Bird & Bird ATMD

Cross Border M&A: Unlocking Potential and Avoiding Pitfalls

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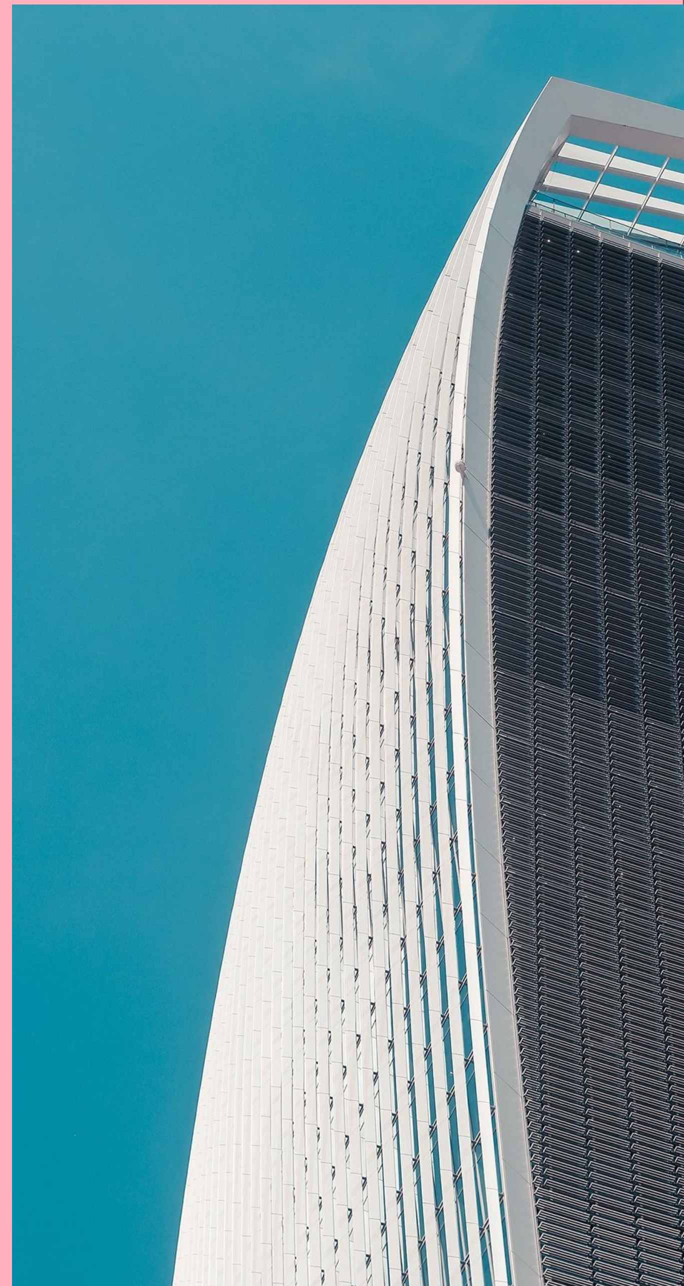

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A. Preamble

Merging with or acquiring a foreign company is a typical strategic manoeuvre to augment the competitive standing of a company whilst diversifying its revenue streams, thereby spreading its commercial risks across different markets and economic conditions. Heavyweight merger and acquisition ("**M&A**") deals could spur market-disrupting innovations and reshape industry norms.

In this article, we offer insights into key motivations, critical considerations, as well as value creation strategies for cross border M&As from a legal and tax perspective.

Motivations underlying cross border M&A

Cross-border M&As have been executed in pursuit of various commercial objectives, often motivated by a confluence of target-specific and jurisdiction-specific considerations. Attractive targets may offer strategic assets, including intellectual property, technological infrastructure, or a skilled workforce, which may not be easily available domestically. Combining complementary enterprises across international borders can engender synergies, fostering increased efficiency, innovation, and competitiveness. Furthermore, consolidating operations with a target company may yield cost savings through economies of scale in production, distribution, or administrative functions.

