Singapore

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Statutes and regulations

1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

Statutes and regulations

The pertinent primary legislation is the Securities And Futures Act (the SFA). Numerous Securities and Futures Regulations, constituting subsidiary legislation, supplement various SFA provisions. These together make up the statutory regime pertaining to securities offerings.

The Monetary Authority of Singapore (MAS) from time to time makes Guidelines, Codes, Practice Notes and Policy Statements, which, while not having statutory force, and breaches of which would not of themselves render the breaching party liable to criminal proceedings, may nevertheless be relied upon as tending to establish or negate any liability in either civil or criminal proceedings.

If the securities are to be listed either on the Main Board or Secondary Board (Sesdaq) of the Singapore Exchange Securities Trading Limited (SGX-ST), the Listing Manual, which sets out both the listing criteria as well as continuing listing requirements, regulates the listing process.

Regulatory bodies

The MAS is the primary regulatory authority administering, amending and enforcing the provisions of the SFA and its subsidiary legislation.

The Listing Manual is administered by the SGX-ST. The SGX-ST is currently the only approved securities exchange in Singapore. Although the SGX-ST is not a 'regulator' in the traditionally-understood sense of the term, as companies are subject to the rules in the Listing Manual only because they are in a contractual relationship with the SGX-ST, observance of the listing rules may nevertheless extend, at common law, to entities that are not in privity of contract with the SGX-ST but which enter into contracts with companies that are so subject.

Public offerings

2 What regulatory or stock exchange filings are required to be made in connection with a public offering of securities? What information is required to be included in such filings or made available to potential investors in connection with a public offering of securities?

Primary versus secondary

With respect to primary offerings, following the abolition of the concept of a 'public offer' with effect from 15 October 2005, the requirement to lodge and register a prospectus attaches to all offers, except in some circumstances, eg, the offer is for no consideration; is a personal one and the total amount raised by the offerer within 12 months does not exceed S$5 million; is a private placement; is made pursuant to certain provisions of the Singapore Code on Take-overs and Mergers; or is made to institutional investors or accredited investors (formerly known as 'sophisticated investors').

With respect to secondary offerings:

- If the securities had been previously issued and are listed for quotation or quoted on a securities exchange, they are exempt from the duty to lodge and register a prospectus, or other disclosure requirements.
- If the securities had not been previously issued, an offer information statement – a summary of information on the issuer since its last annual report – is required.
- In situations where the offering is a secondary one, made to the public, but the primary one was made within six months preceding the secondary offering to institutional investors or accredited investors, then the secondary offer is subject to the full rigours of the prospectus lodging and registration requirements.

Debt versus equity

With respect to equity offerings, a prospectus must be lodged and registered unless these offerings fall within the exceptions mentioned above. With respect to debt equities, although the same requirement obtains, as a matter of practice, offerings of such securities are made largely to institutional investors or accredited investors, and these fall under the exemptions to the prospectus requirements mentioned in the preceding section. For such debt securities, only an information memorandum needs to be sent to the SGX-ST; the prospectus lodging and registration requirements do not apply.

Scope of information required

Procedurally, even for offerings that are subject to prospectus lodging and registration requirements, offers to investors may nevertheless be accompanied by an abridged version of the prospectus (a profile statement) instead of a full prospectus, but the latter must still be produced upon an investor's request.

Whenever a prospectus is required, the scope of information to be included is subject to two cumulative requirements:

- the 'reasonable investor' test; and
- compliance with detailed checklists in the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 (the 2005 Regulations)

3 What are the steps of the registration and filing process? Can an offering commence while review of the offering by the applicable regulatory authority is still in progress? How long does it typically take for the review process to be completed?

