SGX Consults on Proposed Amendments to Voluntary Delisting Regime

On 9 November 2018, the Singapore Exchange Regulation issued a **Consultation Paper on Proposed Amendments to Voluntary Delisting Regime.**

The proposed changes are in relation to (1) two aspects of voluntary delisting, namely the voluntary delisting resolution and the exit alternative ("**Exit Offer**"); and (2) clarification of the applicability of certain Listing Rules to delisting pursuant to a voluntary liquidation, scheme of arrangement and general offer.

This Update provides a brief summary of the key/ salient points of the proposals in the Consultation Paper. The Consultation Paper may be obtained from SGX's website here.

Voluntary delisting

Proposal 1: The Exit Offer must be fair and reasonable, and that the IFA must opine that the Exit Offer is fair and reasonable

The Listing Rules presently require that the Exit Offer must be reasonable. No reference is made to 'fair'.

Although the Takeover Code does not prescribe any requirement that the offer must be fair and reasonable, the Securities Industry Council expects an independent financial adviser ("**IFA**") to clearly and unequivocally opine the fairness and reasonableness of an offer.

According to the SIC, an offer is "fair" if the offer price is equal to, or greater than, the value of the securities which are subject to the offer. However, in considering whether an offer is "reasonable", other matters should be considered, including, the existing voting rights in the offeree company held by the offeror and parties acting in concert with it ("**Offeror Concert Party Group**") and the market liquidity of the relevant securities.

This would therefore mean that an offer can be fair and reasonable, not fair but reasonable, not fair and not reasonable, or fair but not reasonable, although an offer would normally be considered reasonable if it is assessed to be fair.

SGX, therefore, proposes to enhance the Exit Offer requirements to provide that the Exit Offer must not merely be reasonable, it must also be fair ("**Proposed Exit Offer Requirements**").

Proposal 2: A Voluntary Delisting Resolution must be approved by a simple majority of 50% of the total number of issued shares held by shareholders present and voting, and that the Offeror Concert Party Group must abstain from voting on the Voluntary Delisting Resolution

The Listing Rules currently (1) require that the Voluntary Delisting Resolution must be approved by at least 75%, and not be voted against by more than 10% ("**10% Block**") of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting and (2) permit all shareholders (including shareholders who are also members of the Offeror Concert Party Group) to vote on the Voluntary Delisting Resolution.

In order to maintain a balance between ensuring that the rights of the minority shareholders' are not compromised, and that the power accorded in them is not unduly disproportionate, the proposal is to (a) require the Offeror Concert Party Group to abstain from voting on the Voluntary Delisting Resolution ("**Proposed Abstention Requirement**") and (b) reduce the existing approval threshold for a Voluntary Delisting Resolution from 75% to a simple majority of 50%, and to remove the 10% Block provision ("**Proposed Shareholders' Approval Requirements**"). This means that the Voluntary Delisting Resolution is to be approved by a majority of independent shareholders present and voting.

Delisting pursuant to voluntary liquidation, Scheme of arrangement or General offer

Proposal 1: The Proposed Exit Offer Requirements and the Proposed Shareholders' Approval Requirements should not apply to a delisting pursuant to a voluntary liquidation

Since a voluntary liquidation process relates to the realisation of the issuer's assets and subsequent distribution of the cash proceeds to shareholders on a pro rata basis, and the appointed liquidator owes a duty to the court, in ordinary circumstances, the Exit Offer would thereby be fair and reasonable.

SGX proposes, therefore, that the Proposed Exit Offer Requirements and the Proposed Shareholders' Approval Requirements do not apply to a delisting pursuant to a voluntary liquidation.

Proposal 2: In a delisting pursuant to a scheme of arrangement, the Exit Offer must be fair and reasonable, and an IFA must also be appointed to opine that it is fair and reasonable

Consistent with the existing position in the Listing Rules where an exit offer must be reasonable in a delisting pursuant to a scheme of arrangement, SGX proposes that the Exit Offer for a scheme of arrangement must also be fair and reasonable, in the opinion of an IFA.

Proposal 3: The Proposed Exit Offer Requirements and the Proposed Shareholders' Approval Requirements should not apply to a delisting following a general offer where the offeror is exercising its right of compulsory acquisition

Where the offeror has garnered the requisite acceptances from shareholders for a general offer such that the offeror is able to exercise its right of compulsory acquisition and acquire all the remaining shares of the issuer, there is no impetus for SGX to impose the Proposed Exit Offer Requirements or the Proposed Shareholders' Approval Requirements.

It is therefore proposed that, in line with existing practice, the Proposed Exit Offer Requirements and the Proposed Shareholders' Approval Requirements should not apply to a delisting following a general offer where the offeror is exercising its right of compulsory acquisition.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

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