



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Singapore**

# **ACQUISITION FINANCE**

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This country-specific Q&A provides an overview of acquisition finance laws and regulations applicable in Singapore.

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# SINGAPORE ACQUISITION FINANCE



## 1. What are the trends impacting acquisition finance in your jurisdiction and what have been the effects of those trends? Please consider the impact of recent economic cycles, Covid-19, developments relating to sanctions, and any environmental, social, and governance (“ESG”) issues.

The acquisition finance market in Singapore continues to be relatively active and we see a wide range of debt structures, including both recourse and non-recourse, and involving both onshore and offshore lenders. We have seen a significant uptick in sustainability-linked loans in recent times.

## 2. Please advise of any recent legal, tax, regulatory or other developments (including any reforms) that will impact foreign or domestic lenders (both bank and non-bank lenders) in the acquisition finance market in your jurisdiction.

Nothing of particular concern.

## 3. Please highlight any specific high level issues or concerns in your jurisdiction that should be considered in respect of structuring or documenting a typical acquisition financing.

Singapore remains a relatively straight-forward jurisdiction from the perspective of structuring and documenting acquisition finance transactions, although the target sector of the acquisition may have an impact, including as to timeline, and some restrictions may apply depending on the nature of the asset being acquired (as to which see below).

## 4. In your jurisdiction, due to current market conditions, are there any emerging documentary features or practices or existing documentary provisions/features which borrowers or lenders are adjusting or innovating their interpretation of, or documentary approach to?

Nothing particular of general application to the market. As mentioned above, we see a variety of debt structures, often including innovative and bespoke features.

## 5. What are the legal and regulatory requirements for banks and non-banks to be authorised to provide financing to, and to benefit from security provided by, entities established in your jurisdiction?

Generally, the business of moneylending in Singapore is prohibited under the Moneylenders Act 2008 (the “MLA”), unless the lender is (i) licensed to do so under the MLA, (ii) an excluded moneylender, or (iii) an exempt moneylender. Any contract for a loan or guarantee entered into in contravention of the MLA is unenforceable. Where the structure involves a Singapore borrower and a syndicate which includes foreign lenders (including offshore branches of Singapore banks) or an intercompany loan to a Singapore company, the MLA should be considered to ensure that each lender falls within one of the exceptions.

In the context of cash-pooling or intercompany loan structures, the Companies Act 1967 (“CA”) prohibits a Singapore company from making a loan or quasi-loan to another company or a limited liability partnership (whether Singaporean or foreign) if one or more directors of the lending entity is/are interested in 20% or more of the total voting power in the borrowing entity, unless there is prior shareholder approval in relation to which interested director(s) and their family member(s) either abstain from voting (or unanimous shareholder approval is obtained).

**6. Are there any laws or regulations which govern the advance of loan proceeds into, or the repayment of principal, interest or fees from, your jurisdiction in a foreign currency?**

There are no restrictions on non-residents maintaining SGD or foreign currency bank accounts in Singapore and no restrictions on remitting currency overseas.

**7. Are there any laws or regulations which limit the ability of foreign entities to acquire assets in your jurisdiction or for lenders to finance the acquisition of assets in your jurisdiction? Please include any restrictions on the use of proceeds.**

Depending on the target sector, certain regulatory requirements may apply including in some instances, licensing and/or registration requirements, consent or notification obligations. Singapore also has financial assistance rules affecting Singapore public companies and their subsidiaries.

**8. What does the security package typically consist of in acquisition financing transactions in your jurisdiction and are there any additional security assets available to lenders?**

Under Singapore law, security may be taken by way of fixed or floating security over a wide range of assets including shares and investments, bank accounts, land and buildings, plant and machinery, stock in trade and inventory, contractual rights and receivables, and intellectual property. A Singapore limited liability company may in general terms provide guarantees and security for the financial obligations of group companies, subject to compliance with the rules on corporate capacity and authorisation and corporate benefit and it is common to see structures involving downstream, upstream and/or cross-stream guarantees and security.

**9. Does the law of your jurisdiction permit (i) floating charges or any other universal security interest and (ii) security over future assets or for future obligations?**

Yes.

**10. Do security documents have to (by law) include a cap on liabilities? If so, how is this usually calculated/agreed?**

No such cap is required.

**11. What are the formalities for taking and perfecting security in your jurisdiction and the associated costs and timing? If these requirements are different for different asset classes, please outline the main points to note for each of these briefly.**

Singapore law-governed security documents are typically structured as deeds.

