

PRIVATISATION OF A COMPANY LISTED IN SINGAPORE

Posted on September 1, 2016

Category: [CNPupdates](#)

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Date Published: 1 September 2016

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Introduction

This article provides a general overview of the avenues available for a third party ("**Offeror**") to privatise a company listed on the SGX-ST ("**Company**"). The common avenues are delisting proposal, voluntary offer, and scheme of arrangement.

Delisting Proposal, coupled with Exit Offer

Overview

One method of privatising a listed company is to seek the shareholders' approval, at an extraordinary general meeting of shareholders ("**EGM**"), for voluntary delisting of the Company ("**Delisting Proposal**"). In conjunction with the Delisting Proposal, the Offeror is to make an exit offer to acquire all of the shares in the Company, other than those already held by the Offeror ("**Exit Offer**"). The EGM would have to be convened by the board of directors of the Company ("**Board**") or by shareholder(s) with not less than 10% of voting rights in the Company.

Under the SGX-ST listing manual ("**Listing Manual**"), the resolution for the Delisting Proposal must be approved by at least 75% of the total issued shares (excluding treasury shares) held by shareholders, present and voting at the EGM and must not be voted against by 10% or more of the total issued shares (excluding treasury shares) held by such shareholders.

The Listing Manual also requires the company seeking to delist to procure that a reasonable exit alternative, which should normally be in cash, be made to the shareholders. An independent financial adviser is to be engaged to advise on the reasonableness of the exit alternative.

The Exit Offer is intended to form this reasonable exit alternative and is also a voluntary offer for purposes of the Singapore Code on Takeovers and Mergers ("**Code**") (note: a voluntary offer is an offer for the voting shares of a company made by an entity which has not incurred an obligation to make a general offer for such shares under the mandatory rules of the Code).

Conditions

The Exit Offer must be conditional upon the Offeror receiving acceptances which will result in the Offeror, together with any persons acting in concert with it, holding more than 50% of the voting rights of the Company. Subject to Securities Industries Council's ("**SIC**") consent, the Offeror may impose a higher level of acceptance and this issue is further discussed in the section on Voluntary Offers. In addition, the Exit Offer must not be made subject to any conditions whose fulfillment depends on the subjective

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interpretation or judgment of the Offeror.

The Exit Offer may, however, be made conditional upon shareholders' approval of the resolution for the Delisting Proposal. This is usually the case if the Offeror's primary concern is to privatise the Company. However, this also means that if the Delisting Proposal is not approved, the Exit Offer will fail.

Assuming the Delisting Proposal is approved and the Exit Offer fulfills the applicable conditions, the Company will be delisted from the SGX-ST.

Dealings in securities of the Company before and during the Exit Offer period

The Exit Offer must be made at not less than the highest price paid by the Offeror or any person acting in concert with it, during the Exit Offer period and within three months prior to commencement of such period.

During the Exit Offer period, the Offeror and its associates are free to deal in the securities of the Company, subject to the preceding paragraph and prescribed disclosure obligations.

Compulsory Acquisition

If the Offeror proceeds to receive acceptances from shareholders holding not less than 90% of the total number of issued shares (excluding treasury share), other than shares already held by the Offeror at the date of the Exit Offer, the Offeror can proceed to exercise a right to compulsorily acquire the remaining shares under the Companies Act (Cap. 50). This would make the delisted Company a wholly-owned subsidiary of the Offeror.

In the event, this 90% threshold is not met but the Offeror receives acceptances from shareholders holding at least 50% of the total issued shares, the Company will nonetheless be delisted, with the shareholders who declined to accept the offer remaining as minority shareholders of the delisted Company.

Key Milestones

The key milestones in a Delisting Proposal, coupled with Exit Offer, are generally as follows:

1. if necessary, approach the Board, by the Offeror or its financial adviser, to discuss potential privatisation;
2. submission of a formal delisting proposal to the Board;
3. SGX-ST announcement of firm intention to make an offer, either jointly or separately by the Company and the Offeror;
4. despatch of the exit offer letter to the shareholders of the Company by the Offeror;
5. despatch of delisting circular and notice of an extraordinary general meeting to the shareholders by the Company;
6. extraordinary general meeting conducted by the Company;

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7. close of the Exit Offer;
8. assuming Delisting Proposal approved and the acceptance conditions fulfilled, the Company will be delisted; and
9. assuming the Compulsory Acquisition Threshold is met, the Offeror exercises its right of the compulsory acquisition prior to delisting from the SGX-ST.

Voluntary offer

Overview

Where an Offeror's primary concern is to obtain control of a listed company, the Offeror can consider making an independent voluntary offer to acquire all the shares of the Company, other than those already held by the Offeror ("**Voluntary Offer**").