Additionally, the regulatory and market environment of the jurisdiction in which a target company is registered and operates can significantly increase the target company's attractiveness to prospective buyers. Acquiring a target in a foreign jurisdiction can enable the buyer to expand into the target company's market and capitalize on emergent growth opportunities, making the buyer a more competitive global player. Through cross border M&As, companies may also shift or expand their operations into more favourable regulatory environments that offer tax incentives or regulatory advantages.

Forecast for cross border M&A

Several instances of successful cross border M&A deals in 2024 exemplify strategic corporate moves to harness complementary competencies and assets, optimise operations, and advance business growth. For instance, in a deal aimed at strengthening technological capabilities, a Denmark-headquartered provider of maritime software solutions, merged with a Singaporean digital solutions provider for the maritime industry. The merger combined data services prowess with high frequency data and expertise in Internet of Things (IoT) sensors. The new entity leverages these combined capacities to enhance efficiency and reduce emissions for its clients, thereby becoming a significant player in the maritime industry.

We anticipate an uptick in cross border M&A deals for the rest of the year, especially in sectors experiencing rapid expansion, such as those actively engaged in sustainability efforts. In the US, the solar and energy storage sectors, in particular, are seeing significant growth. Moreover, buoyed by the global momentum in energy transition endeavours, the liquefied natural gas ("**LNG**") sector is also expanding rapidly, precipitating noteworthy M&A activities. For instance, the competition between two European and Middle Eastern industry titans, to acquire a Singaporean LNG importer and trader, underscores the intense race to strengthen global market footholds in the LNG and energy transition domains. Similarly, other enterprises in the sustainability sector or other rapidly developing sectors are poised to be coveted M&A targets as they capitalize on technological innovations, supportive policy frameworks, and escalating demand for their specialized resources and competencies.

B. The Tax Due Diligence

Tax due diligence is an integral part of M&A transactions. It is important to identify and quantify, where possible, any historical tax risks attached to a business to be acquired. This is relevant to determining the appropriate risk mitigation strategies, which can include purchase price adjustments, hold-backs, tax indemnities, and warranty protections. Having a good understanding of such tax risks is often critical for negotiating the deal.

The scope of the tax due diligence will often comprise a range of factors, including the buyer's risk appetite, the size and industry of the target company, and the geographies in which the target operates. Where a target company operates across multiple geographies, it is sometimes neither practical nor time-permitting to undertake full due diligence in every geography. In this regard, having a good sense of the target's potential cross-border supply chain structure and revenue delivery model can be useful in determining an appropriate risk-weighted approach to the due diligence process.

Whilst by no means an exhaustive list, we set out below some common areas of scrutiny for a tax due diligence exercise in a cross-border M&A transaction in Southeast Asia ("**SEA**").

a) Permanent establishment risk

The concept of a permanent establishment ("**PE**") is used to allocate the right to tax the business profits of a resident of one jurisdiction (i.e. the resident jurisdiction) where they have operations in another jurisdiction (i.e. the source jurisdiction). This concept is a core component of double taxation agreements and has also been replicated in domestic tax legislation.

We observe that, even post-COVID, companies are increasingly implementing a "work from anywhere" model, where employees continue to work from home or from jurisdictions different from the one in which their employer's office is located. Depending on the facts and circumstances of each work arrangement, such cases could create a PE risk. It therefore becomes important to identify such working arrangements and analyse the facts of each case to determine the PE risk and consequential tax exposure.

Another example is hiring personnel via an Employer of Record ("**EOR**") or Professional Employer Organisation ("**PEO**") in a foreign country with no legal presence. Such arrangements are usually considered for hiring personnel quickly while waiting for the legal entity set-up, which may take time in some countries. Such arrangements, depending on the facts and circumstances, have an inherent risk of PE exposure, which needs to be assessed carefully while undertaking tax due diligence.

b) Related party transactions: transfer pricing and withholding taxes

Most countries (if not all) have specific transfer pricing rules under their domestic tax laws requiring related party transactions to be conducted on an arm's length basis.

Taxpayers are also required to prepare and keep contemporaneous transfer pricing documentation to show that their related party transactions are conducted at arm's length. Non-compliance with the transfer pricing rules could result in transfer pricing adjustments and penalties, in addition to impacting the status of the taxpayer as a good taxpayer.

