



Securities Investors Association (Singapore)

# **SHAREHOLDERS' RIGHTS**

IN AN SGX-LISTED ENTITY



## **FORWARD**

In preparing this summary of shareholders' rights in an SGX listed entity, care has been taken to ensure that it is easily understood by retail investors. It is important that shareholders of listed companies update themselves on their rights in order to be able to exercise their rights in a timely and effective manner at meetings and whenever their interest is affected. By doing so, they reduce the risk of losing their rights in some situations arising in corporate actions.

By being equipped with full knowledge of their rights, SIAS hopes that shareholders in listed companies can participate at meetings effectively and assist the boards in addressing issues that affect them directly.

We thank WongPartnership LLP for their kind assistance to help retail investors with this summary of their rights in SGX listed entities.

David Gerald  
President, SIAS

# SIAS SUMMARY OF SHAREHOLDERS' RIGHTS IN AN SGX-LISTED ENTITY

## INTRODUCTION

In the response to the Corporate Governance Council ("**Council**") consultation feedback and its final recommendations on proposed revisions to the Code of Corporate Governance ("**Code**") issued on 22 November 2011, Council stated that it encourages relevant organisations such as SIAS to issue guidance on shareholder stewardship, and noted that in this context, SIAS undertook to publish a summary of shareholder rights for retail investors, following the issuance of the revised Code. This document is the summary referred to.

Shareholders of SGX-listed entities have certain rights under the law and under the SGX Listing Rules (*as defined below*). This document contains a general summary of those rights.

## SGX LISTING RULES

The Listing Manual of the Singapore Exchange Securities Trading Limited ("**SGX**") comprises the Mainboard Rules applicable to entities listed on the SGX Mainboard and the Catalist Rules applicable to companies listed on Catalist<sup>1</sup> (together, the "**SGX Listing Rules**"). The SGX Listing Rules set out certain decisions and matters which require the approval of shareholders.

## LAWS AND CONSTITUTION

For companies listed on SGX:

1. shareholders have rights under the laws and regulations of the country of incorporation of the company, as well as under the Constitution (such as the Articles or By-Laws) of the company.
2. for companies incorporated in Singapore, shareholders have rights under the Singapore Companies Act ("**CA**"), the Singapore Securities and Futures Act ("**SFA**") and other legislation, as well as under common law, and also under the company's Memorandum and Articles of Association ("**M&AA**").

For Real Estate Investment Trusts ("**REITs**") And Business Trusts listed on SGX:

- a. SGX-listed REITs are bound by the SGX Listing Rules, the Code on Collective Investment Schemes, the SFA, other relevant legislation and common law, as well as by the Trust Deed (including any amendment and supplemental deeds thereto) that constitutes and defines the terms and conditions governing the REIT and the rights and entitlements of the REIT's unitholders.
- b. SGX-listed Business Trusts are bound by the SGX Listing Rules, the Business Trusts Act and regulations, the SFA, other relevant legislation and common law, as well as by the Trust Deed (including any amendment and supplemental deeds thereto) that constitutes and defines the terms and conditions governing the Business Trust and the rights and entitlements of the Business Trust's unitholders.

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<sup>1</sup> The Catalist Rules and the Mainboard Rules contain rules which are largely similar, though there are certain key differences. To name just one example, the general mandate to issue shares and convertible securities that can be obtained from shareholders for Catalist-listed companies is up to 100% of the total number of issued shares with a sub-limit of 50% for shares and convertible securities issued other than on a pro rata basis; for Mainboard-listed companies, the limit is 50% with a sub-limit of 20% respectively.

- c. this document, being only a general summary of rights, refers to shareholders' rights in an SGX-listed company. In principle, similar, though not identical, rights apply to unitholders of SGX-listed REITs and Business Trusts.

## **SUMMARY OF RIGHTS OF SHAREHOLDERS OF COMPANIES LISTED ON SGX**

The key shareholders' rights in a **Singapore**-incorporated company listed on SGX are summarised below.

