



MASTER OF LAWS

CROSS-BORDER BUSINESS AND FINANCE LAW IN ASIA

Course Code: Law 610

Course Title: Law of Mergers and Acquisitions

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PRE-REQUISITE/CO-REQUISITE/MUTUALLY EXCLUSIVE COURSE(S)

None

GRADING BASIS

Graded

COURSE UNIT

1 CU

FIRST OFFERING TERM

Academic Year: AY2015/2016

Academic Term: Term 2

COURSE DESCRIPTION

This course is designed to provide an overview of the regulation and practice of mergers and acquisitions transactions in Singapore. Where relevant, comparisons with other jurisdictions such as United States (particularly Delaware), United Kingdom, Australia and Hong Kong will be made. The topics that would be covered include mechanics of structuring mergers and acquisitions transactions, the preparatory work that is required in connection therewith, the regulatory environment in which mergers and acquisitions take place, duties of participants engaged in mergers and acquisitions (including legal advisers, financial advisers and directors of acquirers and target companies), deal protections, deal tactics for friendly and hostile bids, disclosure obligations, compulsory acquisitions and financing.

Case studies, adapted from real life examples, will be used extensively in the course

LEARNING OBJECTIVES

By the end of this course, participants will be able to:

- Structure a mergers and acquisitions (M&A) transaction
- Be aware of the key issues that arise in a M&A transaction, including the preparatory work, the legal documentation, and the restrictions in dealing in securities
- Having a functioning knowledge of the Singapore Code on Takeovers and Mergers

PRE-REQUISITE/ CO-REQUISITE/ MUTUALLY EXCLUSIVE COURSE(S)

None

RECOMMENDED TEXT AND READINGS

WY Wan and U Varottil, Mergers and Acquisitions in Singapore: Law and Practice (Lexis Nexis, 2013), copies are available at Booklink, SMU, at approximately \$107. Note the student version of the text is only available at Booklink and other University bookstores. If you purchase from the publishers directly, only the hard cover version is available and it costs \$267.50.

LEGISLATION, RULES AND REGULATIONS

The key pieces of legislation, rules and regulations in this area are:

- The Singapore Code on Takeovers and Mergers, available from the website of the Monetary Authority of Singapore at www.mas.gov.sg. You would need the whole of the Code.
- The Listing Manual of Singapore Exchange Securities Trading Limited, available from the website of SGX-ST at www.sgx.com. You would need the whole of the Listing Manual.
- Securities and Futures Act, Chapter 289 of Singapore, available from Legal Workbench , accessible from the website of the SMU library. **The easiest way to do this is to download the entire Securities and Futures Act from the Lawnet website.**
- Companies Act, Chapter 50 of Singapore. Again it is available from Lawnet, accessible from the website of the SMU library. The easiest way to do this is to download the entire Companies Act from the Lawnet website.

Once you access the Acts in question, look at the bottom left corner of the screen at the Lawnet website - you should see an option to download the ENTIRE Act (the default view breaks the Act up into chunks). Select that, and a new window will pop up, which will display the entire Act from cover page to the very last appendix. Save that on to disk, and save it somewhere in your laptop.

For UK materials:

- The City Code on Takeovers and Mergers, available from the website www.thetakeoverpanel.org.uk

ASSESSMENT METHOD

- Class participation 20%
- In-class negotiation 30% (15% for written agreement assessed as a group and 15% for negotiation assessed individually)
- Individual examination 50%

INSTRUCTIONAL METHODS AND EXPECTATIONS

Everyone is expected to read the given case or articles assigned for class room discussions. Creative thinking and peer learning is expected through open sharing from real work situations.

Grading criteria is not solely based on the frequency of participation but quality of meaningful inputs in the discussions.)

Important: Academic Integrity

All acts of academic dishonesty (including, but not limited to, plagiarism, cheating, fabrication, facilitation of acts of academic dishonesty by others, unauthorized possession of exam questions, or tampering with the academic work of other students) are serious offences.

All work (whether oral or written) submitted for purposes of assessment must be the student's own work. Penalties for violation of the policy range from zero marks for the component assessment to expulsion, depending on the nature of the offence.

When in doubt, students should consult the instructors of the course. Details on the SMU Code of Academic Integrity may be accessed at <http://www.smuscd.org/resources.html>.

