

Background

Under the SGX Listing Rules, an independent financial adviser (“IFA”) must be appointed by directors for exit offers, interested person transactions (“IPT”) and, in some cases, under a Notice of Compliance (“NOC”) to review certain transactions as required by the Exchange.

An IFA is required to ensure directors receive an independent and professional opinion on a proposed transaction, including the impact on the issuer. Directors will evaluate this independent advice provided by the IFA and make a recommendation to shareholders. This provides shareholders with the information to make a decision as to whether to accept an offer, or to approve a transaction.

The Guide issued by SGX Regco serves as a means to improve the standard, clarity and consistency of advice rendered by IFA. It also sets out expectations on the role directors play in procuring such advice and on IFAs and their opinions.



1 SGX Regco’s expectations of directors in appointment of IFA

Directors are expected to take the following factors into consideration when appointing an IFA:

- Directors are to ensure that the IFA (including the professionals involved in preparing and approving the IFA Opinion) must be independent and be able to give competent independent advice.
- Directors are to assess the suitability of the professionals involved in preparing and approving the IFA opinion through extent of relevant experience and to consider any other information that may cast doubts on their competency, quality of advice and resourcing.
- Directors should ensure that the issuer provide the IFA with unimpeded access to persons, premises, relevant documents, reports, information and valuations as the IFA reasonably requires to undertake its analysis and issue its opinion.
- Directors to be cognisant of the possible challenges and constraints faced by the IFA and endeavor to assist the IFA to best deliver its analysis and opinion within the stipulated timeline.
- Directors are to evaluate the contents and material considerations contained in the IFA opinion resulting for reliability, accuracy and reasonableness of information. In the event that the IFA’s analysis appears to be insufficient, directors are to critically engage the IFA for further elaboration or substantiation.
- Directors should also refer to guidance under the Take-over Code to assess an IFA’s independence for the purpose of its appointment for transactions that fall within the ambit of the Take-over Code.

2 Independence of the IFA and Conflict of Interest

The IFA is required to have a sufficient degree of independence from the issuer and the directors to ensure that the advice that it gives will be objective and free of any undue influence. As such, the IFA should assess and disclose in the IFA letter whether to accept or decline the engagement based on:

- a) Any business and professional relationships with the commissioning party and other interested parties
- b) Any financial or other interest that could reasonably be regarded as affecting the IFA’s ability to give an unbiased opinion
- c) Any fee or benefit (whether direct or indirect) to be received in connection with the issuance of the opinion that create a conflict of interest

** Onus is on the IFA to demonstrate that if the above-mentioned interest exists, it will not affect its ability to give an unbiased opinion.*

3

SGX Regco's expectations on IFA & their opinions

SGX Regco expects the IFA to exercise its own skills and professional judgement to select the most appropriate methodologies in conducting their analysis. The IFA's analysis should, among others, contain the following information:

- A clear and unequivocal conclusion, as applicable:

Exit Offers	IPT	NOC
Whether they are "fair" and "reasonable". Where the transaction involves alternative forms of consideration (e.g. a scrip option, a cash option or a mix of both), each form should be opined upon by the IFA.	<p>IPT: whether they are on normal commercial terms and if they are prejudicial to the interests of the issuer and its minority shareholders</p> <p>IPT mandates: whether the methods or procedures in determining transactions are sufficient to ensure that the transactions will be carried out on normal commercial terms and will not be prejudicial to the interest of the issuer and its minority shareholders.</p>	As required by any NOC, where relevant

- IFA should state and explain factors considered and whether certain factors are determinative of its recommendations.
- Where relevant and comparable data is available which is or is not taken into consideration for the purpose of the opinion and recommendation, the basis for the selection (or exclusion) should be clearly explained.
- Methodologies used when conducting the analysis on the proposed transaction.
- Any material relationships or interests (with a commissioning party or any other interested party) that could reasonably be regarded as relevant to the independence of the IFA including any fee or benefits (whether direct or indirect) to be received in connection with the issuance of its opinion.

This Guide is not intended to override any of the provisions in the Take-over Code and the Take-over Code Guidance.

Useful References:

- Regulator's Column: Guidelines on Independent Financial Advisers (Please click [here](#))
- Regulator's Column: What SGX RegCo expects of independent financial advisers for listed issuers (Please click [here](#))
- For further information on what is expected of IFAs and their opinion under the Singapore Code on Take-overs and Mergers (Take-over Code) for take-over offers and whitewash resolutions (Please click [here](#))

Please Contact or Find us at:

SAC Capital Private Limited
1 Robinson Road
#21-00 AIA Tower
Singapore 048542
Telephone: (65) 6232 3210
Fax: (65) 6232 3244
www.saccapital.com.sg

This report is confidential and the information in this report shall not be copied or reproduced in part or in whole, and save for the recipient of this report, shall not be disclosed to any other person without the prior written consent of SAC Capital Private Limited. The distribution of this report outside the jurisdiction of Singapore is also strictly prohibited.

Please note that whilst the information in this Regulatory Update is correct to the best of our knowledge at the time of writing, it is only intended as a general guide and should not be taken as professional advice for any particular course of action. Before acting on the contents of this Regulatory Update, readers are encouraged to seek professional advice. In this regard you may contact us at (65) 6232 3210.