

## Update: Amendments to SGX Listing Rules effective on 31 March 2017

On 11 January 2016, SGX issued a consultation paper titled "*Listing Rules Amendments to Align with Changes to the Companies Act*" (the "**Consultation**") which sought to among other things, propose certain amendments to the Listing Rules applicable to both the Mainboard and the Catalist board (referred to respectively as the "**Mainboard Rules**" and the "**Catalist Rules**", and collectively, the "**Listing Rules**") for purposes of alignment with certain provisions of the Companies (Amendment) Act 2014 which amended the Companies Act (Chapter 50 of Singapore) (as amended, the "**Companies Act**"). The Consultation closed in February 2016.

On 22 March 2017, SGX published its responses to comments received on the Consultation, as well as the finalised amendments to the Listing Rules, which will take effect from 31 March 2017 (the "**Listing Rules Amendments**").

This update provides an overview of the Listing Rules Amendments with a primary focus on the Mainboard Rules applicable to listed companies (similar amendments were made to the Catalist Rules). For details, please click [here](#) to view the specific amendments to the Mainboard Rules, and click [here](#) to view the specific amendments to the Catalist Rules. You can also view the SGX news release on the subject [here](#).

### New Listing Rules on Electronic Communications with Shareholders

*New Listing Rules enable electronic communications with consenting shareholders*

Chapter 12 of the Mainboard Rules has been amended to introduce new Listing Rules enabling a listed issuer to undertake electronic communications with its shareholders, provided the issuer has obtained consent, whether express, deemed or implied, from the relevant shareholder. SGX has explained that each issuer will have the flexibility to decide on the most appropriate electronic communication regime to adopt for its shareholder base.

#### Modes of Obtaining Consent: Express, Deemed, and Implied

*Where there is express consent from a shareholder*

##### (i) *Express consent*

Under the new R1208 of the Mainboard Rules, a listed issuer may send all documents (including notices, circulars, and annual reports) by way of electronic communications to a shareholder, provided that shareholder has expressly consented to the same.

In addition to express consent, a listed issuer may also rely on provisions of its constitutive documents providing for deemed consent or implied consent, which are discussed in turn below.

*(ii) Deemed consent*

*Where there is deemed consent from a shareholder*

Under the new R1209(1) of the Mainboard Rules, a listed issuer may send documents using electronic communications to a shareholder where there is deemed consent from the shareholder, provided the following conditions are satisfied:

*Deemed consent – Constitution must provide for electronic communications*

- (a) the issuer's articles of association or other constitutive documents ("**Constitution**"):
- (i) provides for the use of electronic communications;
  - (ii) specifies the manner in which electronic communications is to be used; and
  - (iii) specifies that a shareholder will be given an opportunity within a specified period of time whether to receive such documents electronically or by way of physical copies; and

*Deemed consent – separate written notice to be given on at least one occasion*

- (b) the issuer has separately notified the relevant shareholder directly in writing on at least one occasion that:
- (i) the relevant shareholder has a right to elect (within a time to be specified in that notice) whether to receive documents electronically or to receive physical copies of the same;
  - (ii) if the relevant shareholder does not make an election, documents will be sent to the shareholder electronically;
  - (iii) the manner in which electronic communications will be used is the manner as specified in the Constitution;
  - (iv) the election is a standing election, but that shareholder may make a fresh election at any time; and
  - (v) until a fresh election is made by that shareholder, the last election conveyed by that shareholder to the issuer shall prevail over all previous elections in

relation to all documents to be sent to that shareholder.

*(iii) Implied consent*

*Where there is implied consent from shareholders*

Under the new R1209(2) of the Mainboard Rules, a listed issuer may rely on the implied consent of shareholders if its Constitution:

- (a) provides for the use of electronic communications;
- (b) specifies the manner in which electronic communications is to be used; and
- (c) provides that the shareholders shall agree to receive documents by way of electronic communications and that the shareholders do not have a right to elect to receive a physical copy of such documents.

Deemed / Implied Consent: additional requirements

*Deemed / implied consent – additional requirements*

Where the listed issuer is relying on deemed or implied consent provisions under R1209, it has to additionally observe new R1210, R1211 and R1212, which are discussed below. For the avoidance of doubt, these additional rules do not apply where express consent has been obtained.

*Documents which cannot be transmitted electronically*

*Deemed / implied consent – certain documents must still be transmitted physically*

Under the new R1210 of the Mainboard Rules, in the case of electronic communications pursuant to deemed or implied consent under R1209, a listed issuer will still be required to send physical copies of the following documents to the relevant shareholders:

- (a) notices and documents relating to takeover offers and rights issues;
- (b) any notice of meeting (excluding circulars or letters referred in that notice);
- (c) any form or acceptance letter that shareholders may be required to complete; and
- (d) notices under R1211 and R1212 (discussed below).

*Shareholders may request for physical copies*

*Deemed / implied consent – to provide physical copies upon shareholders' request*

Where a listed issuer uses electronic communications to send documents to a shareholder, under the new R1211 of the Mainboard Rules, that issuer is required to inform that shareholder as soon as practicable of how to request a physical copy of that document from that issuer. The listed issuer shall provide such physical copies upon such request.

