

LEGAL ALERT

Singapore
17 August 2018

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SIC Proposes Revisions to the Takeover Code to Deal with Dual Class Shares

In June 2018, the Singapore Exchange (“SGX”) approved a significant change to its listing rules, paving the way for companies with dual class share structures (“DCS Structures”) to seek a primary listing on its Main Board. DCS Structures are share structures where certain classes of shares in a company carry more voting rights than others. In one class, ordinary shares will carry one vote per share (“OV shares”), while shares in another class will carry multiple voting rights (“MV shares”) up to a limit of 10 votes per share. Please see our update on the DCS Structure [here](#) for more information.

On 19 July 2018, the Securities Industry Council (“SIC”) published its consultation paper highlighting two main features of the primary listing framework for DCS Structures (“DCS Framework”) that will impact the Singapore Code on Take-overs and Mergers (“Code”), and its proposed changes to address them.

SIC is seeking feedback on the following key issues and proposed changes:

1. **Triggering a mandatory offer as a result of MV shares being converted to OV shares or voting rights of MV shares being reduced**

Rule 14.1 of the Code requires a person to make a general offer for the remaining voting rights in a company where: (i) such person acquires shares carrying 30% or more of the voting rights of a company; or (ii) such person, if he and his parties acting in concert with him in aggregate hold between 30% and 50% of the voting rights of a company, acquires more than 1% of the voting rights in any period of 6 months.

Under the DCS Framework, Rule 14 may be triggered under any of the following scenarios:

<p>Conversion of MV shares to OV shares (“Conversion”)</p>	<ul style="list-style-type: none"> • Automatic conversion of MV shares into OV shares upon the occurrence of certain events (such as the transfer of MV shares by the holder to a person not specified to hold MV shares) (“Automatic Conversion”) • The holder of MV shares elects to convert MV shares to OV shares
<p>Reduction of MV share voting rights (“Reduction”)</p>	<ul style="list-style-type: none"> • The holder of MV shares elects to reduce the number of voting rights attached to each MV share

These scenarios will cause a reduction in the total number of voting rights in a company, thus resulting in an increase of percentage of voting rights of a shareholder (the “Triggering Shareholder”) and persons acting in concert with him. In the event the Triggering Shareholder obtains or consolidates effective control of the company, he may be obliged to make an offer under Rule 14.

The SIC distinguishes between independent and non-independent conversions in determining whether the Triggering Shareholder is required to make an offer.

- **Independent conversion**

In the event that the Triggering Shareholder is independent of the Conversion (likely in the case of Automatic Conversion) or Reduction, the SIC proposes to waive the obligation for the Triggering Shareholder to make a general offer under Rule 14.

- **Non-independent conversion**

If the Triggering Shareholder is deemed not independent of the Conversion or Reduction scenario that caused it to obtain effective control of the company, the SIC proposes to:

- a. require the Triggering Shareholder to make a general offer under Rule 14 within 6 months from the date of the Conversion or the Reduction;
- b. provide for a waiver from the requirement for the Triggering Shareholder to make a general offer under Rule 14, subject to the approval of the independent shareholders of the company for a Whitewash Resolution obtained either before or within 3 months of the date of the Conversion or the Reduction; and
- c. allow the Triggering Shareholder to dispose of such number of shares as is necessary to reduce his aggregate voting rights in the company to that below the threshold level stipulated within Rule 14.1 within 6 months from the date of the Conversion or the Reduction (or such longer period of time as the SIC may allow where exceptional circumstances warrant such extension of time) in lieu of making a general offer under Rule 14.

- **Offer Price**

Where the Triggering Shareholder decides or has to make a mandatory offer but has not purchased any OV shares within the previous 6 months, the SIC proposes that the minimum offer price for OV shares be the simple average of the daily volume weighted average traded prices of the company on either of the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the date of the Conversion or the Reduction.

2. **Comparable offers for share classes that only differ in voting rights**

Under a DCS Structure, MV shares may be transferred to third parties subject to approval by independent shareholders at a general meeting. In this event, an offeror must make a general offer to a company with a DCS Structure for both MV shares and OV shares.

To ensure fairness and to safeguard the interest of holders of OV shares, the SIC is proposing to follow the approach taken by Sweden and the Toronto Stock Exchange, by setting the ratio of offer values between MV shares and OV shares at one. This means that in a takeover situation, holders of OV shares are put on an equal footing as holders of MV shares, and any premium paid for MV shares is paid for OV shares. If the ratio is to vary in any other case, it must be justified to the SIC in advance with all relevant circumstances set out.

The consultation ends on 17 August 2018.

For more details on the Consultation Paper, please click [here](#).

If you have any questions or require any additional information, please contact [Yap Lian Seng](#), [Heng Jun Meng](#) or the ZICO Insights Law LLC partner you usually deal with.