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Corporate M&A 2022

Singapore: Trends & Developments
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Trends and Developments

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Overview of The Landscape

The announced global M&A volume in 2021 shattered the previous financial year record in 2007 by 28%. Action was in the USD1 billion to USD10 billion deal size range, making up approximately 50% of total deal value. Steady activity is seen across Asia-Pacific, as activity was up 34% from the financial year five-year average and was up 16% from the previous financial year record in 2015.

There is an expectation in many Southeast Asian countries that deal activity will continue to rise in 2022. With the rise in digital innovation and changing market trends, coupled with increasing resilience against the COVID-19 pandemic, practitioners anticipate that valuations will continue to be attractive to buyers and that funding for M&A will become more accessible to investors and dealmakers. With an uptick trend of public M&A in Q3 and Q4 of 2021, it is highly anticipated that M&A activity across the region is expected to rise in 2022, with large SPAC-based transactions forming part of the key highlights of 2022.

As the world is progressively adjusting and coming to terms with the COVID-19 reality in 2022, this hopeful sense of global normalcy has recently been tempered by Russia's invasion of Ukraine, which has lowered the global GDP forecast to 3.6% from 4.0% and raised global inflation forecast to 5.8% from 4.5%. Oil prices have risen exponentially in light of the prospect of a Western embargo on Russian crude oil, which would, yet again, drive companies to tread with caution and re-think their strategies and policies to sustain themselves and survive in this increas-

ingly challenging and complex world, whereas major stock markets around the world have been hit in light of the uncertainties. Rising interest rates have also introduced greater uncertainty into the deal-making landscape but overall, the mood and expectations in Singapore and the region remain positive and optimistic.

Significant Trends

Special purpose acquisition companies (SPACs)

The SPAC IPO market in Singapore is expected to continue in its development despite headwinds facing the US market. SPAC/de-SPAC activities are expected to impact M&A activities in the year ahead.

Singapore Exchange Limited (SGX) made the first attempt in Asia to ride the wave of the SPAC hype by speedily launching its SPAC listing framework ahead of counterparts like the Hong Kong Exchanges and Clearing Limited (HKEX), and swiftly welcomed three SPACs, which were listed within a week. Vertex Venture's SPAC (Vertex Technology Acquisition Corporation), a small blank-check form backed by Temasek Holdings (Private) Limited (Temasek), made its debut on SGX on 20 January 2022, marking the first local SPAC listing in Singapore.

Following closely behind Vertex Venture's listing, Pegasus Asia made its debut on 21 January 2022 after raising SGD170 million in gross proceeds from the initial public offering. In the same manner, NOVO Tellus Alpha Acquisition (NTAA) was hot on the heels of Pegasus Asia, making its trading debut on 27 January 2022.

All three pioneering SGX-listed SPACs are targeting companies in the Southeast Asian region, with a focus on technology-enabled, disruptive, new-economy sectors, which include Industry 4.0, next-generation semiconductors, cloud and edge computing, artificial intelligence, medical life sciences and supply chain resiliency for advanced engineering.

Despite evident local and international investor-confidence in SGX's ability as a Southeast Asian fund-raising platform to unlock more investment opportunities in this region, SPAC activity in 2022 is envisaged to dip from 2021 due to current market dynamics relating to redemption post-announcement trading performance and smaller private investment in public equity sizes. Further, in light of the notable rise of class action suit filings against SPAC-listed companies, companies mulling over a SPAC listing should also be mindful that successful listings are not necessarily indicative of long-term performance and would tend to attract more scrutiny from investors and the market.

Restructuring

Since the beginning of the pandemic, more than half of the companies surveyed by Deloitte have restructured, and 44% of the companies surveyed are considering restructuring over the next 12 months. Such restructuring considerations include changes to working capital, reorganisation, cost reduction, and legal entity restructuring. This has led to an increase in restructuring-related M&A deals such as spin-offs.

Schemes of arrangement

Similar to the UK market, schemes of arrangement as a method of privatisation of listed companies has grown in popularity and the market is increasingly familiar with schemes of arrangement.

As a sign of the increased maturity of the market in respect of schemes of arrangement, Singapore saw its first takeover privatisation battle proposed to be implemented by way of two competing schemes of arrangements in late 2021. The takeover battle between Keppel Corporation (Keppel) and Cuscaden Peak (Cuscaden) for Singapore Press Holdings (SPH) has been the subject of intense debate and discussion. Keppel's plan to acquire SPH's non-media business in a cash-and-scrip offer by way of a scheme of arrangement drew a rival bid when Cuscaden proposed, also by way of a scheme of arrangement, a two-option offer, comprising of an all-cash consideration option in addition to a cash and scrip consideration option.

The offer by Cuscaden, a company formed by a consortium of investors comprising Hotel Properties Limited and subsidiaries of CLA Real Estate Holdings Pte Ltd and Mapletree Investments Pte Ltd (which are independently managed portfolio companies of Temasek), for all the issued ordinary shares in the capital of SGX-listed SPH by way of a scheme of arrangement marks the first competing takeover for a company listed on the SGX by way of competing schemes of arrangement.

