CLIENT UPDATE
2016 SEPTEMBER

CORPORATE AND CAPITAL MARKETS

SGX Moves Towards Allowing Dual-Class Shares

Introduction

The Listings Advisory Committee ("**LAC**"), established on 7 October 2015 by the Singapore Exchange ("**SGX**") to supplement its listings regulatory process in reviewing Mainboard listing applications and formulating listing policies, has voted in favour of permitting dual-class share ("**DCS**") structures to list on SGX. Such listings will be subject to appropriate safeguards to ensure quality listings, and to mitigate entrenchment and expropriation risks associated with DCS structures.

SGX's CEO Loh Boon Chye has said that SGX would consider the LAC's advice and seek feedback via a public consultation before any amendment to the Listing Rules to allow DCS structures. No timeline has been given.

Background

The Companies Act was amended in January 2016 to remove the one-share-one-vote restriction in public companies. This has paved the way for SGX to consider if it should introduce a framework for listing companies with DCS structures, to help attract high-quality companies which may not otherwise consider Singapore as a listing venue and to attract businesses run by entrepreneurs to list, thereby providing investors access to a wider range of companies and sectors.

What are dual-class share structures?

A DCS structure typically gives certain shareholders greater voting power or other related rights than others, disproportionate to their shareholdings. Shares in one class carry one vote ("**OV shares**") while shares in another carry multiple votes ("**MV shares**"). This will allow owners of the company to have voting control without the corresponding financial investment risk.

However, the concentration of control in owner managers in a company with a DCS structure carries with it both entrenchment and expropriation risks. Owner managers may become entrenched in the management of the company, or may seek to extract excessive private benefits from the company, to the detriment of minority shareholders.

There is also the risk of poor quality listings and lack of clarity for investors when they invest in DCS structures.

Safeguards Against Poor Quality Listings

To safeguard against poor quality listings, SGX proposes several measures including conducting a holistic assessment of companies before they are admitted, and referring listing applications of companies with a DCS structure to the LAC for advice in the initial stages of implementation of the framework.

Holistic assessment

The LAC was of the view that the one-share-one-vote structure should remain the default position for new listings and that a DCS structure may only be permitted if a listing applicant has a compelling reason to adopt such a structure.

The LAC was in favour of SGX conducting a holistic assessment when determining the suitability of a listing applicant using a DCS structure, which may take into account factors such as industry, size, operating track record and raising of funds from sophisticated investors.

Industry: The LAC was not in favour of limiting a DCS structure to companies from certain industries. However, given that there must be a compelling reason for adopting a DCS structure, this could naturally limit the type of companies which may eventually qualify to list with a DCS structure.

Size of company: Large listing applicants, whether in terms of market capitalization or size of the IPO, are more likely to attract sophisticated investors. Participation by sophisticated investors may in turn provide assurances on the quality of a listing applicant with a DCS structure.

Participation by sophisticated investors: Sophisticated investors who choose to invest would have independently conducted their own due diligence and evaluation on the listing applicant and its management. They would also have access to the listing applicant's management, leading to the latter adhering to higher standards of corporate governance.

Referral to LAC

The LAC was in favour of SGX referring listing applications with a DCS structure to the LAC for its review and advice in the initial period after implementation of the listing framework, provided SGX had first assessed the listing applicant as being suitable for listing.

Steps to Mitigate Entrenchment and Expropriation Risks

SGX also identified safeguards to mitigate the risks of entrenchment and expropriation. These safeguards focus on enhancing the corporate governance framework of a listing applicant with a DCS structure and minimizing opportunities for extraction of private benefits.

Entrenchment risks

The LAC was in favour of SGX adopting the following safeguards to minimise entrenchment risks:

(1) a maximum voting differential of 10:1;

(2) prohibition of post-listing issuance of MV shares, with an exception for rights issues which would not increase the shareholding proportion between the MV and OV shares. Existing companies which had listed with a one-share-one-vote structure would not be permitted to convert to a DCS structure post-listing;

(3) auto-conversion of an owner manager's MV shares into OV shares upon a sale or transfer of MV shares (unless such sale is to permitted holders), or the owner manager ceasing to hold his or her role as executive chairman or CEO.

Expropriation risks

To minimise expropriation risks, the LAC was in favour of SGX enhancing the independence element in companies with a DCS structure by:

(1) requiring their boards, Nominating Committees, Remuneration Committees and Audit Committees to comply with the Code of Corporate Governance's recommendations relating to independence of board and board committees on a mandatory, instead of a comply-or-explain, basis; and

(2) restricting MV shares to having voting power of one vote per MV share when voting on election of independent directors.

CORPORATE AND CAPITAL MARKETS

Safeguards to increase investor awareness

The LAC also agreed with SGX's proposition to increase investor awareness of shareholder rights in DCS structures to address the risk of lack of clarity to investors:

(1) by requiring companies with DCS structures to provide clear disclosure of shareholder rights;

(2) through distinctive identification of securities of companies with a DCS structure; and

(3) through investor education initiatives.

Resources

Listings Advisory Committee: FY2016 Report

Contact Us

If you have any questions on the above, please contact one of our team members below who will be happy to assist.

Chia Kim Huat
Regional Head, Corporate & Transactional Practice

D (65) 6232 0464
F (65) 6428 2188
kim.huat.chia@rajahtann.com

Evelyn Wee
Deputy Head, Corporate and Transactional Practice

D (65) 6232 0724
F (65) 6428 2199
evelyn.wee@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("**AEC**") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.

RAJAH & TANN | *Singapore*

Our regional presence

Our regional contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600 F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113 F +855 963 116
kh.rajahtannasia.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP
Shanghai Representative Office
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818 F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
Myanmar Centre Tower 1, Floor 07, Unit 08,
192 Kaba Aye Pagoda Road, Bahan Township,
Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

RAJAH & TANN | *Singapore*

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office
Menara Rajawali 16th Floor
Jalan DR. Ide Anak Agung Gde Agung Lot #5.1
Kawasan Mega Kuningan, Jakarta 12950, Indonesia
T +62 21 2555 7800 F +62 21 2555 7899
www.ahp.co.id

Surabaya Office
Pakuwon Center, Superblok Tunjungan City
Lantai 11, Unit 08
Jalan Embong Malang No. 1, 3, 5, Surabaya 60261, Indonesia
T +62 31 5116 4550 F +62 31 5116 4560

** Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
T +60 3 2273 1919 F +60 3 2273 8310
www.christopherleeong.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN | *Thailand*

Rajah & Tann (Thailand) Limited
973 President Tower, 12th Floor, Units 12A-12F
Ploenchit Road, Lumpini, Pathumwan
Bangkok 10330, Thailand
T +66 2 656 1991 F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.
Phonexay Village, 23 Singha Road, House Number 046/2
Unit 4, Saysettha District, Vientiane Capital, Lao PDR
T +856 21 454 239 F +856 21 285 261
la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
Saigon Centre, Level 13, Unit 2&3
65 Le Loi Boulevard, District 1, HCMC, Vietnam
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
Lotte Center Hanoi - East Tower, Level 30, Unit 3003,
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, China, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. Our Asian network also includes Singapore-based regional desks focused on Japan and South Asia.