- The issuer submits a listing application and final prospectus (with or without pricing information) to the SGX-ST at least 21 days before lodging the prospectus with the MAS.
- The SGX-ST informs the issuer of its eligibility to list within these 21 days via an eligibility letter.
- The issuer lodges the prospectus with the MAS using a general form. There will be a period of at least two weeks (but not more than four weeks, except on the issuer's request) for public exposure before registration of prospectus. Market participants can draw deficiencies to the attention of the MAS, which may then refuse to register the prospectus; however, such comments must be accompanied by the name and contact details of the maker, to minimise the possibility of these remarks being made by the applicant's competitors for purely competitive reasons.
- The issuer submits the lodged prospectus to the SGX-ST with an undertaking that there is no material difference from the previously submitted version.
- The MAS's remit in reviewing is confined to ensuring that prospectuses comply with disclosure requirements, but it has residual discretion to refuse registration in the 'public interest'.
- If a deficiency in the prospectus is discovered post-registration, or a new circumstance 'materially adverse' to an investor that has to be disclosed occurs post-lodging, the issuer may lodge a supplementary prospectus and take reasonable steps to inform potential investors of the new lodging.
- The issuer can launch an IPO only after the MAS registers the prospectus, but may carry out its book-building exercise after lodging.
- Upon closing of the offer, the issuer has to announce the outcome of the offer.

4 Are there any special rules (for example relating to the issuance of new securities or the preferential subscription rights of existing security holders) that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Where a prospectus is required, the SFA prohibits advertisement of an offer and publication of any statement relating to an offer.

Before registration, the only permissible items that can be publicised are:

- the identity of the offerer;
- the identification of the shares;
- a statement that a prospectus or a profile statement for the offer will be made available when the shares are offered;
- a statement that an intending acquirer will need to make an application in the manner prescribed in the prospectus; and
- a statement on how to arrange to receive a copy of the prospectus.

After registration, more detailed advertisements will be allowed, provided that they include a statement to the effect that the prospectus in respect of the offer is available for collection at specified times and places, and that any intending acquirer will need to apply in the manner set out in the prospectus.

With respect to pre-deal research reports, as of 15 October 2005, they may be issued only to institutional investors, and then only if the offer is made concurrently in Singapore and at least one foreign jurisdiction where such reports are permitted. These offerings must be truly global, ie, an offer made only to one citizen or resident in a foreign jurisdiction would not be so. To prevent the general public from receiving such information, the person issuing the reports must pre-number the reports and keep records of the recipients, and observe a quiet period that spans the two weeks prior to the lodging of the prospectus to the close of the offer, during which no report is to be published. The report must also state that it is for circulation to institutional investors only and no other person.

5 Are there any special rules (for example relating to the issuance of new securities or the preferential subscription rights of existing security holders) that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Although primary issuers may be required to lodge and register a full prospectus (see question 2), only an offer information statement is needed for secondary offerings of a class of shares that are already listed.

Secondary offerers have the following obligations that are over and above those of primary offerers:

- prior approval of their shareholders in general meeting must be obtained if:
  - the issue has the effect of transferring a controlling interest; or
  - the issuer's principal subsidiary issues shares that may result in (i) the principal subsidiary ceasing to be a subsidiary of the issuer, or (ii) a percentage reduction of 20 per cent or more of the issuer's equity interest in the principal subsidiary.
- The shareholders may give a general mandate to the board to issue new shares, but the issue must not be more than 50 per cent of the issued share capital, of which the aggregate number of shares issued other than on a pro-rata basis to existing shareholders must not be more than 20 per cent of the issued share capital.
- An issue of shares must not be discounted by more that 10 per cent of the weighted average price for trades executed on the SGX-ST for the full market day on which the placement or subscription agreement is signed.

Pertaining to preferential subscription rights, if an issuer's shareholders are offered a specific entitlement in a new issue of securities, this entitlement must be on a pro-rata basis with no restriction on the number of shares held before entitlements accrue.

For the contents of their prospectuses or offer information statements, secondary offerers are subject to prospectus liability (see question 18).