Increased shareholder activism

In Singapore, shareholder activism has continued to develop and M&A practitioners will need to be increasingly sensitive to these pressures.

Good examples of increased shareholder activism and their impact on M&A deals can be seen in the REIT merger transactions of recent years.

For example, vehement dissatisfaction towards the one proxy rule arose in the proposed merger of Sabana REIT and ESR REIT in 2020, as unitholder funds claimed that the submission of a single proxy form did not fully and fairly represent the votes of all unitholders at a trust

scheme. This has now led to a change in the practice of proxy votes in schemes of arrangement.

Further, shareholder activism has placed significant pressure on managers to offer better merger terms. The Sabana REIT – ESR REIT merger in 2020, which had sparked aggressive shareholder dissent towards the terms of the merger, could be seen as the spark of a chain of subsequent activism. Such activism was once again present in the proposed merger between Mapletree Commercial Trust (MCT) and Mapletree North Asia Commercial Trust (MNACT), in which activist investor Quarz Capital Management wrote an open letter to MNACT’s management, raising its concerns with the proposed merger.

Subsequently, the terms of the merger were revised to include an all-cash consideration option, in addition to the prior offer for all-units or a mixed cash-units consideration, which has been said to provide MNACT unitholders “greater flexibility to elect the form of scheme consideration that is most suited to their investment needs”. Although the value of the scheme consideration remained unchanged, the additional cash offering resulted in an additional requirement of SGD2.2 billion which is to be funded by way of a preferential offering and had been positively received by said activist investor.

In the same light, in the merger between ESR-REIT and ARA Logos Logistics Trust (ARA Logos), Institutional Shareholder Services and Glass Lewis had raised questions about the process aspect of the merger and noted that ARA Logos had not “shopped around” for alternative transactions. This nudged the REIT managers into improving the merger offer and consequently postponing the planned dates for their EGMs to vote on the proposed deal by a couple of months. Thereafter, favourable reports were

issued by the same proxy advisory firms and the resolutions were subsequently carried at the respective shareholders’ meetings of ESR-REIT and ARA Logos on 21 March 2022.

Accordingly, there is clear demand for transparency from the managers and sponsors of merger REITS. REIT managers should be aware that they will be expected to get ahead of the expectation of investors, rather than benchmark themselves against market practice.

Other market trends

Technology

As companies continue to revamp and innovate across all sectors, the technology sector remains at the forefront.

Asia-Pacific M&A activity in 2021 increased by 37% from 2020 and 50% from 2019, and private M&A relating to technology and software accounted for 30% of the deal activity in Asia-Pacific. Such a rise in M&A activity in the Asia-Pacific technology space could be attributed to the increasing reliance on smartphones, the proliferation of online businesses, and the rise in government initiatives to digitalise their economies. Accordingly, Asia-Pacific is expected to lead the world on a digital transformation over the next five years. Notably, Gojek and Tokopedia have completed a long-awaited synergistic merger to form the “GoTo Group” – a company specialising in e-commerce, on-demand services and financial services.

With a combined gross transaction value of over USD22 billion, the GoTo Group also plans to develop its payment and financial services. Ahead of its planned IPO, the GoTo Group has already secured USD1.3 billion from investors, which include Google, Tencent, Temasek, a Malaysian sovereign wealth fund and a wholly owned subsidiary of Abu Dhabi Investment

Authority, in the first close of an ongoing funding round.

Fintech

Venture capital investments in Asia-Pacific-based fintech companies surged to unprecedented highs in 2021, receiving USD15.69 billion in private funding, which was more than twice the amount received in 2020. Within Asia-Pacific, Southeast Asia-based fintech companies registered the biggest funding growth in 2021, netting USD4.70 billion across 217 transactions, which is more than double of the USD1.13 billion across 118 deals in the prior year.

The digitisation of finance has also been marked by an increase in Southeast Asian cross-border cooperation in the fintech space. With the global rise in Buy Now Pay Later (BNPL) products, the Monetary Authority of Singapore (MAS) has been engaging BNPL providers and reviewing the experience of other jurisdictions where such schemes are more prevalent to assess whether a regulatory framework is necessary to guide the BNPL schemes as they become more widespread and popular amongst consumers.

Part of the regulatory framework may include requiring clear disclosures at the point of account opening to ensure that consumers are fully aware of the late fees chargeable if payment is not made on time. Further, to address existing frictions in global cross-border payments, Singapore's initiative to a phased linkage of its PayNow with Malaysia's DuitNow and India's Unified Payments Interface real-time payment will commence in 2022. This will allow customers of participating financial institutions to make real-time fund transfers between Singapore and Malaysia, and instant, low-cost fund transfers between Singapore and India.

MAS and Bangko Sentral ng Pilipinas (BSP) have also signed an enhanced Fintech Cooperation

Agreement to facilitate interoperable payments between Singapore and the Philippines. Additionally, MAS has announced that it will pilot four digital platforms to address the financial sector's needs for good data on sustainability.