Security over real property located in Singapore must be registered in the Registry of Deeds or Registry of Land Titles, depending on how the property is held.

Under the CA certain charges created by a company incorporated in Singapore (or a foreign company registered in Singapore under the CA) must be lodged with the Registrar of Companies for registration within 30 days after the creation of the charge (if the document creating the charge is executed in Singapore), and within 37 days after the creation of the charge (if the document creating the charge is executed outside Singapore). While the CA does not require that all types of security that would typically be encountered in the context of an acquisition financing be registered, the list includes charges in respect of book debts and floating charges and in practice, therefore, it is usual to register all security documents.

Registration is effected quickly and cheaply by way of an on-line registration system with the Accounting and Corporate Regulatory Authority of Singapore with a fee of SG\$60.

Stamp duty is payable on documents relating to immovable property, stocks and shares. This requirement applies both to sales and mortgages and therefore relevant security documents will need to be stamped. The maximum stamp duty payable on security documents is SG\$500. Conveyances of immovable property are subject to ad valorem duty, with the actual amount dependent on a variety of factors. Stamp duty of SG\$10 is also payable on a declaration of trust relating to stampable security.

If applicable, stamp duty is required to be paid no later than 14 days after the date of the document (if executed in Singapore) or 30 days after the date of receipt in Singapore (if executed abroad). Stamping can be

completed quickly on-line via the IRAS website.

**12. Are there any limitations, restrictions or prohibitions on downstream, upstream and cross-stream guarantees in your jurisdiction? Please also provide a brief description of any potential mitigants or solutions to these limitations, restrictions or prohibitions.**

In order to give any kind of guarantee, a Singapore company must have the power to do so, the giving of the relevant guarantee must have been properly authorised and there must also be corporate benefit. As regards power and authorisation it will be necessary to check the relevant company's constitution and in some instances, there may be restrictions on the exercise of powers by directors and/or the extent to which a company may give a guarantee. It should also be noted that companies (other than exempt private companies) are prohibited by statute from giving guarantees in certain circumstances. In the context of an acquisition financing, Singapore's financial assistance rules (see below) may also be relevant.

As regards the question of corporate benefit, the directors of a company are required to act in good faith in the best interests of the company. This means the interests of the company itself and not the group of which it is a member. In the context of a downstream guarantee, this is not usually problematic, however for upstream or cross-stream guarantees, benefit may be less obvious.

In addition, if the company is insolvent at the time, or becomes so as a result of giving the guarantee, the validity of the guarantee may be open to challenge by a liquidator, including as a transaction at an undervalue if sufficient value in money or money's worth was not received for giving the guarantee.

To mitigate against the risk of challenge on the corporate benefit issue, it is usual practice for lenders to require that any upstream or cross-stream guarantee be approved by a unanimous shareholders' resolution. This is not watertight, however, and will not provide protection in the event of a challenge by a liquidator.

**13. Are there any other notable costs, consents or restrictions associated with providing security for, or guaranteeing, acquisition financing in your jurisdiction?**

No.

**14. Is it possible for a company to give financial assistance (by entering into a guarantee, providing security in respect of acquisition debt or providing any other form of financial assistance) to another company within the group for the purpose of acquiring shares in (i) itself, (ii) a sister company and/or (iii) a parent company? If there are restrictions on granting financial assistance, please specify the extent to which such restrictions will affect the amount that can be guaranteed and/or secured.**

Save to the extent expressly provided in the CA, a Singapore public company or a Singapore company which is a subsidiary of a Singapore public company is prohibited from giving financial assistance, directly or indirectly for the purpose of, or in connection with:

- the acquisition or proposed acquisition of shares or units of shares in that Singapore company; or
- the acquisition or proposed acquisition of shares or units of shares in the holding company or ultimate holding company of that Singapore company.

Although the prohibition has largely been abolished for private companies, the constitution of some may nonetheless contain restrictions, and therefore it will be necessary to check in all cases.

Financial assistance is, for these purposes, broadly defined and includes the making of a loan, the provision of security or the giving a guarantee for a loan made to another person, or the releasing an obligation or a debt.

There are a number of exceptions to the prohibition as well as "whitewash procedures" which may be available depending on the circumstances.