We have observed that such risks may arise for related party transactions such as inter-company charges for management and/or services fees, intragroup royalty, or license fees in relation to the use of intangibles, etc.) and intercompany financing. Depending on the country involved, the transfer pricing exposure can run back for many years (e.g. certain countries have a longer statute of limitation for Transfer Pricing) and hence the tax and penalty risks could be recurring in nature and quite significant. For businesses with significant cross-border and related party transactions, another matter requiring tax due diligence is cross-border withholding tax compliance.

Identifying and assessing the quantum of tax exposure in such cases therefore becomes important in due diligence exercises.

c) Tax reviews and audits

In many countries in SEA, tax filings are routinely reviewed and tax audits are regularly carried out. The prior years' audit position in several countries will often be the starting point for the tax authority. Depending on the country and sector of the business, we often see discrepancies between financial accounts and what is filed in tax returns. The burden lies with the target company to reconcile these differences. Unreconciled discrepancies can lead to tax deficiency assessments.

It is important from a risk mitigation perspective to understand the risk of potential adjustments and additional assessments that may arise from a tax review or audit, which may be unrecorded or under-provided by a business. Further, non-routine tax audits can take time to close and impose on resourcing post-acquisition.

For taxpayers enjoying tax incentives or tax holidays (commonly awarded by SEA governments to attract investments), compliance with qualifying conditions is the focus of tax reviews and audits. The target company would often be required to submit rigorous documentation to substantiate compliance. Any exposure by target companies to tax incentives or potential revocations of tax incentives or tax holidays by tax authorities would materially affect the viability of most investments.

With the introduction of a capital gains tax regime in Malaysia and taxation of foreign-sourced disposal gains in Singapore in recent years, it is expected that these newly introduced regimes will be a key focus area for tax authorities in the coming years.

d) Indirect tax considerations

Unlike corporate income tax ("**CIT**"), indirect taxes (e.g. Goods and Services, Value Added Tax, Sales Tax and Service Tax, etc.) are more transaction-based. There may be risks associated with discrepancies between the revenue recorded in the financial accounts and the taxable base reported in indirect tax filings. Risks may also arise from the existence of non-standard rated (exempt and/or out of scope) supplies and the reporting of reverse charges on imported services. Indicators such as taxable purchases ("**TP**") or taxable supplies ("**TS**") ratios are commonly used parameters by both tax authorities and tax practitioners to preliminarily assess indirect tax compliance.

We have also seen greater scrutiny on businesses enjoying certain indirect tax schemes (such as the Major Exporter Scheme, Sales Tax drawback, group registration, etc.). While the goal is to alleviate cash flow issues for businesses, strict conditions are usually imposed by tax authorities to prevent abuse by businesses and revenue loss to governments.

e) Rules for taxing indirect transfers

Certain countries in Asia have rules that may operate to tax the disposal of shares or interests in a foreign entity that derives value from a subsidiary in that local country.

There may be times when these rules are missed due to complex holding structures or ignorance of such taxing rules in the local countries. It is important to identify such matters during the due diligence exercise as a buyer can inherit such risks. Depending on the country involved, mitigation strategies typically include obtaining specific tax indemnities and requiring a seller to report the transaction and file in the local country.

C. The Legal Due Diligence

Legal due diligence ("**LDD**") is a critical and often underappreciated process in M&A transactions. Whilst there is always the temptation to do a simple "red-flag" report, the LDD should investigate, in reasonable detail, the various legal aspects of a target company to identify any potential risks or liabilities that could affect the transaction and any change of control issues. This process includes scrutinizing material contracts, agreements, lawsuits, intellectual property, data compliance, regulatory compliance, and other documents to ferret out any major liabilities or potential risks that could undermine the value of the deal.

Depending on the legal issues identified, the buyer may request for the issues to be fully rectified before the completion of the deal or negotiate for contractual indemnities to ensure that the seller bears the cost of rectification. There are consequently very few real "showstoppers" which cannot be mitigated by indemnities in *bona fide* transactions.

