



Institute of
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ICPAS RESEARCH



SGX Enhanced Listing Rules to Strengthen Corporate Governance Practice

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SGX Enhanced Listing Rules To Strengthen Corporate Governance Practices

On 14 September, the Singapore Exchange Ltd (“SGX” or the “Exchange”) announced a slew of amendments to the listing rules which aim to strengthen corporate governance practices in issuers and safeguard shareholders’ interests. Consultation for the rule amendments was concluded in January 2010.

The amendments will be effective from 29 September 2011 and will apply to issuers on the Mainboard as well as Catalist where applicable.

ICPAS Research summarised the key amendments below:

Strengthening Corporate Governance and Safeguarding Shareholders’ Interests		
Rule	Rationale of Amendment	New /Amended Rules
LR 719 (1)	To highlight the need for good internal controls and clarify the need for board committees to be satisfied of the issuer’s internal control systems.	A issuer should have a robust and effective system of internal controls, addressing financial, operational and compliance risks. The audit committee (“AC”) (or such other committee responsible) may commission an independent audit on internal controls for its assurance, or where it is not satisfied with the systems of internal control.
LR 704 (31)	To require disclosure of loan covenants which make reference to control or controlling shareholders.	The issuer should disclose the following information relating to loan agreements which make reference to control or controlling shareholders: <ul style="list-style-type: none"> • The details of the covenant(s) making reference to shareholding interests of any shareholder in the issuer or restrictions placed on any change in control of the issuer; and • The aggregate level of these facilities that may be affected by a breach of the obligation. • Any breach of the terms of the loan covenants which may have a significant impact on the operations of the issuer.
LR 728	To require controlling shareholders to notify issuers when their shareholdings have been pledged.	Where any borrowings or loans of the issuer or any of its subsidiaries contains any covenants which makes reference to the shareholding interest of any controlling shareholder(s), the issuer must obtain an undertaking from its controlling shareholder(s) to notify the issuer as soon as it becomes aware, of any share pledging arrangements relating to these shares and of any event which may result in a breach of the issuer’s loan covenants. Upon notification by the controlling shareholder(s), the issuer must immediately announce the following information: - <ul style="list-style-type: none"> • The name of the shareholder; • The class and number of shares and the percentage of the issuer’s issued share capital that is the subject of the security interest; • The party of parties in whose favour the security interest is created or financial instrument given; and • All other material details which are necessary for the understanding of the arrangements.
LR 610 (7)	To require the disclosure of information and risks relating to the appointment of legal representative(s).	The information to be disclosed in relation to the appointment of the legal representative(s) include: <ul style="list-style-type: none"> • the identity as well as powers and responsibilities of the legal representative(s) • Any risks in relation to the appointment, including concentration of authority and impediments to their removal; and • A description of the processes and procedures put in place to mitigate the risks in relation to appointment and an opinion by the board on the adequacy of these processes and procedures.
LR 704 (11)	To require issuers to notify investors of changes to the legal representative(s) in the issuer and/or its principal subsidiaries.	Issuers should notify investors of any appointment of, or change in legal representative(s) in the issuer and/or its principal subsidiaries.

Rule	Rationale of Amendment	New /Amended Rules
LR 610 (8)	To require disclosure of whether an independent director of the issuer is appointed to the board of the issuer's principal subsidiaries that are based in jurisdictions other than Singapore.	A statement by the issuer whether any of the independent directors of the issuer sits on the board of its principal subsidiaries that are based in jurisdictions other than Singapore.
LR 704(12)	To disclose when an independent director of the issuer is appointed to, or ceased to be on the board of the issuer's principal subsidiaries that are based in jurisdictions other than Singapore.	Announcement is required for the appointment and cessation of independent directors to the board of the issuer's principal subsidiaries based in jurisdictions other than Singapore.
LR 729	To ensure level playing field for all shareholders.	During trading suspension, there must not be any transfers of securities, unless approved by the Exchange.