**15. If there are any financial assistance issues in your jurisdiction, is there a procedure available that will have the effect of making the proposed financial assistance possible (and if so, please briefly describe the procedure and how long it will take)?**

There are a variety of procedures available under the CA pursuant to which (and provided the relevant conditions can be satisfied) financial assistance that would

otherwise be prohibited may be given, including both simplified “whitewash” procedures available in certain specific situations and a more traditional (longer form) process. The required process varies depending on the circumstances, but in very general terms, typically include some (or all) of the following:

(i) a resolution of the directors of the company proposing to give the financial assistance; (ii) a solvency statement given by the directors of such company; (iii) an auditor’s report as to the solvency statement; (iv) a shareholders’ resolution; (v) the lodging of notice of the proposal to give financial assistance with the Registrar of Companies; and (vi) the publishing of notice in a newspaper, so that any objections may be raised.

Once the process has been completed (and regardless of the process used), the company should issue a certificate signed by not less than two directors or a director and a secretary, confirming that the relevant process has been complied with in relation to the giving of the relevant financial assistance.

The length of time necessary to complete the procedure will depend on which of the processes is adopted and, in some cases, the time required will be increased by the need to give notice to shareholders and to publish a newspaper notice and to allow the required time period during which objections may be raised to expire.

**16. If there are financial assistance issues in your jurisdiction, is it possible to give guarantees and/or security for debt that is not pure acquisition debt (e.g. refinancing debt) and if so it is necessary or strongly desirable that the different types of debt be clearly identifiable and/or segregated (e.g. by tranching)?**

Yes, but it would be necessary to separate out the different loans, so that only those loans the proceeds of which cannot be applied for the purpose of, or in connection with, the acquisition of the relevant shares, benefit from any element which would otherwise constitute financial assistance. In practice, the view may be that it is preferable to avoid the issue and complete the whitewash process.

**17. Does your jurisdiction recognise the concept of a security trustee or security**

**agent for the purposes of holding security, enforcing the rights of the lenders and applying the proceeds of enforcement? If not, is there any other way in which the lenders can claim and share security without each lender individually enforcing its rights (e.g. the concept of parallel debt)?**

Yes.

**18. Does your jurisdiction have significant restrictions on the role of a security agent (e.g. if the security agent in respect of local security or assets is a foreign entity)?**

No.

**19. Describe the loan transfer mechanisms that exist in your jurisdiction and how the benefit of the associated security package can be transferred.**

There is no difference in Singapore from the usual system envisaged under English law syndicated loan agreements (e.g., as set out in the LMA/APLMA forms of facility agreement) and Singapore law-governed loan agreements will typically include the same transfer mechanisms (i.e., transfer by way of pre-agreed transfer mechanics including a transfer certificate or transfer by way of assignment). The security agent typically holds the benefit of security for the lenders from time to time.

**20. What are the rules governing the priority of competing security interests in your jurisdiction? What methods of subordination are used in your jurisdiction and can the priority be contractually varied? Will contractual subordination provisions survive the insolvency of a borrower incorporated in your jurisdiction?**

**Priorities:** Priorities between competing security interests are regulated largely by common law principles derived from English common law.

Typically, therefore, in the case of competing security interests, first in time will prevail in terms of priority, subject to certain exceptions. For example:

- in the case of an equitable mortgage, a



subsequent legal mortgage may take priority if the subsequent mortgagee was acting in good faith without actual or constructive notice of the prior equitable mortgage. In practice, this is not normally a significant issue given most creditors proposing to take security will have actual knowledge of existing security; and

- in the case of assignments of a debt or other legal choses in action, priority is determined by the order in which notice is given to the debtor or the counterparty.

Generally, priorities are not affected by the order of registration of security interests and as long as security is registered within the time allowed it will take priority reflecting the date of creation. That said, in the case of security granted by individuals, the Bills of Sale Act provides that priorities are determined by registration.

**Subordination:** It is not unusual for creditors sharing security to agree their respective priorities contractually, pursuant to an intercreditor or subordination agreement. While, as at the time of writing, there is no Singapore court decision confirming the enforceability of such arrangements upon an insolvency, comfort is usually taken from English court decisions accepting the validity of subordination arrangements. Although these decisions are not binding on Singapore courts, they would be of persuasive authority.

## 21. Is there a concept of “equitable subordination” in your jurisdiction whereby loans provided by a shareholder (as a creditor) to a company incorporated in your jurisdiction are subordinated by law upon insolvency of that company in your jurisdiction?

No.

## 22. Does your jurisdiction generally (i) recognise and enforce clauses regarding choice of a foreign law as the governing law of the contract, the submission to a foreign jurisdiction and a waiver of immunity and (ii) enforce foreign judgments?

