

## New Changes to the SGX-ST's Voluntary Delisting Regime

For the first half of 2019, there were 11 delistings<sup>1</sup> seen in the Singapore market which is the same number of delistings<sup>1</sup> in the first half of 2018. In November 2018, the Singapore Exchange Regulation (“SGX RegCo”) launched a public consultation to seek feedback on the amendments of the SGX-ST’s listing rules on its voluntary delisting rules for listed companies (“**Voluntary Delisting Regime**”). Subsequent to the consultation, on 11 July 2019, SGX RegCo announced changes to the two following aspects of its Voluntary Delisting Regime with immediate effect:

### (i) The Voluntary Delisting Resolution

The resolution to delist the issuer has been approved by majority of at least 75% of the total number of issued shares held by independent shareholders (i.e. excluding the shares held by the offeror and parties acting in concert with it) present and voting.

### (ii) A Fair and Reasonable Exit Offer

A cash alternative as the default alternative, is offered to shareholders. The independent financial adviser (IFA) appointed to advise on the exit offer must also opine that the exit offer is fair and reasonable.

## What other methods are there for delisting?

Apart from voluntary delisting, a Singapore-listed company can also be delisted through other methods, such as,

- (i) **General Offer** under the Takeover Code and the Offeror is exercising its right of compulsory acquisition under the Companies Act; and
- (ii) **Scheme of Arrangement** under Companies Act.

A summary of the 3 delisting mechanisms are provided below.

### New Voluntary Delisting Regime

Under the amended SGX-ST’s Listing Rules<sup>2</sup>, that is effective 11 July 2019, a listed Company can be voluntarily delisted when the SGX RegCo agrees to the Company’s voluntary delisting application when the Company has sought shareholders’ approval at an extraordinary general meeting (EGM) and the **Voluntary Delisting Resolution** is approved with a **Fair and Reasonable exit offer**.

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#### Old Voluntary Delisting Regime [before 11<sup>th</sup> July 2019]

- Offeror and Concert Party Group were able to vote on the voluntary delisting resolution;
- Exit Offer only had to be reasonable; and
- 10% Block provision- The voluntary delisting resolution could be blocked if there are more than 10% of shareholders who vote against delisting [*This requirement is now removed. SGX had provided its comments in the consultation that it did not think it is appropriate to retain the 10% block provision as it may be difficult for minority shareholders to collectively obtain the requirement when the issuer is tightly controlled.*]

### What happens after the Voluntary Delisting resolution is approved at the EGM with a fair and reasonable exit offer?

● **Offeror exercise its rights of Compulsory Acquisition.** This occurs when the Offeror receives acceptances that is more than **90%** of the shares from the independent shareholders (i.e. remaining shares that excludes those held by Offeror and Concert Party Group). Under Company Act S215(1), the Offeror can exercise its right to compulsorily acquire the shares from the independent shareholders. After the compulsory acquisition, the Offeror will hold 100% of the delisted Company’s shares.

● **Offeror is unable to exercise its rights of Compulsory Acquisition.** If the Offeror receives acceptances resulting in less than the **90%** of the shares from independent shareholders, the Company will nonetheless be delisted. Shareholders who did not accept the exit offer will remain as minority shareholders of the delisted Company. The Offeror would be faced to consider alternative exit strategies for the minority shareholders thereafter.

### Other Regulatory Requirements (Takeover Code)

The Offeror should also note that an exit offer made for the purposes of a voluntarily delisting falls within the ambit of the Singapore’s Code on Takeovers and Mergers (the Takeover Code) and therefore needs to comply with the relevant rules of the Code unless otherwise waived by the Securities Industry Council (SIC). Legal counsel would be required in the interpretation of the Code and applications to the SIC.

1: SGX monthly statistics reports, January 2018 to June 2019.

2: Reference to Amended Rule 1307 and 1309 of the Mainboard listing rules and Amended Rule 1307 and 1308 of the Catalyst listing rules (effective on 11 July 2019).

## General Offer

Voluntary delistings and scheme of arrangements requires the cooperation of the targeted listed Company. If this is not expected, the Offeror can consider a General Offer for the Company. Where the Offeror's intention is to privatise, the General Offer is generally structured to allow the Offeror to exercise its right of a **Compulsory Acquisition**. The General Offer would most likely be conditional upon the Offeror receiving acceptances of more than 90% of the shares from the independent shareholders (i.e. remaining shares that excludes those held by Offeror and Concert Party Group).

Unlike a voluntary delisting, a **General Offer** does not require an EGM to be held and need not be fair and reasonable. The onus of determining whether the offer is fair and/or reasonable will be based on the opinion of the IFA that is appointed by the Audit Committee of the targeted listed Company.

**Compulsory Acquisition.** If the Offeror receives acceptances that is more than 90% of the shares from the independent shareholders. Under Company Act S215(1), the Offeror can exercise its right to compulsorily acquire the shares from the independent shareholders. After the Compulsory Acquisition, the Offeror will hold 100% of the delisted Company's shares.

