

## NOTIFICATION REGIME FOR SUBSTANTIAL SHAREHOLDINGS OR UNITHOLDINGS AND INTERESTS OF DIRECTORS OR CEOS UNDER THE SECURITIES AND FUTURES ACT

### Disclosure Obligation

1. Singapore maintains a statutory framework that requires disclosure of interest of:-
  - (a) Shareholder who owns substantial interest (i.e. more than 5% of the total votes attached to all the voting shares of the Company) in the shares of a Singapore listed company.
  - (b) Director.

### A. Substantial Shareholders

#### Current Regime

1. The disclosure regime governing substantial shareholding in a Singapore incorporated company which is listed on the SGX-ST ("Listco") is contained in:-
  - (a) Companies Act (Cap 50), Part IV, Division 4;
  - (b) Securities and Futures Act (Cap 289), Section 137; and
  - (c) Listing Manual.
2. Currently, a substantial shareholder of a Listco (incorporated in Singapore) is required under the Companies Act to disclose his interest in voting shares of the Listco and percentage level changes thereto.
3. In particular, Section 81 of the Companies Act provides as follow:-
  - (1) *For the purposes of this Division, a person has a substantial shareholding in a company if:-*
    - (a) *He has **an interest or interests** in one or more voting shares in the company; and*
    - (b) *The total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.*

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4. "Interests in shares" is defined in Section 7 of the Companies Act.  
For foreign incorporated listco, in practice, the Articles of Association / bye-laws of the Listco incorporated in other jurisdiction usually provide for similar disclosure of interest.

## **Securities and Futures (Amendment) Act 2009 ("Amendment Act")**

6. When the Amendment Act becomes effective, the substantial shareholding notification requirement will be migrated from the Companies Act to the Securities and Futures Act.
7. This means that as a result of the Amendment Act, the substantial shareholding reporting requirement will be extended to substantial shareholders of foreign-incorporated companies with a primary listing on SGX-ST.
8. In particular, the new Sections 135-137 of SFA provides as follow:

### Section 135

- (1) *A person who is or (if he has ceased to be one) had been a substantial shareholder in a corporation shall give notice in writing to the corporation of particulars of the voting shares in the corporation in which he has or had an **interest or interests** and the nature and extent of that interest or those interests.*

### Section 136

- (1) *Where there is a change in the percentage level of the **interest or interests** of a substantial shareholder in a corporation in voting shares in the corporation, the substantial shareholder shall give notice in writing to the corporation within 2 business days after he becomes aware of the change.*

### Section 137

- (1) *A person who ceases to be a substantial shareholder in a corporation shall give notice in writing to the corporation within 2 business days after he becomes aware that he has ceased to be a substantial shareholder.*
9. "**Interests in securities**" is defined in Section 4 of the SFA. For comparison between Section 7 of the Companies act and Section 4 of the SFA, see Annexure 2. It is important to note that there are certain duplications between Section 7 of Companies Act and Section 4 of the SFA but Section 4 of SFA provides wider definition of "Interests in Securities".

**Comparative Table for disclosure obligation of substantial shareholder**

<b>Current Regime</b>	<b>New Regime</b>
Disclosure obligation set out in Companies Act and Securities and Futures Act - only applies to Singapore incorporated Companies	Disclosure obligations of substantial shareholders of Listco consolidated under the Securities and Futures Act - applies to companies having primary listing on SGX-ST.
Substantial Shareholders must disclose their shareholding interests and changes thereto to both the Listco and SGX-ST	Substantial Shareholders must disclose their shareholdings or changes thereto to Listco only
Substantial Shareholders and Listco subject to criminal liabilities for non-compliance	Substantial Shareholders and Listco are subject to criminal liabilities or civil penalties for non-compliance

**B. Directors**

**Current regime**

10. The Companies Act currently provides for disclosure of interests in securities of a Singapore incorporated company by its directors.
11. Under the Companies Act, a director of a Singapore incorporated company is required to disclose both his personal and family members' holding of and dealing in shares, debentures, rights or options, units in collective investment schemes or contract for delivery of shares, in the Company or its related corporation.
12. In practice, the Articles of Association / bye-laws of the Listco incorporated in other jurisdictions usually provide for similar disclosure of interest.

**Securities and Futures (Amendment) Act 2009 ("Amendment Act")**

13. New provisions have been enacted under the Amendment Act to regulate the disclosure of obligations of a CEO of a listed corporation.
14. This new requirement is not limited to the express designation of "CEO". A person whom irrespective of his corporate title, is principally responsible for the management and conduct of business of that listed corporation, will falls within the definition of "CEO" under the Securities and Futures Act.