**Choice of foreign law:** Yes, the basic principle under Singapore law is that parties are entitled to agree which country’s laws will govern their contract. If the parties to a contract expressly select a law to govern that contract,

it would usually be upheld as the proper law governing the contract unless the choice was not made in good faith. Examples of a choice not made in good faith are where the sole purpose for choosing that law is to circumvent the operation of another law that is mandatory, or where the application of the choice of law contravenes public policy in Singapore.

**Enforcement of foreign judgments:** Yes, a final and conclusive judgment for the payment of money rendered by a foreign court is, in principle, recognisable and enforceable in the Singapore courts. Foreign judgments may be enforced by a suit on a debt under the traditional common law position or by registration under the Reciprocal Enforcement of Foreign Judgments Act 1959 or the Choice of Court Agreements Act, 2016 (as applicable).

## 23. What are the requirements, procedures, methods and restrictions relating to the enforcement of collateral by secured lenders in your jurisdiction?

The process for enforcement will depend on a number of factors including the nature of the asset and the provisions of the security agreement. Enforcement powers typically include the ability to appoint a receiver of the relevant secured assets, the power to take possession of and to sell the relevant assets, and the power of foreclosure, although the latter is rarely used, not least because it requires a costly and cumbersome court process.

In general terms, enforcement can generally be achieved without the involvement of the courts and the terms of the relevant security agreement will govern the timing of the exercise of rights by secured parties. In the case of bank accounts, for example, secured creditors will typically have the right to apply proceeds directly towards satisfaction of the secured liabilities. Whether or not a receiver is in fact appointed will depend on the nature of the secured assets including the ease with which value can be determined and a sale achieved. In the case of bank accounts, absent an uncooperative account bank, it would be unusual to appoint a receiver since the process is straightforward. Similarly, in relation to enforcement of security over listed shares, where there is usually a readily ascertainable market price. In relation to enforcement of security over shares of a private company, however, it is usual to appoint a receiver since the process to determine value and effect a sale may be more complex and this approach will help insulate the security agent (or secured lender) from liability. Once appointed, the receiver (or indeed the security agent/secured lender) will be subject to certain

duties in the exercise of its powers, including the need to act in good faith, with reasonable skill and care; to take reasonable steps to obtain a proper price for the relevant assets; and to take reasonable care to obtain the best price reasonably obtainable for the relevant assets at the relevant time and in the circumstances. While any receiver will owe their duties to the secured parties, a receiver will nonetheless act as the agent of the relevant security provider.

If the value of security is less than the debt owed, secured creditors may claim the balance of any outstanding debt (after the enforcement of the security) as an unsecured creditor.

#### **24. What are the insolvency or other rescue/reorganisation procedures in your jurisdiction?**

The position in Singapore is governed by the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"). There are three main insolvency regimes for companies in Singapore: liquidation (which may be compulsory by order of court or voluntary), judicial management (which may be used as a restructuring tool or to enhance realisations of a company's assets or property as compared to a winding up) and receivership. In common with other jurisdictions, Singapore also has a process for schemes of arrangement including the ability to cramdown creditors both within the same class and cross-classes with the debtor supported by a moratorium to ensure that no enforcement action is taken while the scheme is being considered and processed. There is also the potential for pre-packed schemes and the ability to raise additional rescue finance with super-priority status. Moratoria are also a feature of the judicial management process.

Note also that the UNCITRAL Model Law on Cross Border Insolvency has been adopted in Singapore, making it easier for foreign companies that are subject to insolvency proceedings in other countries but with assets in Singapore to obtain the assistance of the Singapore courts to administer those assets.

#### **25. Does entry into any insolvency or other process in your jurisdiction prevent or delay secured lenders from accelerating their loans or enforcing their security in your jurisdiction?**

Yes. In addition to the enforcement moratoria which arise in relation to judicial management and schemes of arrangement (as mentioned above), Singapore also has

ipso facto restrictions precluding creditors from relying solely on a debtor's insolvency or the commencement of judicial management or other proceedings relating to compromise or other arrangements with creditors, to terminate or modify loan agreements or to accelerate loans.

#### **26. In what order are creditors paid on an insolvency in your jurisdiction and are there any creditors that will take priority to secured creditors?**

In general terms, the order of priority in a liquidation under Singapore law is:

1. Secured debt;
2. Preferential debt (including costs and expenses of winding up, various payments relating to wages, retrenchment benefits and others to employees, amounts due in respect of contributions under the Central Provident Fund Act (Singapore's social security savings plan) and taxes);
3. Floating charge holders;
4. Certain other categories of payments to employees;
5. Unsecured creditors; and
6. Shareholders.

