

THE MERGERS &  
ACQUISITIONS  
REVIEW

THIRTEENTH EDITION

Editor  
Mark Zerdin

THE LAWREVIEWS

THE  
MERGERS &  
ACQUISITIONS  
REVIEW

THIRTEENTH EDITION

Reproduced with permission from Law Business Research Ltd  
This article was first published in September 2019  
For further information please contact [Nick.Barette@thelawreviews.co.uk](mailto:Nick.Barette@thelawreviews.co.uk)

**Editor**  
Mark Zerdin

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGER

Joel Woods

SENIOR ACCOUNT MANAGERS

Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS

Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATOR

Tommy Lawson

HEAD OF PRODUCTION

Adam Myers

PRODUCTION EDITOR

Anne Borthwick

SUBEDITOR

Hilary Scott

CHIEF EXECUTIVE OFFICER

Nick Brailey

Published in the United Kingdom  
by Law Business Research Ltd, London  
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK  
© 2019 Law Business Research Ltd  
[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at August 2019, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed  
to the Publisher – [tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

ISBN 978-1-83862-050-9

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA

ÆLEX

AFRIDI & ANGELL

AGUILAR CASTILLO LOVE

ARIAS, FÁBREGA & FÁBREGA

ASHURST LLP

BAE, KIM & LEE LLC

BAKER MCKENZIE

BGP LITIGATION

BHARUCHA & PARTNERS

BIRD & BIRD ATMD LLP

BREDIN PRAT

CLEARY GOTTlieb STEEN & HAMILTON LLP

CMS ROMANIA

CORONEL & PÉREZ

CRAVATH, SWAINE & MOORE LLP

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ, SC

DEBEVOISE & PLIMPTON LLP

DEHENG LAW OFFICES

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELVINGER HOSS PRUSSEN

GREENBERG TRAURIG SANTA MARIA LAW FIRM  
HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWAELTEN MBB  
HEUKING KÜHN LÜER WOJTEK  
KENNEDY VAN DER LAAN  
MAKES & PARTNERS LAW FIRM  
MAPLES GROUP  
MARTÍNEZ DE HOZ & RUEDA  
MATOUK BASSIOUNY & HENNAWY  
MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS  
MCCARTHY TÉTRAULT LLP  
NIEDERER KRAFT FREY LTD  
NISHIMURA & ASAHI  
OPPENHEIM LAW FIRM  
RUSSIN, VECCHI & HEREDIA BONETTI  
SCHINDLER RECHTSANWÄLTE GMBH  
SLAUGHTER AND MAY  
TMI ASSOCIATES  
TORRES, PLAZ & ARAUJO  
URÍA MENÉNDEZ  
WHITE & CASE LLP  
WINSTON & STRAWN LLP

# CONTENTS

PREFACE.....	vii
<i>Mark Zerdin</i>	
Chapter 1 EU OVERVIEW.....	1
<i>Mark Zerdin</i>	
Chapter 2 EUROPEAN PRIVATE EQUITY.....	10
<i>Benedikt von Schorlemer and Jan van Kistfeld</i>	
Chapter 3 M&A LITIGATION.....	18
<i>Roger A Cooper, Meredith Kotler, Mark McDonald and Vanessa C Richardson</i>	
Chapter 4 REGULATION OF FINANCIAL INSTITUTION M&A IN THE UNITED STATES.....	27
<i>Gregory Lyons, David Portilla and Nicholas Potter</i>	
Chapter 5 UNITED STATES ANTITRUST OVERVIEW.....	34
<i>Richie Falek, Neely Agin and Conor Reidy</i>	
Chapter 6 ARGENTINA.....	40
<i>Fernando S Zoppi</i>	
Chapter 7 AUSTRIA.....	48
<i>Clemens Philipp Schindler and Christian Thaler</i>	
Chapter 8 BRAZIL.....	59
<i>Adriano Castello Branco, Claudio Oksenberg and João Marcelino Cavalcanti Júnior</i>	
Chapter 9 CANADA.....	70
<i>Cameron Belsher, Robert Hansen, Robert Richardson and Mark McEwan</i>	
Chapter 10 CAYMAN ISLANDS.....	83
<i>Suzanne Correy and Daniel Lee</i>	

## Contents

---

Chapter 11	CHINA.....	93
	<i>Wei (David) Chen and Kai Xue</i>	
Chapter 12	COLOMBIA.....	104
	<i>Alexandra Montealegre and Stefania Olmos</i>	
Chapter 13	COSTA RICA.....	117
	<i>John Aguilar Quesada and Marco Solano</i>	
Chapter 14	DOMINICAN REPUBLIC.....	124
	<i>Georges Santoni Recio and Laura Fernández-Peix Pérez</i>	
Chapter 15	ECUADOR.....	134
	<i>Boanerges H Rodriguez Velásquez</i>	
Chapter 16	EGYPT.....	142
	<i>Omar S Bassiouny and Maha El-Meihy</i>	
Chapter 17	FINLAND.....	152
	<i>Jan Ollila, Wilhelm Eklund and Jasper Kuhlefeldt</i>	
Chapter 18	FRANCE.....	164
	<i>Didier Martin</i>	
Chapter 19	GERMANY.....	185
	<i>Heinrich Knepper</i>	
Chapter 20	GREECE.....	202
	<i>Cleomenis G Yannikas, Vassilis S Constantinidis and John M Papadakis</i>	
Chapter 21	HONG KONG.....	213
	<i>Jason Webber</i>	
Chapter 22	HUNGARY.....	224
	<i>József Bulcsú Fenyvesi and Mihály Barcza</i>	
Chapter 23	ICELAND.....	234
	<i>Hans Henning Hoff</i>	
Chapter 24	INDIA.....	241
	<i>Justin Bharucha</i>	