We set out some key areas of scrutiny for LDD in cross-border M&A transactions below.

a) Subsidiaries

Where a target company has subsidiaries in different countries, it is key to also conduct LDD on each subsidiary, along with the target company, to identify any legal risks or pitfalls in matters relating to the entire target group. This will often involve lawyers in various jurisdictions having to conduct LDD on each of these companies concurrently. The scope of LDD may be different for each subsidiary and will depend on several factors such as the buyer's risk appetite and the scope of commercial activities undertaken by the particular subsidiary. For instance, the scope of LDD may be narrower for a dormant company, as compared to another company under the group where most of the trading occurs.

b) Material contracts

Key contracts pertaining to the business of the target company are usually scrutinised to identify material risks. These may include customer contracts, service contracts, supplier contracts, financing agreements, or any intercompany agreements. Some contracts may contain onerous indemnities, liquidated damages clauses, or termination provisions that would have a significant impact on the business or present a legal risk to the target company. In such cases, the buyer may consider having the target company re-negotiate these contracts or include appropriate warranties and indemnities in the definitive share purchase agreement.

Where the business of a target company spans different jurisdictions, the contract may not be governed by Singapore law but, instead, by the law of the country that the relevant counterparty is based in. This will require a more nuanced approach to investigate any legal implications arising from the laws of that particular jurisdiction.

c) Change of control

Change in control provisions refer to any provision giving a party certain rights in the event that there is a change in ownership of the other party to the agreement. For example, if there is a change in ownership, the target company may be required to seek prior written consent from the counterparty, or the counterparty may be entitled to terminate the agreement entirely. These provisions are often found in lease agreements where the landlord's prior written consent is typically required when a company effects any change in its shareholders.

d) Licences

Relevant licences may be required depending on the target company's business. In some countries, licences are needed for a company to simply conduct business. In such cases, the LDD will involve scrutiny on whether the requisite licences have been obtained and are in force. Approval from the relevant authorities may also be required as part of a company's licence conditions. For example, in Singapore, companies that hold a capital markets services licence will need to seek approval from the Monetary Authority of Singapore ("**MAS**").

D. The Sale & Purchase Agreement

The sale and purchase agreement ("**SPA**") can be drafted and reviewed concurrently with the due diligence exercise but will necessarily address matters identified during the exercise. The circumstances and motivations behind the sale and purchase will drive the negotiations and priorities of parties in the SPA.

a) Representations and warranties

In multi-jurisdictional transactions, risks specific to the various jurisdictions should be identified during the due diligence exercise. These will need to be addressed in the SPA together with any red flags from the due diligence process.

b) Compliance with laws

Warranties that the target company or parties have complied with applicable laws are particularly important where there are jurisdictional differences, such as different standards in the application or even the existence of equivalent laws. Common compliance concerns relate to corporate governance, workplace or occupational safety and health, employment and related benefits, data protection, anti-corruption, and, increasingly, anti-trust and environmental protection and reporting.

In relation to laws on anti-corruption and anti-trust that potentially involve surreptitious conduct and have extra-territorial reach, breaches may only be detected much later after the transaction has concluded and investigations may extend to related holdings outside of the jurisdiction, resulting in significant reputational damage even just from investigations.

Parties will need counsels who are familiar with the commercial practices in the relevant jurisdictions in order to help identify materiality thresholds, knowledge qualifiers, and potential exclusions and disclosures.

c) Intellectual property

Intellectual property issues can arise if the target company has intellectual property assets or requires certain licences to remain viable. Common concerns include the provenance of intellectual property assets, especially employee-created works and works involving or incorporating open-source software. More recently, there have been growing concerns about the nature of generative artificial intelligence ("**AI**") and the treatment of AI-generated works. This area continues to develop and requires careful attention and review.

d) Environmental liabilities

It can take years for environmental incidents to be discovered and their impact felt, thus necessitating comprehensive warranties and indemnities where appropriate to minimise the impact on the buyer's investment. In addition to environmental laws that generally protect environmental resources, prohibiting pollution and other environmental hazards, an increasing number of jurisdictions are implementing environmental and sustainability reporting requirements that extend to social and governance activities. These reporting requirements are also developing to ensure that this is not merely an investor or public relations exercise, and that there are significant consequences for false or misleading statements.

