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Proposed Amendments to the Voluntary Delisting Regime

Introduction

On 9 November 2018, Singapore Exchange Regulation ("**SGX RegCo**") issued a consultation paper on proposed amendments to the voluntary delisting regime. The amendments are aimed at aligning the interests of the offeror and shareholders, in particular minority shareholders, as much as possible.

Under the SGX-ST Listing Rules (Mainboard) ("**Mainboard Rules**") and the SGX-ST Listing Rules (Catalist) ("**Catalist Rules**", and together with the Mainboard Rules, "**Listing Rules**"), an issuer may apply to the Singapore Exchange ("**SGX**") to be delisted for a variety of reasons. SGX may agree to a voluntary delisting application if:

(a) the issuer convenes a general meeting to obtain shareholders' approval for the voluntary delisting;

(b) the resolution to delist the issuer ("**Voluntary Delisting Resolution**") has been approved by a majority of at least 75% of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting; and

(c) the Voluntary Delisting Resolution has not been voted against by 10% or more of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting ("**10% Block**").

The issuer's directors and controlling shareholders are not required to abstain from voting on the Voluntary Delisting Resolution.

The Listing Rules also require that an exit alternative ("**Exit Offer**") be offered to the issuer's shareholders and holders of any other class of listed securities to be delisted, which must be reasonable and should normally be in cash. The issuer should also normally appoint an independent financial adviser ("**IFA**") to advise on the Exit Offer.

SGX is now proposing amendments to two key aspects of a voluntary delisting – the Exit Offer and the shareholder approval thresholds for the Voluntary Delisting Resolution – in order to strengthen protection for minority shareholders.

Interested parties are invited to provide feedback by **7 December 2018**. The consultation paper and proposed amendments to the Listing Rules can be accessed at this link.

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Proposed Amendments to Voluntary Delisting

Exit Offers must be Fair and Reasonable

The Listing Rules currently require an Exit Offer to be reasonable but do not require it to be fair. SGX had, previously in a Regulator's Column dated 4 September 2009, stated that "*the Board should take into account the interests of shareholders, and ensure that the [Exit Offer] is not prejudicial to shareholders as a whole. In making the recommendation for a delisting of a company, the Board of Directors is responsible for ensuring that the [Exit Offer] is reasonable to all shareholders. The Board is required to appoint financial advisers to provide an independent view on the reasonableness of the [Exit Offer]*". SGX has also, on occasion, reminded stakeholders of this baseline requirement.

To ensure that the board of directors of the issuer takes into account the interests of all shareholders, SGX is proposing to amend Rule 1309 of the Mainboard Rules and Rule 1308 of the Catalist Rules to state that:

(i) the Exit Offer must be fair and reasonable;
(ii) the Exit Offer must include a cash alternative as the default alternative; and
(iii) the appointed IFA must opine that the Exit Offer is fair and reasonable.

What is Fair and Reasonable

In this regard, SGX will take guidance from the Practice Statement on the Opinion issued by an IFA in relation to Offers, Whitewash Waivers and Disposal of Assets under the Singapore Code on Takeovers and Mergers ("**Practice Statement**") issued by the Securities Industry Council ("**SIC**") on 25 June 2014.

In the Practice Statement, the SIC stated its expectation that an IFA should conclude, clearly and unequivocally, whether an offer is fair and reasonable. The SIC expressed that an offer is considered "fair" if the offer price is equal to, or greater than, the value of the securities which are subject to the offer. In considering whether an offer is "reasonable", the SIC was of the view that the IFA should additionally consider other matters, including, the existing voting rights in the offeree company held by the offeror and parties acting in concert ("**Offeror Concert Party Group**") and the market liquidity of the relevant securities.

Shareholder Approval Requirements for Voluntary Delisting Resolution

The Listing Rules currently protect minority shareholders by requiring that the Voluntary Delisting Resolution must not be voted against by a 10% Block. However, this means that the offeror has no incentive to get minority shareholders to turn up and vote. The problem is compounded in situations where the issuer is tightly controlled as it becomes more difficult for minority shareholders to garner the 10% Block.

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To strengthen protection for minority shareholders, SGX is proposing to amend Rule 1307 of the Listing Rules to:

(i) remove the 10% Block provision;
(ii) reduce the existing approval threshold for a Voluntary Delisting Resolution from 75% to a simple majority of 50% of the total number of issued shares (excluding treasury shares and subsidiary holdings, to ensure that the power accorded in the hands of minority shareholders is not disproportionate; and
(iii) provide that the Offeror Concert Party Group must abstain from voting on the Voluntary Delisting Resolution ("**Proposed Abstention Requirement**"). Directors and controlling shareholders of the issuer that are not part of the Offeror Concert Party Group may vote on the Voluntary Delisting Resolution.

(collectively referred to as the **"Proposed Shareholders' Approval Requirements**").

The Proposed Abstention Requirement is in line with the general principles in the Listing Rules whereby a party who is interested in a transaction should not be allowed to vote on the relevant resolution.

