

ACRA-SGX-SID Audit Committee Seminar – Preparing for 2015

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Agenda

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 - ❖ Issuers Expanding into Other Businesses via Multiple Acquisitions
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 - ❖ Appointment of Auditors
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 - ❖ Bundled Resolutions

- 2 **Minimum Trading Price**
 - ❖ Introduction of the Minimum Trading Price (MTP)

Areas of Concern

Area of Concern ► General Mandate for Interested Person Transactions (“IPT”)

Rules

- Listing Rule 920(1) states that an issuer may seek a general mandate (“IPT General Mandate”) from shareholders for recurrent transactions of a revenue or trading nature or those necessary for its day-to-day operations, but not in respect of the purchase or sale of assets, undertakings or businesses.
- Listing Rule 920(1)(b) states that the circular to shareholders seeking an IPT General Mandate must include, amongst others, the class of interested persons with which the entity at risk will be transacting.

Observations

- ✓ Some issuers seeking an IPT General Mandate for transactions that are not of a revenue or trading nature. For example:
 - placement/borrowing of funds with any interested persons (other than a financial institution); and
 - subscription of debt securities issued by and issue of debt securities to interested persons.
- ✓ Some issuers have drafted the IPT General Mandate to cover classes of interested persons which include both the current associates and future/unidentified associates. For example, “directors of the Company and their respective associates”.

Area of Concern ► General Mandate for Interested Person Transactions (“IPT”)

Concerns

- IPTs that are not of a recurring revenue or trading nature or not within the issuer’s ordinary course of business should be subject to specific shareholder approval. In such cases, independent shareholders should be provided with specific information about the rationale and terms of the proposed IPT so that they are able to make an informed decision.
- Interested persons who cannot be specifically identified as at the time of shareholders’ approval should not be covered under the IPT General Mandate. Otherwise, shareholders would not have sufficient information on the interested persons covered under the mandate and would not be able to make an informed decision.

Recommended Practices

- ✓ Issuers should consider whether the scope of the IPT General Mandate sought meets the requirements in Listing Rule 920(1).
- ✓ The IPT General Mandate should be limited to specific interested persons as disclosed in the shareholders’ circular and not to a generic class of persons. If the issuer wishes to include more associates in the future, the issuer should seek a modification of the mandate instead.

Area of Concern ► Issuers Expanding into Other Businesses via Multiple Acquisitions

Rules

- Listing Rule 1014 states that for an acquisition, where any of the figures computed on the bases set out in Rule 1006 (“Rule 1006 figures”) exceeds 20%, the acquisition is classified as a major transaction and must be made conditional upon shareholder approval in a general meeting.

Observations

- ✓ Increasing number of Issuers expanding into other businesses.
- ✓ We noted that some issuers have done so via multiple acquisitions where the Rule 1006 figures, for each acquisition, do not exceed 20%.

Concerns

- ✓ The risk profile and business of the issuer could have changed pursuant to the multiple acquisitions and shareholders are not given the opportunity to vote on the proposed acquisition.

Area of Concern ► Issuers Expanding into Other Businesses via Multiple Acquisitions

Recommended Practices

- ✓ Listing Rule 1005 states that the Exchange may aggregate separate transactions completed within the last 12 months and treat them as if they were one transaction. This applies even if the acquisitions were made from different vendors.
- ✓ Issuers diversifying into Mineral, Oil and Gas (“MOG”) activities should be reminded that pursuant to Practice Note 6.3, issuers will be required to comply with all the continuing listing rules applicable to MOG companies if after the completion of the acquisition, the MOG activities of the issuer and/or its subsidiaries (i) represent 50% or more of the latest audited total assets, revenue or operating expenses of the group, or (ii) is the single largest contributor of any of the tests in (i).

Area of Concern ► Diversification of Business

Observations

- Increasing number of issuers seeking a mandate (“Diversification Mandate”) from shareholders to diversify into business that are not within its existing core business (“Proposed New Business”) even though it has not identified any acquisition target.