Generally speaking, many of the key shareholders' rights summarised below will also apply to **foreign**-incorporated companies as well, though there will be differences. The differences are due to differences between the laws of Singapore and the laws of the foreign country where the company was incorporated.

The SGX Listing Rules provide that a **foreign** issuer with a primary listing on SGX must comply with the SGX Listing Rules in full, and must also make an announcement via SGXNet as soon as there is any change in the law of its place of incorporation which may affect or change shareholders' rights or obligations over its securities, including such rights as the right to attend, speak, vote at shareholders' meetings and the right to appoint proxies, and the right to receive rights offering and any other entitlements, to name a few.

### **RIGHTS IN RELATION TO GENERAL MEETINGS**

The right to attend and to speak and vote at a general meeting is one of the fundamental rights of shareholders. It is through their attendance and votes that shareholders have their voices heard in the company's affairs.

In relation to meeting procedures, shareholders generally have, subject to certain requirements, the right to:

- requisition or call a general meeting, if two or more shareholders holding 10% or more of the paid up capital/number of shares get together to do so;
- obtain notice and information on the agenda items that are to be discussed at a general meeting in a timely fashion (for ordinary resolutions, at least 14 clear days' notice, and for special resolutions, at least 21 clear days' notice);
- requisition a resolution to be moved at a general meeting, if eligible shareholders holding 5% or more of the voting rights or not fewer than 100 eligible shareholders who have paid up on average at least \$500 per shareholder, get together to do so;
- demand a poll on any question or matter other than the election of the chairman or adjournment of the general meeting, if eligible shareholders holding 10% or more of the voting rights or having paid up at least 10% of the total share capital, or at least 5 eligible shareholders, get together to do so; and
- appoint up to two proxies (subject to contrary provision in the M&AA) to attend and vote on their behalf, and to submit their proxy forms up to 48 hours before a meeting.

Under the CA, the business of a company is to be managed by or under the direction of the directors, who may exercise **all** the powers of the company, **except** any power that the CA or the M&AA require the company to exercise in general meeting.

Various material matters in relation to the structure, management, constitution and/or transactions of the company are required to be approved by shareholders, in accordance with the applicable requirements under the SGX Listing Rules and/or relevant legislation. These include the right to vote on ordinary or special resolutions (as applicable) relating to approval of:

- amendments to the M&AA;
- change of the name of the company;
- the appointment, re-appointment and/or removal of directors;<sup>2</sup>
- the provision or improvement of a director's emoluments/remuneration<sup>3</sup> and benefits;
- certain payments to directors on their loss of office, retirement or in connection with transfer of the undertaking or property of the company;
- the appointment and/or removal of the company's auditors;
- a members' voluntary winding up of the company;
- schemes of arrangements and amalgamations of the company;
- the voluntary delisting of the company;
- certain transactions affecting the share capital of the company, such as share buy-back, reduction of share capital and mandate to issue shares and convertible securities;
- certain transactions of the company and other entities at risk with the company's interested persons ("entities at risk" and "interested persons" as defined in Chapter 9 of the SGX Listing Rules);
- the provision of certain forms of financial assistance by the company in connection with the acquisition of shares in the company or its holding company; and
- certain significant commercial transactions by the company, which include:
  - o the disposal of substantially the whole of the company's undertaking; and
  - o "major transactions", "very substantial acquisitions" or "reverse takeovers" (all as defined in Chapter 10 of the SGX Listing Rules).

