

Stricter compliance measures for listed companies

March 9, 2018

The Corporate Governance Council (the CG Council), through its recently issued consultation paper, has proposed amendments to the Singapore Code of Corporate Governance (the CG Code 2012) and the Listing Rules of the Mainboard of the Singapore Exchange Securities Trading Limited (SGX Listing Rules). Accordingly, companies listed on the Mainboard of the Singapore Exchange Securities Trading Limited (Listed Companies) have until 15 March 2018 to submit comments on the proposed amendments.

The proposed amendments would result in stricter compliance measures for Listed Companies, and concern:

1. Director independence & training
2. Remuneration
3. Internal controls & risk management systems
4. Stakeholder engagement

The proposed amended compliance framework for Listed Companies is as follows:

	SGX Listing Rules	Revised CG Code 2012 (Revised Code)	Practice Guidance
Purpose	<p>Mandatory Compliance:</p> <p>Sets out key requirements and baseline market practices</p>	<p>Comply or Explain: Provides overarching principles of good corporate governance and actionable steps to guide compliance with such principles</p>	<p>Voluntary Compliance: Provides guidance for compliance with the Revised Code as well as setting of best practices</p>
Key Changes	<p>Guidelines in the CG Code 2012 which are considered important requirements or baseline market practices are proposed to be shifted to the SGX Listing Rules for mandatory compliance</p> <p>Key changes are further discussed below</p>	<p>The definition of “comply or explain” should be clarified to strengthen the emphasis on thoughtful and meaningful communication between Listed Companies and their stakeholders</p> <p>Key changes are further discussed below</p>	<p>The introduction of the Practice Guidance is recommended to complement the Revised Code, but is non-binding and will apply on a voluntary basis.</p> <p>24 prescriptive or less essential details, which are currently contained in the CG Code 2012, are recommended to be incorporated into the Practice Guidance instead</p>

Below, we discuss the key changes that would affect current operations of Listed Companies. If you or your company would like to assess your company’s current position or submit comments to the proposed amendments, please reach out to us.

1. Director Independence & Training

Topic	Current Guideline under the CG Code 2012	Will it be mandatory?
<p>“Independent” director ratio on board of directors of the Listed Company (Board)</p>	<p>Guideline 2.1:</p> <p>There should be a strong and independent element on the Board, with independent directors making up at least one-third of the Board.</p>	<p>Mandatory compliance:</p> <p>It is proposed that this become a mandatory rule under the SGX Listing Rules, such that independent directors would have to form at least one-third of the Board.</p>
<p>“Independent” director ratio on the Board, where the chairman of the Board (Chairman) is not independent</p>	<p>Guideline 2.2:</p> <p>The independent directors should make up at least half of the Board where:</p> <ol style="list-style-type: none"> the Chairman and the chief executive officer (or equivalent) (the CEO) is the same person; the Chairman and the CEO are immediate family members; the Chairman is part of the management team; or the Chairman is not an independent director. 	<p>Comply or explain:</p> <p>It is proposed that this Guideline be revised to provide that independent directors are to comprise a majority of the Board where the Chairman is not independent.</p>
<p>“Independent” director tests</p>	<p>Guideline 2.3:</p> <p>The Board should determine, taking into account the views of the nominating committee, whether the director is independent in character and judgement. The Board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination.</p> <p>Examples of relationships or circumstances which would deem a director to be not independent are set out in this Guideline. If the Board wishes, in spite of the existence of one or more of these relationships or circumstances, to consider a director as</p>	<p>Mandatory compliance:</p> <p>The proposed tests for director independence provide that a director will not be considered independent where:</p> <ol style="list-style-type: none"> he is employed by the Listed Company or its related corporations for the current or was employed in any of the past three (3) financial years; or his immediate family member is employed by the Listed Company or its related corporations for the current financial year or was employed in any of the past three (3) financial years, and such family member’s remuneration was determined by the Listed Company’s remuneration committee; or he is, or has an immediate family member who is, a substantial shareholder of the Listed Company; or <p><i>Option (i) – to incorporate the “nine (9) year rule”</i></p>