Role of Board Directors, Key Executive Officers and Auditors

Rule	Rationale of Amendment	New /Amended Rules
LR 720	To codify Exchange's powers to take actions against directors and key executive officers.	<p>The issuer may require the Exchange's approval for the appointment of a director, a chief executive officer and chief financial officer (or its equivalent rank) in but not limited to the following circumstances:</p> <ul style="list-style-type: none"> • Where the issuer is under investigation for irregularities or other wrongdoing by a special auditor or a regulatory or enforcement agency; • Where the integrity of the market may be adversely affected; • Where it is in the interests of the public or investors; and • Where the issuer is uncooperative to the Exchange on regulatory matters. <p>Where the Exchange is of the opinion that a director or a key executive officer of an issuer has willfully contravened or willfully caused the issuer to breach the Listing Rules and/or relevant laws, rules and regulations or being uncooperative with the Exchange or other regulatory agencies, the Exchange may take the necessary actions including but not limited to:</p> <ul style="list-style-type: none"> • Publishing the names of the director or officer with relevant information about the contravention; and • Objecting to appointments of individual directors or executive officers to the board of directors of issuers.
LR 610 (6)	To require the AC to assess and provide a negative confirmation on the suitability of the Chief Financial Officer (CFO).	A statement by the AC, after making all reasonable enquiries, and to the best of their knowledge and belief, nothing has come to the attention of the AC members to cause them to believe that the person appointed as CFO does not have the competence, character and integrity expected of a CFO of a listed issuer.
LR 610 (5)	To require the board and AC to assess the adequacy of the internal controls at the time of listing.	An opinion of the board, with the concurrence of the AC on the adequacy of the internal controls, addressing financial, operational and compliance risks.
LR 712	Provide details on what constitutes a suitable auditor.	<p>The auditing firm appointed by the issuer must be: -</p> <ul style="list-style-type: none"> • Registered with the Accounting and Corporate Regulatory Authority ("ACRA"); or • Registered with and /or regulated by an independent oversight body acceptable to the Exchange; or • Any other auditing firms acceptable by the Exchange. <p>A change in auditing firm must be specifically approved by shareholders in a general meeting.</p>

The Exchange also introduced two new practice notes, ie Practice Note 4.1 and 12.1, to provide clarity on the wordings for responsibility statements, use of Right of First Refusal Agreements and submission of profit estimates projections and forecasts.

Summary of Practice Note 4.1

This practice note is applicable for real estate investment trusts (REITs) and business trusts ("Trusts").

Profit estimates, forecasts and/or projections

- The annual accounts of the investment fund for the last 3 financial years must be submitted when applying for a listing. If such information is unavailable, the investment fund is expected to provide profit estimates, forecasts and/or projections.
- The proforma income statement or statement of comprehensive income should be presented for the last 3 financial years and for the most recent interim period (if applicable) as if the restructured group had been in existence at the beginning of the period reported on. If the issuer is unable to present the required proforma financial information, the Exchange may request for the provision of profit estimates, forecasts and/or projections.
- As a guide, the Exchange will normally expect up to 2 years of full year profit estimates, forecasts or projections to be provided.

Right of First Refusals ("ROFRs")

- For disposals of assets owned by the controlling unitholder and/or any of its subsidiaries that would fall under the investment mandate ("the competing assets"), a ROFR granted by the controlling unitholder to the Manager of the Trust will effectively mitigate conflicts of interest when the ROFR : -
 - (a) Gives the Trust the first right to acquire the competing assets from the controlling unitholder and/or any of its subsidiaries; and
 - (b) Is valid for as long as (i) the Manager remains the manager of the Trust ; and (ii) the controlling unitholder together with its related corporations, remains a controlling shareholder of the Manager,

Where "related corporations" has the meaning ascribed to it under the Companies Act.

Summary of Practice Note 12.1

This practice note provides guidance on the wordings for responsibility statements for directors, vendors and financial advisors.

Responsibility statements for Directors and Vendors

For the purpose of Rule 610 (3) and 1205, the following directors' (or vendors') responsibility statement should be included in circulars:

"The [directors/vendors] collectively and individually accept full responsibility for the accuracy of the information given in this circular and confirm after making all reasonable enquiries that, to the best of their knowledge and belief this circular constitutes full and true disclosure of all material facts about the [described proposed action], the issuer and its subsidiaries and the [directors/vendors] are not aware of any facts the omission of which would make any statement in this circular misleading, [and where the circular contains a profit forecast, the directors are satisfied that the profit forecast has been stated after due and careful enquiry]. Where information in the circular has been extracted from published or otherwise publicly available sources or obtained from a named source, the sole responsibility of the [directors/vendors] has been to ensure that such information has been accurately and correctly extracted from those sources and/or reproduced in the circular in its proper form and context."

Responsibility statements for Financial Advisors

For the purpose of Rule 1015(5)(d), 1206(6) and Appendix 8.2, the following directors' (or vendors') responsibility statement should be included in circulars:

"To the best of the financial adviser's knowledge and belief, this circular constitutes full and true disclosure of all material facts about the [described proposed action], the issuer and its subsidiaries, and the financial adviser is not aware of any facts the omission of which would make any statement in the document misleading; [and where the document contains a profit forecast, it is satisfied that the profit forecast has been stated by the directors after due and careful enquiry]."

For full details on the latest rule amendments, please refer to www.sgx.com

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