## Contents

---

Chapter 25	INDONESIA.....	256
	<i>Yozua Makes</i>	
Chapter 26	ITALY.....	267
	<i>Mario Santa Maria and Carlo Scaglioni</i>	
Chapter 27	JAPAN.....	278
	<i>Masakazu Iwakura, Gyo Toda and Makiko Yamamoto</i>	
Chapter 28	KOREA.....	287
	<i>Ho Kyung Chang, Alan Peum Joo Lee and Robert Dooley</i>	
Chapter 29	LUXEMBOURG.....	298
	<i>Philippe Hoss and Thierry Kauffman</i>	
Chapter 30	MEXICO.....	313
	<i>Eduardo González and Jorge Montaña</i>	
Chapter 31	NETHERLANDS.....	321
	<i>Meltem Koning-Gungormez and Hanne van 't Klooster</i>	
Chapter 32	NIGERIA.....	331
	<i>Lawrence Fubara Anga and Maranatha Abraham</i>	
Chapter 33	NORWAY.....	336
	<i>Ole K Aabo-Evensen</i>	
Chapter 34	PANAMA.....	368
	<i>Andrés N Rubinoff</i>	
Chapter 35	PORTUGAL.....	376
	<i>Francisco Brito e Abreu and Joana Torres Ereio</i>	
Chapter 36	QATAR.....	388
	<i>Michiel Visser, Charbel Abou Charaf and Mohammed Basama</i>	
Chapter 37	ROMANIA.....	400
	<i>Horea Popescu and Claudia Nagy</i>	
Chapter 38	RUSSIA.....	411
	<i>Alexander Vaneev, Denis Durashkin and Anton Patkin</i>	

## Contents

---

Chapter 39	SINGAPORE.....	422
	<i>Sandra Seab, Marcus Chow and Seow Hui Goh</i>	
Chapter 40	SPAIN.....	432
	<i>Christian Hoedl and Miguel Bolívar Tejedo</i>	
Chapter 41	SWITZERLAND .....	446
	<i>Manuel Werder, Till Spillmann, Thomas Brönnimann, Philippe Weber, Ulysses von Salis, Nicolas Birkhäuser and Elga Reana Tozzi</i>	
Chapter 42	UKRAINE.....	455
	<i>Viacheslav Yakymchuk and Olha Demianiuk</i>	
Chapter 43	UNITED ARAB EMIRATES .....	469
	<i>Danielle Lobo and Abdus Samad</i>	
Chapter 44	UNITED KINGDOM .....	479
	<i>Mark Zerdin</i>	
Chapter 45	UNITED STATES .....	498
	<i>Richard Hall and Mark I Greene</i>	
Chapter 46	VENEZUELA.....	530
	<i>Guillermo de la Rosa Stolk, Juan Domingo Alfonzo Paradisi, Valmy Diaz Ibarra and Domingo Piscitelli Nevola</i>	
Chapter 47	VIETNAM.....	543
	<i>Hikaru Oguchi, Taro Hirosawa and Ha Hoang Loc</i>	
Appendix 1	ABOUT THE AUTHORS.....	557
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	587

# PREFACE

2018 was the year of the mega-deal, with an unprecedented number of big-ticket mergers taking place across a range of jurisdictions and sectors. In the first six months of 2018, global deal value rose by 59 per cent compared to 2017, despite volumes falling by 12 per cent. Although there was a considerable drop off in activity in the second half of the year, 2018 nonetheless saw robust overall performance by market participants, with global activity in 2018 exceeding US\$3 trillion for the fifth consecutive year.

The United States remained the most targeted and acquisitive region globally in 2018; however, the deal-making landscape in the US for the remainder of 2019 presents a mixed picture. On the one hand, tax reform, a more relaxed US regulatory climate and growing cash reserves present a favourable environment for investors. On the other, dealmakers are likely to be concerned by the trade dispute between the US and China – which is already threatening economic growth and, at the time of writing, shows no sign of abating – and the ongoing uncertainty regarding antitrust policies, which may lead to increased scrutiny of M&A deals.

In Europe, after a record-breaking start to the year, the prolonged uncertainty caused by stuttering Brexit negotiations and wider political tensions across the continent finally caught up with dealmakers in the second half of 2018. In line with a softening of the global economy, the value of European deals in H2 plummeted to its lowest level since 2013, and the volume of transatlantic deals between North America and Europe also fell by 29 per cent year-on-year.

One of the main disruptors to M&A activity over the past 12 months has been the rise in political intervention in cross-border deals. In particular, concerns over national security have led to the tightening of foreign investment regimes and antitrust regulations, coupled with more active enforcement by regulators. This growth in protectionism is likely to remain one of the main obstacles facing dealmakers in the near future.

