

SGX RegCo Proposes Enhancements to Enforcement and Whistleblowing Frameworks

On 6 August 2020, Singapore Exchange Regulation (“**SGX RegCo**”) issued a consultation paper proposing enhancements to enforcement and whistleblowing frameworks under the Listing Rules of the Singapore Exchange (“**SGX**”).

In connection with enforcement, several measures have been proposed for greater and quicker accountability and clarity.

Presently, SGX RegCo’s enforcement powers are mainly confined to private actions. While there are public sanctions available, those are wielded by the independent Listings Disciplinary Committee (“**LDC**”). Under the consultation, SGX is proposed to have the power to levy those public sanctions except for fines.

The proposed additional powers to be given to SGX include the following:

- (a) Public reprimand against Relevant Persons;
- (b) In the case of issuers:
 - (i) Ordering denial of market facilities to the issuer for a specified period; and
 - (ii) Requiring issuer to comply with conditions on its activities; and
- (c) In the case of directors or executive officers of issuers:
 - (i) Requiring their resignation from any position with any issuer;
 - (ii) Prohibiting an issuer for a period not exceeding 3 years from appointing or re-appointing the director or executive officer, in these capacities;
 - (iii) Requiring an issuer to obtain SGX’s prior approval, for a period not exceeding 3 years, for the appointment or re-appointment of a director or executive officer; and
 - (iv) Objecting to the appointment or re-appointment of directors or executive officers in an issuer for a period not exceeding 3 years.

These will not be appealable actions but there is an existing show cause process and SGX RegCo will ensure that this process continues to be robust and conforms to natural justice principles.

An updated Enforcement Handbook will be issued to increase transparency of the process.

Fines being the severest of disciplinary actions, the LDC will continue to be the sole power to levy this sanction.

Additionally, it is proposed that SGX's prior approval be required when new directors are appointed, or existing directors re-appointed, to the board of an issuer which is under investigation (by a special auditor or a regulatory or enforcement agency).

A new power is also proposed to be introduced to allow SGX to require an issuer to suspend individual directors or executive officers for a period not exceeding three years. The circumstances in which SGX may exercise its powers to object to an appointment or reappointment of, or to suspend, individual directors or executive officers, each for a period not exceeding three years, are proposed to be clarified to include the following:

- Where the director or executive officer is being investigated or is the subject of proceedings for breach of any laws or regulations relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties, in Singapore or elsewhere; or
- Where he/she has contravened such laws or regulations (the requirement for "wilful" contravention on the part of the director is proposed to be removed).

Whistleblowing

Separately, SGX RegCo is proposing that all issuers have a whistleblowing policy in place, through which issuers can receive and investigate (*via* an independent function) whistleblowing allegations as well as protect the whistleblower within the company against detrimental or unfair treatment and requiring his/her identity to be kept confidential. The SGX Listing Rules will require issuers to include in their annual report a statement whether or not the issuer has complied with the best practices on whistleblowing as specified. The Audit Committee of each issuer will be responsible for oversight of whistleblowing.

Exclusion of Liability of SGX RegCo

SGX RegCo is also proposing to introduce certain provisions on the exclusion of liability and indemnity, given its proposed assumption of further regulatory responsibilities. These include the right to delegate its rights, powers, authorities and discretions.

Comments

These potential developments are welcome from a corporate governance perspective. The proposed enhancement to the enforcement framework allows for cases to be dealt with more efficiently and with more certainty. This increases the investing public's trust and confidence that issuers will more quickly be taken to task for breaches of the SGX Listing Rules.

The proposal that all issuers implement a whistleblowing policy is also a welcome development. Unlike some other jurisdictions, Singapore does not afford statutory protection to whistleblowers. The proposal that issuers establish such a whistleblowing policy and publicly confirm in their annual report that the policy complies with best practices provides a level of protection for whistleblowers. This is important to

build an effective and robust whistleblowing culture, and brings Singapore in line with the practice adopted by other exchanges (such as the Hong Kong Stock Exchange and Bursa Malaysia).

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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