6 What is the typical settlement process for sales of securities in a public offering?

All settlement of securities transactions involving SGX-ST-listed securities come under the purview of the Central Depository (Pte) Ltd (CDP), a wholly-owned subsidiary of the SGX-ST. Upon listing and quotation, the securities will be traded under the CDP's book-entry settlement system. They will be registered in the name of the CDP or its nominee, and they will be held by the CDP as agents of its securities accounts holders. Settlement is effected on a scripless basis to facilitate trading. In the context of IPOs, after the offer is made, applications for shares (with monies paid in

advance) are received. If there is an excess of takers, balloting is carried out. A final list of successful applicants is drawn up by the issuer and underwriter. The shares are issued by the issuer to the CDP, which will then credit the successful applicants' accounts with the shares. Unsuccessful applicants will have their monies returned. Debt securities are usually not traded on either the Main Board or Sesdaq and are therefore not subject to the settlement process.

Private placements

7 Are there specific rules for the private placement of securities? What procedures must be implemented to effect a valid private placement?

The SFA, as amended in 2005, defines a private placement as an offer that is made to no more than 50 persons within any period of 12 months, is not accompanied by an advertisement publicising it, and has no selling or promotional expenses incurred in connection it other than for administrative or professional services.

A 'private offer' may include offers made to institutional investors and 'relevant persons' (defined to include, among others, accredited investors, corporations in the sole business of holding investments, trustees of trusts for the sole purpose of holding investments, officers of the entities above, as well as certain close relatives of such relevant persons), are likewise exempt from the prospectus filing and registration requirements.

There are no prospectus filing or registration requirements to effect a valid private placement or offer. If a private offering falls under the definition of a collective investment scheme, the position under the SFA since late 2005 has been that the offering nevertheless is not subject to prospectus registration and lodging requirements.

8 What information is required to be made available to potential investors in connection with a private placement of securities?

The SFA specifically exempts private placements from a prospectus requirement. However, potential investors in a private placement scenario may nonetheless be given information by the offerer, the extent of such disclosure being market-driven. As a matter of practice, if the offerer is a private company, information provided would be of a wider scope, along the lines of what a reasonable investor would want to know, than that for a public company, where information pertinent to investors' decision-making process would already be in the public domain.

9 Do any restrictions apply to the transferability of securities acquired in a private placement? Are there any mechanisms used to enhance the liquidity of securities sold in a private placement?

A subsequent transfer of securities that were initially issued to institutional investors and relevant persons (defined in the answer to question 7) are subject, for a period of six months after the initial issue, to prospectus registration and lodging requirements insofar as the subsequent transferee is not an institutional investor or relevant person. After six months, this restriction no longer applies. Initial offerings structured as private placements are not subject to this default rule; instead, where such private placements are made 'with a view to those securities being subsequently offered for sale to another person', that other person not being an exempted person such as an institutional investor or a relevant person, both the subsequent transferor and transferee 'shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons' (currently 50). Apart from this, there is no further mechanism to enhance the liquidity of assets sold in a private placement.

Offshore offerings

10 What specific rules, if any, apply to offerings of securities outside the home jurisdiction in relation to an issuer in your jurisdiction?

Where an act outside Singapore has a 'substantial and reasonably foreseeable effect' in Singapore, and that act would, if carried out in Singapore, constitute an offence under the SFA, extra-territorial jurisdiction may apply. However, there are exceptions if:

The following are too insignificant to have a substantial effect:

- the number of enquiries or applications from Singapore;
- the number of offerees in Singapore;
- the number persons in Singapore to whom the subject of the offer are issued; and
- the amount raised from persons in Singapore pursuant to the offer.

Or

- the offer is not denominated in Singapore dollars;
- proper systems are in place to
  - prevent persons in Singapore from subscribing for or purchasing the subject matter of the offer and
  - ensure adequate checks on the efficacy of such systems;
- the offer is not made to or directed at persons in Singapore, electronically or otherwise;
- there is a prominent disclaimer comprising a statement to the effect that the offer is made to or directed at persons outside Singapore only, and may be acted upon only by persons outside Singapore;
- the materials used for the offer do not contain any information that is specifically relevant to persons in Singapore; and
- the offer is not referred to in, or directly accessible from, any source intended for persons in Singapore.

Particular financings

11 What special considerations, if any, apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Convertible securities and warrants

Where these are the subject of an offer and are subject to redemption or call, regulation 7(b), part X of the 2005 Regulations requires the offerer to:

- describe the conversion terms of the shares or material terms of the warrants;
- state the expiration or termination date of the warrants;
- state the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and
- in the case of bearer securities, state that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.