As mentioned in Q24 above, creditors providing rescue financing may, in some circumstances, be granted super-priority ranking, above existing secured creditors.

#### **27. Are there any hardening periods or transactions voidable upon insolvency in your jurisdiction?**

Yes, there are various circumstances in which antecedent transactions may be set aside or varied by the courts on the application of a liquidator or judicial manager in the event of a winding up or judicial management. These include the following:

	Description	Relevant Period
Transactions at an undervalue	Transactions in which (a) the relevant company receives no consideration or consideration the value of which in money or money's worth is significantly less than the value, in money or money's worth, of the consideration provided by it; and (b) the company was unable to pay its debts at the time the transaction was entered into (or became unable to do so as a result of the transaction).	Transaction entered into (a) within 3 years of the commencement of judicial management/winding up ("relevant proceedings") or (b) in the period between the commencement of judicial management proceedings and the date the company enters judicial management.
Unfair preferences	An unfair preference is regarded as having been given to a person where (a) that person is a creditor of the company or a surety or guarantor for any of the company's debt or other liabilities and (b) the company (being influenced by a desire to prefer that person) does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company's winding up, will be better than the position that person would have been in if that thing had not been done; and (c) at the time of the granting of the preference, the company was unable to pay its debts (or became unable to do so as a result of that preference having been granted).	Preference is given (a) within one year before the commencement of relevant proceedings (increased to two years if the beneficiary is a connected person); or (b) in the period between the commencement of judicial management proceedings and the date the company enters judicial management.
Floating charges	Floating charges are vulnerable save to the extent fresh consideration was received and, where the beneficiary is not a connected person, provided that the company was unable to pay its debts at the time the transaction was entered into (or became unable to do so as a result of entering into the relevant transaction).	Floating charge is granted (a) within one year before the commencement of relevant proceedings (increased to two years if the charge is in favour of a connected person); or (b) in the period between the commencement of judicial management proceedings and the date the company enters judicial management.
Extortionate credit transactions	Transactions the terms of which are such as to require grossly exorbitant payments to be made in respect of the provision of credit or which are harsh and unconscionable or substantially unfair.	Transaction entered into within three years prior to the commencement of relevant proceedings.

**28. Are there any other notable risks or concerns for secured lenders in enforcing**

**their rights under a loan or collateral agreement (whether in an insolvency or restructuring context or otherwise)?**

It should be noted that the Singapore insolvency regime may also apply to offshore companies with a substantial connection to Singapore. The requirement of having a substantial connection may be satisfied not only by companies which are registered as foreign companies under CA, or who have their COMI, carry on business and/or have substantial assets in Singapore but also to those who have chosen Singapore law as the governing law of a transaction and/or the law governing dispute resolution in relation to a transaction or have otherwise submitted to the jurisdiction of the Singapore courts.

**29. Please detail any taxes, duties, charges or related considerations which are relevant for lenders making loans to (or taking security and guarantees from) entities in your jurisdiction in the context of acquisition finance, including if any withholding tax is applicable on payments (interest and fees) to lenders and at what rate.**

Tax is required to be withheld from payments of, or in the nature of, income by a Singapore obligor if made to any person who is not known to be resident in Singapore (as defined in the Singapore Income Tax Act, 1947 ("SITA")). This is, however, subject to (i) any concessions granted by the Inland Revenue Authority of Singapore ("IRAS"); (ii) certain exemptions available under SITA; and (iii) any reduced rate / exemption of withholding tax available under any applicable tax treaty between Singapore and the country of residence of the payment recipient. Examples of payments that attract withholding tax include interest, commissions, fees and other payments in connection with loans or indebtedness (commonly referred to as "Section 12(6) payments"). Since 2014, however, a concession has been available such that **Section 12(6) payments** made to Singapore branches of non-resident companies (including foreign banks) are not subject to withholding tax.

Subject to any concessions, exemptions and any applicable treaty, the applicable rate for Section 12(6) payments is 15%.

**30. Are there any other tax issues that foreign lenders should be aware of when**



## lending into your jurisdiction?

Certain fees payable to lenders in respect of services provided may be subject to GST to the extent they relate to the provision of services other than the actual making of a loan (e.g., arranging and underwriting services).

