

Mergers & Acquisitions

SIC's Regime for Unlisted Public Companies to Obtain a Waiver from Singapore Code on Take-Overs and Mergers

Introduction

On 7 October 2022, the Securities Industry Council ("**SIC**") issued the "[Practice Statement on the Waiver of the Application of the Singapore Code on Take-overs and Mergers \("**Code**"\) to Unlisted Public Companies](#)" ("**Practice Statement**"). The main purpose of the Code is to ensure fair and equal treatment of all shareholders in a take-over or merger situation, that shareholders are not denied an opportunity to decide on the merits of a take-over and that shareholders of the same class are afforded equivalent treatment by an offeror.

The Code applies to, among others, an unlisted public company incorporated in Singapore with more than 50 shareholders and net tangible assets of S\$5 million or more ("**Unlisted Public Company**"). Unlisted Public Companies may now apply to SIC for a waiver from the application of the Code in accordance with the requirements set out in the Practice Statement ("**Code Waiver**"). For unlisted public companies which do not have more than 50 shareholders and net tangible assets of S\$5 million or more, *but if they would soon fall under the ambit of the Code*, such unlisted public companies may also apply for a Code Waiver in advance.

This Update outlines how eligible Unlisted Public Companies can apply for a Code Waiver.

Conditions for Code Waiver

The conditions for the Code Waiver are as follows ("**Waiver Conditions**"):

1. The number of shareholders in the Unlisted Public Company is 50 or fewer, after excluding the following persons (the "**Excluded Persons**"):
 - (i) institutional investors as defined in section 4A(1)(c) of the Securities and Futures Act 2001 ("**SFA**");
 - (ii) accredited investors as defined in section 4A(1)(a) of the SFA;
 - (iii) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the Unlisted Public Company or a related company of that Unlisted Public Company; and

Mergers & Acquisitions

- (iv) corporations, partnerships and trusts the sole purpose of which is to hold investments and whose shareholders, partners and/or beneficial owners comprise solely of persons set out in paragraphs 1(a)(i), (ii) and (iii).
2. A written notification has been issued by the Unlisted Public Company to all its shareholders (including holders of convertibles) informing them of the Unlisted Public Company's intention to obtain the Code Waiver and the implications arising as a result thereof ("**Shareholders Notification**").
 3. The Unlisted Public Company must issue the Shareholders Notification at least 21 calendar days before the date of the Unlisted Public Company's application to SIC for the Code Waiver.
 4. The Shareholders Notification must include the following information: key protections that the Code gives, and the risks associated with the loss of such protection to shareholders if the Code Waiver is granted; and a point of contact for shareholders to object to or raise queries on the Code Waiver with the Unlisted Public Company during the 21-day notice period.
 5. The Unlisted Public Company has not received objections to the Code Waiver from shareholders representing more than 10% of the total voting rights of the Unlisted Public Company during the 21-day notice period (calculated with reference to the total voting rights of the Unlisted Public Company as at the end of the 21-day notice period).
 6. The Unlisted Public Company has taken or will take (in the event of subsequent rounds of fundraising) reasonable measures to verify whether a shareholder or an incoming shareholder is an Excluded Person. The Unlisted Public Company will be required to implement necessary controls and procedures to establish whether a shareholder continues to meet the definition of an Excluded Person in order to comply with the Waiver Condition set out in paragraph 1 above on an ongoing basis.
 7. When the Code Waiver takes effect, the Unlisted Public Company will be required to
 - (i) state its Code Waiver status prominently on its corporate website (if any);
 - (ii) notify its shareholders (including holders of convertibles) that it has obtained the Code Waiver; and
 - (iii) notify any new investors before they invest that the Unlisted Public Company is not subject to the Code and the implications arising from the Code Waiver. This notification may be through the subscription agreements or otherwise.

Applying for Code Waiver

The key steps to apply for the Code Waiver are outlined below.

Mergers & Acquisitions

1. When at least 21 calendar days have lapsed after the Unlisted Public Company issued the Shareholders Notification, the Unlisted Public Company may make a written application to the SIC Secretariat for the Code Waiver, along with certain prescribed information. Required information includes: general details of the Unlisted Public Company such as net tangible assets, number of shareholders (both before and after excluding the Excluded Persons), date of the Shareholders Notification and whether there are objections to Code Waiver.
2. The Unlisted Public Company must include in its application form a signed confirmation (in the prescribed form set out in the Practice Statement) from the Unlisted Public Company's board of directors that the Waiver Conditions have been or will be (as the case may be) complied with.

Grant of Code Waiver

The grant of the Code Waiver is at the discretion of SIC, and SIC reserves the right to impose further conditions for the grant of the Code Waiver, or not grant the waiver. Furthermore, SIC may, where circumstances warrant, revoke the grant of the Code Waiver.

The Code Waiver will take effect when the Unlisted Public Company is published on the Code Waiver List on the SIC's website, which is expected to take place 21 calendar days after the date of application to SIC or such other date as otherwise notified to the Unlisted Public Company by SIC.