Nevertheless, looking forwards into the remainder of 2019, there is certainly cause for optimism: private equity continues to enjoy record-breaking levels of dry powder, and developments in technology are driving both the sector itself and the facilitation of deals more broadly. Finally, and perhaps most importantly, the past 12 months have highlighted the resilience of companies and private equity firms in their navigation of global political uncertainty and economic shifts.

I would like to thank the contributors for their support in producing the 13th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 47 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**

Slaughter and May

London

July 2019

# HONG KONG

*Jason Webber*<sup>1</sup>

## I OVERVIEW OF M&A ACTIVITY<sup>2</sup>

M&A activity in Hong Kong remained high in 2018, with a total of 584 announced deals and a total disclosed value of US\$167.93 billion in 2018, representing a decrease compared with 2017.

The Hong Kong securities markets showed a decrease in terms of market capitalisation but an upturn in terms of trading activity in 2018. A total of 218 companies were newly listed on the Stock Exchange of Hong Kong Limited (SEHK) in 2018, and the total amount of equity funds raised on the SEHK in 2018 was approximately HK\$544.13 billion.<sup>3</sup>

## II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The law governing M&A comprises primary legislation, regulatory rules, the law of contract and case law.

The primary legislation that applies principally to Hong Kong-incorporated companies in general is the Companies Ordinance (CO) and includes provisions relating to financial assistance for the acquisition of a company's own shares, merger relief, transfers of shares and schemes of arrangement affecting mergers. The Securities and Futures Ordinance (SFO) is also relevant, covering the regulation of offers of securities, and the communication of invitations and inducements to engage in securities transactions.

For companies in certain industries, there is also specific legislation that may be relevant, for example:

- a* the Banking Ordinance for banking, restricted licence banking and deposit-taking companies;
- b* the SFO for securities, financial advisory and asset management companies;
- c* the Broadcasting Ordinance (BO) and the Telecommunications Ordinance (TO) for radio, television broadcasting and telecommunications companies; and
- d* the Insurance Companies Ordinance for insurance companies.

---

1 Jason Webber is a partner at Slaughter and May. The author would like to thank Nicola Lui and Dimitri Au-Yeung for their assistance in preparing this chapter.

2 Statistics on mergers and acquisitions involving Hong Kong companies differ significantly among various sources. This summary covers all M&A activity where Hong Kong was the target, seller or bidder region between 1 January 2018 and 31 December 2018.

3 Source: SEHK Fact Book 2018.

Prior approval of ownership changes from the relevant regulatory bodies may be required under the legislation listed above.

If an M&A transaction involves a company whose shares are listed on the SEHK, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules) will also apply. In addition, the Securities and Futures Commission (SFC), in consultation with the Takeovers and Mergers Panel (Panel) – a committee formed by the SFC pursuant to the SFO – has issued the Code on Takeovers and Mergers and Share Buy-backs (Takeovers Code), which applies to takeovers, mergers and share buy-backs affecting public companies<sup>4</sup> in Hong Kong and companies with a primary listing of their equity securities in Hong Kong. The Takeovers Code is not statutory and does not have the force of law, but the Listing Rules expressly require compliance with the Takeovers Code. As a non-governmental statutory body, the SFC regulates the securities and futures markets in Hong Kong and oversees the development of these markets. Its decisions apply to M&A of public companies.

Since Hong Kong is a common law jurisdiction,<sup>5</sup> the law of contract (which is largely derived from English law) and case law<sup>6</sup> also form an important part of the law governing M&A.

### **III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT**

#### **i The Takeovers Code**

To ensure that the Takeovers Code takes account of market developments and developing international practice, it is regularly reviewed by the Executive of the SFC in consultation with the Panel. On 13 July 2018, the SFC introduced certain amendments to the Takeovers Code<sup>7</sup> that came into effect immediately, including an upwards revision of the shareholder voting approval threshold for whitewash waivers from a simple majority of independent votes to 75 per cent of independent votes, with a separate simple majority independent shareholder approval requirement for the underlying transaction.

---

4 The Takeovers Code states that all circumstances are to be considered, and an economic or commercial test is to be applied (taking into account primarily the number of Hong Kong shareholders and the extent of share trading in Hong Kong), in deciding whether a company is a public company. For the purposes of the CO, a private company is a company incorporated in Hong Kong that, by its articles of association, restricts the right to transfer its shares; limits the number of its members to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after the termination of that employment to be, members of the company; and prohibits any invitation to the public to subscribe for any shares or debentures of the company (Section 11 of the CO).

5 Under the 'one country, two systems' approach, implemented after the transfer of sovereignty over Hong Kong to the People's Republic of China (China) on 1 July 1997, Hong Kong remains a common law jurisdiction.

6 English case law has persuasive authority only and is subject to interpretation by the Hong Kong courts.

7 Source: Consultation Conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buybacks, SFC (<https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=18CP1>).