e) Employment obligations

Labour laws can vary significantly between neighbouring countries or even within the same region. There is often a need to strike a balance between requiring compliance with group policies and specific approvals or exceptions when certain group policies are set at a higher level than what the target company is required to or even capable of complying with.

f) Consideration settlement

Consideration for the transaction is heavily driven by the strategic commercial intent behind the transaction. This can be in the form of cash payments for immediate liquidity, share swaps, and additional performance-based payments ("**earn-outs**") for longer-term commitments and to incentivise post-acquisition performance, exchange of other assets or deferred payments, and any mix of the same. Parties' advisors need to have a good understanding of their relationship and strategic intentions for entering into the transaction in order to realise their intent across jurisdictions and, where necessary, collaborate with other advisors to address the risks that may arise especially if the consideration is settled in different jurisdictions.

g) Cultural and integration issues

Related to the settlement of consideration, there are "soft" skills and sensitivities to be considered part of the transaction. Negotiations on consideration may involve apportioning the consideration as awards or bonuses for key employees who are not equity holders or adjusting the compensation policies to reflect local practice. Advisors often play a key role in helping to identify and address potential cultural differences as well. For example, there may be certain nuanced changes to corporate gifting practices to ensure that cultural sensitivities are recognised while complying with anti-corruption laws and policies. To this end, the relevant warranties and disclosures in the SPA will need to be carefully drafted accordingly.

h) Conduct of business

A growing area of concern is anti-trust or competition laws in the conduct of business and the transaction itself. While there are broad anti-trust or competition principles that are similar across various jurisdictions, there are often differences in the standards applied. Alternatively, certain jurisdictions may have anti-trust or competition laws but lack merger controls, especially when the economies and competition laws are developing at different rates. Parties may face scrutiny for the transaction if there is an impact in their jurisdiction, regardless of whether the target company is in that jurisdiction. If parties are subject to review, unless there is some form of recognition or cooperation between the competition or anti-trust authorities, parties may need to make multiple applications and representations, and potentially face different outcomes in different jurisdictions due to the differing standards. Where multiple jurisdictions are involved, it will greatly benefit parties to have advisors who are able to coordinate across each jurisdiction to provide clear and consistent advice.

i) Non-compete

Another common concern is the protection of the target or acquired asset from any dilution in value from sellers or key employees engaged in a competing enterprise. This may partially be addressed by deferred payments or vesting periods for consideration and earn-outs. A more direct approach is the measured use of non-competes. Generally, these non-competes cannot be overly broad and must protect a legitimate interest, with reasonable limitations on scope, duration, and geography. Non-competes should be reviewed for compliance across all applicable jurisdictions as there may be specific requirements for each jurisdiction. This is especially important where the workforce is more mobile. Even if such non-competes have extra-territorial reach, they may be invalidated if they do not comply with local laws.

j) Tax protections

The SPA will typically address matters identified during the tax due diligence exercise. Where there are quantifiable tax exposures, these may need to be addressed in the SPA via completion adjustment to the purchase price, and many SPAs will have a mechanism to achieve this.

A general tax indemnity is often the best fallback recourse and will include an anti-double counting provision for amounts already adjusted via the closing mechanisms. Specific tax indemnities can be utilized along with a range of tax warranty protections. Specific tax warranties are also useful in deals where a seller has provided limited information on such matters as it will often lead to the seller providing relevant information or disclosing any known matters pursuant to these warranties. In such cases, further due diligence may be done or other risk mitigation strategies employed (i.e. closing adjustments or specific indemnities).

E. Warranty & Indemnity Insurance

Warranty & Indemnity ("**W&I**") insurance is becoming an increasingly important risk mitigation strategy and a key consideration in many large M&A deals, as it provides protection to the policyholder in the event of a loss resulting from a breach of warranty or a claim under a tax indemnity.

Generally, tax indemnities and warranties will be excluded from W&I insurance policy coverage unless sufficient tax due diligence has been performed, or otherwise be subject to coverage exceptions.

