

SGX Makes Changes to Voluntary Delisting Regime

On 11 July 2019, the Singapore Exchange Regulation ("SGX RegCo") announced changes to two aspects of the voluntary delisting rules (namely, the voluntary delisting resolution and the exit alternative ("**Exit Offer**")), which came into effect immediately. Changes were also made to the SGX-ST Listing Rules (MainBoard) and SGX-ST Listing Rules (Catalist) (together, "**Listing Rules**") to clarify the applicability of the voluntary delisting rules to voluntary liquidations, schemes of arrangement and general offers.

These changes were made after a public consultation pursuant to the Consultation Paper on Proposed Amendments to Voluntary Delisting Regime issued by the SGX RegCo on 9 November 2018 (our earlier update on the Consultation Paper can be accessed [here](#)). Whilst the changes were effective immediately, if an offeror had announced its firm intention to make an offer (as opposed to an announcement that talks are taking place which may lead to an offer) prior to the implementation of the changes, the Listing Rules in effect prior to the implementation will apply instead.

This update provides a brief summary of the key/salient points to the changes that have been effected. SGX RegCo's response to comments on the Consultation Paper can be found on SGX's website [here](#).

Voluntary delisting

Exit Offer Requirements

Previously, the Listing Rules only require that an Exit Offer must be reasonable. With the change, an Exit Offer must now be both fair and reasonable and the independent financial adviser ("**IFA**") must also opine that the Exit Offer is fair

and reasonable ("**Revised Exit Offer Requirements**").

It is expected that the IFA will need to separately set out details regarding the bases for determining fairness as well as reasonableness of the Exit Offer to ensure that IFA opinions are well understood by investors. SGX RegCo has said that it intends to work with relevant industry bodies to develop guidance and standards for IFAs and their opinion.

Shareholders' Approval Requirements

Prior to the change, the Listing Rules (1) require that the resolution to delist the issuer ("**Voluntary Delisting Resolution**") must be approved by at least 75% ("**75% Approval Threshold**"), 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 and the parties acting in concert with it ("**Offeror Concert Party Group**")) to vote on the Voluntary Delisting Resolution.

After considering responses to the public consultation, SGX RegCo has retained the 75% Approval Threshold, removed the 10% Block provision, and now requires the Offeror Concert Party Group to abstain from voting on the Voluntary Delisting Resolution ("**Revised Shareholders' Approval Requirements**"). SGX-RegCo's original proposal during the public consultation was to reduce the approval threshold to a simple majority of 50%. Further to the consultation, SGX RegCo chose to retain the 75% Approval Threshold to address concerns in a

"third party buyout" situation e.g., where a controlling shareholder who is not part of the Offeror Concert Party Group holds 51% of the issuer's issued share capital, such a controlling shareholder may then dominate the outcome of the Voluntary Delisting Resolution regardless of the views of the minority shareholders. SGX RegCo also took the view that, it would, amongst other reasons, be "disproportionate" to retain the 10% Block in light of the requirement for the Offeror Concert Party Group to abstain from voting on the Voluntary Delisting Resolution as it would give too much "veto" power to minority shareholders.

SGX RegCo also clarified that when computing whether the 75% Approval Threshold has been met, the denominator should not include shares held by the Offeror Concert Party Group.

Delisting pursuant to voluntary liquidation, scheme of arrangement or general offer

Voluntary Liquidation

SGX-RegCo has amended the Listing Rules to make clear that the Revised Exit Offer Requirements as well as the Revised Shareholders' Approval Requirements do not apply to a delisting pursuant to a voluntary liquidation.

Scheme of Arrangement

As the Companies Act ("**Act**") does not prescribe any requirements relating to the Exit Offer, SGX RegCo considers it necessary that the Revised Exit Offer Requirements be made to apply to a scheme of arrangement. The Revised Shareholders' Approval Requirements however,

are not applicable to a scheme of arrangement as SGX RegCo notes that the voting requirements for a scheme of arrangement under the Act are comparable to the Revised Shareholders' Approval Requirements. SGX RegCo also made clear that a cash alternative should be offered as a default alternative under this scenario. SGX RegCo may nevertheless allow waivers from this requirement if, for example, shares in an SGX-listed issuer are offered as a default alternative as these shares will be readily tradable and shareholders will be able to exit their investment if they wish to do so.

General Offer

SGX RegCo has amended the Listing Rules to clarify that the Revised Exit Offer Requirements and the Revised Shareholders' Approval Requirements do not apply to a delisting following a general offer where the offeror is exercising its right of compulsory liquidation.

However, SGX RegCo has highlighted a situation where the Revised Exit Offer Requirements and the Revised Shareholders' Approval Requirements would generally still apply. In a situation where the offeror is not entitled to exercise its compulsory acquisition right and the issuer has lost its public float ("**Loss of Public Float Scenario**"), SGX RegCo must be consulted on the applicability of the Listing Rules. Generally, SGX RegCo is cautious against utilising the Loss of Public Float Scenario as a mechanism to avoid compliance with the principles applicable to a voluntary delisting. In particular, SGX RegCo is unlikely to allow the issuer to delist and may even suspend the trading of the issuer's securities unless the Revised Exit Offer Requirements and the Revised Shareholders' Approval Requirements are met.

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 work with or any of the following partners:



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