were instigated before the restrictions were implemented, to achieve the ultimate commercial desire.

Areas of contractual focus

Statutory intervention of nonperformance of contractual terms

Under the Act, temporary relief is provided from the inability to perform obligations under the following five categories of contracts:

- a) Leases or licences for nonresidential property.
- b) Construction contracts or supply contracts.
- c) Provision of goods and services for events.
- d) Provision of goods or services relating to tourism.
- e) Certain secured loan facilities granted by a bank or a finance company to small-medium enterprises and hire-purchase agreements.

In the context of M&A transactions, parties should be aware that the Act provides temporary relief for nonperformance of certain contractual terms notwithstanding contractual terms which may allow a contract to be terminated for the nonperformance of certain contractual obligations (for example, force majeure terms and material adverse change clauses).

Relief from nonperformance under the Act

The Act prohibits a party to a contract from taking certain legal actions against a nonperforming party such as, court and insolvency proceedings, enforcement of certain security, call on certain performance bonds, and termination of nonresidential leases.

Relief is also available where a party meets the following criteria:

- a) The party is unable to perform an obligation to be performed on or after 1 February 2020.
- b) The inability to perform the obligation is materially caused by a COVID-19 event.
- c) A notification for relief has been served on the other party.

A party that receives a notification for relief is prohibited from taking any of the above mentioned legal proceedings. Proceedings relating to a prohibited action that have already been commenced must be stayed. Noncompliance by that party will be an offense.

Temporary relief for businesses in financial distress

The Act also introduces temporary changes to bankruptcy and insolvency laws.

The insolvency thresholds in respect of businesses are temporarily revised as follows:

- a) The monetary threshold for insolvency has increased from SG\$10,000 to SG\$100,000.
- b) The time period to satisfy a statutory demand has increased from 21 days to six months.
- c) The time period for the setting aside of a statutory demand has increased from 21 days to six months.

Directors are temporarily relieved from the obligation to prevent their companies from trading while insolvent, if debts are incurred in the ordinary course of business.

The Monetary Authority of Singapore has announced measures to allow distressed property owners and small- and medium-sized enterprises (businesses with annual revenue of no more than SG\$100 million (SMEs)) to temporarily suspend debt repayments or payments on insurance.

In the context of M&A transactions, the solvency risks of target companies and the respective counterparties should be viewed in light of the temporary measures introduced by the Act.

Impact of corporate governance

On 13 April 2020 the following orders were also introduced: (i) the COVID-19 (Temporary Measures) Order 2020, and (ii) the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 (collectively, the "Orders"). These Orders apply to both listed and non-listed entities.

These Orders set out alternative arrangements for the conduct of general meetings by companies, variable capital companies, and registered business trusts held between 27 March 2020 until the last day that the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020 is in force.

Contacts



Stephanie Keen
Office Managing Partner, Singapore
T +65 6302 2553
stephanie.keen@hoganlovells.com



Rachel Wong
Associate, Singapore
T +65 6302 7152
rachel.wong@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.
© Hogan Lovells 2020. All rights reserved.