

# SGX RegCo 2019 Regulatory Updates

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# BOARD MATTERS



## CONTINUING OBLIGATIONS – Directors & Management Mainboard LR 720(5) and Catalist LR 702(4)

Sub-Section	Before	After
MB LR 720(5) CAT LR 702(4)	-	All directors are to submit themselves for re-nomination and re-appointment at least <u>once every three years</u> .

# BOARD MATTERS



## CIRCULARS, ANNUAL REPORTS AND ELECTRONIC COMMUNICATIONS Mainboard LR 1207(10) and Catalyst LR 1204(10)

Sub-Section	Description	
(A)	<p>Chairman ← Immediate family member → CEO</p>	<p>The relationship <u>must be disclosed</u> if they are immediate family members.</p>
(B)	<p>Designations: Independent; Non-exec; Executive etc. Roles: Chairman; Board Member → ANNUAL REPORT</p>	<p>All directors, including their <u>designations</u> and <u>roles</u>, must be identified in the annual report.</p>

# Regulation Issues and Concerns



Valuers in violation of  
the VALMIN Code

Dilutive Convertible  
Securities

Circumvention of  
Shareholders' Approval

IPT and Requirement  
for IFA Opinion

Relationship Between  
Director and Vendor

# Violation of the VALMIN Code



Transaction Type: Proposed Acquisition

## Case Facts

Company announced the proposed acquisition of the Target Company in the business of exploration, research and development of rare earth. Vendor purchased the Target Company 6 months ago at 7 times less than the value of the consideration.

Valuation report was prepared by “A” Valuer valuing the asset at about US\$1 billion.

“A” Valuer is a **sole practitioner** i.e. not an independent qualified person defined under Listing Rule 210(9)(b)(i).

2<sup>nd</sup> valuation issued by “B” Valuer valued the Target Company at around US\$1 billion. However, **no site visit was conducted** i.e. not compliant with the VALMIN Code.

# Violation of the VALMIN Code



Transaction Type: Proposed Acquisition (cont'd)

## Case Facts (cont'd)

Actions taken:

1. Exchange required significant queries to be addressed via SGXNET.
2. Engagement of Tier 1 valuer resulting in 3<sup>rd</sup> valuation report with the relevant asset valued at less than half the last appraised value of US\$1 billion in earlier reports.

Consequence:

The authors of the 2 valuation reports were suspended from the relevant professional organisation.

# Dilutive Convertible Securities



Transaction Type: Issuance of Convertible Bond

## Case Facts

1. Issuance of a 5 year convertible bond may be redeemed at the Company's option through cash payment and/or conversion into shares.
2. The convertible bond upon exercise represents more than 100% of share capital of the Company.
3. Conversion shares will be issued out of general mandates i.e. over the duration of the bond.

## Issues

- (i) Company issued Bond without seeking shareholders' approval for transfer of control.
- (ii) Reliance on future general mandate for issuance of Bond.
- (iii) Term of the Bond did not provide for adjustments in accordance with Rule 829.

# Circumvention of Shareholders' Approval



Transaction Type: Convertible Loan Agreement

## Case Facts

1. Company entered into a convertible loan agreement (“Loan”) with the Lender.
2. Loan shall be converted into conversion shares pursuant to, amongst others, specific approval of shareholders for (i) the issuance of the conversion shares, and (ii) potential transfer of controlling interest.
3. Loan agreement contained a clause that entitled the Lender to request the Company to issue the conversion shares pursuant to the general mandate granted by shareholders in the next AGM if any of the Conversion Conditions are not satisfied.

## Issue

Potential circumvention of listing rules by negating the need and/or outcome of specific shareholders' approval.



# IPT and Requirement for IFA Opinion



Transaction Type: Issuance of Convertibles to Interested Persons

Listing Rule  
MB and CAT  
921(4)(b)

However, the opinion from an independent financial adviser is **not required for the following transactions**. Instead, an opinion from the audit committee in the form required in Rule 917(4)(a) must be disclosed:

- (i) The **issue of shares pursuant to Part IV of Chapter 8**, or the issue of other securities of a class that is **already listed**, for cash.
- (ii) Purchase or sale of any real property where: the consideration for the purchase or sale is in cash; an independent professional valuation has been obtained for the purpose of the purchase or sale of such property; and the valuation of such property is disclosed in the circular.

Note

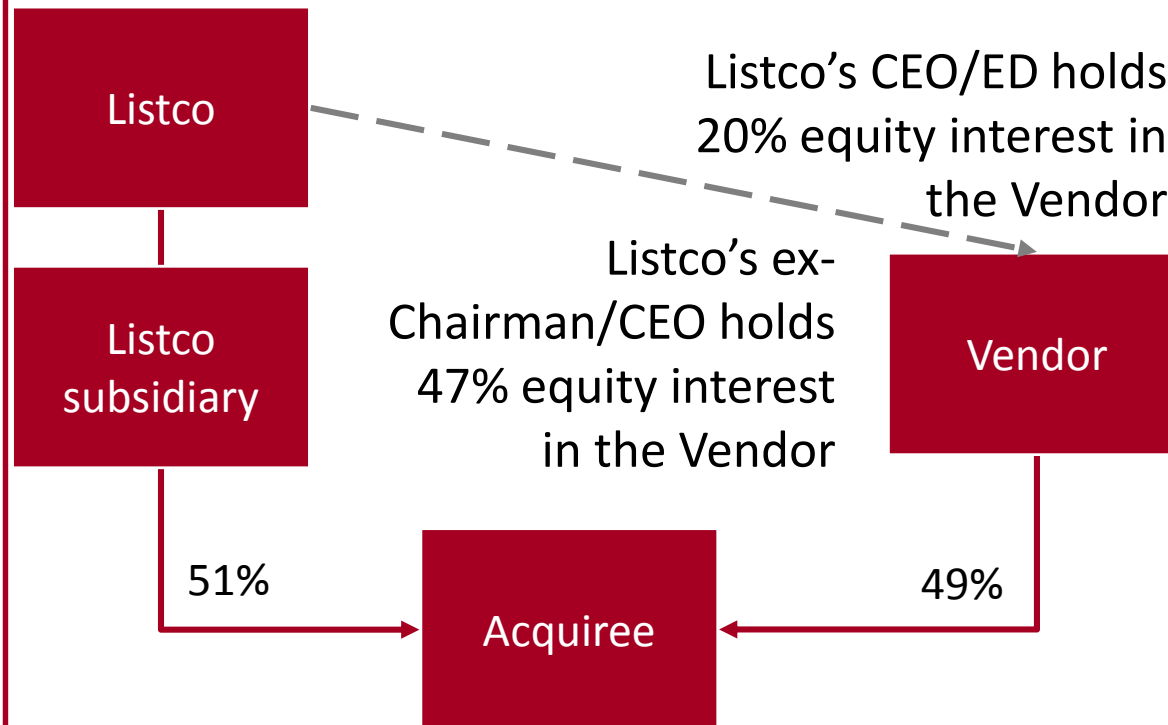
Issuance of convertibles/options that will ultimately result in the conversion into the Listco's shares do not fall under this exception i.e. IFA opinion is still required.

# R'ship Between Director and Vendor

Transaction Type: Proposed Acquisition of remaining 49% shares in subsidiary  
(Waiver application from shareholders' approval of major acquisition)

## Concerns

1. Change in risk profile due to cash balance substantially utilized for cash consideration.
2. Proposed Acquisition will be transacted with Listco's director and former directors.



## Concerns (cont'd)

3. Changes in shareholdings of the vendor.
4. No valuation was conducted by the Company.

Thank You!