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Introduction of new law in Singapore to manage significant investments into entities critical to national security



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Background

In line with the global trend towards stricter regulations on foreign investments in sectors critical to national security, Singapore has introduced the Significant Investments Review Bill (the "**Bill**") which sets out a new investment management regime aimed at regulating significant investments by local and foreign investors into entities that are critical to Singapore's national security.

The Bill was first introduced into Parliament on 6 November 2023, and has since been passed into law on 9 January 2024. Legislation is likely to come into effect in the next few months, although the commencement date for the Significant Investments Review Act 2023 of Singapore ("**Act**") has yet to be published.

Under the new regime, entities which are considered critical to Singapore's national security will be designated under the regime and regulated accordingly ("**Designated Entities**"). The Bill also provides scope for the Minister of Trade and Industry (the "**Minister**") to review transactions involving entities which have acted against Singapore's national interests, notwithstanding that such entities have not been designated under the Bill. Further, a dedicated office will be set up within Singapore's Ministry of Trade and Industry ("**MTI**") to administer the new regime and act as a dedicated one-stop touchpoint for stakeholders.

Singapore currently relies on a range of sector-specific laws (comprising of restrictions on foreign ownership and control, and licensing regimes requiring investors to obtain approvals from the relevant regulators, amongst others) to monitor and manage entities in regulated sectors such as telecommunications, banking and utilities sectors. The Bill will thus complement existing legislation by regulating critical entities which are not adequately covered under these legislations. Given that most critical entities in Singapore have already been adequately covered by existing sectoral legislation, it is expected that only a handful of critical entities will be designated under the Bill.

The vast majority of the market would thus remain open to foreign investment and there will likely be minimal impact on entities which have not been designated under the Bill.

Key features of the Bill

1. National security interests

At present, the Bill does not expressly define the term "national security", although it was clarified in the Singapore Parliament that "national security" is intended to broadly cover areas critical to Singapore's sovereignty and security, including its economic security and resilience, and the continued delivery of essential services.

The absence of an express definition of "national security" in the Bill was a deliberate decision to grant the regulator in Singapore the flexibility required to deal with the complex and evolving nature of national security issues. This broad approach towards "national security" is not uncommon, especially with reference to other foreign investment regimes in the United States, Europe and China.



2. Designated Entities

Singapore has adopted a targeted, entity-based approach as opposed to a broader sectoral approach, whereby the Bill would only apply to individual entities rather than entire sectors.

Generally, entities which (a) are incorporated, formed, or established in Singapore; (b) carry out activities in Singapore; or (c) provide goods and services to any person in Singapore may be designated as Designated Entities under the new regime if the Minister considers the designation necessary in the interest of Singapore's national security. The Minister may consider several factors when determining which entities should be designated, such as:

- whether the entity provides a critical function in relation to Singapore's national security interests;
- whether the entity undertakes business activities in sectors where there are few or no alternatives; and
- whether national security interests are already adequately covered by existing sectoral legislation.

While the list of Designated Entities to be regulated under the Bill has yet to be identified, all designations or cancellations of designations will be notified in the Singapore Government Gazette and a Designated Entity that ceases to meet the relevant criteria may be removed from the list of Designated Entities. This targeted, entity-based approach of expressly identifying all Designated Entities would bring clarity and enhance transparency in the market, thus providing greater assurance for investors and investment targets alike.

3. Key regulations applicable to Designated Entities

Designated Entities are required to comply with certain requirements imposed under the Bill. If these requirements are not complied with, the Bill also outlines certain consequences or remedial actions which the Minister may implement.

Changes in ownership and control

Buyers must notify the Minister within seven (7) days of becoming a 5% controller of a Designated Entity, and are to seek the Minister's approval before becoming a 12%, 25%, or 50% controller, an indirect controller, or acquiring as a going concern (parts of) the business or undertaking.

Sellers of Designated Entities are required to seek the Minister's approval when ceasing to be a 50% or 75% controller. Transactions that occur without the necessary approvals will be rendered void, although parties that are materially affected by the fact that a transaction is void may apply for a validation notice in relation to the transaction. Once granted, the validation notice nullifies the void status of the transaction. The Minister may issue such notice if they are satisfied that it is in the interest of Singapore's national security to validate the transaction.

Designated Entities must also notify the Minister on becoming aware of such changes. If the conditions of approval have not been complied with or false or misleading information was provided in connection with an application for approval, the Minister may: (a) instruct a party to transfer or dispose of all or any of its equity interests held in the Designated Entities; or (b) instruct that the transfer or disposal of a party's equity interests be restricted, amongst others.