Privatisation could still be achieved in this manner provided acceptances to the Voluntary Offer meet the 90% threshold for compulsory acquisition. In such an event, the Offeror can exercise its right to compulsorily acquire the shares of the non-assenting shareholders and the Company will then be delisted (without the need for a reasonable exit alternative) as there is only a single shareholder, the Offeror.

Acceptance Levels

The Voluntary Offer must be conditional upon the Offeror receiving acceptances which will result in the Offeror, together with any persons acting in concert with it, holding more than 50% of the voting rights of the Company. The Offeror may impose a higher level of acceptance if the Offeror states clearly in the offer document the level of acceptance upon which the Voluntary Offer is conditional and the SIC is satisfied that the Offeror is acting in good faith in imposing such high level of acceptances. In addition, the SIC may allow the Offeror to revise the initial acceptance level to a lower level (but above 50%) during the course of the Voluntary Offer, provided that the revised offer remains open for an additional 14 days following the revision and shareholders who accepted the initial offer are permitted to withdraw their acceptance within 8 days of notification of the revision.

Do note that if the 90% threshold for a compulsory acquisition is not met, subject to the applicable acceptance levels imposed by the Offeror, the Offeror may nonetheless be required to acquire the shares of the shareholders who accepted the Voluntary Offer and the Offeror may be left with a substantial stake in the Company which remains listed on the SGX-ST.

Key Milestones

The key milestones in a Voluntary Offer with Compulsory Acquisition are as follows:

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1. if necessary, approach the Board, by the Offeror or its financial adviser, to discuss a potential offer;
2. submission of a formal proposal to the Board;
3. SGX-ST announcement of firm intention to make an offer, either jointly or separately by the Company and the Offeror;
4. despatch of offer document to the shareholders of the Company by the Offeror;
5. despatch of board circular to the shareholders by the Company;
6. close of the Voluntary Offer;
7. assuming applicable acceptance conditions are fulfilled, the Voluntary Offer will be completed;
8. assuming the Compulsory Acquisition Threshold is met, the Offeror exercises its right of compulsory acquisition; and
9. once the Compulsory Acquisition is completed, the Company can proceed to be delisted from the SGX-ST.

Scheme of Arrangement

Overview

A scheme of arrangement is a procedure allowing a company to be restructured under the Companies Act and may also be used to privatise a listed company.

Pursuant to the scheme, the listed Company may cancel its existing shares and issue new shares in itself to the Offeror, i.e. in consideration of the Offeror paying cash and/or issuing new shares in itself to the shareholders of the Company. Alternatively, outstanding shares in the listed Company may be transferred directly to the Offeror.

Structure of a Scheme of Arrangement

Only the listed Company may initiate the scheme of arrangement. Accordingly, it is typically used to structure a takeover on a recommended basis. The Company will need to engage a scheme manager to prepare the scheme proposal before putting the proposal to its shareholders for approval.

If approved by a statutory majority (i.e. a majority in number, representing 75% in value, of all of the shares, present, and voting at a scheme meeting), the Company will then need to seek the sanction of the High Court to the scheme. If such sanction is obtained, the scheme will become binding on all of the shareholders of the Company.

A scheme of arrangement is also subject to the Code but, if certain conditions are met, exemptions from the application of the Code's material rules can be obtained from the SIC.

If approval by the statutory majority is not obtained to a scheme of the arrangement, the scheme will fail and the Offeror will not acquire any shares in the Company.

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Advantage of a Scheme of Arrangement

The key advantage in structuring a takeover through a scheme of arrangement is that the statutory majority approval to compel non-assenting shareholders to comply with the scheme of arrangement is lower than the 90% threshold required to exercise compulsory acquisition rights under the Singapore Companies Act.

Key Milestones

The key milestones of a Scheme of Arrangement (“**Scheme**”) are as follows:

1. the Company makes an application to Court for a meeting (“**Scheme Meeting**”) of the shareholders to be ordered;
2. the Court’s approval for the Scheme Meeting is obtained;
3. the scheme manager despatches the scheme document to the shareholders;
4. assuming the Scheme is approved at the Scheme Meeting, the Company brings the approved Scheme to Court for approval;
5. assuming the Court approves the Scheme, it becomes binding on all the shareholders;
6. the Scheme is made effective upon lodgment with the Registrar of Companies; and
7. the Company proceeds to be delisted from the SGX-ST.

Concluding Comments

In the current uncertain economic climate, the listed companies should consider the cost and benefits of remaining listed on the SGX-ST. In particular, the compliance cost, the relatively broad shareholder base, ready access to the equity capital markets and the prestige of being listed.

The suitability of the various avenues of privatisation depends on the intentions of the listed company and/or the Offeror, and the circumstances. Do approach us if have queries or wish to speak to us on the above.

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