Rights offerings

There is a recent exemption from the full prospectus requirement for rights issues if they are accompanied by an offer informa-

tion statement that is lodged with the MAS for a period of six months.

Depository shares

There is as yet no special scheme for such shares (see question 20). They are subject to the same rules pertaining to offerings and listings as equity securities.

Underwriting arrangements

12 What types of underwriting arrangements are commonly used?

Consistent with the trend of investment banks operating in Asia becoming increasingly risk-averse – noted in a recent edition of CFO Asia – 'soft' underwriting commitments, that is, where the bank underwrites a deal on a 'best efforts' basis, typically at the later stages of a deal, are very much the norm. Conversely, 'hard' underwriting commitments, whereby the bank will guarantee a pre-agreed payment to the company for its shares after the listing, are very rare.

13 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

Indemnities pertain to false or misleading statements or omissions in the prospectus, and breach of representations and warranties in the offer documents. Indemnities are always given by the issuer to the underwriter, to protect the underwriter from liability in respect of information which the issuer knows, or should know, but of which it did not inform the underwriter.

An amendment to the Companies Act that came into force in early 2006 specifically provides that indemnities given in good faith in relation to an offer of shares to the public shall not constitute prohibited financial assistance for the purpose of acquisition of its shares.

Force majeure clauses allow for underwriters to get out of their underwriting obligations, and include the normal acts of God provisions, although consistent with the reported increasing risk-aversion of investment banks, they are often more widely-drafted to cover changes to financial and economic conditions, such as changes in exchange rates or market conditions.

There is no statutory provision as to the level of success fees; such fees are contingent on bargaining power and market norms.

As of 6 March 2006, the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006 (the 2006 Regulations) have provided that an over-allotment option can be up to 20 per cent of all securities offered, if the total value of securities offered is not less than S$25 million.

14 What additional regulations, if any, apply to underwriting arrangements?

Offerers must provide:

- a summary of the features of the underwriting relationship together with the amount of shares or units of shares, as the case may be, being underwritten by each underwriter; and
- a statement whether the arrangement is for 'soft' or 'hard' underwriting commitments (see question 12).

Ongoing reporting obligations

15 In what instances does an issuer of securities become subject to ongoing reporting obligations?

Issuers of securities become subject to ongoing reporting obligations when their shares are listed on the SGX-ST Main Board or Sesdaq. The website to which the SGX uploads such information, the SGXNET (formerly known as MASNET), is the official forum for the dissemination of such information to investors and the public at large.

16 What information is a reporting company required to make available to the public?

All information that a reasonable investor would expect to see should be made available, except for information that is confidential, contains an incomplete proposal or negotiation, contains matters of supposition or is insufficiently definite to warrant disclosure, is generated for internal management purposes of the entity, or is a trade secret. Specific circumstances that warrant immediate disclosure include:

- appointment or resignation of any key executive or director;
- appointment of special auditors;
- acquisitions and realisations;
- winding-up and judicial management of an issuer or its subsidiaries;
- announcements of results and dividends; and
- books closure.

In addition, debt issuers must announce:

- any redemption or cancellation of the debt securities;
- details of any interest payment to be made (except for fixed rate notes);
- any amendments to the Trust Deed; and
- any appointment of a replacement trustee.

Anti-manipulation rules

17 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The main proscriptions are: false trading and market rigging; securities market manipulation; making false or misleading statements; fraudulently inducing another person to deal in securities; employing manipulative and deceptive methods; disseminating information about illegal transactions; and failing to make continuous disclosures.

There is a notable exception for price stabilisation in respect of offers of securities, including offers of bonds and convertible bonds listed or to be listed on the SGX-ST, from the rules prohibiting market manipulation, false trading and market rigging, and (in certain cases) insider trading. As of 6 March 2006, pursuant to the 2006 Regulations, stabilising managers no longer need to apply to the MAS for exemptions on a case-by-case basis, but just need to ensure, among other requirements, that the total value of securities offered is not less than S$25 million, and the stabilising manager agrees to undertake that the over-allotment does not exceed 20 per cent of the total nominal value of securities offered.