While W&I insurance typically covers unknown or undisclosed tax breaches, there is an increasing trend in obtaining coverage for tax risks identified as "low" in the tax due diligence or the possibility of obtaining specific tax liability insurance. For additional premiums, specific liability insurance can cover the potential crystallisation of the tax risks identified during due diligence, where supported by a tax opinion on risk and likelihood from an accepted tax advisor.

That said, buyers would need to evaluate the costs and benefits involved in obtaining W&I insurance where premiums may be prohibitive, especially for deals of smaller scale.

F. Legal Provisions Seeking to Ensure Value Creation

A number of mechanisms have been developed to ensure that the M&A creates value for the buyer. The following are tried and tested mechanisms, and lawyers tend not to reinvent the wheel where it works.

a) Earn-outs

The most obvious and important way to measure the success and impact of an M&A is to use financial metrics that reflect the value and profitability of the deal. These can include revenue growth, cost synergies, earnings per share, return on invested capital, cash flow, and market share of the target company. The legal documentation in this area is fairly well developed, largely focusing on the payment of part of the sale consideration post-closing by way of earn-outs. Earn-outs can form part of the SPA. Alternatively, a neater solution would be to set out earn-outs in a stand-alone Earn-out Agreement.

Typically, the seller of the target company will be highly motivated to continue working hard for the company's business in order to ensure that the EBITDA (earnings before interest, taxes, depreciation, and amortization) generated by the company during the periods post-closing ("**earn-out period**") exceed specific thresholds so that the seller receives earn-outs. The EBITDA is computed by the buyer and as the seller would have relinquished full control and management post-closing, there will typically be specific provisions to ensure that the buyer acts in a manner which supports the company's growth. For instance, there may be covenants in place to require the buyer to (i) operate the target company's business in good faith, (ii) provide sufficient working capital for the operation of the target company's business operations, (iii) maintain a normalized cost and expense load so as not to overburden the business, and (iv) maintain clear and unbiased financial information regarding the target company's business for the earn out period. The earn-out mechanism has overtaken retention arrangements to hold back part of the sale consideration for gradual release post-closing if the target company attained the promised level of profitability. This is largely due to the immense difficulty and high cost of retaining escrow agents for the hold back sums. Legal and accounting firms no longer safekeep monies as escrow agents on account of the mandatory know your client ("**KYC**") rules in place to counter money laundering and terrorism funding.

b) Employee transition

The success of an M&A also resides in aligning the existing or revamped management team with the acquisition targets and in retaining key employees. Modern M&As put people first and it is therefore unsurprising that one of the most intensely reviewed areas relates to the employees' transition. Based on current trends, there is a rising number of employee transition agreements which are entered into between the target company and its key employees, which form part of the conditions precedent to the closing of the SPA. The employee transition agreements differ from the typical business transition agreement where the seller agrees with the buyer to provide services, such as IT, accounting, or payroll services, to the target company for a specific period post-closing for business continuity.

The employee transition services are binding on the target company's key employees pending the onboarding of the buyer's personnel or elected management. The agreement usually delves into a fair amount of detail on the roles and designations of the key employees post-closing, the specific duties or projects to be undertaken, as well as the compensation and benefits (e.g. bonus, employee stock, etc) to secure their committed service. We have seen several cases where the target company also takes the opportunity to update the confidentiality and non-compete requirements for the key employee whilst the buyer may take the opportunity to harmonise the target company's employment terms with the buyer's employment terms. Such agreements give assurance to the buyer that there will be a stable management team and continuity of certain senior or critical management expertise and skillsets critical for the target company's success.

G. Potential Hiccups for Closing

a) Time gap between signing and closing

For most cross-border M&A deals, there is usually a time gap between signing and closing. Such a time gap can range from just a few weeks to several months. For the seller, it is important to ensure that the company is managed as usual and that there are no material adverse changes that may affect closing. On closing, the seller must also be in a position to repeat the same representations and warranties that were previously provided during signing.

b) New Director appointments

In cross-border deals involving a 100% take-over of the target company, the existing slate of directors will often be replaced with an entirely new slate of directors nominated or appointed by the buyer.

