

International Corporate Governance

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Securities Regulatory Reform: Directors and Substantial Shareholders Disclosure Obligations of a Listed Corporation

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This article discusses the current disclosure regime governing directors' and substantial shareholders' interests in securities of Singapore corporations listed on the Singapore Exchange Securities Trading Limited ("SGX-ST"). It also highlights the pending legislative reform to these disclosure requirements.

Timely disclosure of information pertaining to the ownership structure of the company and its directors' interests in securities of the company is a cornerstone for maintaining a transparent system that allows investors and shareholders to make informed decisions about that company. Public reporting of information pertaining to directors' securities dealings can also operate as a deterrent against directors having a free reign to leverage off confidential knowledge of the company's affairs.

Singapore maintains a statutory framework that mandates the disclosure of interests of any (i) single shareholder who has garnered substantial interests in the shares of a Singapore-listed company; and (ii) director of a company who acquires interests in securities of a company, and where applicable, its related corporations. In January 2009, Singapore Parliament passed the Securities and Futures (Amendment) Act 2009 (the "Amendment Act") which broadly introduces streamlining changes by migrating the current notification requirements for substantial shareholdings and directors' interests in securities of Singapore-listed companies to the Securities Futures Act (Chapter 289) (the "SFA"). The Amendment Act also expands the categories of persons to whom the disclosure requirements apply, to include a chief executive officer ("CEO"). As of the date of this article, these legislated changes have yet to come into force.

Disclosure of Substantial Shareholdings in Singapore-Listed Corporations

Regulatory framework: The disclosure regime governing substantial shareholdings in a Singapore-incorporated company which is listed on the SGX-ST ("Listed Company") is currently contained in the Companies Act (Chapter 50) (the "CA"), the SFA and the Listing Manual of the SGX-ST (non-statutory rules) (the "Listing Manual").

When the relevant provisions of the Amendment Act become effective, the substantial shareholding notification requirements will be migrated from the CA to the SFA. This move is also consistent with the Singapore Government's broader initiatives in consolidating securities market provisions under the purview of the Monetary Authority of Singapore (the "MAS").

Who should disclose: At present, a substantial shareholder (whether or not residing within Singapore) of a Listed Company is required under the CA to disclose his interests in voting shares of the Listed Company, and percentage level changes thereto. A person is a substantial shareholder if he holds an interest in one or more voting shares to which the total votes attached to those shares comprise not less than 5% of the total votes attached to all the voting shares of that Listed Company, excluding treasury shares (the "voting shares"). A substantial shareholder includes a person who holds direct and/or deemed (indirect) interests in voting shares of a Listed Company. The CA formulates a list of criteria for establishing whether a "deemed interest" in shares arises, and this determination is relevant for ascertaining whether a person has an interest in voting shares for purposes of the substantial shareholding requirement disclosure under the CA. The new SFA regime likewise prescribes

a similar criterion for determining whether the “deemed interest” threshold has been met, to satisfy the same objectives as articulated above.

As a result of the Amendment Act, the substantial shareholders reporting obligation will be extended to substantial shareholders of foreign-incorporated corporations with a primary listing on the SGX-ST. This new requirement, however, stops short of extending its coverage to foreign-incorporated corporations with a secondary listing on the SGX-ST.

Timing for disclosure: Presently, a substantial shareholder must give written notice to the Listed Company and the SGX-ST of his substantial shareholding within two business days after becoming a substantial shareholder or ceasing to be one, providing his name, address, details of his shareholding and the circumstances by reason of which he has that interest (as prescribed in the CA). Disclosure is also required when there is any change in the percentage level of the interest in voting shares in the Listed Company held by a substantial shareholder. Effectively, this means threshold bands of 1% based on the issued voting share capital of the company. There is no change to this requirement under the Amendment Act.

The requirement for substantial shareholders to separately notify the SGX-ST will be removed under the Amendment Act. It will then become incumbent upon the following listed corporations to report to the SGX-ST of substantial shareholding notifications received from its substantial shareholders: (i) a Listed Company; or (ii) a foreign corporation with a primary listing on the SGX-ST (collectively, the “Listed Corporation”).

Disclosure obligations of listed company: Currently, when a Listed Company receives a notice of acquisition, change or cessation of substantial shareholding, it is obliged under the Listing Manual to immediately announce such notification. To augment a Listed Corporation’s duty of disclosure in this aspect, there will be a new legal requirement under the SFA for the Listed Corporation to announce such notices to the public.

