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SGX Regco's proposed rule to facilitate shareholder-requisitioned meetings



As part of a push to create shareholder value, and amidst an increasing number of shareholders requisitioning for general meetings to table resolutions, the Singapore Exchange Regulation ("**SGX Regco**") has proposed amendments to the Listing Rules (Mainboard) and Listing Rules (Catalist) (together, "**Listing Rules**"), and launched a public consultation seeking comments on the proposed rules.

The proposed amendment is the addition of Rule 730A(5) to the Listing Rules – which states that where a listed issuer has received a requisition notice from shareholders calling for a general meeting that meets the procedural thresholds in the relevant laws, regulations and company constitution ("**Relevant Law**"), the listed issuer must in each case as soon as practicable, within 21 days upon deposit of the requisition notice, provide facilitative efforts towards the convening and conduct of the general meeting. If the listed issuer disputes the validity of the requisition notice, the listed issuer must, within the same timeframe, apply for a court ruling. Thereafter, requisitioning shareholders should conduct the shareholder-requisitioned meeting as soon as possible.

SGX Regco has also clarified that the aforementioned proposed amendment would be applicable to meetings requisitioned by unitholders in respect of real estate investment trusts and business trusts, through the Code on Collective Investment Schemes and Business Trusts Act 2004 respectively.

Rationale for the proposed rule

With increasing levels of shareholder engagement in Singapore and globally, the trend underway is for regulators to promote a more robust and collaborative climate between Boards and shareholders. The SGX RegCo is of the view that shareholders are entitled to have all facts made available to them, including the position and resolutions put forth by requisitioning shareholders and the Board's responses. This will allow shareholders to gain a balanced perspective and be in an informed position to make decisions on the merits of the resolutions tabled by the requisitioning shareholders at the requisitioned general meeting.

As such, the SGX Regco considers it imperative that where the requisite procedural thresholds in the Relevant Law to call a shareholder-requisitioned meeting are met, the democratic process should, as a matter of principle, be allowed to proceed. The High Court of Singapore has similarly echoed the importance of allowing the democratic process of a shareholder-requisitioned meeting to take its course and has stated its preference not to intervene to prevent shareholders or members from having a voice in the affairs of a company.

Requisition of general meetings under the Singapore Companies Act

A shareholder or a group of shareholders acting together ("**Requisitionists**") may wish to requisition a general meeting ("**Shareholder-Requisitioned Meeting**") to table resolutions before other shareholders. The mechanisms enabling Requisitionists to do so are typically contained in the Relevant Law.

In Singapore, the Companies Act 1967 of Singapore provides two ways by which shareholders can requisition a general meeting. The key difference between the two mechanisms relates to the extent of the Board's involvement in the convening and conduct of the Shareholder-Requisitioned Meeting.

The first method is provided for under Section 176 of the Companies Act, where upon satisfaction of the procedural threshold, the directors of the company must immediately proceed to duly convene an extraordinary general meeting (i.e a Shareholder-Requisitioned Meeting) of the company to be held not later than 2 months after the receipt of the requisition. If the directors do not proceed to convene the Shareholder-Requisitioned Meeting, the Requisitionists may themselves convene the Shareholder-Requisitioned Meeting, in the same manner as nearly as possible as general meetings are normally held, and

any reasonable expenses incurred by them must be paid by the company.

The second method is provided for under Section 177 of the Companies Act, where upon satisfaction of the procedural threshold, the Requisitionists may directly call a general meeting themselves. However, unlike Section 176, there is no specific provision in Section 177 providing that the costs of convening and conducting the Shareholder-Requisitioned Meeting will be borne by the issuer.

It is observed that, whether Requisitionists elect to proceed under Section 176 or Section 177, they may nonetheless, be constrained in their ability to satisfy the procedural requirements necessary to convene and conduct the Shareholder-Requisitioned Meeting.



Current challenges faced by requisitioning shareholders

Shareholders seeking to convene a Shareholder-Requisitioned Meeting pursuant to the Companies Act will face potential difficulties in satisfying certain procedural requirements (as illustrated below). These challenges can be difficult to surmount, especially in the face of an uncooperative Board that is unwelcoming of the Shareholder-Requisitioned Meeting.

Failure to give proper notice due to inaccessibility

It is not uncommon for a company constitution to require that proper notice of a Shareholder-Requisitioned Meeting be sent to each shareholder's address. While the Companies Act confers upon Requisitionists the right of access to members' particulars held in the register of members, in practice however, the register is unlikely to comprehensively represent the entire shareholding base. A key reason for this is because the register of members may not reflect the particulars of shareholders that hold shares through the Central Depository (Pte) Ltd ("**CDP**") and

would simply reflect "CDP" as a member in respect of all the book-entry securities of the issuer.

Further, Section 81SJ of the Securities and Futures Act 2001 does not impose an obligation for depositors' particulars to be entered into the registry of members, even though depositors are deemed to be members. Depositors' particulars are instead contained in a separate register ("**Depository Register**"). While issuers are able to obtain the Depository Register directly from CDP, owing to restrictions under the Personal Data Protection Act 2012, CDP is unable to disclose the Depository Register to the Requisitionists.