For a Singapore target company, it is imperative to take note of the requirement to have at least one locally resident director in place at all times. This is particularly so for foreign buyers that do not have an individual who is locally resident in Singapore and who is suitable to take over directorship of the target company. In such cases, it is recommended that they reach out to nominee director service providers early in order to comply with all mandatory KYC requirements required by the service provider before closing.

If the foreign buyer wishes to nominate an individual with an existing Employment Pass ("**EP**") to helm the role of the locally resident director of the target company, they should also take particular note of the requirement to apply for a letter of consent from the Ministry of Manpower and the specific requirements for such an application prior to the proposed directorship appointment, should the individual's EP not be tied to the target company. *Authorised signatories for bank accounts*

Changing the authorised signatories of a target company's bank account should also be completed on closing. This is provided that there will be a change of control of the target company from the seller to the buyer on closing and the seller will typically not be held liable for any acts or omissions performed post-closing.

Banks in Singapore will usually require a certified copy of board resolutions passed by the target company to effect any change in authorised signatories. The banks usually also have a standard form of the resolution that they would accept.

The buyer should procure that the company reaches out to the respective banks early and, prior to closing, to obtain the relevant standard form resolutions and any other forms required to process the change in authorised signatories.

c) Share Certificates

Share certificates are *prima facie* evidence of title to the shares in a target Singapore company. To this end, for closing to take place, the existing share certificates representing the shares to be transferred will need to be surrendered to the buyer for cancellation.

It is therefore important for the seller to ensure that the existing share certificates are located prior to closing. If the existing share certificates are deemed lost or destroyed, the seller should report this to its company secretary immediately so that remedial actions can be urgently taken to have duplicate share certificates issued. Do also take note that there will be a suite of documents required, including statutory declarations, before duplicate share certificates can be issued under the Singapore Companies Act 1967 and time will be of the essence in issuing the relevant duplicate share certificates prior to closing if the original existing certificates can no longer be located.

d) Date of lodgement of share transfers with ACRA

In order for a transaction to be considered closed in a target Singapore company, it is usual practice for the target company to furnish an updated business profile and electronic register of members ("**EROM**") from the Accounting and Corporate Regulatory Authority ("**ACRA**") evidencing the successful transfer of shares from the seller to the buyer.

For transactions involving foreign parties, there may be instances where the lodgement to be performed with ACRA to effect the share transfer is performed on a different date from that stated in the share transfer instrument due to time differences (for example, the next business day).

Pursuant to section 126(3) of the Singapore Companies Act 1967, this will mean that in such cases, the share transfer will only be effective on the date which the lodgements with ACRA were performed and not the date indicated on the share transfer instrument. In the EROM, the date on which the share transfer lodgement was performed with ACRA will therefore be reflected as the effective date where the shares were transferred out from the seller to the buyer and there is no way to amend this date as reflected in the EROM.

For a share transfer transaction that is particularly time-sensitive and has the potential to cause a butterfly effect on other follow-on transactions, it is crucial to keep the above in mind and all parties, including the company secretary of the target company, should collaborate to time the share transfer lodgement accordingly.

H. Diligence on The Future

As mentioned above, several mechanisms have been developed to ensure that M&A deals create value for buyers.