In addition, if the Unlisted Public Company fails to comply with the Waiver Conditions at any point in time, the Code Waiver will cease to be in effect. The Unlisted Public Company must promptly notify SIC and all relevant parties (including its shareholders and holders of convertibles) of the cessation of the Code Waiver.

Practical Significance

This Practice Statement is expected to benefit start-ups and others seeking to raise equity capital from the venture capital and private equity space, especially those companies that have a significant number of investors arising from the various earlier rounds of successful series fundings. Technical compliance with the Code in instances where there are or will be more than 50 shareholders has been an existing issue and the Practice Statement is a welcome development to the Code regime, addressing concerns of triggering take-over obligations under the Code in respect of Unlisted Public Companies.

If you require any assistance with applying for a Code Waiver, advice on the Waiver Conditions or have any other queries relating to the above, please feel free to contact any one of our team members below who will be happy to assist.

Contacts



Sandy Foo
Deputy Head, Corporate &
Transactional Group
Head, Mergers &
Acquisitions

T +65 6232 0716

sandy.foo@rajahtann.com



Terence Quek
Deputy Head, Mergers &
Acquisitions

T +65 6232 0277

terence.quek@rajahtann.com



Tracy-Anne Ang
Deputy Head, Mergers &
Acquisitions

T +65 6232 0483

tracy.ang@rajahtann.com



Lawrence Tan
Partner, Mergers &
Acquisitions

T +65 6232 0726

lawrence.tan@rajahtann.com



Danny Lim
Partner, Mergers &
Acquisitions

T +65 6232 0475

danny.lim@rajahtann.com



Favian Tan
Partner, Mergers &
Acquisitions

T +65 6232 0626

favian.tan@rajahtann.com



Hoon Chi Tern
Partner, Mergers &
Acquisitions

T +65 6232 0714

chi.tern.hoon@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

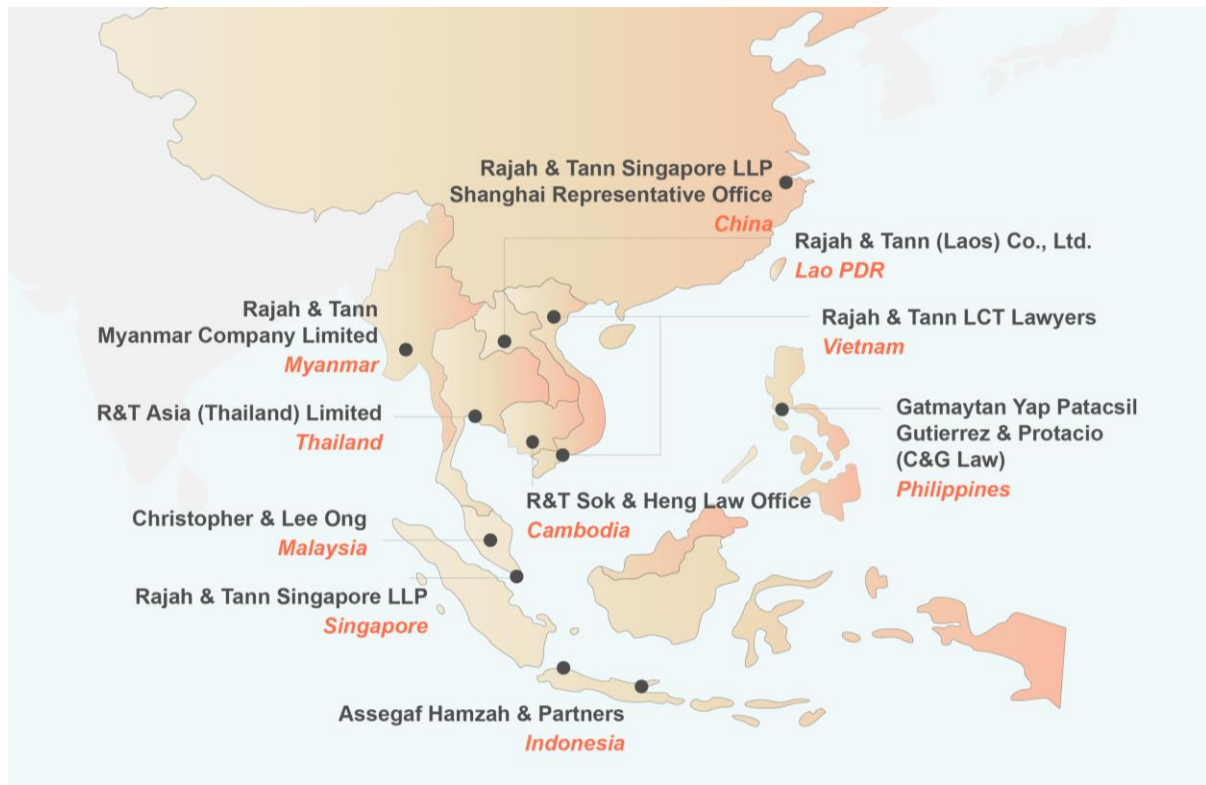
Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Client Update: Singapore

2022 OCTOBER

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.