

SGX RegCo – Public Consultation on Changes to Listing Rules regarding Long-Serving Independent Directors (IDs) and Specific Remuneration Disclosures

On 27 October 2022, Singapore Exchange Regulation (**SGX RegCo**) released a public consultation paper seeking feedback on two key proposals: (a) the imposition of a 9-year hard limit for IDs; and (b) mandatory disclosure of the specific remuneration of each director and the chief executive officer (**CEO**) in the annual report.

The public consultation follows from the recommendations of the Corporate Governance Advisory Committee (**CGAC**) dated 13 September 2022, which can be found [here](#) and SGX RegCo's statement of the same date (**SGX RegCo Statement**), which can be found [here](#), both of which are in respect of the report published by KPMG Singapore of listed companies' disclosures on their compliance with the Code of Corporate Governance (**CG Code**) on 13 September 2022 (**KPMG report**). You may also wish to read our previous client update [here](#).

Board Renewal and 9-Year Limit for IDs

Currently, under Mainboard Rule 210(5)(d)(iii) and Catalist Rule 406(3)(d)(iii), a director of a listed company is no longer independent after a nine-year cumulative tenure, unless his or her appointment as an ID has been approved in two separate resolutions by: (a) all shareholders; and (b) shareholders, excluding the directors and the CEO and their associates (known as the **Two-Tier Vote**). SGX RegCo has clarified that, where an ID does not secure the Two-Tier Vote, he or she may continue to serve on the board, albeit as a non-independent director.

The Two-Tier Vote, which was introduced on 6 August 2018 and came into effect on 1 January 2022, was intended to provide flexibility for boards to retain quality IDs, to empower shareholders to assess the independence of long-tenured IDs and to encourage shareholders' active engagement. At the time the Two-Tier Vote was contemplated, the Corporate Governance Council which was appointed to provide its recommendations on the CG Code noted that there was no international consensus on the most effective approach to address the risks related to long-tenured IDs, and the international approaches then ranged from a requirement for boards to conduct regular assessments (in Australia), to a disclosure of reasons for determining the independence of a director who has served more than nine years (in the United Kingdom (**UK**)), and to requirements to subject such IDs to shareholders' votes (in Hong Kong and Malaysia, and for certain companies in the UK). Apart from the Two-Tier Vote, boards were also required under Principle 4 of the CG Code to take into account the need for progressive renewal of the board.

Noting the observations in the KPMG report that board renewal and remuneration matters were areas where improvement is needed, SGX RegCo CEO, Mr Tan Boon Gin, remarked in the SGX RegCo Statement that it was timely for SGX RegCo to consult on "*hard-coding the 9-year limit for*" IDs, given that there had been a rush to use the Two-Tier Vote to retain long-serving IDs beyond nine years, instead of using it sparingly to retain quality IDs, despite SGX RegCo having cautioned against this.

In its public consultation paper, SGX RegCo reported that:

- (a) Based on the KPMG report (covering companies with the financial years ended from 1 July 2020 to 30 June 2021), only 52% of companies disclosed that they did not have directors serving beyond nine years;
- (b) Based on a 2021 Nanyang Business School study: (i) 70% (273 out of 391) of long-serving ID seats that were due for re-election were put up for election through the Two-Tier Vote; (ii) 73% (125 out of 172) of the remaining long-serving ID seats were also put through the Two-Tier Vote, despite not being due for re-election; and (iii) of these 398 long-serving IDs who were put through the Two-Tier Vote, almost all (97%) were reappointed.

SGX RegCo commented that, at this rate, there is an increasing risk that companies' boards will grow stale and their independence compromised. SGX RegCo also remarked that companies have also not provided adequate or meaningful disclosures on the independence assessments of their long-serving IDs, with very few providing details on the process used to form the basis of their conclusions. SGX RegCo is of the view that decisive action must be taken to accelerate board renewal and promote board independence, through the **removal of the Two-Tier Vote mechanism**, which would effectively **hard-wire the 9-year rule**. SGX RegCo is of the view that board renewal is critical for boards to remain effective under the constantly evolving market landscape so that fresh ideas and independent thought are brought into the board's decision-making process.