**Comparative Table for disclosure obligation of directors**

<b>Current Regime</b>	<b>New Regime</b>
Applicable to directors of Singapore-incorporated companies	Applicable to directors of Listco and in addition, extends to cover CEO of Listco
Directors must disclose their interests to the Listco and SGX-ST	Directors and CEOs of Listco must disclose their interests to the Listco only
Directors and Listco subject to criminal liabilities for non-compliance	Directors, CEOs and Listco subject to criminal liabilities or civil penalties for non-compliance.

15. For directors' disclosure obligation, please take note that it is still important to refer to section 164 and 165 of the Companies Act. In particular, section 164(15) of the Companies Act which provides that a director shall be deemed to have an interest in shares if a wife or husband or infant children of the director holds or has an interests in shares.

**C. Exemptions**

16. The Securities and Futures (Disclosure of Interests) Regulation 2012 which will come into effect on 19 November 2012 introduce exemptions to the disclosure obligation dated above for, inter alia, securities lending transaction, take-over offer, participants in collective investment schemes and employee benefit schemes.

## **MARKET MISCONDUCT ENFORCEMENT FRAMEWORK**

1. New Section 61 introduces a new concept of attributing liability for market misconduct offences which will make corporations, partnerships or limited liability partnerships criminally liable for market misconduct committed by their employees for their benefit and with their consent or connivance.

For market misconduct offences, please refer to Part XII, Division 1, 2 and 3 e.g. insider trading, market rigging etc.

2. These entities will be subject to civil penalty liability if they have failed to prevent or detect the market misconduct by the employees due to their own negligence. Section 236C.
3. In particular, please refer to section 236B(2) and 236B(8).

## **REITs / BT**

1. The amendment to SFA establishes a new recognition regime to enable foreign business trusts that are not registered under the Business Trusts Act to offer their units to retail investors in Singapore subject to the foreign business trusts being constituted in a jurisdiction whose laws and practices afford protection to Singapore investors equivalent to that provided under the Business Trusts Act.

## ANNEXURE 1

The table below provides an overview of the different categories of reporting persons and their respective notification obligations.

Reporting Person	Notification obligations		
	Notification made to	Types of interests to be disclosed	Time period for disclosure to be made
Director/CEO of : <ul style="list-style-type: none"> <li>Listed corporation</li> <li>Trustee-manager of listed BT</li> <li>Responsible person for listed REIT</li> </ul>	<ul style="list-style-type: none"> <li>Listed corporation</li> <li>Trustee-manager of listed BT</li> <li>Responsible person of listed REIT</li> </ul>	Interests or changes in interests in the securities of listed issuer	Within two business days of : <ol style="list-style-type: none"> <li>his appointment as a director/CEO; or</li> <li>an acquisition or disposal of, or a change in his interest</li> </ol>
Director of a listed company incorporated in Singapore	Listed company	Interest or changes in interests in the securities of a related corporation of the listed company	Within two business days of : <ol style="list-style-type: none"> <li>his appointment as a director of the listed company; or</li> <li>an acquisition or disposal of, or a change in his interest in the securities of the related corporation.</li> </ol>
Substantial shareholder / unitholder of listed issuer	<ul style="list-style-type: none"> <li>Listed corporation</li> <li>Trustee-manager of listed BT</li> <li>Responsible person for, and trustee of, listed REIT</li> </ul>	Changes in percentage level of interests in voting shares/units of listed issuer	Within two business days of him becoming aware: <ol style="list-style-type: none"> <li>that he is a substantial shareholder/unitholder;</li> <li>of a change in percentage level of his interest in the listed issuer (while still remaining as a substantial shareholder / unitholder); or</li> <li>that he has ceased to be a substantial shareholder / unitholder.</li> </ol>

Reporting Person	Notification obligations		
	Notification made to	Types of interests to be disclosed	Time period for disclosure to be made
Registered holder of voting shares/units in listed issuer	Person who has a deemed interest in the voting shares/units held by him	Acquisition or disposal of the voting shares / units	Within two business days of the acquisition or disposal
Shareholder of an unlisted <ul style="list-style-type: none"> <li>i. trustee-manager of a listed BT; or</li> <li>ii. responsible person of a listed REIT</li> </ul>	<ul style="list-style-type: none"> <li>• Trustee-manager of listed BT</li> <li>• Responsible person for listed REIT</li> </ul>	Changes in interest in the voting shares of the trustee-manager / responsible person	Within two business days of becoming aware of his interest in the trustee-manager / responsible person reaching, crossing or falling the specific thresholds of 15%, 30%, 50% and 75%.
Trustee-manager of a listed BT /responsible person for a listed REIT	Securities market	Interests or changes in interests in the securities of the listed BT/REIT	Announce its acquisition or disposal of interests in securities of the listed BT/REIT via SGXNet announcement within one business day.
<ul style="list-style-type: none"> <li>• Listed corporation</li> <li>• Trustee-manager of listed BT</li> <li>• Responsible person for listed REIT</li> </ul>	Securities market	Notification forms received from directors / CEOs, substantial shareholders / unitholders and shareholders of unlisted trustee manager / responsible person	Disseminate the completed form via SGXNet announcement within one business day of the receipt of the form.