Sustainability – ESG

Environmental, social and governance (ESG) remains at the top of the board room agenda, as firms become more aware of the potential benefits of owning ESG-positive assets. Notably, the board of directors considers ESG factors 75% of the time when making decisions. Accordingly, ESG has the potential to be a significant driver of M&A in 2022 and beyond, as countries step up demands for greater ESG disclosure and regulators introduce new standards. Many businesses will rethink their portfolios and focus on acquisitions that could improve their ESG credentials.

In Singapore, recognisable efforts to invest in sustainability is evident. Investment and M&A activities marrying the two trends of technology and sustainability have also risen markedly – agri-tech, biotech and medtech to name a few. The transition from brown to green has also presented many deal opportunities. For example:

- the joint venture (Climate Impact X (CIX)) established by DBS Bank Limited (DBS), SGX, Standard Chartered plc and Temasek, which provides organisations with high-quality carbon credits to address hard-to-abate emissions and aims to be a global exchange and marketplace for high-quality carbon credits;
- the partnership between HSBC Holdings plc and Temasek launched to establish a debt financing platform dedicated to sustainable infrastructure projects with an initial focus on Southeast Asia, as part of efforts to reduce climate change;
- the joint venture (Sydrogen Energy) between Nanofilm Technologies International Lim-

ited (Nanofilm) and Temasek, which aims to bring about greater and more widespread commercial adoption of hydrogen energy by leveraging on Nanofilm's core technologies to overcome existing limitations in enabling the use of hydrogen as an energy source; and

- EDP Renewables, a leading renewable energy and the world's 4th largest wind energy producer, had also acquired a 91% majority stake in the Singapore based renewables firm Sunseap Group, with announced plans to invest SGD10 billion by 2030 to develop a clean energy hub in Singapore.

Key Legal Developments

SPAC listing framework

As discussed above, with effect from 3 September 2021, SPACs are allowed to list on SGX Mainboard by way of a primary listing. Among other requirements, SGX-listed SPACs must satisfy a minimum capitalisation requirement of SGD150 million, and a minimum IPO issue price of SGD5 per share. Notably, SGX has lowered the minimum capitalisation requirement from SGD300 million to SGD150 million (approximately USD110 million) on the basis that the SGD150 million threshold is sufficient to facilitate a sizable business combination while not unduly-limiting the potential target pool of businesses that a SPAC may acquire.

Further, this change provides SGX with a competitive edge against the HKEX, which requires a minimum initial offering of HKD1 billion (approximately USD128 million). Considering the flurry of SPAC activity (as discussed in the trends section above), SGX is clearly making progress in its goal of being a conducive environment for SPACs to be promoted. As also mentioned above, SPAC/de-SPAC activities are expected to impact the M&A scene in the year ahead.

ESG-climate and board diversity Disclosures

As part of its efforts to keep up with global standards of governance, SGX issued a consultation paper in which it has proposed to move towards mandatory climate-related disclosures in sustainability reporting via a phased approach. It also proposed a mandatory disclosure of Board Diversity Policy in annual reports.

Under SGX's phased approach towards mandatory disclosure, all issuers are expected to adopt climate reporting practices on a "comply or explain" basis for financial years commencing in 2022. Climate reporting will then be mandatory for some sectors of issuers in 2023, while the "comply or explain" basis will continue to be the approach for the other issuers. From 2024 onwards, more sectors of issuers will adopt mandatory climate reporting. Further, SGX proposes that the requirement for mandatory climate reporting should be based on an issuer's industry classification to facilitate comparability. Sectors identified to have the highest climate-related risks include:

- financial industries; and
- certain non-financial industries most affected by climate change and the transition to a lower-carbon economy, such as agriculture, food and forest products, energy, materials and buildings, and transportation.

Under the proposed changes to board diversity policy under the new rules, SGX requires issuers to establish a board diversity policy. In the companies' annual report, the board diversity policy must include targets for achieving the stipulated diversity, accompanying plans, timeline for achieving the targets, and a description of how the combination of skills, talents, experience, and diversity of directors in the Board serves the needs and plans of the issuer.

Outlook for 2022

Overall, M&A hit record heights in 2021 and the opening months of 2022 have provided indications that M&A activity has not slowed down. Uncertainties abound (Russia/Ukraine, energy and supply disruptions, rising interest rates, to name a few) but at the time of writing, there does not appear to have been a significant dampening of M&A pipeline in Singapore and the region for the year.

SINGAPORE TRENDS AND DEVELOPMENTS

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Rajah & Tann Singapore LLP is a leading, full-service law firm and a member of Rajah & Tann Asia, one of the largest regional networks, with 800 fee earners in South-East Asia and China. The M&A practice fields a highly regarded team with depth of experience in many significant, complex and challenging transactions in Singapore and the region. The team is consistently involved in a vast range of transactions, including acquisitions and divestments; takeovers, mergers, schemes of arrangements and amalgamations; delistings and privatisations; as well as private equity investments. Clients include

multinational corporations, financial institutions, accounting firms, investment banks, listed and unlisted companies, government-linked entities, funds, private equity investors and high net worth individuals. The firm has offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam, as well as dedicated desks focusing on Brunei, Japan and South Asia.

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