### General Offer

- General Offers can either be Voluntary or Mandatory, and it is mainly regulated by the Takeover Code.
- The General Offer must be made at minimum, the highest price paid by the Offeror or Concert Party Group, during the offer period and within 3 or 6 months (where applicable) prior to its commencement of a General Offer respectively.

**Trading Suspension.** During the offer period, if the Offeror has received acceptances which results in the listed Company not meeting its free-float requirement (10% of total issued shares), SGX will direct the Company to be suspended if the Offeror does not restore the free-float after the close of the offer. In which case, the listed Company is obliged to comply with the SGX-ST's listing rules, including the requirement to restore its public float (through private placement or otherwise).

## Scheme of Arrangement

A Scheme of Arrangement is a legislative procedure allowing a company to be restructured under the Companies Act.

Delisting via Voluntary Delisting or General Offer may leave minority shareholders (that did not accept the offer) stuck with the delisted company's shares if the Offeror is unable to exercise the Compulsory Acquisition. However, if a Company chooses to delist via a Scheme of Arrangement, it provides a binary outcome where the Offeror would either have a compulsory buyout of all shareholders or does not have to acquire any shares of the listed Company.

For a Scheme of Arrangement, only the listed Company is allowed to initiate the scheme, pursuant to Company Act S210. A **Scheme Meeting** for the shareholders will be required under the Company Act for the approval of the High Court.

### Scheme Meeting

Approval Threshold for scheme meeting is:

- Majority in number of independent shareholders present and voting (Majority headcount of independent shareholders); and
- 75% in value of all issued shares held by independent shareholders present and voting.

Major shareholders looking to privatise the Company may be disadvantaged as they have to abstain from voting on the scheme.

### Exit Offer

IFA opinion on the Exit Offer of the Scheme of Arrangement needs to be fair and reasonable.

### Delisting

- If the Scheme Meeting gets approved by the statutory majority, the Company has to bring the approved scheme to the High Court for approval.
- When the High Court approves the scheme, it is binding on all shareholders. The issuer is subsequently delisted from SGX-ST.

For delisting purposes, the Scheme of Arrangement might be preferred by the Offeror over a voluntary delisting as the result would be binary, unlike in Voluntary Delisting application where there is a chance of minority shareholders being stuck as shareholders in a delisted Company.

**In a Nutshell:****Delisting Mechanisms**

	Voluntary Delisting	General Offer	Scheme of Arrangement
IFA opinion of the Offer to be <b>Fair and Reasonable</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
Conditions	<ul style="list-style-type: none"> <li>Delisting resolution to be approved by majority of at least 75% of the total number of issued shares held by independent shareholders (i.e. excluding the shares held by the offeror and parties acting in concert with it) present and voting.</li> </ul>	<ul style="list-style-type: none"> <li>For purposes of delisting, the General offer is structured to allow the Offeror to exercise its right of a Compulsory Acquisition.</li> <li>The General Offer would be conditional upon the Offeror receiving acceptances of more than 90% of the shares from the independent shareholders (i.e. remaining shares that excludes those held by Offeror and Concert Party Group).</li> </ul>	<ul style="list-style-type: none"> <li>Majority in number of shareholders present and voting</li> <li>Majority of 75% in value of all issued shares held by independent shareholders present and voting</li> </ul>
Abstain from Voting	Offeror and Concert Party Group (EGM Required)	N.A (No EGM required)	Offeror and Concert Party Group (Scheme Meeting)
Regulatory Requirements	<ul style="list-style-type: none"> <li>SGX-ST Listing Rules</li> <li>Singapore Code on Take-overs and Mergers</li> </ul>	<ul style="list-style-type: none"> <li>Singapore Code on Take-overs and Mergers</li> <li>Companies Act</li> </ul>	<ul style="list-style-type: none"> <li>Singapore Code on Take-overs and Mergers</li> <li>Companies Act</li> </ul>
Possible Outcomes	<ul style="list-style-type: none"> <li>100% privatised (if exercise Compulsory Acquisition)</li> <li>If not 100% privatised, Company can be delisted but may carry minority shareholders</li> </ul>	<ul style="list-style-type: none"> <li>100% privatised (if exercise Compulsory Acquisition)</li> <li>If not 100% privatised, Company can be delisted but may carry minority shareholders</li> </ul>	<ul style="list-style-type: none"> <li>100% privatised</li> </ul>

**Conclusion**

In view of the listing rule amendments for the new Voluntary Delisting Regime, voting powers to approve the voluntary delisting resolution has been shifted from the Offerors and concert parties to independent shareholders. Coupled with the requirement of a fair and reasonable exit offer, this would push companies to give shareholders a better exit value if they choose to go private by way of a voluntary delisting. Lastly, SGX has also stressed that Offerors should not use other forms of privatisation to avoid complying with the above requirements.

If you would like more information and/or assistance on the above, you may wish to contact any of the departments in our contact list page.

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**Useful References:**

**SGX Regulator Column on Privatisations through General Offers**

<https://www2.sgx.com/media-centre/20190711-regulators-column-privatisations-through-general-offers>

**SGX Consultation Paper on Proposed Amendments to Voluntary Delisting Regime**

<https://www2.sgx.com/regulation/public-consultations/20181109-consultation-paper-proposed-amendments-voluntary-delisting>

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