Voting restrictions may be prescribed by the SGX Listing Rules or by legislation in certain situations. Generally speaking, shareholders and/or directors and their associates who have an interest in the outcome of the resolution concerned may have to abstain from voting. For example:

- shareholders who are eligible to participate in certain share option or share schemes must abstain from voting on any resolution relating to the scheme;
- in the case of a placement of shares or convertible securities (apart from an issue on a pro rata basis to all shareholders) to:

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<sup>2</sup> Nb. directors may initially be appointed by the board through a casual vacancy

<sup>3</sup> Nb. excluding employment remuneration paid to an executive director

- o the company's directors and substantial shareholders;
- o immediate family members of the persons in (a);
- o corporations in whose shares the persons in (a) have an aggregate interest of at least 10%; and
- o substantial shareholders, related corporations (as defined in Section 6 of the CA), associated companies and sister companies of the company's substantial shareholders,

the placees and their associates (as defined in the SGX Listing Rules) must abstain from voting on the resolution; and

- interested persons and their associates must abstain from voting on any resolution relating to an interested person transaction or a general mandate for interested person transactions, between them and the company's entities at risk ("interested persons", "associates", "interested person transaction" and "entities at risk" as defined in the SGX Listing Rules).

## OTHER SHAREHOLDERS' RIGHTS

### A. The right to information

To ensure shareholders are updated and to enable them to exercise their rights in a timely fashion (or risk losing them in some situations), shareholders have certain rights to access to information. These include:

- the right to inspect certain registers of the company without charge and for copies to be furnished at a nominal charge, including the register of members, register of directors, secretaries, managers and auditors, register of directors' shareholdings, and register of debenture holders;
- the right to receive a copy of the M&AA at a nominal charge;
- the right to receive (through the company's announcements on SGXNet) any information known to the company concerning it or its subsidiaries or associated companies which (i) is necessary to avoid the establishment of a false market in the company's securities or (ii) would be likely to materially affect the price or value of its securities;
- the right to inspect the minutes of the company's general meetings without charge and for copies to be furnished at a nominal charge; and
- the right to be informed of the company's financial position. This includes:
  - o the right to a copy of the audited financial statements and annual report of the company, without charge, at least 14 days before the annual general meeting;
  - o the right to inspect the register of charges of the company without charge; and
  - o the right to inspect any instruments creating registrable charges in respect of the company property free of charge, and to request a copy at a nominal fee per page.

### B. The right to be treated fairly

All shareholders shall be treated fairly and equitably. Shareholders can bring an action for remedy by the court in situations where the court finds that:

- the company's affairs are conducted or the directors' powers are exercised (i) in a manner oppressive to the shareholder or (ii) in disregard of the shareholder's interests; or
- there is an act or resolution that unfairly discriminates against or is otherwise prejudicial to the shareholder.

A shareholder also has a right to apply to the court to bring an action in the name and on behalf of the company or intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company, if (i) the directors do not bring, diligently prosecute or defend or discontinue the action, (ii) the shareholder is acting in good faith, and (iii) the action is prima facie in the company's interests.

#### C. The right of return of capital in limited situations

Shareholders have the right to recover the original subscription price of their shares (and have a pro rata share in any surplus assets) on the winding up of the company, provided that there are enough assets remaining after all other legitimate claims have been paid off.

Further, shareholders under the SGX Listing Rules are entitled to a reasonable exit alternative should the company delist from the SGX, though there may be inevitable limitations on the availability or viability of such an exit alternative where it involves the cooperation or finances of the controlling shareholder or the company, and there are financial, legal or other constraints on controlling shareholders or the company which prevent them from making this available to shareholders.

### CODE OF CORPORATE GOVERNANCE

The Code also sets out certain shareholder rights. This document also summarises those rights as set out in the revised Code issued by the Monetary Authority of Singapore ("**MAS**") on 2 May 2012 following Council's review of the Code.

The revised Code supersedes the existing Code that was issued in July 2005. The revised Code will take effect for companies in respect of Annual Reports relating to financial years commencing from 1 November 2012 onwards. Board composition changes should be made at annual general meetings ("**AGMs**") following the end of the relevant financial year, save for board composition changes needed to comply with Guideline 2.2 of the revised Code which should be made at the AGMs following the end of financial years commencing on or after 1 May 2016.

The Code's provisions include the following:

#### *Rights relating to General Meetings:*

Companies should ensure that shareholders have the opportunity to participate effectively in and vote at general meetings of shareholders. Shareholders should be informed of the rules, including voting procedures, that govern general meetings of shareholders. (Guideline 14.2).