**ANNEXURE 2**

Section 4 of SFA

Subsections	Similar provision in CA
(1) Subject to this Section, person has an interest in securities if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities.	N/A
(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is, or is capable of being made, subject to restraint or restriction.	N/A
(3) Where any property held in trust consists of or includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those securities.	Section 7(2) of CA.
(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security and:-  (a) The corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person; or  (b) A person has a controlling interest in the corporation.  That person shall be deemed to have an interest in that security.	Section 7(4) of CA.
(5) or the purposes of subsection (5), a person is an associate of another person if the first-mentioned person is:-  (a) A related corporation of the second-mentioned person;  (b) A person in accordance with whose directions, instructions or wishes that the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);  (c) 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 second-mentioned person in relation to that security;	Section 7(5) of CA.

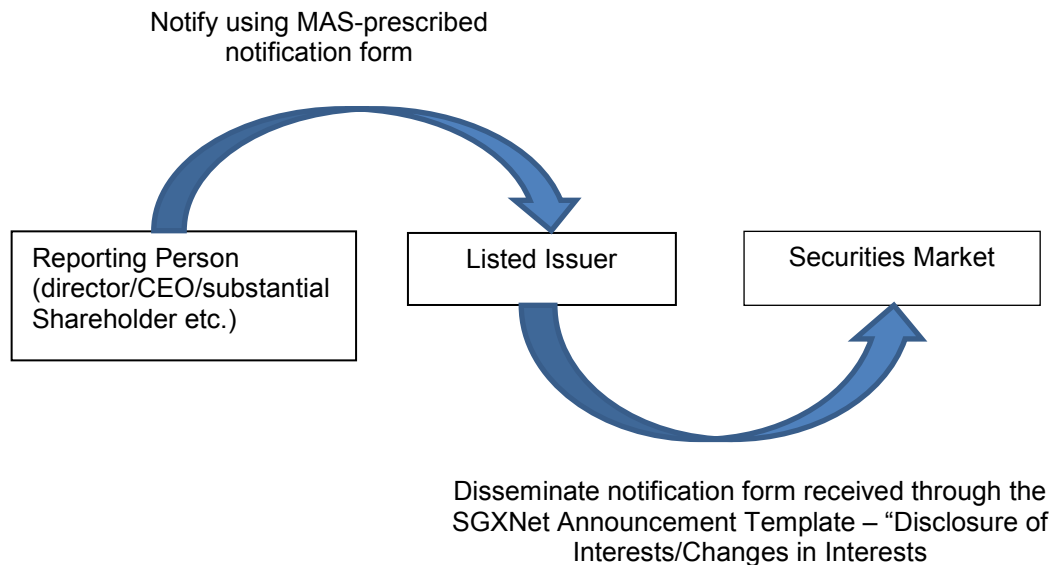


<p>(d) A corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or</p> <p>(e) A corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.</p>	
<p>(6) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:</p> <p>(a) Where he has entered into a contract to purchase a security;</p> <p>(b) Where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;</p> <p>(c) Where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not; or</p> <p>(d) Where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.</p>	Section 7(6) of CA.
<p>(7) A person shall be deemed to have an interest in a security if that security is held jointly with another person.</p>	Section 7(7) of CA.
<p>(8) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.</p>	Section 7(8) of CA.
<p>(9) There shall be disregarded –</p> <p>(a) An interest in a security if the interest is that of a person who holds the security as bare trustee;</p> <p>(b) An interest in a security if the interest is that of a person</p>	Section 7(9) of CA.

<p>whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;</p> <p>(c) An interest of a person in a security if that security is an interest held by him by reason of his holding a prescribed office;</p> <p>(d) An interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap 50); and</p> <p>(e) A prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as may be prescribed.</p>	
<p>(10) An interest in a security shall not be disregarded by reason only of:-</p> <p>(a) Its remoteness;</p> <p>(b) The manner in which it arose; or</p> <p>(c) The fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.</p>	<p>Section 7(10) of CA.</p>

ANNEXURE 3

The notification process is depicted in the flowchart below:



Reporting persons are required to give notice using only notification forms which are prescribed by MAS. The notification forms are available for download on the MAS' internet website, which can be accessed at <http://www.mas.gov.sg> ("Regulations and Financial Stability" 4 "Regulations, Guidance and Licensing" 4 "Securities, Futures and Fund Management" 4 "Forms" 4 "Disclosure of Interests").

Listed issuers are required to disseminate the notification forms received through the SGXNet Announcement Template — "*Disclosure of Interests/Changes in Interests*" (i.e. Form 7). The SGXNet Announcement Template can only be accessed and submitted via the SGXNet internet website, <http://www.sqxnet.sqx.com>.

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