Consequences of non-compliance: Failure by a substantial shareholder to comply with its disclosure requirements attracts criminal sanctions. Likewise, a Listed Company which fails to make immediate disclosure of any substantial shareholdings notification also faces criminal penalties for failure to comply with the Listing Manual. The Amendment Act does not detract from the current position on criminalising omissions to report. The offender may become subject to civil penalties imposed by the MAS under the SFA.

Disclosure of Directors’ Interests in Singapore-Listed Corporations

Who should disclose: The CA presently provides for the disclosure of interests in securities of a Singapore-incorporated company by its directors. It is recognised that a CEO of a company also occupies an equally important position that enables him to take advantage of confidential knowledge of the affairs of that company by dealing in its securities. New provisions have therefore been enacted under the SFA to regulate the disclosure obligations of a CEO of a Listed Corporation. Notably, this new requirement is not limited to the express designation of “CEO” per se. A person whom irrespective of his corporate title, is principally responsible for the management and conduct of business of that Listed Corporation, also falls within the definition of CEO under the SFA.

Nature of interests subject to disclosure: Under the CA, a director of a Singapore-incorporated company is required to disclose both his personal and family members’ (spouse and infant children (including adopted and step-children)) holdings of and dealings in shares, debentures, rights or options, units in collective investment schemes, or contracts for delivery of shares, in the company or its related corporations (the “CA Disclosures”).

The list of discloseable interests applicable to the CEO of a Listed Corporation and director of a foreign

corporation with a primary SGX-ST listing (collectively, the “New Disclosure Parties”) under the Amendment Act is more limited than the CA Disclosures. Whilst the new reporting requirements are generally similar to the existing CA Disclosures, the reporting categories pertaining to interests held by the New Disclosure Parties in (i) units in collective investment schemes; and (ii) securities in related corporations of Listed Corporations, are excluded from the list of discloseable items under the new SFA regime.

The categories of interests subject to disclosure under the SFA may be widened over time, given the MAS’ empowerment to prescribe other types of securities that should be disclosed by directors and CEOs of Listed Corporations from time to time.

When and to whom to disclose: Presently, reporting of a discloseable interest is to be made within two business days upon being appointed as director and subsequently, upon any changes thereto. The Amendment Act partially relaxes this requirement by introducing a concept of knowledge-based disclosure, that is, the duty of disclosure only arises upon a director or CEO becoming aware of a change in his discloseable interest.

Presently, directors of a Listed Company must separately notify the SGX-ST of their interests. As part of the regulatory reform, a director will no longer need to separately notify the SGX-ST of his discloseable interests or changes thereof. Instead, only the Listed Corporation itself will be obliged to report such notifications on behalf of its director or CEO within the end of the business day following the date of receipt of that director’s or CEO’s notification.

Disclosure obligations of listed company: A Listed Company has a duty under the Listing Manual to make an immediate announcement of notifications received from its directors, reporting their discloseable interests and changes thereof. When the Amendment Act comes into force, a Listed Corporation is legally obliged to disclose such notices under the SFA.

Consequences of non-compliance: A director who fails to report a discloseable interest pursuant to the CA or a Listed Company which fails to announce any director’s notification of interests is liable to face criminal sanctions. Under the new SFA regime, criminal or civil liabilities will be imposed on the offending Listed Corporation, its director or CEO who has failed to comply with the disclosure requirements thereunder.

Summary of Key Changes to the Disclosure Regimes

DISCLOSURE OF SUBSTANTIAL SHAREHOLDINGS IN LISTED CORPORATIONS	
Current regime	New regime under the SFA
Disclosure obligations set out in the CA and the SFA	Disclosure obligations of substantial shareholders of Listed Corporations consolidated under the SFA
Substantial shareholders must disclose their shareholdings interests and changes thereof to both the Listed Company <u>and</u> SGX-ST	Substantial shareholders must disclose their shareholdings or changes thereof to Listed Corporations only
Substantial shareholders and Listed Companies subject to criminal liabilities for non-compliance	Substantial shareholders and Listed Corporations subject to criminal liabilities or civil penalties for non-compliance

DISCLOSURE OF DIRECTOR'S INTERESTS IN LISTED CORPORATIONS	
Current regime	New regime under the SFA
Applicable to directors of Singapore-incorporated companies	Applicable to directors and in addition, extends to cover CEOs of Listed Corporations
Directors must disclose their interests to the Listed Company <u>and</u> SGX-ST	Directors and CEOs of Listed Corporations must disclose their interests to the Listed Corporations only
Directors and Listed Companies subject to criminal liabilities for non-compliance	Directors, CEOs and Listed Corporations subject to criminal liabilities or civil penalties for non-compliance

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