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	<p>independent, it should disclose in full, the nature of that director's relationship or circumstance and bear responsibility for explaining why that director should be considered independent.</p>	<p><i>as a hard limit</i></p> <p>iv. he has served on the Board for more than nine (9) years since the date of the director's first appointment (before or after listing).</p> <p>OR</p> <p>Option (ii) – <i>to subject independent directors who would like to serve more than nine (9) years to a two-tier vote</i></p> <p>i. such director has been a member of the Board for an aggregate period of more than nine (9) years before or after listing and his continued appointment as an independent director has not been sought and approved in separate resolutions from: (A) all shareholders; and (B) shareholders excluding any controlling shareholder and associate of the controlling shareholder.</p> <p>The 9-year rule is not a term limit, as it does not prevent an independent director who has served on the Board for nine (9) years, to continue as a non-independent director. Additionally, a transition period of three (3) years is recommended, regardless of which option is adopted, to give companies sufficient time to adjust their Board composition and/or search for new independent directors.</p> <p>The remaining tests of director independence from the CG Code 2012 are proposed to be shifted to the non-binding Practice Guidance.</p>
<p>Shareholding threshold for “independent” directors</p>	<p>Guideline 2.3:</p> <p>An “independent” director is one who has no relationship with the company, its related corporations, <i>its 10% shareholders</i> or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement with a view to the best interests of the company.</p>	<p>Mandatory compliance:</p> <p>It is proposed that the shareholding threshold in relation to determining director independence be lowered from 10% to 5%, and that this become a mandatory rule under the SGX Listing Rules.</p>

Topic	Current Guideline under the CG Code 2012	Will it be mandatory?
First-time director training	<p>Guideline 1.6:</p> <p>Incoming directors should receive comprehensive and tailored induction on joining the Board, and companies should provide training for first-time director in areas such as accounting, legal and industry-specific knowledge as appropriate, as well as regular training on relevant new laws, regulations and changing commercial risks.</p>	<p>Mandatory compliance:</p> <p>It is proposed that this become a mandatory rule under the SGX Listing Rules, requiring any first-time directors to undergo training in the roles and responsibilities of a director.</p>

2. Remuneration

Topic	Current Guideline under the CG Code 2012	Will it be mandatory?
Disclosure on relationship between remuneration and performance	<p>Guideline 9:</p> <p>Every company should provide clear disclosure of its remuneration policies, level and mix of remuneration, and the procedure for setting remuneration, in the company's Annual Report.</p>	<p>Comply or explain:</p> <p>It is proposed that this Guideline be revised to provide for Listed Companies to disclose the relationship between remuneration and value creation. In particular, the proposed revised Principle provides that the company be transparent with its remuneration policies, and, among other things, its procedures for setting remuneration, and the relationships between remuneration, performance and value creation.</p>
Remuneration of employees who are, or directly related to, substantial shareholders	<p>Guideline 9.4:</p> <p>For transparency, the annual remuneration report should disclose the details of the remuneration of employees who are immediate family members of a director or the CEO, and whose remuneration exceeds S\$50,000 during the year. This will be done on a named basis with clear indication of the employee's relationship with the relevant director or the CEO. Disclosure of remuneration should be in incremental bands of S\$50,000. The company need only show the applicable bands.</p>	<p>Comply or explain:</p> <p>It is proposed that this Guideline be revised to provide for Listed Companies to disclose the names and remuneration of employees who are substantial shareholders or immediate family of substantial shareholders (in addition to employees who are immediate family members of a director or the CEO, as in the CG Code 2012), where such remuneration exceeds S\$100,000 during the year (revised from S\$50,000 currently), in bands no wider than S\$100,000 (revised from S\$50,000 currently).</p>

3. Internal Controls & Risk Management Systems

Topic	Current Guideline under the CG Code 2012	Will it be mandatory?
Disclosure on internal controls and risk management systems	<p>Guideline 11.3:</p> <p>The Board should comment on the adequacy and effectiveness of the internal controls, including financial, operational, compliance and information technology controls, and risk management systems, in the company's Annual Report. The Board's commentary should include information needed by stakeholders to make an informed assessment of the company's internal control and risk management systems.</p>	<p>Mandatory compliance:</p> <p>While the SGX Listing Rules currently require Listed Companies to comment on their internal controls, it is proposed that these rules be amended to enhance disclosures on the adequacy and effectiveness of Listed Companies' internal controls and risk management systems. In particular, there is an additional requirement for disclosure of the Listed Company's weaknesses, and steps to address them.</p>

4. Stakeholder Engagement

It is proposed that a provision be introduced in the Revised Code to provide for Listed Companies to consider and balance the needs and interests of material stakeholders, as well as accompanying provisions setting out expectations for Listed Companies to:

- a. have arrangements to identify and manage relationships with material stakeholder groups;
- b. disclose key focus areas in relation to their management of stakeholder relationships; and
- c. maintain a current corporate website for all stakeholders to stay informed of material updates in a timely manner.

5. Conclusion

Ultimately, the proposed measures would impose stricter compliance requirements for Listed Companies. If you or your company would like to submit comments to the proposed amendments, please reach out to us prior to 15 March 2018. We are also available to help you assess your company's current position and determine the next steps under the proposed amendments.

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