## ii Listing Rules

The Listing Rules reflect currently acceptable standards in the marketplace and are designed to ensure that investors have, and can maintain, confidence in the market. To ensure that the Listing Rules take account of market developments and developing international practice, the SEHK regularly reviews the Listing Rules and may, subject to the approval of the SFC under Section 24 of the SFO, make amendments to the Listing Rules. Effective from 30 April 2018, three new chapters were added to the Listing Rules, together with consequential amendments, to:

- a* permit listings of biotech issuers that do not meet the normal financial eligibility tests under the Listing Rules;
- b* permit listings of companies with weighted voting rights structures; and
- c* establish a new concessionary secondary listing route for Greater China and international companies that wish to list on a secondary basis in Hong Kong.<sup>8</sup>

These changes aim to facilitate the listing of companies from emerging and innovative sectors on the SEHK. As stated above, there were a total of 218 newly listed companies on the SEHK in 2018, compared to 174 newly listed companies in 2017.

Separately, the SEHK is proposing to tighten the rules on backdoor listings and the continuing listing criteria to address concerns over the perceived negative impact of increased market activities related to shell companies. The SEHK issued a consultation paper on its proposed rule amendments in June 2018,<sup>9</sup> and will publish its consultation conclusions in due course.

## iii The CO

The CO came into effect on 3 March 2014. Various key concepts under the CO that are relevant in the context of M&A are as follows:

- a* the requirements for approving a scheme of arrangement differ depending on the type of scheme. For privatisation schemes and members' schemes involving a takeover offer or a general offer, the disinterested shares test (which requires not more than 10 per cent of the total voting rights attached to all disinterested shares to be voted against a proposal) applies so as to align with the requirement under the Takeovers Code in the context of a takeover. The headcount test (which requires that a majority of the shareholders of the target company voting on a scheme of arrangement (either in person or by proxy) must vote in favour of it) applies to creditors' schemes and members' schemes not involving a takeover offer or a general offer, and in these situations, the court is given discretion to dispense with the test in appropriate circumstances;
- b* a company and its wholly owned subsidiaries may amalgamate and continue as one company without the sanction of the court provided that certain conditions are met. Such conditions include, for example, that each amalgamating company is a Hong

---

8 Source: SEHK press release dated 24 April 2018 ([https://www.hkex.com.hk/News/News-Release/2018/180424news?sc\\_lang=en](https://www.hkex.com.hk/News/News-Release/2018/180424news?sc_lang=en)).

9 Source: Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments, SEHK (<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultation-s/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Consultation-Paper/cp201806.pdf>).

Kong-incorporated company limited by shares, that each amalgamating company is solvent and that no creditor of an amalgamating company will be prejudiced by the amalgamation;

- c general prohibition on private and public companies providing financial assistance for an acquisition of shares in itself, and streamlined whitewash procedures are extended to listed companies. In addition, it is expressly provided that a company is not prohibited from giving financial assistance for the purpose of an acquisition of shares in its holding company if the holding company is incorporated outside Hong Kong; and
- d increased flexibility for companies to structure and organise their share capital in light of updated concepts relating to share capital (par value (or nominal value), share premium and the requirement for authorised capital have been abolished). Despite the absence of share premium, merger relief continues to be available. The amount required to be recorded as share capital in respect of the consideration shares issued by an acquiring company is the subscribed capital attributable to the acquired shares.

### ***Significant controllers register***

To enhance the transparency of company ownership and control, from 1 March 2018, all Hong Kong-incorporated companies (except those listed in Hong Kong) are required to create and maintain a register of significant controllers pursuant to Part 12 of the CO. A company's significant controllers are, in broad terms, natural persons and corporate entities immediately above the company in the ownership chain with significant control over the company.

### ***Companies (Amendment) (No. 2) Ordinance***

On 1 February 2019, the Companies (Amendment) (No. 2) Ordinance 2018 came into effect. This Ordinance amends certain provisions of the CO to improve its clarity and facilitate business in Hong Kong, one notable amendment being a clarification that subsidiaries of a non-Hong Kong holding company may take advantage of the court-free procedure for horizontal amalgamation under the CO provided the merging companies are Hong Kong companies.

## **IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS**

Given Hong Kong's position as a hub for investment into China, its status as a major regional financial centre, and the widespread use of offshore companies for investment into and out of China, a substantial number of transactions have foreign involvement, including in the form of acquisitions by offshore companies. An analysis by reference to foreign involvement in transactions is therefore not particularly meaningful.

## **V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES**

A key trend observed in 2017 was the increased use of consortium structures involving both private equity and strategic investors to undertake acquisitions as a means of sharing risk and creating value through synergies. This trend continued in 2018, with examples such as CK Group's proposed consortium bid for Australia's APA Group Limited, which is described in more detail below, and the US\$200 million investment by a group of investors led by

Sequoia China in Klook Travel Technology Limited,<sup>10</sup> a Hong Kong-based travel activities and services booking platform. Another trend observed in 2018 was the increased interest in deals with a technology focus. Examples include Alibaba Group's acquisition of China-based online food delivery platform Ele.me<sup>11</sup> and the Tencent-led investment in UBTECH Robotics,<sup>12</sup> a China-based intelligent humanoid robots manufacturer.

The most active sectors for M&A activity in Hong Kong in 2018 included technology and fintech, energy and infrastructure, logistics, real estate, financial services and consumer. It is expected that interest in these sectors will continue in 2019.