COURSE SCHEDULE

Session No.	Topic	Case Studies / Mini case studies
1	<p>Introduction</p> <p>Overview of the legal and regulatory framework relating to mergers and acquisitions regime in Singapore:</p> <ul style="list-style-type: none"> ▪ Singapore Code on Take-overs and Mergers and the role of the Securities Industry Council ▪ SGX-ST Listing Manual ▪ Companies Act ▪ Securities and Futures Act <p>Comparison with other jurisdictions (UK, Delaware)</p> <p>Basic principles of company law (recapping)</p>	Discussion Question – F&N / Asia Pacific Breweries
2	<p>Structuring mergers and acquisitions (Part 1):</p> <ul style="list-style-type: none"> ▪ asset sale ▪ scheme of arrangements ▪ general offer (mandatory and voluntary offer) ▪ statutory amalgamations ▪ dual listed company structures ▪ partial offer ▪ selective capital reduction ▪ joint ventures ▪ placements 	Mini case study – F&N / Asia Pacific Breweries
3	<p>Structuring mergers and acquisitions (Part 2):</p> <ul style="list-style-type: none"> ▪ approvals required ▪ who gets to vote? How many votes are required? ▪ interested person or related party transactions ▪ key considerations in choosing structures ▪ privatisation and compulsory acquisitions ▪ friendly versus hostile bids ▪ risks involved in structuring 	Mini case study – PCCW

4	<p>Themes in take-over regulation and regulation of take-overs under the Code</p> <p>Workings of the SIC/Panel</p> <p>Preparatory work for mergers and acquisitions, and deal mechanics</p> <ul style="list-style-type: none"> ▪ disclosure obligations in the course of a take-over offer and information flow ▪ share acquisitions (restrictions and disclosures) ▪ virtual bids and premature leaks ▪ due diligence ▪ information memorandum ▪ letters of Intent 	Mini case study – PROJECT LOI
5	<p>Deal in action (Part 1)</p> <p>Duties of participants in public mergers and acquisitions in the course of the takeover offer:</p> <ul style="list-style-type: none"> • lawyers • financial advisers to acquiror and target (and Chinese Walls) ▪ independent financial advisers and fairness opinions ▪ controlling shareholders ▪ disclosure issues relating to share acquisitions and acquisitions of derivative instruments 	Mini case study – fairness opinions RE JADE TECHNOLOGIES
6	<p>Deal in action (Part 2)</p> <p>Duties of participants in public mergers and acquisitions in the course of the take-over offer (including fiduciary duties and standards of review):</p> <ul style="list-style-type: none"> ▪ corporate governance issues ▪ directors of acquiror and target Obligations under the Takeover Code of offeror and target (with emphasis on equal treatment and disclosure obligations) 	Mini case study – directors’ duties
6 (2)	<p>Deal protections and defensive measures pre-bid and post-bid:</p> <ul style="list-style-type: none"> ▪ rationale and compensation ▪ lock-ups 	Mini case study – defence document, KRAFT/ CADBURY

	<ul style="list-style-type: none"> ▪ break fees ▪ no talk and no shop provisions ▪ permissible defensive measures ▪ litigation 	
7	<p>Legal documentation in mergers and acquisitions:</p> <ul style="list-style-type: none"> • Conditions and conditions precedent • Events post-signing but pre-completion • Representations and warranties • Undertakings by major shareholders • Earn-outs and contingent payments 	Mini case study – Prudential/AIA on legal documentation
8	<p>Minority shareholders (protection of)</p> <ul style="list-style-type: none"> • challenges to compulsory acquisition, scheme of arrangement and amalgamation • related party transactions • de-listing and exit offers • appraisal rights <p>Financing issues in mergers and acquisitions</p> <ul style="list-style-type: none"> • financial assistance • equity and debt fund-raising (including open offers) • rights issue • securities law issues • joint ventures • charges 	
9	<p>In class assignments / discussions</p> <p>(Case of MBO discussion)</p>	Groups 1 and 2 (Negotiation of a sale and purchase agreement involving private company)
10	<p>In class assignments / discussions</p> <p>(Drafting announcements)</p>	Groups 3 and 4 (Negotiation of a sale and purchase agreement involving a public company)