

SGX RegCo 2021 Regulatory Updates - Directors / Executive Officers Under Investigation

To recap, on 7 Feb 2020, enhancements made by SGX RegCo to the continuous disclosures of the listing rules were made effective. Amongst the enhancement of listing rules, guidance on disclosure obligations relating to investigations was worded under Practice Note 7A Continuing Disclosure (Catalist Rules) and Practice Note 7.1 Continuing Disclosure (Mainboard Rules).

Subsequent to the implementation of the rule enhancements, the topic of investigations on directors and executive officers (“EO”) (“**Relevant Persons**”) of listed companies has been raised and broached by SGX RegCo in different seminars. In the latest SGX RegCo’s Regulatory Update which was presented in the joint SID-SGX-ACRA seminar (on 12 Jan 2021) for audit committee members of listed companies, further guidance was provided and the following key takeaways are provided below:

What are the considerations (i) in determining the materiality of the investigation for disclosure purposes, and (ii) the Nominating Committee’s assessment on suitability of the Relevant Persons?

1. Investigation pertaining to the issuer or the Group

- a) What is the extent (i.e. nature and areas) to which the interview or investigation of the relevant conduct concerns the affairs of the issuer or the group?
- b) Was the issuer served with an order to produce documents or devices?
- c) Was any director / EO interviewed?

2. Subject matter or assisting with the investigation

- a) Is the director/ EO the subject of the investigation or merely assisting in the investigation?
- b) Did any director / EO surrender* his or her passports to the authorities?
- c) Was any director / EO arrested, with or without bail?
- d) Was any director / EO formally charged?

: Where the director / EO surrenders their passport to the relevant authority or if they are arrested, these would indicate that the director / EO is the subject of the investigation as opposed to merely assisting with the investigation and **relevant disclosures are required.*

If an investigation is still pending, issuers should first release a statement to that effect and follow up as and when there are material developments.

3. Issuer is reliant on Director/ EO for oversight and management

- a) What is the extent to which the issuer is reliant on the director / EO for the proper oversight and management of the issuer?

4. Compromise of oversight and management abilities

- a) What is the extent to which the director / EO’s ability to oversee or manage the issuer is compromised?
- b) Were there any conditions or restrictions imposed by the authorities?

5. Severity of the potential breach

- a) What is the severity of the potential breach?

If any of the aforementioned queries answers are **YES**, what should the Company disclose?

1. The nature of the offence as stated in the bail form or order;
2. Details of conditions or restrictions imposed;
3. NC’s assessment on (i) suitability of director / EO, and (ii) continued compliance with Rule 720(1) with bases clearly stated;
4. Name of the director / EO and position and role with the Company;
5. Statement on the Relevant Persons’ continued obligation to provide updates; and
6. Board’s statement that it will continue to monitor and re-assess accordingly.

Other considerations for the Nominating Committee in assessing suitability of the Relevant Persons (to be disclosed if applicable).

1. Whether conflicts of interest will arise if the director / EO remains.
2. If there are sufficient checks and balances within the board.
3. If the director / EO will be able to devote sufficient time and attention to the Company.
4. The impact on the company's reputation if the director / EO remains.
5. Whether the director /EO will cause any "distraction" by remaining while the investigation progresses.
6. Is the Company reserving its rights against the director / EO for potential breaches of their contractual obligations or fiduciary duties.

Should the Relevant Person inform all Boards that he/she is serving?




For the purpose of transparency, the Directors/ Executive Officers should inform the **affected Board** as well as **all other Boards** where he/ she's holding a directorship **as soon as possible** and if necessary call for a trading halt. The Nominating Committee for each Board will have to **assess the suitability** of the director/ executive officers who are under investigation.

What if the entire board is under investigation?

Here are some of the suggestions by SGX RegCo:

1. Appoint 1 or 2 new IDs to the Board to strengthen checks and balances.
2. Appoint one of the incoming IDs as the lead ID.
3. Seek assistance of professional search firms/ SID to identify new IDs.
4. The new IDs to form a special committee to oversee the investigative process and ensure that the issuer is cooperating fully.

In a Nutshell:

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Disclosure Obligations. Boards should **ask the right questions**. E.g. does the offence relate to the issuer, and announce adequate information for shareholders to make informed decisions.
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Timeliness. Relevant Persons should **inform the Board immediately** when faced with an investigation and **if necessary to call for a trading halt**. Issuers should have internal controls in place that ensure material information is escalated immediately to the Board.
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Interest of the Company and Shareholders.
 - **The Nominating Committee** has the responsibility to **provide assessment** on the suitability of the Relevant Persons; assessment should consider, amongst other things, his or her character and integrity of a director or executive officer that is expected of a listed company.
 - **The Board** has to determine whether it is in the **best interest** of the Company and its shareholders for the Relevant Persons to continue to be on the Board or management while the investigation is ongoing.



Useful References:

7th annual Audit Committee Seminar jointly organised by ACRA, Singapore Exchange (SGX) and the Singapore Institute of Directors (SID) on 12 Jan 2021

<https://www.acra.gov.sg/training-and-resources/useful-resources/acra-sgx-sid-audit-committee-seminar-2021>

Catalist Rule Enhancement (effective 7 Feb 2020)

- In terms of disclosure for investigations, please refer to paragraph 5.6 to 5.12 of Practice Note 7A Continuing Disclosure

http://rulebook.sgx.com/sites/default/files/net_file_store/SGX_Catalist_Rules_February_7_2020_ii.pdf

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

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