## 31. What is the regulatory framework by which an acquisition of a public company in your jurisdiction is effected?

The primary legislation governing the takeover of a Singapore public company is the Securities and Futures Act 2001 (the “**SFA**”), pursuant to which the Singapore Code on Takeovers and Mergers (the “**Takeover Code**”) is issued. The Securities Industry Council (“**SIC**”) is the regulator responsible for administering and enforcing the Takeover Code.

The Companies Act 1967 also provides for:

- court-approved schemes of arrangement, which may be useful in friendly deals when an “all or nothing” outcome is desired; and
- amalgamations, which may be used where the bidder and target entities are both incorporated in Singapore.

The provisions of the Listing Manual of the Singapore Exchange Securities Trading Limited (“**SGX**”) will also be applicable to a takeover where the bidder or target is listed on the SGX.

## 32. What are the key milestones in the timetable (e.g. announcement, posting of documentation, meetings, court hearings, effective dates, provision of consideration, withdrawal conditions)?

The timetable for a takeover would depend on how that takeover is structured and the approach adopted. In general terms, an indicative timetable under the Takeover Code for a voluntary general offer would be as follows:

T: Announcement of a firm intention to make an offer

T+14: Earliest date a bidder can post an offer document

T+21: Latest date a bidder can post an offer document

T+28: Earliest possible last date for target to post an offeree circular to its shareholders (must be posted within 14 days of offer document being posted)

T+42: Earliest possible date on which offer can close (offer must stay open for at least 28 days)

T+74: Earliest possible last date by which offer must close (offer cannot stay open for more than 60 days after the day on which the offer document was posted unless the offer has previously become unconditional as to acceptances).

## 33. What is the technical minimum acceptance condition required by the regulatory framework? Is there a squeeze out procedure for minority hold outs?

**Acceptance condition:** Assuming a takeover under the Takeover Code:

- **Mandatory offer:** A mandatory offer must (unless otherwise agreed by the SIC) be conditional upon a bidder receiving acceptances which will result in it (together with parties acting in concert with it) holding more than 50% of the voting rights of the target.
- **Voluntary offer:** A voluntary offer must be conditional upon a bidder receiving acceptances which will result in it (together with parties acting in concert with it) holding more than 50% of the voting rights of the target or, with the approval of the SIC, a higher level.
- **Partial offer:** A partial offer must be conditional upon a bidder (together with parties acting in concert with it) receiving a specified number or percentage of acceptances. There is no technical minimum acceptance condition required in the case of a partial offer.

**Squeeze out:** Squeeze out of dissenting shareholders is possible after a bidder has acquired 90% of target’s shares (excluding treasury shares and shares held as at the date of the offer by the bidder, its related corporations, or their nominees).

## 34. At what level of acceptance can the bidder (i) pass special resolutions, (ii) delist the target, (iii) effect any squeeze out, and (iv) cause target to grant upstream guarantees and security in respect of the acquisition financing?

(i) 75%.

(ii) 75%.

(iii) See Q33 above.

(iv) See Qs 14 and 15 above.

### 35. Is there a requirement for a cash confirmation and how is this provided, by who, and when?

Where an offer is for cash or includes a cash element, the bidder must have sufficient financial resources available to it on an unconditional basis to be able to satisfy its obligations in the event of full acceptance of the offer before it can announce an offer. The bidder's financial adviser or another appropriate third party (e.g., the bank providing any financing) is required under the Takeover Code to confirm that resources are available and that unconditional confirmation is required to be included in the offer announcement and the offer document. The party providing such confirmation will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash would be available to satisfy full acceptance of the offer. The SIC may require evidence to support such confirmation.

### 36. What conditions to completion are permitted?

In the case of a mandatory offer, no conditions can be imposed other than the minimum acceptance level and any necessary merger control clearance.

In the case of a voluntary or partial offer, conditions cannot be attached if the determination of satisfaction is dependent on a subjective interpretation by the bidder or is within the bidder's control. Conditions relating to the level of acceptance, shareholder approval for the issue of new shares and the SGX's approval for listing may be attached without reference to the SIC but the SIC's approval should be sought where any other conditions are proposed. Where there are reasonable grounds for an offer to be conditional on specific statements, facts or estimates relating to the target's business being satisfactorily confirmed, SIC will normally allow such conditions to be included provided that the test is sufficiently objective and depends on the judgment of parties other than the bidder and its concert parties.

A bidder may also, subject to certain requirements, announce a pre-conditional voluntary offer such that the announcement of a firm intention to make an offer is subject to certain pre-conditions.

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