In view of the existing statutory position, the register of members that Requisitionists may obtain through the Companies Act is thus of limited use. In the absence of the Board's cooperation, Requisitionists have limited recourse to obtain depositors' particulars. A failure to comply with, *inter alia*, the giving of proper notice could result in the risk that the Shareholder-Requisitioned Meeting is declared invalid by the court.

Other challenges

Should a company constitution provide that completed proxy forms must be deposited at the company's registered office, Requisitionists will require the cooperation of the Board (or agents delegated by the Board) to assist to handle these proxy forms given that they are unlikely to be able to access the issuer's registered office. An uncooperative Board may hinder the requisition shareholder's access to such completed forms.

Similarly, Requisitionists are also unable to release announcements and documents, such as notices, circulars and proxy forms, on SGXNET on their own accord.

The company constitution may also require that all general meetings, which would include Shareholder-Requisitioned Meetings, be conducted in the presence of the Board. Requisitionists may then not be able to unilaterally secure the Board's attendance necessary to give effect to the Shareholder-Requisitioned Meeting, should the Board be uncooperative.



Proposed rule change

SGX RegCo proposes that, unless it requires otherwise, issuers be obliged to facilitate the convening, and conduct, of a Shareholder-Requisitioned Meeting upon the receipt of a requisition notice from Requisitionists calling for the Shareholder-Requisitioned Meeting ("**Requisition Notice**") that *prima facie* satisfies the procedural thresholds in the Relevant Law and the constitution. SGX RegCo proposes that this requirement would apply to Shareholder-Requisitioned Meetings convened under Sections 176 and 177 of the Companies Act.

Assessing procedural thresholds

To facilitate the Board's assessment on the satisfaction of the procedural thresholds in the Relevant Law and the constitution (i.e. that a requisition must be made by members holding at least 10% of the issuer's total number of paid-up shares under Section 176; or that a requisition must be made by at least two members holding at least 10% of the issuer's total number of issued shares under Section 177), it has been recommended that the Requisition Notice should contain such information to enable the Board to ascertain its validity in accordance with the requirements in the Relevant Law. Minimally, this should encompass the names and shareholdings of the Requisitionists as well as a description of the resolutions proposed to be tabled at the Shareholder-Requisitioned Meeting. When the Board receives a Requisition Notice, it should immediately inform shareholders via SGXNET under Rule 703 of the Listing Rules.

Being forthcoming

Further, Requisitionists should be forthcoming in providing the Board with the information that it may reasonably require, and the Board should be mindful not to unduly hinder or delay the conduct of the Shareholder-Requisitioned Meeting. While the Board may wish to seek legal advice on aspects of the Shareholder-Requisitioned Meeting, it should not be utilised by the Board to prevent or unreasonably delay the conduct of the Shareholding-Requisitioned Meeting. In accordance with Rule 703 of the Listing Rules, material developments relating to the Shareholder-Requisitioned Meeting, including any application filed to court, should also be immediately announced on SGXNET.

Areas where issuers should provide assistance

In addition, SGX RegCo expects that the Shareholder-Requisitioned Meeting be convened and conducted in the same manner, as nearly as possible, as that in which general meetings are held by the Board. In view of the constraints faced by Requisitionists, areas in which SGX RegCo envisages that issuers should provide assistance to Requisitionists include:

- releasing announcements and documents, such as notices, circulars and proxy forms, on SGXNET;
- sending documents, such as notices, circulars and proxy forms, to shareholders;
- collating any proxy forms submitted by shareholders at the issuer's registered office;
- securing the Board's attendance at the Shareholder-Requisitioned Meeting;
- enabling the appointed scrutineer to discharge its duties under Rule 730A of the Listing Rules; and
- instructing its agents, including its share registrar and company secretary, to provide any necessary assistance such as preparing the mailing labels for the purposes of sending documents to shareholders and attending at the Shareholder-Requisitioned Meeting.

Concluding thoughts

In light of the global trend of increasing levels of shareholder engagement, moving forward, the significance of the Board's role in shareholder engagement cannot be understated. Through general meetings and other avenues, Boards will be expected to constructively engage with shareholders to gather shareholder inputs and set the tone and expectation for governance of the company. Such active and constructive shareholder relations will be a crucial step in spurring Boards and companies towards a high standard of corporate governance.

Whilst it is clear that having the proposed new rule in place would be of great benefit to shareholders, it remains to be seen whether Boards and management would genuinely act in accordance with the spirit of the rules. This is particularly so given the high-stakes nature of boardroom challenges. Nonetheless, when the proposed new rule is given effect, Boards can no longer opt for delay tactics in the hope that the Requisitionists will give up. Instead, Boards will need to act quickly to either facilitate the convening of the Shareholder-Requisitioned Meeting; or to apply for a court ruling disputing the validity of the requisition. With many considerations to account for within the mandated period of 21 days, Boards may find it worthwhile to seek urgent legal advice when a requisition notice is received.

How we can help

As a full-service law firm, we can offer our clients breadth of service and depth of expertise. With our knowledge of the Singapore market and our clients' business being complemented by our ability to approach problems from a range of perspectives, we are well-placed to assist both Boards and shareholders in navigating these regulatory requirements and obligations.

Get in touch



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