Appointment and removal of key officers

Designated Entities will be required to seek approval from the Minister when appointing key officers such as the chief executive officer, directors, and the chairperson of the board. Any key officers which are appointed without approval or in breach of approval conditions may be removed. The Minister also has the discretion to remove key officers in the interest of national security, for instance where the appointment of such key officers poses a threat to national security interests, amongst others.

Cessation of business

Designated Entities may not be voluntarily wound up without the Minister's approval to ensure the security and continuity of critical functions.

Additionally, any person who intends to enforce security over a Designated Entity's property must notify the Minister as part of the process.

Special administration order

The Minister has the authority to issue a special administrative order if the Minister deems it necessary for Singapore's national security or to ensure the survival or security of a Designated Entity's business operations. The special administrative order may appoint a person chosen by the Minister to oversee and manage the affairs, businesses, and assets of the Designated Entity.

No retrospective effect

Regulations applicable to a Designated Entity will not be applicable if the relevant transaction was entered into before the designation of such entity.



4. Overarching powers to review transactions against Singapore's national security

The Minister also has wide cross-sector powers to review transactions involving entities which have acted against Singapore's national interests within a two (2) year period after the relevant transaction, notwithstanding that such entities have not been designated under the Bill.

Under the Bill, the Minister is empowered to take various targeted actions, including: (a) instructing the party involved in the transaction to transfer or dispose of their equity interest in the entity; (b) specifying restrictions on the transfer or disposal of their equity interest in the entity; or (c) instructing the party involved in the transaction to transfer or dispose of their control of voting power in the entity.

5. Appeals and requests for reconsideration

In line with Singapore's business-friendly approach, the Bill also sets out clear processes for parties that wish to seek reconsideration for decisions by the Minister and for further appeals to an independent tribunal for review ("**Reviewing Tribunal**").

- **Requests for reconsideration:** A party has the option to submit an application to the Minister for the reconsideration of an initial decision within 14 days from the date of the initial decision. The Minister has the authority to completely nullify the initial decision, substitute it with an alternative decision, or uphold the initial decision. Once the Minister issues a subsequent decision, no further reconsideration requests are permitted, although the concerned party retains the right to appeal to the Reviewing Tribunal.
- **Independent Review Tribunal:** The Reviewing Tribunal will consist of three (3) individuals appointed by the President of Singapore on the advice of the Cabinet of Singapore, including a chairperson who holds the position of a Supreme Court judge. The Reviewing Tribunal can either dismiss the appeal and affirm the appealed decision or overturn the appealed decision. The determination of the Reviewing Tribunal is conclusive.

Concluding thoughts

While Singapore has traditionally adopted a permissive and open stance towards foreign investment, the introduction of the new regime signifies Singapore's move towards a more nuanced approach which seeks to strike a balance between regulating investments in sectors critical to its national security whilst maintaining a business-friendly environment.

Importantly, the targeted, entity-based approach adopted under the Bill and the MTI's proposal to set up a dedicated office and Reviewing Tribunal demonstrates Singapore's commitment to ensuring that the overall impact on affected businesses will be minimised. While uncertainty remains, the Bill would unlikely weaken Singapore's foreign investment prospects and could instead enhance it as investors may benefit from a more streamlined, transparent and equitable investment control regime.

How we can help

Moving forward, businesses and prospective investors should familiarise themselves with the new regulatory framework, carefully evaluate the potential impact of these new laws on their investment decisions and strategies, and assess the national security implications of their investments. Conducting risk assessments early on can help determine if the proposed transaction may trigger government intervention, allowing investors to incorporate buyer-friendly clauses in transactional documents to effectively allocate this risk. Additionally, investors should be mindful of the approval and ongoing disclosure requirements imposed by the new legislation and adjust their transaction timelines accordingly.

In light of the global trend towards stricter regulations aimed at safeguarding national security interests, our extensive presence across the United Kingdom, European Union, Asia, and the Middle East uniquely positions us to support our clients in navigating these evolving and challenging regulatory regimes.

We actively collaborate with our global teams to conduct comprehensive assessments aligned with evolving regulatory requirements, and we ensure that our clients receive proactive advice on the applicability of foreign investment regimes to mitigate risks associated with these dynamic regulatory environments.

Where necessary, we work closely alongside experienced local counsel to navigate seamlessly through the review processes and ensure all necessary regulatory consents are obtained swiftly to meet the commercial objectives of the transaction. From early strategic advice on the applicability of foreign investment regimes to steering transactions through the review processes, our priority is to ensure successful outcomes for our clients across multiple jurisdictions whilst offering a consistently high level of service.



“Overall, I have been incredibly impressed by the team at Stephenson Harwood, with their can-do attitude and understanding, and their efficient and knowledgeable team.”

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