There were numerous high-profile M&A transactions in 2018. The largest proposed outbound deal was the bid by a consortium led by CK Asset Holdings Limited in June 2018 to acquire all outstanding shares in APA Group Limited for approximately A\$12,979 million.<sup>13</sup> APA Group Limited is listed on the Australian Securities Exchange and is a major natural gas pipeline operator in Australia. Although the proposed transaction was recommended by the board of directors of APA Group Limited and was approved by the Australian Competition and Consumer Commission, the Treasurer of the Australian government vetoed it in November 2018 on the basis that the proposed deal would be contrary to the national interest as it would result in a single foreign company group having sole ownership and control over Australia's most significant gas transmission business.<sup>14</sup>

A notable tech transaction was the Series C equity financing announced in June 2018 by Ant Small and Micro Financial Services Group Co, Ltd (Ant Financial), an affiliate of Alibaba Group Holding Ltd, which raised approximately US\$14 billion.<sup>15</sup> This fundraising included a US dollar tranche, which was backed by global institutional investors such as GIC Private Limited, and a renminbi tranche, which was primarily supported by existing Ant Financial shareholders. Ant Financial has confirmed that it would use the funds raised to accelerate globalisation plans for its Alipay payment platform, one of the largest online payment platforms within China, and to invest in developing financial technology.

As a significant number of companies whose shares are listed on the SEHK have controlling shareholders, there is not a large number of unsolicited M&A offers. Nonetheless, in 2018, there was a rare hostile takeover attempt by Re Strategic Investments Pte Ltd (Re Strategic), which operates under the control of PAG Real Estate, to acquire a controlling stake in Spring Estate Investment Trust (Spring REIT). Spring REIT is a real estate investment trust that primarily invests in real estate in China. Re Strategic was one of the substantial unitholders of Spring REIT, and PAG Real Estate is an Asian alternative investment fund. The offeror sought to acquire a controlling stake of Spring REIT in order to replace the manager. Although the initial offer price was subsequently revised,<sup>16</sup> the acceptance condition was not met and the bid was ultimately unsuccessful.

---

10 <https://www.klook.com/en-GB/newsroom/content/6388?n=5>.

11 <https://www.alizila.com/alibaba-acquires-eleme-boosting-new-retail-efforts/>.

12 <https://pressroom.ubtrobot.com/2018/05/07/ubtech-robotics-announces-largest-artificial-intelligence-funding-in-history/>.

13 [https://www.cki.com/english/PDF\\_file/announcement/2018/20181009\\_2.pdf](https://www.cki.com/english/PDF_file/announcement/2018/20181009_2.pdf).

14 <http://jaf.ministers.treasury.gov.au/media-release/055-2018/>.

15 <https://www.antfin.com/newsDetail.html?id=5b19ed5ef86ebdaa6985060f>.

16 <http://www3.hkexnews.hk/listedco/listconews/SEHK/2018/1029/LTN20181029927.PDF>.

In addition, there were a number of high-profile proposed privatisations of Hong Kong-listed companies in 2018, including GuoLine Overseas Limited's failed proposed privatisation of Hong Kong-listed Guoco Group Limited and Swire Pacific Limited's successful privatisation of Hong Kong Aircraft Engineering Company Limited.<sup>17</sup>

## **VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS**

In common with many jurisdictions, Hong Kong's Takeovers Code requires an offeror to have certainty of funds to make an offer for a public company. Under the Takeovers Code, an announcement of a firm intention to make an offer should include a confirmation by a financial adviser (or another appropriate third party) that resources are available to the offeror sufficient to satisfy full acceptance of the offer (a sufficiency statement). Such confirmation is not only required when the consideration is cash, or includes an element of cash, but also when the consideration consists of, or includes, any other assets except new securities to be issued by the offeror. The executive may also require evidence to support the sufficiency statement, and evidence that the offeror has sufficient resources to complete the purchase of shares that gives rise to the offer obligation.

Depending on how an acquisition is structured, M&A transactions in Hong Kong are usually financed by:

- a* internal resources;
- b* shareholders' loans;
- c* equity issues;
- d* debt issues;
- e* loan facilities from banks and financial institutions; or
- f* a combination of two or more of the above.

## **VII PENSIONS AND EMPLOYMENT LAW**

Under Hong Kong law, there is no specific regulation that provides for the transfer of employment contracts when there is a change of ownership of a business, as opposed to an employing company. Employment contracts would therefore be terminated in the case of an acquisition of a business, and the new employer would have the freedom to decide whether to enter into new employment contracts with existing employees. However, generally speaking, where termination of an employment contract takes place due to a transfer of business, this would constitute redundancy, and employees previously employed may be entitled to severance payments and long-service awards, for which the old employer would be liable. However, under Sections 31J and 31C of the Employment Ordinance (EO), severance payments and long-service awards are not payable in the case of a business transfer if, not less than seven days before the end date of an employee's previous contract, the new employer has offered to renew the employee's contract, or to re-engage him or her under a new contract, on no less favourable terms and conditions, and the employee has unreasonably refused that offer. If an offer of renewal or re-engagement is accepted by the employee, the new contract has effect as if the renewal or re-engagement had been a renewal or re-engagement by the old employer

---

<sup>17</sup> [https://www.haeco.com/getattachment/e54ff63e-d570-4941-9491-83f5605b6930/Joint-Announcement-\(3\).aspx](https://www.haeco.com/getattachment/e54ff63e-d570-4941-9491-83f5605b6930/Joint-Announcement-(3).aspx).

without any substitution of the new employer;<sup>18</sup> therefore, the employment relationship will be regarded as being continuous for the purposes of the EO.<sup>19</sup> Any redundancy issues that may arise in future disposals of the business would be passed to the new employer after the renewal or re-engagement.