*Website publication – physical notification required*

*Deemed / implied consent – electronic communication by way of website publication – to provide physical notification*

If the listed issuer uses website publication as its mode of electronic communications, under the new R1212 of the Mainboard Rules, the listed issuer is required to separately provide a physical notification to its shareholders of the following:

- (a) the publication of the document on the website;
- (b) if the document is not available on the website on the date of the notification, the date on which it will be available;
- (c) the address of the website;
- (d) the place on the website where the document may be assessed; and
- (e) how to access the document.

**Enhanced Disclosure of Persons Required to Abstain from Voting**

*Enhanced disclosure of persons required to abstain from voting in general meeting*

Under R1206(5) of the Mainboard Rules (prior to amendment), a listed issuer is required to include a statement in its circular to shareholders if a person is required to abstain from voting on a proposal at a general meeting pursuant to a listing rule.

R1206(5) has been amended to extend this requirement to where a person is required to abstain from voting pursuant to any court order (only if such court order has been served on the issuer). Such a statement must also disclose that the issuer will disregard any votes cast on a resolution by the person who is required to abstain from voting by the listing rule or pursuant to a court order.

SGX has clarified that the above restriction does not require the issuer to disregard (a) votes of associates of the person who is subject to the court order, or (b) votes of the person who is subject

to the court order where he is acting as proxy for another shareholder (who is not restricted under the court order).

SGX has also clarified that it is aware that some issuers are in the process of preparing or despatching circulars or annual reports to shareholders for AGMs to be held in April 2017, and as a transitional measure, if such issuer has been served a court order that requires any person to abstain from voting at the AGM, the issuer may, in lieu of including the statement in the circular, make an announcement on SGXNET instead.

### New Exceptions to IPT Rules

*New exceptions to  
IPT Rules*

The Listing Rules Amendments also introduced additional exceptions to the disclosure and shareholders' approval requirements under Chapter 9 of the Mainboard Rules (the "**IPT Rules**"), in alignment with the Companies Act. Specifically, R915 of the Mainboard Rules has been amended to introduce two new exceptions to compliance with R905, R906 and R907 of the Mainboard Rules:

- (a) insurance coverage and indemnities for directors and CEOs against liabilities attaching to them in relation to their duties as officers of the entity at risk, to the extent permitted under the Companies Act; and
- (b) defence funding for directors and CEOs of the entity at risk to the extent permitted under sections 163A and 163B of the Companies Act, provided that in the case of defence funding permitted under section 163B of the Companies Act, such defence funding is to be repaid upon any action taken by a regulatory authority against him. *(Note: for this purpose, references to "director" in sections 163A and 163B of the Companies Act shall be read as references to "director or chief executive officer".)*

In both cases above, the exception applies regardless of whether the entity at risk is subject to the Companies Act.

### Subsidiary Holdings

*Listing Rules  
Amendments  
pertaining to  
subsidiary holdings*

Under the Companies Act, where a subsidiary holds shares of its holding company (referred to in the amended Listing Rules as a "**subsidiary holding**"), such shares are treated in a manner which is similar to that of the holding company's treasury shares. For example, such shares will not carry the right to vote, but may



receive dividends and other distributions of that holding company's assets.

Likewise, the Listing Rules Amendments exclude subsidiary holdings of the listed issuer's shares from the calculation of the issued share capital of the listed issuer in computation in relation to voting rights, but do not exclude such shares from (a) calculation of issued share capital where it does not relate to voting rights, and (b) calculations of market capitalisation. There are also new disclosure requirements relating to subsidiary holdings. SGX has clarified that these rules apply only if an issuer has subsidiary holdings.

The affected Mainboard Rules can be found in the "*Definitions and Interpretation*" section, Chapters 2, 5, 7, 8, 12 and 13, and Appendices 7.2, 8.3.1, and 8.3.2. In particular, we wish to highlight the following new disclosure requirements:

- (i) New R704(28A) requires an immediate announcement to be made of any sale, transfer, cancellation and/or use of subsidiary holdings, stating certain prescribed details.
- (ii) New R1207(9)(g) and (h) require the issuer's annual report to provide some prescribed information relating to the number and percentage of subsidiary holdings held, as at a date not more than 1 month before the date of the notice of the annual general meeting or summary financial statement, whichever is earlier.

SGX has clarified that it is aware that some issuers are in the process of preparing or despatching circulars or annual reports to shareholders for AGMs to be held in April 2017, and these issuers are not expected to align the language in their said circulars or annual reports with the amended Listing Rules. However, if such an issuer has subsidiary holdings: (1) it should still comply with the amended Listing Rules relating to the computation of the maximum number of shares which may be issued under a general mandate (see R806) or acquired under a share buyback mandate (see R882); and (2) where information on subsidiary holdings was not presented in its current year annual report (as required under new R1207(9), which was discussed above), such issuer may instead announce the information via SGXNET before its AGM in April 2017.

## Summary Financial Statements

*Issuance of  
summary financial  
statements*

The Listing Rules Amendments also expand existing R711 of the Mainboard Rules to allow issuers to issue summary financial statements in accordance with "any applicable written law, regulation or code" (previously limited to the Companies Act).

If you would like more information on this or any other area of law, you may wish to contact the partners at WongPartnership LLP that you normally deal with or any of the following partners:

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**25**  
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