Concerns

- ✓ Shareholders’ circulars do not contain sufficient information about the Proposed New Business. E.g. details and terms of specific transactions that will be entered into under the Proposed New Business.
- ✓ Consequently, shareholders would not be able to make an informed decision on the Diversification Mandate.

Area of Concern ► Diversification of Business

Recommended Practices

- ✓ As the issuer has not operated in this new business space and it did not provide sufficient information about the Proposed New Business at the time when it is seeking shareholders' approval for the Diversification Mandate:
 - ✓ Where the issuer enters into the first major transaction (the "First Major Transaction") involving the Proposed New Business, or where any of the Rule 1006 figures in respect of several transactions aggregated (the "Aggregated Transactions") over the course of a financial year exceeds 20%, such First Major Transaction or the last of the Aggregated Transactions will be made conditional upon shareholders' approval; and
 - ✓ In respect of a transaction where any of the Rule 1006 figures is 100% or more or results in a change in control of the issuer, Listing Rule 1015 will still apply.

Area of Concern ► Disclosure of Board and Key Management Remuneration

Rules / Guidelines

- Under Guidelines 9.2 & 9.3 of the Code of Corporate Governance (the “Code”), the Company should disclose amongst others, the following:
 - Remuneration of individual directors and CEO on a named basis to the nearest thousand dollars, with a breakdown of their salary component;
 - Remuneration of at least the top 5 key management in bands of S\$250,000 with a breakdown of their salary component; and
 - Aggregate sum of the remuneration paid to the top 5 key management.
- Listing Rule 1207(12) states that remuneration must be disclosed as recommended in the Code, or otherwise disclose and explain any deviation from the recommendations.

Area of Concern ► Disclosure of Board and Key Management Remuneration

Observations

- Some issuers are still disclosing Board's remuneration in bands and no explanation is provided on why the exact remuneration is not disclosed.
- Some issuers, when disclosing the remuneration of their top 5 key management in bands of S\$250,000, did not disclose the upper limit of the highest band and no explanation is provided for such non-disclosure. For example, "S\$1,000,000 and above".
- Some issuers are not providing a meaningful explanation for deviating from the recommended disclosure. For example, some issuers explain that the reason for not disclosing the remuneration of the controlling shareholder is due to concerns of poaching.

Recommended Practices

- ✓ Issuers are reminded of their remuneration disclosure obligations under the Code.
- ✓ Where issuers are unable to comply with the Code, a meaningful explanation for the deviation should be provided.

Area of Concern ► Appointment of Auditors

Rules

- Listing Rule 712 provides that an issuer must appoint a suitable auditing firm to meet its audit obligations, having regard to the adequacy of the resources and experience of the auditing firm and the audit engagement partner assigned to the audit. The auditing firm appointed by the issuer must be:
 - a) Registered with the Accounting and Corporate Regulatory Authority;
 - b) Registered with and/or regulated by an independent audit oversight body acceptable to the Exchange. Such oversight bodies should be members of the International Forum of Independent Audit Regulators, independent of the accounting profession and directly responsible for the system of recurring inspection of accounting firms or are able to exercise oversight of inspections undertaken by professional bodies; or
 - c) Any other auditing firm acceptable by the Exchange
- Listing Rule 715(2) states that an issuer must engage a suitable auditing firm for its significant foreign-incorporated subsidiaries and associated companies.

Observations

- ✓ We note that some issuers do not engage the same auditing firm/group of firms for both its group accounts and its significant foreign-incorporated subsidiaries and associated companies.

Area of Concern ► Appointment of Auditors

Concerns

- No detailed supervision by the issuer's auditor of the work performed by the auditors of the issuer's significant foreign-incorporated subsidiaries and associated companies.
- Effectiveness of audit may be affected if different audit firms are engaged or if the audit firm auditing the significant foreign-incorporated subsidiaries and associated companies are not suitably qualified.