Generally speaking, under the Mandatory Provident Funds Schemes Ordinance (MPFO), an employer<sup>20</sup> must enrol its employees as members of one of the registered MPF schemes (as defined in the MPFO) available in the market in Hong Kong. An employer may enrol different employees in different registered schemes. During the contribution period (as defined in the MPFO), the employer must contribute to the registered scheme from its own funds an amount determined in accordance with the MPFO, and deduct from employees' relevant income for that period as a contribution by the employees to the scheme a further amount determined in accordance with the MPFO. An employee and an employer may make additional voluntary contributions to the employee's scheme.

Where there is a proposed disposal of a business, the existing employer and the proposed new employer should consider the implications of the MPFO and arrangements to deal with the accrued benefits of employees under the applicable MPF scheme. If a merger or acquisition is to be effected by way of a share sale, it is not likely that there will be MPF implications (unless the target company is spun out from a group of companies that operates a group-based scheme), as the merger or acquisition will not involve a change of employer. The surviving party or acquirer would nevertheless be well advised to carry out due diligence to ensure that all target employees are employed by the target company on terms that comply with the MPFO.

However, if a merger or acquisition is to be effected by way of a business transfer involving a change of employer, the employee must, in accordance with Section 14 of the MPFO, elect to transfer the accrued benefits to a contribution account<sup>21</sup> under the new employer's MPF scheme, retain the accrued benefits in the previous MPF scheme under a preserved account<sup>22</sup> or transfer the accrued benefits to a preserved account of another MPF scheme.

Both the seller and the buyer must observe and comply with the requirements of the MPFO with respect to the transfer of the accrued benefits of employees.

On 1 May 2011, the Minimum Wage Ordinance came into effect in Hong Kong and introduced a statutory minimum wage. The statutory minimum wage was raised by 8.7 per cent from the previous rate with effect from 1 May 2019.

---

18 Section 31J of the EO.

19 Subsection 3 of Section 31J of the EO and Paragraph 5 of Schedule 1 of the EO.

20 Under the MPFO, an employer means any person who has entered into a contract of employment to employ another person as his or her employee.

21 A contribution account is an account mainly used to accumulate MPF contributions in respect of current employment and investment returns.

22 A preserved account is an account in which accrued MPF benefits in respect of former employment are held.

## VIII TAX LAW

Hong Kong's competitive economy is reflected in the transparency, predictability and simplicity of its low-rate tax system. These attractive qualities mean that, unlike many other jurisdictions, Hong Kong tax is generally not the determining factor in the way in which a transaction is structured in Hong Kong. There is no capital gains tax on the disposal of assets, including the disposal of shares and property. In addition, dividends are not classified as taxable income, and there is no withholding tax on dividends.

Stamp duty on the transfer of Hong Kong shares is currently 0.2 per cent of the consideration paid (or market value), and is generally payable in equal shares of 0.1 per cent by both the seller and the buyer. Transactions that are structured as schemes of arrangement do not attract stamp duty. Stamp duty on the transfer of immovable non-residential property in Hong Kong ranges from 1.5 per cent (for transactions up to HK\$2 million) to 8.5 per cent of the amount or value of the consideration (for transactions over HK\$21,739,130) and is usually paid by the purchaser.<sup>23</sup> The Stamp Duty Ordinance is the principal source of legislation governing this area.

The Inland Revenue Ordinance sets out three separate taxes on income: profits tax, salaries tax and property tax. Liability to tax under these three heads, as a general rule, is limited to persons or entities carrying on a trade, profession or business in Hong Kong, and to income that arises in or is derived from Hong Kong. To this extent, the residence status of persons and companies is irrelevant to income tax assessment. For the year of assessment from 2018 to 2019 onwards, a two-tiered profits tax rate applies. Corporations are taxed at 8.25 per cent on assessable profits up to HK\$2 million and 16.5 per cent on any part of assessable profits over HK\$2 million, whereas unincorporated businesses are taxed at 7.5 per cent on assessable profits up to HK\$2 million and 15 per cent on any part of assessable profits over HK\$2 million.

In respect of loan repayments, as a general rule a borrower's interest expenses will be deductible where the lender is subject to Hong Kong profits tax on its receipt of the interest. In addition, where a financial institution (whether onshore or offshore) makes a genuine loan, interest expenses will generally be deductible.

## IX COMPETITION LAW

The Competition Ordinance, Hong Kong's first cross-sector competition law, came into full effect on 14 December 2015. Previously, only the broadcasting and telecommunications industries were subject to competition law, as provided for in specific provisions of the BO and the TO (now largely repealed). The former TO provided a regulatory framework for the Communications Authority to consent to certain M&A involving carrier licensees in the telecommunications industry.

