

# MOF, Acra accept proposals that make it harder to buy out minority shareholders in an offer

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FUTURE compulsory acquisitions by controlling shareholders could soon be tougher, as the Ministry of Finance (MOF) and the Accounting and Corporate Regulatory Authority (Acra) have accepted proposed amendments to the Companies Act – closing a well-used loophole.

Observers said the proposed amendments are “fairer” to minority shareholders, especially when shareholders are faced with low-ball privatisation offers.

The Companies Act – specifically Section 215 – allows an offeror to exercise the right of compulsory acquisition once it obtains at least 90 per cent of a target company’s shares that it and its related companies do not already own.

As an example, an individual owning 50 per cent of a company would have to acquire 90 per cent of the remaining 50 per cent of all shares, in order to exercise this right. That would work out to an effective control of 95 per cent of all shares.

To get around this rule, individuals who are controlling shareholders of listed companies often set up a special purpose vehicle (SPV). The SPV then makes the offer, and the individual accepts the SPV’s offer. Thus, the controlling shareholder can make his or her shares count towards the 90 per cent acceptance threshold.

This makes it easier for the SPV to cross the 90 per cent acceptance threshold, said Robson Lee, a partner at Kennedys Legal Solutions.

To plug this loophole, the authorities had proposed amending the Companies Act. A public consultation was launched, running from Jul 20, 2020 to Aug 17, 2020.

The consultation also included proposals on digital meetings and digitalisation. Most have been accepted, and the next step would be for these proposed amendments to be tabled in Parliament. The timeline for this is uncertain.

Based on the summary of responses to the consultation, the following are the shareholders whose shares would in future be excluded from the computation of the 90 per cent threshold:

- A person who is likely to, or under an obligation to, act in accordance with the directions and wishes of the individual behind the offer;
- An entity controlled by the individual behind the offer;
- Close relatives of the individual behind the offer, such as his or her spouse, children (including adopted children and step-children), parents and siblings;
- A person with some power of instruction over the individual behind the offer, as well as an entity controlled by such a person

There was also a proposal to exclude from the count any shares held by a person who is a party (or is a nominee of a party) to a share acquisition agreement with the individual behind the offer.

But this proposal was not accepted.

Also, the authorities have taken in feedback to set the shareholding threshold to establish control of an entity at 50 per cent – instead of the 30 per cent originally proposed. This will be in line with similar concepts in the Companies Act and the Singapore Code on Take-overs and Mergers, said MOF and Acra.

The proposed amendments will make it fairer and more equitable for minority shareholders in a privatisation exercise, said Lee, who is also the head of legal affairs at investor watchdog Securities Investors Association (Singapore).

He said: “For a long time, minority shareholders who refuse to accept a low-ball offer are compulsorily forced to accept when Section 215 is applied by the SPV offeror, when the 90 per cent threshold is crossed...

“Once the proposed amendments are legislated, management-controlling shareholders who wish to take a listed company private cannot game the system by using an SPV to mount a takeover, and subsequently forcing dissenting minority shareholders to accept a low-ball offer that may not be commensurate with the true market value of the listed company and/or its foreseeable good prospects.”

Mak Yuen Teen, an associate professor at the National University of Singapore Business School, also supported the amendments, saying they will provide better protection for minority investors. On the authorities’ modifications, the corporate governance watcher

found them reasonable.

“Regulators need to monitor compulsory acquisitions closely, to ensure that those wanting to compulsorily acquire do not skirt around the rules,” added Prof Mak.

Head of Asia research at investment firm United First Partners, Justin Tang, however, pointed out that the bar to establish control is higher than originally proposed.

“This could potentially pose an issue in contentious acquisitions,” Tang said.