

Singapore Expands Scope of Shareholders Excluded for Calculating Compulsory Acquisition Threshold

New legislation strengthening the compulsory acquisition regulatory framework in the Companies Act 1967 is welcome news for minority shareholders.

On 9 May 2023 the Parliament of Singapore passed the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill (the Bill), which, among other changes, excludes shares held by certain persons connected with the offeror from the computation of the 90% threshold for compulsory acquisition under section 215 of the Companies Act 1967 (the CA). The Bill is expected to come into law later this year.

Section 215 of the CA currently allows an acquirer in a takeover offer to compulsorily acquire the shares held by shareholders in the target company who have not accepted the offer for their shares (effectively, the dissenting shareholders). The compulsory share acquisition only applies if that offer has otherwise been approved by the shareholders holding at least 90% of the shares in the target (known as the squeeze-out right). This squeeze-out right effectively allows the acquirer to wholly own the target company, and is therefore an important right for an acquirer that is seeking to delist the target company.

In order to exercise the squeeze-out right under the CA, the acquirer must purchase at least 90% of the issued shares of the target after making the offer to the target's shareholders. The rule excludes those shares held at the date of the offer by the acquirer, its related corporations, and their respective nominees, as well as any treasury shares.

90% Threshold

Currently, in calculating the 90% threshold, shares held by the acquirer, its related corporations (e.g., its parent company, subsidiaries, or fellow subsidiaries), and their respective nominees are excluded.

Under the proposed amendment to Section 215 of the CA, the scope of shareholders excluded from the calculation will expand to include:

- a) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of the acquirer in respect of the target company;

- b) the acquirer's close relatives (i.e., spouse, parents, siblings, and children, including adopted children and step-children);
- c) a person whose directions, instructions, or wishes the acquirer is accustomed or is under an obligation, whether formal or informal, to act in accordance with, in respect of the target company; and
- d) a body corporate that is controlled by the acquirer or a person mentioned in paragraphs (a), (b), or (c) above. The shares in the target company held by any special purpose vehicles controlled by such persons will also be excluded for the purposes of calculating the 90% threshold.

In this context, a body corporate is “controlled” by the acquirer or a person mentioned in paragraphs (a), (b), or (c) above if (1) the acquirer or person is entitled to exercise at least 50% of the voting power in the body corporate or (2) the body corporate is (or a majority of its directors are) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of the acquirer or the person. This approach aligns with similar concepts in the CA and the Singapore Code on Take-overs and Mergers, which defines statutory control as holding more than 50% of the company's voting power.

Implications

Changes to Section 215 have been contemplated for several years. In 2018, the Companies Act Working Group (CAWG) (appointed by the Accounting and Corporate Regulatory Authority (ACRA)) considered the matter in great detail, observing that acquirers were taking advantage of the limited scope of exclusions to satisfy the 90% compulsory acquisition threshold.¹ One example featured a controlling shareholder of a target company who set up a special purpose vehicle to make an offer for the shares in the target, as the shares held by the controlling shareholder could be counted towards the computation of the threshold, even though the shareholder controlled the special purpose vehicle.

In another example, a controlling shareholder may have also controlled another body corporate which held shares in the target, which would also be counted in computing the threshold. CAWG noted that this loophole should be addressed because the ability to circumvent the 90% threshold undermined an important protection for minority shareholders and created a discrepancy in rules that apply to offers made by individuals and body corporates. Further, from a policy perspective, CAWG identified that while dissenting minority shareholders could apply to the court in the case of unfairness, most retail investors would not wish to incur the costs associated with commencing such legal actions, assuming their individual shareholdings were likely to be relatively small.

Minority shareholders have welcomed these changes. As CAWG acknowledged, in a healthy financial market, companies should be able to restructure by way of takeover without facing onerous requirements. At the same time, these changes to the compulsory acquisition framework ensure that minority shareholders are not disadvantaged when takeover offers are made.

If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Sharon Lau](#)

Sharon.lau@lw.com
+65.6437.5464
Singapore

[Marcus Lee](#)

marcus.lee@lw.com
+65.6437.5452
Singapore

[Farhana Sharmeen](#)

farhana.sharmeen@lw.com
+65.6437.5364
Singapore

You Might Also Be Interested In

[Beyond the Valuation Gap — Flexing Earnouts in the Current M&A Environment](#)

[Avoiding Buyer's Remorse in M&A Deals](#)

[Corporate Reorganisations — United Kingdom 2023](#)

[Singapore's Green Finance Industry Taskforce Launches Final Consultation on Green and Transition Taxonomy](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's Client Alerts can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham, [visit our subscriber page](#).

Endnotes

¹ Section IV. Review of Compulsory Acquisition of Shares Threshold, [Annex B, Report of the Companies Act Working Group, 15 May 2019](#).