

The Singapore Exchange Listing Decision On The Use Of A Business/Ownership Structure To Comply With Foreign Ownership Restrictions

In certain jurisdictions, there may be restrictions on foreign ownership of domestic companies or in respect of certain industries. Foreign companies wishing to do business in these countries frequently use a variety of business/ownership structures (“**Structures**”) in the principal places of operations of their businesses (“**Relevant Jurisdictions**”) in order to comply with the foreign ownership restrictions. Such Structures include the usage of contractual arrangements that provide for operational control and economic rights so as to comply with foreign ownership restrictions. For instance, in China, issuers utilise the “variable interest entity” structure to achieve control over operating entities and obtain economic benefits from those entities through a series of agreements and arrangements rather than through direct legal ownership.

Listing Decisions

On 31 December 2018, the Singapore Exchange (“**SGX**”) published a listing decision on whether an issuer’s use of a Structure in its Relevant Jurisdiction affects its evaluation of the issuer’s suitability to list (“**Listing Decision**”).

The SGX highlighted two (2) major concerns. Firstly, whether the Structure is in line with the relevant laws and regulations (“**Relevant Laws**”). Secondly, whether contract-related risks, especially where contractual arrangements provide for control and economic rights, are adequately managed.

In accordance with Listing Rules 103(1), 104 and 203 and Catalist Rules 103(2)

and 225(1), the SGX examines certain factors in evaluating a Structure:

Rationale of the Structure

The SGX assesses the reasonableness of the justification for the Structures used by issuers on a case-by-case basis. It will consider whether the Structures are only for the compliance with foreign ownership restrictions and their compliance with the safeguards/disclosures in the Listing Decision.

Significance of the business conducted through the Structure

The SGX considers various factors like the degree of dependence on the relevant operating entity (“**Entity**”) for the generation of the issuer’s revenue, and profits, together with the contribution of the Entity’s assets to the issuer group.

Legality of the Structure

The SGX stated that Issue Managers/Full Sponsors are expected to demonstrate that the Structure (i) is legal and valid; and (ii) complies in fact and in good faith with, and is not contrary to, all Relevant Laws. If the Structure uses contractual arrangements to confer control and economic rights to the issuer, Issue Managers/Full Sponsors also have to show the ability to ensure proper operation and enforceability of the contractual arrangements. The SGX views actions taken by the authorities in the Relevant Jurisdiction against entities that use similar Structures as an important consideration. Where Relevant Jurisdictions do not appear to display signs of official disapproval, an issuer

with a significant Entity may adopt the Structure, provided that the relevant safeguards and disclosures in the Listing Document and the listing admission criteria/conditions in the Listing Manual and/or the Catalyst Rules are fulfilled.

Listing Documents

The SGX requires issuers to provide adequate safeguards and disclosures in the prospectuses/offer documents/offer circulars (“**Listing Documents**”) on the Structures proposed:

Safeguards

- Issue Managers/Full Sponsors would be required to provide safeguards such as the following:
 - the issuer should obtain suitable regulatory assurance to show that the Structures are legal;
 - a clean opinion from the legal adviser in connection with the legality of the Structures; and
 - effective measures and internal controls procedures to be adopted to protect the issuer’s assets which are held through the Structures.
- Where the Structures use contractual arrangements, the SGX would require additional safeguards to be implemented such as the following:
 - the clean legal opinion should include a confirmation that the contractual arrangements constitute valid, legal and binding obligations of the parties, and are enforceable against the parties;
 - where the Entity’s accounts would be consolidated at the issuer-group level because of the contractual arrangements, a written confirmation from the reporting accountant on the basis of consolidation; and
 - relevant written undertakings from the issuer pertaining to the basis of consolidation of the Entity’s accounts at the issuer-group level; the unwinding of, material changes

to the terms of and the exclusion of entrenchment provisions in the contractual arrangements; the protection of the issuer’s interests and the issuer’s shareholding interest in the Entity.

Listing Document Disclosures

Issue managers/Full Sponsors would be required to provide adequate disclosures in the Listing Document, such as the following:

- summary of the foreign ownership restriction under the Relevant Laws and the issuer’s compliance with the Relevant Laws including the implications to the issuer;
- details of and rationale for the use of the Structure; and
- details of the clean opinion set out in paragraph (A)(I)(ii) above. Where contractual arrangements are used, the SGX would require additional disclosures in the Listing Document, such as the following:
 - details of and rationale for the use of contractual arrangements, including the rights and obligations of the parties to the arrangements and termination provisions;
 - details of the legal opinion set out in paragraph (A)(II)(i) above; and
 - the board of directors’ views and bases, as to how the contractual arrangement confers control and economic benefits from the Entity to the issuer and is enforceable under the Relevant Laws.

Continuing Disclosures

Where the Structure involves contractual arrangements, the SGX would require the issuer to inform its shareholders of certain information such as changes to the Entity’s registered shareholders, registered owners and/or legal representatives; changes to the shareholding interests in the Entity arising from changes in the Relevant Laws; and

any material change in the contractual arrangements and/or the circumstances under which they were adopted and its impact on the issuer group.

The SGX has encouraged Issue Managers/Full Sponsors to consult with them early to request for confidential guidance where appropriate.

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This update is provided to you for general information only and should not be relied upon as legal advice.

For further information on the above, please contact our Corporate Finance/ Capital Markets Team.