Liabilities and enforcement

18 What are the most common bases of liability for a securities transaction?

Criminal liability

Insider trading, manipulative practices (see question 17), as well as the making of false or misleading statements or omissions in prospectuses and condensed versions of same, eg, profile statements, offer information statements, attract criminal liability.

Pertaining to prospectus liability, parties who can be made liable include the offerer and its directors, the issue manager, and the underwriter (but not sub-underwriters).

Civil liability

The same circumstances as above can attract civil liability, involving compensation to people who had suffered losses as a result of the actions of the person in breach. This is statutorily provided for in the SFA; in addition, the prohibited activities can give rise to tortious and contractual liabilities at common law.

19 What are the main mechanisms for seeking remedies and sanctions for improper securities activities (for example, civil litigation, administrative proceedings or criminal prosecution)?

There is an Investor Compensation Scheme, provided for in the SFA, which allows each claimant to get up to a maximum of S$50,000.

For civil litigation, in the context of breaches of the Listing Manual, third parties do not have standing to sue for breaches of duties by companies subject to rules in the Manual, for such duties are owed only to the SGX-ST and not to any third party.

However, civil litigation need not take just the form of private suits; civil penalties may also be visited upon offenders. Any person in breach of the market manipulation or insider trading proscriptions may either be ordered by a court, or voluntarily enter into agreement with the MAS, with or without admission of liability, to pay such a civil penalty. Where the breach resulted in a profit made or loss avoided, the penalty may be up to three times the amount of profit made or loss avoided, or S$50,000, if the offender is an individual, or S$100,000, if a corporation, whichever is the higher. If there was no profit made or loss avoided, the penalty would be of a sum not less than S$50,000 but not more than S$2 million. The procedure for such payment is set out in the Rules of Court. These penalties are 'meant to complement the existing criminal regime by providing a calibrated approach of enforcement that punishes and deters market misconduct, but while not impeding the growth of the securities markets in Singapore'. On 19 August 2005, the MAS announced that the China Aviation Oil Holding Company (CAOHC) was to pay a S$8 million penalty. CAOHC had admitted insider trading via a placement of a bloc of its subsidiary's shares to the market in October 2004 while it (CAOHC) was in possession of material price-sensitive information concerning the financial condition of its subsidiary that was not generally available.

Turning to criminal sanctions, the penalty at present for prospectus-related offences is a fine of up to S$150,000, imprisonment of up to two years, or both; the other offences listed in response to question 18 may incur a fine of up to S$250,000, imprisonment of up to seven years, or both. Continuing offences are subject to a further fine not exceeding S$15,000 every day of the continuation. However, where civil penalties have been imposed on a breaching party, no criminal proceedings shall be brought against it.

Current proposals for change

20 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

Although there is no further formally tabled amendment to the law, Singapore's securities regulation regime is constantly evolving to keep in line with international best practices. For instance, the Singapore Exchange Limited (SGX), in December 2005, issued a public consultation paper pertaining to its proposed introduction of a platform for the listing of global depository receipts, which would facilitate foreign companies to access the Singapore capital market and broaden their shareholder base. On 24 April 2006, it was reported that, pursuant to a broader revamp to give general investors more options, investors with more than 50,000 shares in a stock of which the shares are kept by the CDP may be allowed to lend out their shares and earn interest of up to 4 per cent. Currently only brokerages and some banks are allowed to short-sell shares by borrowing scrip from the CDP; this proposal would extend this ability to retail investors.

As shown in the responses above, many amendments have been made to the law in 2005–2006. These have the effect of furthering the move away from a merit-based regime to a disclosure-based one, and remove remnants of a one-size-fits-all regulatory approach in favour of one that is tailored and flexible. At the same time, to ensure that this approach is not abused, and to further promote investor confidence, sanctions for breaches have been stepped up in practice, an example of which is seen in the CAOHC civil penalty settlement (see question 19). Taken together these allow for a facilitative yet robust regulatory regime.

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