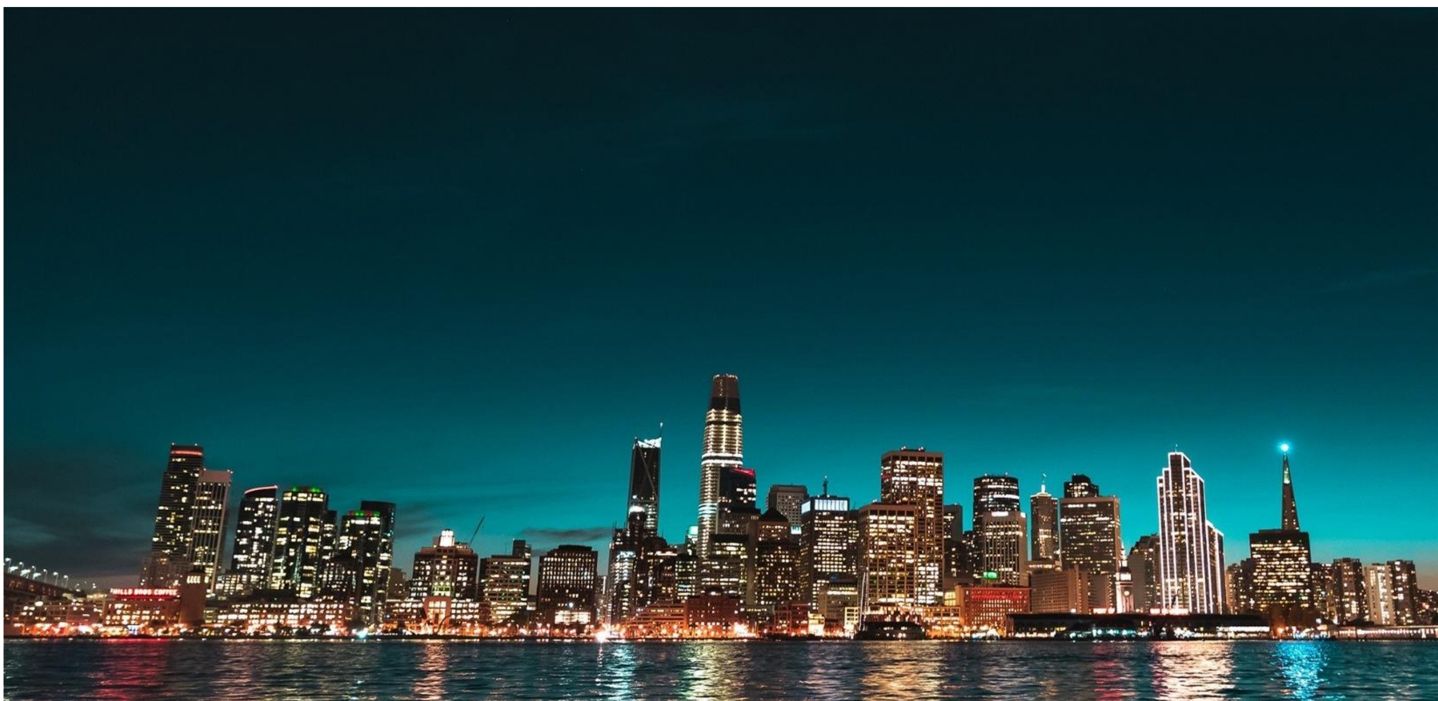
While due diligence typically looks at the historical position of a business, there has been an increasing trend of buyers wanting to better understand the value to be unlocked in a merger or takeover deal. In an enlarged business that results from the M&A deal, such areas for creating value may reside in balance sheet, working capital, revenue, and cost optimization strategies. In a competitive bid scenario, a buyer who has identified the potential value to be unlocked in a merger or takeover may have a strategic advantage through the deal negotiation process.

In this regard, the due diligence process can help identify areas for business improvement, including enhancing or strengthening an enlarged group's tax function, control, and governance framework as well as identifying areas where structuring rationalization or simplification may be required. The due diligence process can also reveal other potential business optimization areas (e.g. supply chain restructuring, ability to claim R&D and other tax incentives, etc.) that should be underpinned by sound tax policy, including better use of technology tools for monitoring global tax compliance.

I. Conclusion

M&A deals carry great potential for business expansion but are also inadvertently risky endeavours, especially M&A in the cross-border context. Companies looking to navigate risks, avoid pitfalls, and maximise value creation need to consider a multiplicity of complex commercial, legal, and tax considerations.

Experienced legal and tax practitioners assist the acquiring or merging companies through the diligence process where risks may be flagged for resolution or mitigated in the sale agreement. Conducting due diligence for the future and structuring a well-crafted sale agreement can also help to ensure that the deal creates value for the buyer. Experienced practitioners will also be able to provide a good steer in negotiating and closing the deal in a timely manner.



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