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SGX Amends Mainboard Rules to Allow Dual Class Share Structures

Introduction

In response to strong market support for the introduction of dual class shares in Singapore, the SGX has amended the Mainboard Rules (“the Rules”), with effect from 26 June 2018, to allow new companies seeking to list on the Mainboard to offer dual class share structures.

Under a dual class share structure (“DCS structure”), certain shareholders are given voting rights that are disproportionate to their shareholding, i.e. shares in one class will carry one vote, while shares in another class will carry multiple votes. For the avoidance of doubt, save for multiple voting rights, a multiple voting (“MV”) share shall have the same rights as an ordinary voting (“OV”) share.

This update sets out SGX’s framework for the listing of new companies with DCS structures on the Mainboard, as well as safeguards protecting the interests of minority shareholders and investors and mitigating the entrenchment and expropriation risks associated with DCS structures.

Eligibility, Suitability and other criteria

Existing companies that have listed using a one-share-one-vote structure are not permitted to adopt a DCS structure post-listing. Only new issuers seeking a primary listing on the Mainboard can choose to adopt a DCS structure.

In addition to meeting the usual requirements for admission set out in Chapter 2 of the Rules, the issuer and issue manager must also demonstrate the issuer’s suitability for listing with a DCS structure. The factors that the SGX may take into account when making such a determination include, amongst others:

- the business model of the company;
- the operating track record of the company/business;
- the role and contribution of intended MV shareholders to the success of the company/business;
- participation by sophisticated investors; and
- other features of the company/business that requires a DCS structure.

SGX will also require holders of MV shares to give contractual undertakings to the issue manager to observe a moratorium on the transfer or disposal of their entire shareholding in the issuer in respect of their interests in both MV and OV shares at the time of listing, for at least 12 months post-listing.

Safeguards against Entrenchment Risks

Initial holders of MV shares are to be limited to directors of the issuer. SGX is also limiting the voting rights of MV shares to a maximum of 10 votes per share, and issuers must set out the voting rights of its MV shares clearly in its Constitution.

OV shareholders holding at least 10% of the total voting rights on a one-share-one-vote basis must be able to convene a general meeting. In any general meeting, the number of votes that may be cast by OV shareholders who are not also MV shareholders must be at least 10% of the total voting rights of the issuer.



Issuers will also not be allowed to undertake equity fundraising by issuing MV shares post-listing, except in the event of a rights issue, bonus issue, scrip dividend scheme or consolidation or subdivision of shares.

In addition, the issuer must ensure that, in undertaking any corporate action, the proportion of the total voting rights of the MV shares against those of the OV shares will not increase above the proportion existing prior to such corporate action.

Issuers with DCS structures are also required to make provision in its Constitution for the automatic conversion of MV shares into OV shares on a one-for-one basis in the event that:

- a. a MV share is sold or transferred to any person, and in the case of a person permitted to hold MV shares, other than to persons permitted to hold MV shares;
- b. the holder of MV shares ceases to be a director (whether through death, incapacity, retirement, resignation or otherwise), and in the case of a person permitted to hold MV shares, other than where a new director being a holder of MV shares is appointed.

Any deviation from the two principles set out above shall be subject to specific shareholders' approval at a general meeting where one MV share is limited to one vote (the "[Enhanced Voting Process](#)"). The relevant holder of the MV share, the person to whom the MV shares are to be sold or transferred, and the former, who ceases to be a director, must abstain from voting on the resolution.

Safeguards against Expropriation Risks

The Rules also require the majority of the Audit, Nominating and Remuneration Committees of issuers with DCS structures, including the respective chairmen, to be independent.

The Enhanced Voting Process shall apply to the following matters:

- making changes to the issuer's Constitution;
- varying the rights attached to any class of shares;
- appointing and removing independent directors;
- appointing and removing auditors;
- reverse takeover of the issuer;
- winding up of the issuer; and
- delisting of the issuer.

Disclosure and other clarifying measures

Mainboard issuers with DCS structures will be required to prominently disclose, on a continuous basis:

- in its annual report: its DCS structure and the holders of MV shares and their respective shareholding and voting percentage both at the point of listing and thereafter;
- in its shareholders' circular: information on the voting rights of each class of shares; and
- in its prospectus: the risks of DCS structures, its rationale for adopting a DCS structure, matters subject to the Enhanced Voting Process, implications to holders of OV shares and key provisions in its Constitution relating to DCS structures.

Issuers with DCS structures are also required to include a prominent statement highlighting the fact that it is a company with a DCS structure in its annual reports, circulars, on the cover page of its prospectuses and in its announcements (including financial statement announcements).





Conclusion

The adoption of the DCS structure is a welcome development as this will potentially enable the SGX to attract and accommodate the listing of new economy companies in fast-growing industries such as information technology and life sciences.

If you have further questions on the above, please contact [Yap Lian Seng](#), [Heng Jun Meng](#) or the ZICO Insights Law LLC you usually deal with.

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