The Competition Ordinance retains a merger control regime in Hong Kong for the telecommunications industry known as the Merger Rule. Like the regime under the TO, the Merger Rule applies only to mergers involving carrier licensees, and the Communications

---

<sup>23</sup> The same range of stamp duty is applicable to the transfer of immovable residential property executed on or after 23 February 2013 but before 5 November 2016. The stamp duty applicable to the transfer of immovable residential property executed on or after 5 November 2016 is a flat rate of 15 per cent of the consideration or value of the property (whichever is the higher).

Authority has concurrent jurisdiction with the Competition Commission in relation to the Merger Rule. However, unlike the merger regime under the TO, the Competition Ordinance does not specify thresholds upon which regulatory consent is triggered. Instead, the Merger Rule refers to the acquisition of control, which could apply even if the acquisition involves a minority interest not exceeding 30 per cent. A merger could be prohibited if it has or is likely to have the effect of substantially lessening competition in Hong Kong. It is worth noting that notification of mergers is voluntary rather than mandatory, but in practice the Communications Authority is consulted in most (if not all) cases, even when no competition concerns are expected.

Since the entry into force of the Competition Ordinance, the Communications Authority has reviewed four transactions under the Merger Rule to date. In each of these cases, the Communications Authority decided not to commence an investigation either on the basis that each transaction was unlikely to have the effect of substantially lessening competition in Hong Kong or, in respect of the most recent case, on the basis that the commitments offered by the parties addressed effectively the competition issues identified. The first such decision under the Competition Ordinance, announced by the Communications Authority on 31 March 2016, was in respect of the indirect acquisition of New World Telecommunications Limited,<sup>24</sup> a carrier licensee under the TO, by HKBN Ltd, the holding company of Hong Kong Broadband Network Limited, another carrier licensee under the TO.<sup>25</sup> The second decision, announced on 10 November 2016, was in respect of the HK\$9.5 billion acquisition<sup>26</sup> by Green Energy Cayman Corp<sup>27</sup> of the entire equity interests of Wharf T&T Limited, a carrier licensee under the TO.<sup>28</sup> More recently, on 3 October 2017, the Communications Authority announced it had decided not to commence an investigation under the Competition Ordinance in respect of the acquisition by Asia Cube Global Communications Limited<sup>29</sup> of the entire equity interests of Hutchison Global Communications Investment Holding Limited, which wholly owns Hutchison Global Communications Limited, a carrier licensee under the TO.<sup>30</sup> The latest case concerned the proposed acquisition by HKBN Ltd of WTT Holding Corp, both of which hold carrier licences under the TO.<sup>31</sup> On 17 April 2019, the Communications Authority accepted commitments from the merging parties to address competition issues that it had identified as being likely to arise relating to building access and wholesale service provision.<sup>32</sup> The Communications Authority decided to accept the commitments and not to commence an investigation into the proposed transaction.

---

24 New World Telecommunications Limited is indirectly owned by Concord Ideas Ltd.

25 Source: Communications Authority press release, 31 March 2016 ([https://www.comsauth.hk/en/media\\_focus/press\\_releases/index\\_id\\_1195.html](https://www.comsauth.hk/en/media_focus/press_releases/index_id_1195.html)).

26 Source: [www.wharftt.com/en/about\\_us\\_press\\_release\\_2016\\_20161110.html](http://www.wharftt.com/en/about_us_press_release_2016_20161110.html).

27 Green Energy Cayman Corp is indirectly owned by MBK Partners and TPG Capital.

28 Source: Communications Authority press release, 10 November 2016 ([https://www.comsauth.hk/en/media\\_focus/press\\_releases/index\\_id\\_1328.html](https://www.comsauth.hk/en/media_focus/press_releases/index_id_1328.html)).

29 Asia Cube Global Communications Limited is wholly owned by a fund managed by I Squared Capital, a private investment firm.

30 Source: Communications Authority press release, 3 October 2017 ([https://www.comsauth.hk/en/media\\_focus/press\\_releases/index\\_id\\_1530.html](https://www.comsauth.hk/en/media_focus/press_releases/index_id_1530.html)).

31 Source: HKBN press release, 7 August 2018 ([https://reg.hkbn.net/WwwCMS/upload/pdf/en/201808\\_HKBN-WTT-EN-web.pdf](https://reg.hkbn.net/WwwCMS/upload/pdf/en/201808_HKBN-WTT-EN-web.pdf)).

32 Source: Communications Authority press release, 17 April 2019 ([https://www.coms-auth.hk/en/media\\_focus/press\\_releases/index\\_id\\_1907.html](https://www.coms-auth.hk/en/media_focus/press_releases/index_id_1907.html)).