The CGAC statement on the KPMG report noted that tenure restrictions on IDs have been imposed in other jurisdictions (e.g., the UK, France, India and Malaysia), and that, besides safeguarding board independence, a tenure limit also creates opportunities for board refreshment and diversity. Recent developments in other jurisdictions regarding tenure limits for IDs include the following:

- (a) Hong Kong's Corporate Governance Code was recently amended to require the appointment of a new ID if all the IDs on the board have served more than nine years, to take effect in January 2023. Hong Kong Exchange has also suggested that they may consider phasing out long-serving IDs gradually in the long run. The Hong Kong Corporate Governance Code can be found [here](#).
- (b) Bursa Malaysia Main Market Listing Requirements will introduce a hard limit of 12 years for IDs in June 2023, such that all IDs who have served beyond 12 years are required to resign or be re-designated as non-independent. This amendment to the Main Market Listing Requirements can be found [here](#).
- (c) The European Commission recommends that non-executive directors have a limited tenure of 12 years. This has been adopted by France in the Afep-Medef Corporate Governance Code of Listed Corporations. The Afep-Medef Corporate Governance Code (June 2018) can be found [here](#).

Timing wise, SGX RegCo proposes: (a) to remove the Two-Tier Vote mechanism **immediately** after the date of SGX RegCo's response to the public consultation paper; and (b) (to provide companies with sufficient time to find suitable ID candidates) a **one-year transition period** after that date, before the new hard limit becomes effective. SGX RegCo has clarified that: (a) at the effective date of the hard limit, an ID who has served beyond the hard tenure limit must be re-designated as non-independent, regardless of whether he or she has been approved through the Two-Tier Vote previously; and (b) exercising the Two-Tier Vote mechanism prior to the said effective date will not work to lock in an ID's continued independence beyond the said effective date.

Specific Remuneration Disclosures for Each Director and CEO

SGX RegCo noted that the KPMG report found companies' annual report disclosures in this area lacking:

- (a) While almost all companies provided a breakdown of remuneration in percentage terms into salary, bonus, benefits and others for directors and the CEO, only 5% of companies fully disclosed the remuneration amount in dollar value paid to both directors and the CEO on a named basis, with such breakdowns;
- (b) 35% and 18% of companies disclosed the actual remuneration of directors and CEO respectively on a named basis;
- (c) 59% of companies disclosed directors' remuneration in bands, while 75% of companies disclosed the CEO's remuneration in bands; and
- (d) Companies mostly provided boilerplate explanations that their non-compliance was due to competitive, sensitivity and confidentiality concerns, disclosures on how remuneration was determined were mostly high level, and companies often did not explain how remuneration, performance and value creation were related.

While it noted issuers' concerns about sensitivity and confidentiality, SGX RegCo is of the view that these considerations are outweighed by the fiduciary duty owed to shareholders to provide transparency, and the arguments against disclosing the exact amount of remuneration due to competitive concerns are less relevant for directors and the CEO, compared to those for key management personnel. SGX RegCo is of the view that there should be more transparency on companies' remuneration practices, and that full transparency on director and CEO pay is thus necessary for investors to make informed assessments on whether there is alignment with their interests on these matters.

Accordingly, SGX RegCo proposes to introduce a new Mainboard Rule 1207(10D) and Catalist Rule 1204(10D) to require companies to **disclose the amount and breakdown of remuneration of each director and the CEO in the annual report on a named basis.**

SGX RegCo stated that this proposal will bring Singapore's disclosure requirements on director and CEO remuneration in line with other jurisdictions such as the UK, the United States of America, and Australia. In respect of Hong Kong and Malaysia, the public consultation paper observed that the Hong Kong Exchange Listing Rules require an issuer to disclose the amount and breakdown of directors' fees on a named basis as well as the exact remuneration paid to the five highest paid individuals on an *unnamed* basis; and the Bursa Main Market Listing Requirements mandate the disclosure of the exact amount of

directors' remuneration with breakdowns on a named basis while the Malaysian Code of Corporate Governance requires the disclosure of the top five senior management's remuneration components in *bands of RM50,000* with breakdowns.

The public consultation closes on 17 November 2022.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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