

Potential scenarios when general offers lead to loss of public float

The requirements for 75 per cent independent acceptances and a fair and reasonable general offer are conjunctive requirements for shareholder protection

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THE SGX Listing Rules provides for certain requirements to safeguard the interests of shareholders in the event of a delisting of an issuer. Under the SGX Listing Rules, Singapore Exchange Regulation (SGX RegCo) may agree to an application by an issuer to delist if:

- The issuer convenes a general meeting to obtain shareholders' approval for the delisting, and the resolution has been approved by at least 75 per cent of the total number of issued shares held by independent shareholders (Note 1) present and voting; and
- The independent financial adviser (IFA) has opined that the exit offer (Note 2) offered to shareholders is fair and reasonable.

Collectively, these are the voluntary delisting requirements.

An offeror seeking to privatise an issuer may also elect to utilise other mechanisms, such as a general offer under the Singapore Code on Takeovers and Mergers.

Where an offeror has made a general offer with the intention to privatise the issuer, unless it is exercising its right of compulsory acquisition, SGX RegCo will require that the voluntary delisting requirements have, in principle, be adhered to before it will allow the issuer to be delisted.

In this regard, SGX RegCo will consider that the requirement for 75 per cent independent approval is satisfied where, as at the close of the general offer, the offeror has received acceptances from independent shareholders that represent at least 75 per cent of the total number of issued shares held by independent shareholders.

The requirement for a fair and reasonable offer will be satisfied if the IFA has opined that the general offer is fair and reasonable.

The requirements for 75 per cent independent acceptances and a fair and reasonable general offer are conjunctive requirements for shareholder protection.

A general offer that sets a fair and reasonable price may nonetheless not receive the requisite shareholder acceptance; conversely, even if the general offer finds favour with a substantial majority of shareholders, a fair and reasonable price is still necessary to take out the remainder of the shareholders who do not accept the general offer.

The listing status of an issuer is defined by the tradability of its shares. When an offeror seeks to privatise an issuer, it seeks to remove its listing status – the result of which is that shareholders will no longer be able to trade the shares on the exchange.

Under SGX's listing rules, to ensure an orderly market, issuers must maintain a free float where at least 10 per cent of the shares are held in public hands. The purpose of this requirement is to provide an orderly secondary market in the securities during trading and to prevent a situation where the shares can be manipulated or cornered.

SGX RegCo notes the queries by shareholders and media commentary in respect of the applicability of the voluntary delisting requirements to recent general offers, particularly where the issuer has lost its public float pursuant to the general offer.

Should the issuer lose its public float pursuant to the general offer, SGX RegCo may suspend the trading of the issuer's securities as at close of the general offer.

Thereafter, the scenarios that may occur will differ depending on whether the IFA has opined that the general offer is fair and reasonable and whether the offeror has received 75 per cent independent acceptances.

SGX RegCo wishes to highlight that, where any of the voluntary delisting requirements have not, in principle, been satisfied, the offeror may also explore other options for privatisation, for example, an exit offer that complies with the SGX's listing rules.

However, it should be noted that, under the Takeover Code, the offeror may not make another offer on terms better than those made available under the previous general offer until six months from the closure of the previous general offer.

SGX RegCo will not permit trading in an issuer's securities to be suspended for a prolonged period.

Should the issuer (and the controlling shareholder, where applicable) fail to comply with the requirements in the listing rules, including the requirement to restore free float, SGX RegCo may utilise the range of enforcement powers available to it under the listing rules.

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