In the run-up to the drafting and passing of the Competition Ordinance, which, on the whole, was supported by the public, there was some debate about whether there is a need for merger control in Hong Kong to govern general M&A activity (outside the telecommunications sector). The Public Consultation Paper on Detailed Proposals for Competition Law in 2008 showed a softening of the government's stance on this issue, from 'we do not need a merger control regime' to inviting views on three possible options regarding such a regime. The recommendation of the Commerce and Economic Development Bureau of Hong Kong (CED Bureau) was that merger activities are not to be regulated except in the telecommunications sector, which is already subject to such regulation under the former TO. The CED Bureau stated that this proposal would give the Competition Commission more time to focus on its initial work of implementing the proposed Competition Ordinance, and would allow for a more effective assessment of whether merger control provisions would be desirable in other (or all) sectors in the future once the Competition Commission has accumulated some experience in the operation of the competition regime. This was the position ultimately adopted in the Competition Ordinance. It has been suggested that the Competition Commission would seek to introduce a fully fledged merger control regime within two to three years of the Competition Ordinance taking full effect. The Competition Ordinance is currently undergoing a review, which will include an assessment of whether a cross-sector merger control regime should now be introduced.

## **X OUTLOOK**

The government has forecast that Hong Kong's GDP is likely to grow by 2 to 3 per cent in 2019.<sup>33</sup> Hong Kong's economic performance in 2019 will be influenced by, among other things, developments in external demand, the performance of the global economy and geopolitical developments in major advanced economies, for example the trade dispute between the US and China and Brexit.

The increasing trend of protectionist policies by international governments is likely to continue to be a challenge for cross-border transactions involving sensitive industries and strategic assets. Regulatory compliance will be another key challenge. In Hong Kong, the HKSE has stated its intent to address perceived abuses related to reverse takeovers by tightening relevant regulations. Of a wider application is the European Union's General Data Protection Regulation (GDPR), which came into force on 25 May 2018. The GDPR has extraterritorial reach, applying to all firms with establishments in Europe or that provide goods and services to individuals in Europe. It is, therefore, expected that there will be an increased emphasis in M&A transactions on data protection compliance under the GDPR, from due diligence of target companies to post-transaction integration.

Nonetheless, the M&A market in Hong Kong has remained busy, with 129 M&A deals completed in Q1 2019, with a total disclosed value of US\$32.06 billion.<sup>34</sup> Despite global challenges, M&A activity in Hong Kong is expected to remain steady in 2019. It

---

33 Source: 2018 Economic Background and 2019 Prospects, Financial Secretary's Office, government of the Hong Kong Special Administrative Region (HKSAR) (<https://www.statistics.gov.hk/pub/B6XX00042019AN19E0100.pdf>). The HKSAR government has stated that its GDP growth forecast is predicated on the assumption that the US–China trade tensions would not escalate from the tariff measures announced as at the time of the publication of its report (in February 2019) or might even ease somewhat.

34 Source: Mergermarket.

is expected that private equity-led transactions will continue to feature strongly, especially in the active tech and fintech sectors. The flow of Chinese outbound investment will likely be maintained in respect of targets that are regarded as prudent and strategic investments in support of the One Belt, One Road initiative, further supported by favourable Chinese policy developments such as the series of measures announced by the People's Bank of China in May 2018 to further enhance cross-border funds flow management. Therefore, while there are several material variables that could impact on deal appetite in Hong Kong in 2019, the overall outlook of the M&A market in Hong Kong for 2019 remains optimistic.

## ABOUT THE AUTHORS

### **JASON WEBBER**

#### *Slaughter and May*

Jason Webber is a partner at Slaughter and May who is based in Hong Kong. He joined the firm in 1991 and became a partner in 2001. Mr Webber is involved in a wide range of corporate, commercial and financing work, advising companies, financial institutions and fund management groups. He regularly advises in relation to complex matters involving the Hong Kong regulatory authorities and governmental bodies. Mr Webber has also worked in the London office of Slaughter and May.

Mr Webber's experience includes advising MTR Corporation Limited, Hong Kong's mass transit railway operator, in relation to various projects, including its privatisation (being Hong Kong's first and, to date, only privatisation of this kind), its merger with the Kowloon-Canton Railway Corporation (being one of the largest and most complex mergers in Asia), and various significant new railway projects such as the Disney Resort Line, the West Island Line, the Shatin to Central Link, the Express Rail Line, the South Island Line, the West Island Line, the Kwun Tong Extension, and the construction and operation of the Tung Chung Cable Car on Lantau Island; advising various financial institutions on numerous regulatory matters involving the Hong Kong Monetary Authority, the Hong Kong Securities and Futures Commission, the Hong Kong Stock Exchange and other Hong Kong regulators, such as advising a consortium of financial institutions in relation to the Hong Kong regulatory aspects of operating an automated trading and clearing system; advising Mercer on its agreement to acquire SCM Strategic Capital Management AG; advising one of the largest international asset management groups on the launch of retail funds in Hong Kong; advising various asset management groups in relation to acquisitions and disposals of asset management vehicles; advising the Oxford Asset Management Group on the launch of the OxAM Quant Fund, a Cayman Island-based hedge fund; and advising several international hedge fund groups on the establishment of operations in Hong Kong. Mr Webber has also sat on one of the disciplinary committees of the Hong Kong Securities and Futures Commission. He is qualified in England and Wales, Hong Kong and Ireland.

**SLAUGHTER AND MAY**

47th Floor, Jardine House

One Connaught Place, Central

Hong Kong

Tel: +852 2521 0551

Fax: +852 2845 2125

[jason.webber@slaughterandmay.com](mailto:jason.webber@slaughterandmay.com)

[www.slaughterandmay.com](http://www.slaughterandmay.com)



ISBN 978-1-83862-050-9