

Capital Markets | Mergers & Acquisitions

Revised Criteria for Computing 90% Threshold for Compulsory Acquisition under Companies Act w.e.f. 1 July 2023

Introduction

On 1 July 2023, section 215 of the Companies Act 1967 ("**CA**") will be revised to expand the scope of shareholders whose shares will be excluded from the computation of the 90% threshold requirement for compulsory acquisition to, in broad terms, also cover shares owned by related parties who are controlled by the acquiror and shares owned by related parties who control the acquiror (as elaborated further below).

This amendment is one of the key changes under the [Companies, Business Trusts and Other Bodies \(Miscellaneous Amendments\) Act 2023](#) which was passed by Parliament on 9 May 2023.

Compulsory Acquisition Provision under Section 215 of the CA

The compulsory acquisition provision under section 215 of the CA allows an acquiror ("**acquiror**") in a takeover offer who has acquired a very substantial number of shares in the target company (the "**target company**") to compulsorily acquire the shares of the minority dissenting shareholders. This allows the acquiror to convert the target company into a wholly-owned subsidiary, an important right if the objective of the takeover is to delist the target company.

Section 215 of the CA provides that the acquiror is entitled to exercise the right to compulsorily acquire the shares of any dissenting shareholders in the target company when the takeover offer for all the shares in the target company has been approved by shareholders who hold at least 90% of the shares of the target company ("**90% threshold requirement**").

Currently, shares held by the following persons on the date of the offer are excluded when computing the 90% threshold requirement:

- (a) the acquiror;
- (b) a nominee on behalf of the acquiror;
- (c) a related corporation of the acquiror;
- (d) a nominee of the related corporation of the acquiror; and
- (e) the target company (holding such shares as treasury shares).

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Revised Criteria for 90% Threshold With Effect From 1 July 2023

From 1 July 2023, the scope of the exclusions under section 215 of the CA will be expanded to exclude shares held or acquired by the following persons when computing the 90% threshold:

- (a) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the acquiror in respect of the target company;
- (b) the acquiror's spouse, parent, brother, sister, son, adopted son, stepson, daughter, adopted daughter or stepdaughter;
- (c) a person whose directions, instructions or wishes the acquiror is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the target company; and
- (d) a body corporate that is "controlled" by the acquiror or a person mentioned in paragraphs (a), (b) and (c) above ("**Excluded Persons**"). A body corporate is "controlled" by the acquiror or Excluded Persons if:
 - (i) the acquiror or Excluded Persons is entitled to exercise or control the exercise of not less than 50% of the voting power in the body corporate or such percentage of the voting power in the body corporate as may be prescribed, whichever is lower; or
 - (ii) the body corporate is, or a majority of its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the acquiror or Excluded Persons.

The changes to section 215 of the CA strike a fair balance between affording sufficient protection to minority shareholders by addressing the discrepancy between the rules that apply to offers made by individuals and body corporates, whilst ensuring the amendments to section 215 of the CA do not make it overly stringent or unduly onerous for companies to restructure or for acquirors to obtain full ownership for the target company.

Further Information

For more information about the amendments to section 215 of the CA, please refer to our previous Client Update titled "[Upcoming Changes to Criteria for Computing 90% Threshold for Compulsory Acquisition](#)" which was published in May 2023.

If you have any queries on the amendments to section 215 of the CA, or any other related matter, please feel free to contact our team members below who will be happy to assist.

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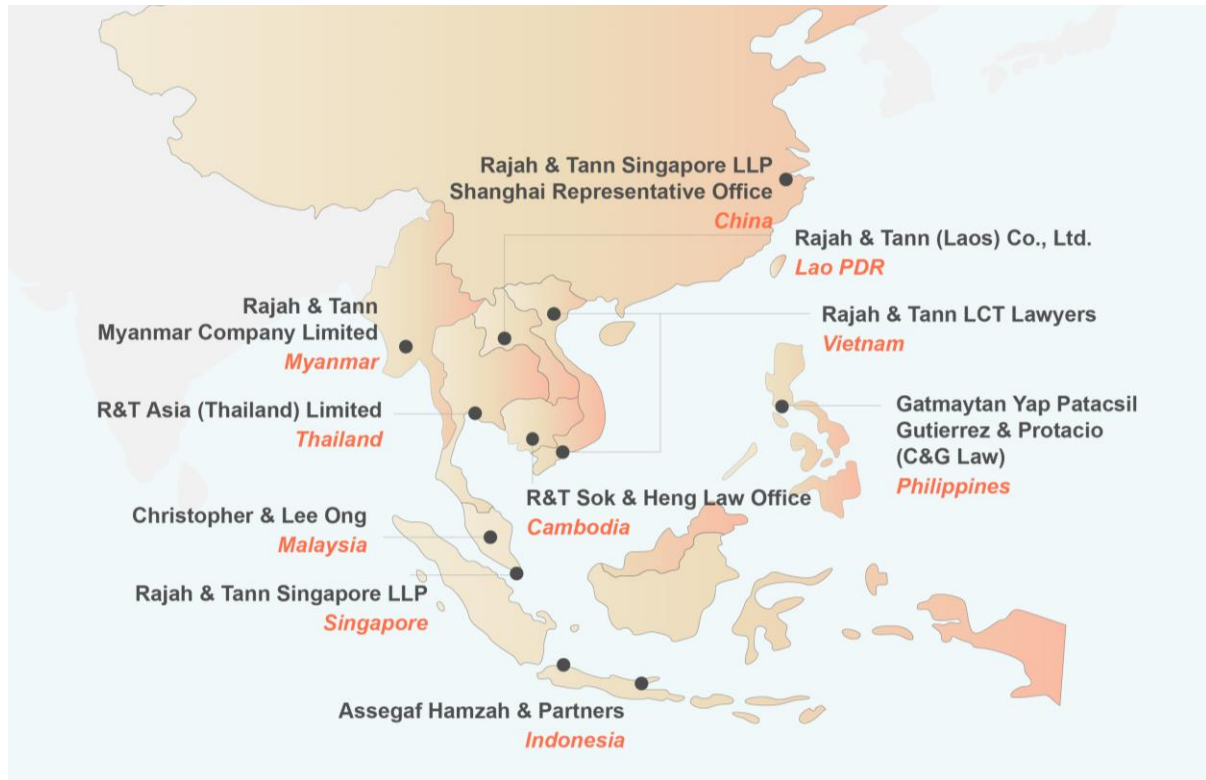
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