Recommended Practices

- ✓ Issuers are reminded that all audit firms appointed to audit the accounts of the issuer and its local and significant foreign-incorporated subsidiaries and associated companies, must comply with Listing Rule 712.
 - ✓ PRC audit firms should be suitably qualified. We have noted that the China Securities Regulatory Commission ("CSRC") has its list of qualified audit firms and audit firms not on this list are not acceptable.
- ✓ The Audit Committee is encouraged to engage the same audit firm to audit the accounts of the issuer and its significant foreign-incorporated subsidiaries and associated companies.
- ✓ In the event that different auditors are appointed, the Board and the Audit Committee must be satisfied that the appointment would not compromise the standard and effectiveness of the audit of the issuer.

Area of Concern ► Auditor's Report with a Qualification or Disclaimer

Rules

- Listing Rule 704(5) requires an issuer to immediately announce any qualification or disclaimer by the auditors on the financial statements of (a) the issuer or (b) any of the issuer's subsidiaries or associated companies, if the qualification or disclaimer has a material impact on the issuer's consolidated accounts or the group's financial position.

Observations

- ✓ We noted that some of the announcements made by issuers pursuant to Listing Rule 704(5) do not include the Board's opinion on whether:
 - the issuer is able to operate as a going concern;
 - trading of its securities can continue in an orderly manner; and
 - the basis of the Board's opinion.

Concerns

- ✓ Given the qualification or disclaimer by the auditors, there may not be clarity on the state of affairs of the issuer including, but not limited to, its ability to operate as a going concern and to continue trading in an orderly manner.

Area of Concern ► Auditor's Report with a Qualification or Disclaimer

Recommended Practices

- In addition to the disclosure requirements of Listing Rule 704(5), the Board should provide a confirmation on (i) whether sufficient information is disclosed for the trading of the issuer's securities to continue in an orderly manner, and (ii) the basis for their views.
- Where the Board takes a different view from the external auditors with regards to whether the issuer remains a going concern, the Board should justify the basis of its opinion.
- Issuers should also take note of Listing Rule 1303(3) which states that the Exchange may suspend trading of the issuer's securities if the issuer is unable to continue as a going concern or is unable to demonstrate to the Exchange and its shareholders that it is able to do so, including when the issuer is unable to reasonably assess its financial position and inform the market accordingly.

Area of Concern ► Bundled Resolutions

Observations

- It is observed that some issuers bundle resolutions or draft resolutions inter-conditionally.
 - E.g. acquisition of assets resulting in issuance of consideration shares bundled with a resolution to do a placement of shares to the existing controlling shareholders to maintain their interest in the Company.
- However, the Exchange is cognizant that there are certain circumstances where this may be necessary.
 - E.g. some REIT managers bundle resolutions when the seller of the property is also the master lessee of the property upon the completion of the acquisition.

Concerns

- ✓ Shareholders have to vote on a composite transaction and would not have the opportunity to consider and vote on the resolutions based on its own merits.

Recommended Practices

- ✓ Issuers are encouraged to evaluate the justifications for bundling and consider whether there are valid and relevant reasons for doing so.
- ✓ Whenever possible, resolutions should be drafted separately so that shareholders are not placed in a position where they are unable to consider the merits of the transactions separately.

Minimum Trading Price

Introduction of the Minimum Trading Price (MTP)

Issuers whose shares are trading below S\$0.20 can undertake various corporate actions to comply with the MTP requirement. Examples are:-

- Share consolidation
 - Consolidate share prices to at least S\$0.25 to cater for price fluctuations
 - SGX review fees for share consolidation to comply with MTP requirement will be waived
 - Issuers are strongly encouraged to make plans for their share consolidation early: For expedience, this could be timed to coincide with the issuers' AGMs

- Transfer to the Catalist Board, subject to the following:
 - Engage a sponsor for its Catalist listing and comply with Catalist listing requirements
 - Full sponsor required if undertake RTO
 - Continuing sponsor required if it undertakes other corporate actions for the purpose of transfer to Catalist
 - Please note that the list of complex corporate transactions requiring the appointment of a Sponsor can be found in Practice Note 7D (Corporate Actions Requiring the Engagement of a Sponsor) of the Catalist Rulebook.

- Restructuring

- Reverse Takeover

Question and Answer

Thank you

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