Companies should encourage greater shareholder participation at general meetings of shareholders, and allow shareholders the opportunity to communicate their views on various matters affecting the company (Principle 16).



### *Right to Information:*

The Code specifies information required to be disclosed in the company's annual report, the availability of which will enable shareholders to better assess the corporate governance standards of the company. To name just a few examples of information required by the Code to be disclosed, every company is required to provide:

- clear disclosure of its remuneration policies, level and mix of remuneration, and the procedure for setting remuneration (Principle 9);
- full disclosure of the remuneration of each individual director and the CEO on a named basis (Guideline 9.2);
- the independence status of the directors (Guidelines 2.3 and 2.4). The Code recommends the presence of a strong and independent element on the Board;
- the process for the selection, appointment and re-appointment of new directors to the Board (Guideline 4.6);
- the board assessment process (Guideline 5.1); and
- the detailed results for resolutions conducted by poll<sup>4</sup> showing the number of votes cast for and against each resolution and the respective percentages (Guideline 16.5).

### *Right to be treated fairly:*

The Code encapsulates the principle that companies should treat all shareholders fairly and equitably, and should recognise, protect and facilitate the exercise of shareholders' rights, and continually review and update such governance arrangements (Principle 14).

### *Right to communication:*

Companies should actively engage their shareholders and put in place an investor relations policy to promote regular, effective and fair communication with shareholders (Principle 15).

Boards should establish and maintain regular dialogue with shareholders, to gather views or inputs, and address shareholders' concerns (Guideline 15.3).

## STATEMENT ON THE ROLE OF SHAREHOLDERS

The revised Code contains an annexure setting out a statement on the role of shareholders in engaging companies in which they invest ("**Statement**"). The Statement does not form part of the Code but is a useful reference for shareholders to better understand their role in shaping the corporate governance practices and policies of companies in which they invest.

While the Code is non-mandatory, it represents corporate governance best practice in Singapore, and under the SGX Listing Rules, SGX-listed entities are required to comply or disclose and explain any deviations from the guidelines of the Code.

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<sup>4</sup> The Code states that companies should put all resolutions to vote by poll

## **ABOUT SIAS**

Securities Investors Association (Singapore) or SIAS, a non-profit organization, was founded unexpectedly in June 1999, to champion the CLOB issue. 172,000 retail investors were suddenly stranded when the Malaysian Government froze their investments on Malaysian stocks in September 1998, amounting to US\$5 billion. A group of civic-minded citizens lead by Mr David Gerald got together and took on the challenge to help free the frozen shares with an initial backing by 49,880 retail investors as members. Their resoluteness and unity helped to resolve the issue on our terms.

Today, SIAS is the largest organized investor lobby group in Asia, with almost 70,000 retail investors as members. It is run by a Management Committee comprising of professionals who are volunteers. It actively promotes Investor Education, Corporate Governance and Transparency and is the watchdog for Investor rights in Singapore. To-date, SIAS has successfully organized some 600 investor education programmes ranging from basic investment seminars for novices to certificate courses for investment savvy investors. Thus far, more than 70,000 retail investors have benefited from these programmes. which are offered largely free. Members are educated on the features of investment products, and the attendant risks involved in each product. Investors are taught to make informed decision on investing.

Today, SIAS is the voice for minority shareholders and has already locked horns with corporations falling short of good Corporate Governance practices. However, its preferred approach to resolve investors' right issues is to do so in the boardroom and not in the courtroom. Many SIAS members have sought protection also from errant traders. SIAS conducts dispute resolution sessions regularly to assist members to resolve issues.

SIAS also works with Public Listed Companies to reach out to retail investors through its corporate communication programme to enable investors to determine the fundamentals of a company and take a long-term view of the company for investment.

SIAS is able to provide a variety of investor education programmes to its members and the investing community at large through collaborative arrangements with financial institutions and listed companies interested in investor education as part of its corporate social responsibility agenda.

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