Proposed Amendments to Delisting pursuant to Voluntary Liquidation, Scheme of Arrangement and General Offer

Voluntary Liquidation

As the voluntary liquidation process relates to the realisation of the issuer's assets and subsequent distribution of cash proceeds on a pro rata basis, SGX considers that the Exit Offer would ordinarily be fair and reasonable. Further, in such cases, the liquidator also owes a duty to the court.

SGX would therefore normally not require an IFA to be appointed to opine on the Exit Offer. However, where there are doubts as to the independence of the liquidation process, an IFA may be appointed pursuant to the Listing Rules.

Accordingly, SGX proposes that the proposed Exit Offer requirements and the Proposed Shareholder Requirements do not apply to a delisting pursuant to a voluntary liquidation.

Scheme of Arrangement

For delisting pursuant to a scheme of arrangement, SGX is proposing that the Exit Offer must be fair and reasonable, and an IFA must also be appointed to opine that the Exit Offer is fair and reasonable.

This is consistent with the existing position in the Listing Rules where Rule 1309 of the Mainboard Rules and Rule 1308 of the Catalist Rules are applicable to a delisting pursuant to a scheme of arrangement.

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General Offer

SGX is proposing to clarify that the proposed Exit Offer requirements and the Proposed Shareholders' Approval Requirements do not apply to delisting pursuant to a general offer where the issuer is exercising its right of compulsory acquisition. This is in line with SGX's existing practice where a waiver from Rule 1307 of the Listing Rules is typically granted following a general offer where the offeror is exercising its right of compulsory acquisition.

In such cases, the offeror would also have garnered the requisite acceptances from shareholders for a general offer.

Implementation Timeline

Subject to feedback received, SGX hopes to implement the new rules in 2019.

Conclusion

If you have any questions on the above or wish to include your views in our submissions to SGX RegCo, please contact our team members below who will be happy to assist.

Contacts

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 & Transactional Practice
Head, Capital Markets

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

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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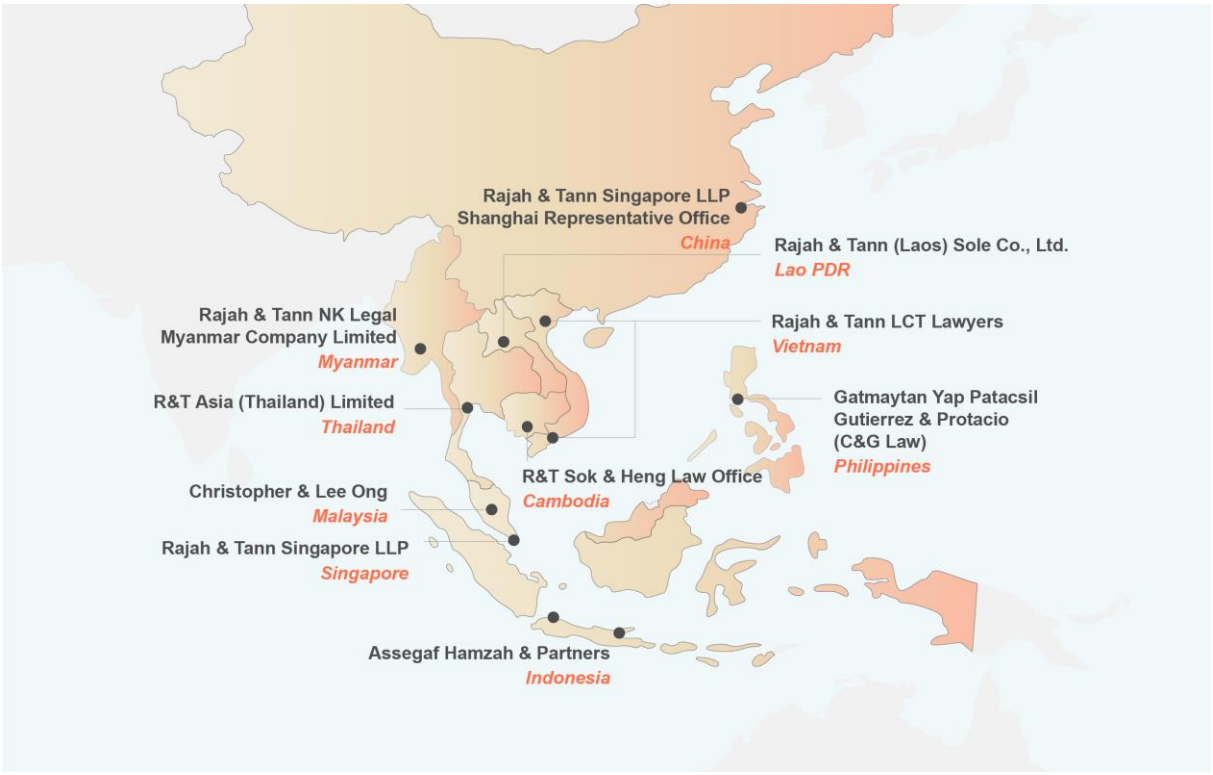

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