What to Watch Out for After a Delisting

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While delisting brings about lower compliance costs and less public scrutiny, companies should nevertheless take heed of critical challenges and best practices post-delisting.

Singapore has seen a net decrease of listed entities in the last decade.

From 2009 to 2019, there were 302 delistings, compared to 279 new listings of Singapore and foreign companies on Singapore Exchange (SGX). The chart, "Number of Companies listed on the SGX" shows the decline in the net number of companies for the past five years.

SMRT Corp, OSIM, Eu Yan Sang, M1 and BreadTalk are some examples of well-known local companies which have delisted in recent history. These were a result of privatisation exercises by controlling shareholders and financial investors – such privatisations will be the focus of this article.

Companies may also be required to delist by SGX because of non-compliance with listing rules or financial irregularities. Delistings may also result from mergers of listed entities as companies consolidate.

Delistings in Singapore

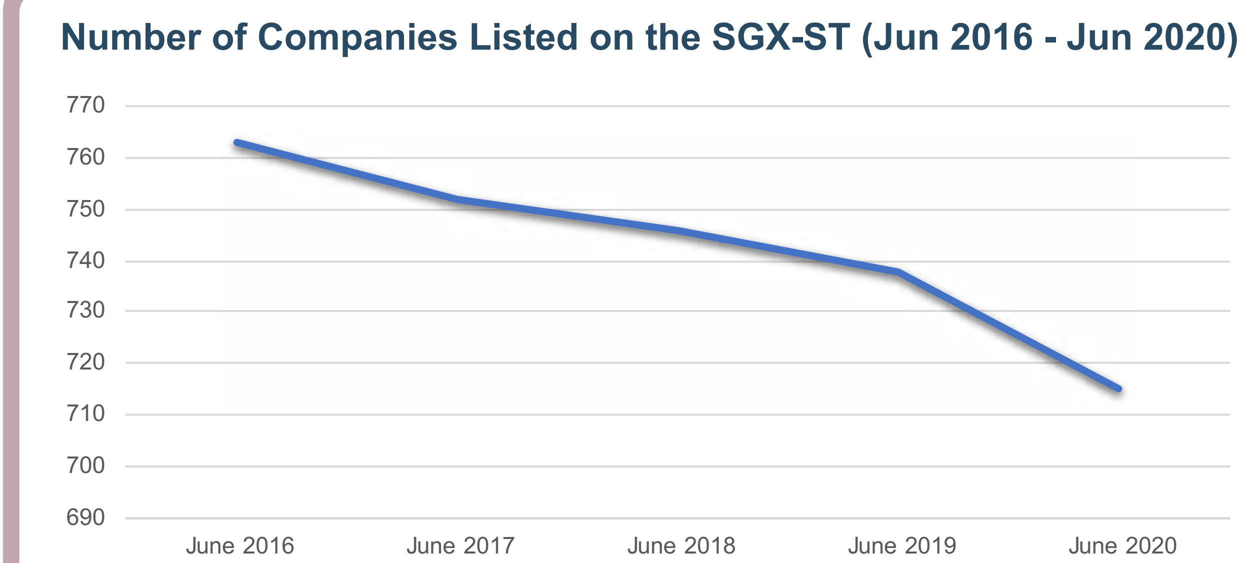
The route to delisting can take three general forms: (1) a general offer under the Singapore Code on Take-overs and Mergers (Code); (2) a delisting proposal accompanied by a cash exit offer which requires the approval of 75 per cent of independent shareholders; or (3) a scheme of arrangement which needs to be approved at a court-ordered meeting of the shareholders by a majority in number representing three-fourths in value of the shareholders present and voting.

Several factors affect the selection of forms for the delisting:

- The pre-offer shareholding of the controlling shareholders and their concert parties.
- The level of public float.
- The trading pattern and market prices of the listed company's securities.
- The leverage ratio, cash level and value of the listed company's assets.
- Whether the offeror wants to obtain 100 per cent control of the listed company.

The increasing trend in privatisation-driven delistings can generally be attributed to attractive valuations for offerors, availability of private capital partners and a decreased need to access the public capital markets for fundraising.

A company looking to transform or grow its businesses might also consider itself better able to do so while delisted. This is particularly in a yield-



Source: SGX

hungry environment where the pressure to pay dividends are increased from institutional and retail investors alike. Many of the Straits Times Index (STI) constituent stocks now comprise yield-related stocks. As such, companies which are entering into the growth phase of their corporate development may turn towards long-term capital partners for their funding needs instead.

Retail shareholders focused on the short term may also oppose pushing forward with the business transformation plans. Shareholders of M1, Keppel and Singapore Press Holdings, for example, in 2018 made an offer for the shares in M1 as they had noted intensifying competition and industry disruption and saw a need to increase control to push forward business transformation plans. The anticipated business transformation could be complex and might take several years, during which time dividends could be affected.

Delistings in this respect are not in themselves a worrying trend. It is indicative of a healthy and functional capital markets system, as companies decide when to access and exit the public and private capital markets.

ARA Asset Management is one such example. Having grown significantly since its privatisation in April 2017, it was recently reported to have declared its intention to explore a dual stock market listing. Another example is OSIM, which was delisted from the SGX in August 2016. The parent company V3 subsequently raised up to S$500 million from private equity firm KKR in December 2018 to finance its next phase of growth.

What comes next after delisting?

There are challenges and matters to watch out for after a delisting.

Governance framework – Once a company is delisted, its directors must continue to ensure that the governance framework and "good habits" built up as a listed company remain in place. Such measures can include:

- Maintaining a robust system of internal controls over financial, compliance, operational and IT matters.
- Adhering to internationally recognised standards of financial reporting.
- Having "checks and balances" in place, including retaining suitable independent directors on the board of directors, and having a professional management team that is independent of the controlling shareholders of the company.

Even though the company ceases to have access to public capital after delisting, the maintenance of a good governance framework could provide confidence to incoming institutional lenders, private capital providers and investors, especially if the company intends to pursue a trade sale or a future relisting.

Business rationalisation – Business rationalisation often is a key purpose of the delisting exercise. This could include business restructurings, costs optimisation, assets repositioning and enhancing human capital efficiency.

Directors should always be mindful that notwithstanding a company may be delisted, there is still a need to comply with various legislation when undertaking these business rationalisation exercises. Although there is no longer a need to announce such restructuring exercises publicly, companies should note that there is often scrutiny of recently delisted companies in relation to their corporate actions shortly after delisting.

Post-delisting corporate actions should be consistent with the statements made by the offerors in the offer document. Companies must continue to engage with all relevant stakeholders, including employees, lenders, customers and suppliers, to ensure a successful outcome.

Funding rationalisation – Delisting exercises can often be costly to the offeror, especially if the exit offer is at a significant premium. These offers are generally at least partially financed by banks or other institutional lenders. Such acquisition financing loans usually are required to be repaid within one to three years.

Offerors must consider these as they plan for the delisting exercise to avoid being forced to sell assets piece-meal or lower than their full value.

That said, the sale of assets to deleverage may not be contradictory to the growth of a company. For example, a delisted company might have moved towards an asset-light model as part of business transformation. Selling non-core assets or seeking partners to share ownership interests in its assets would then unlock the value of underlying businesses and assets, free up capital and resources and allow the company to focus on its core business objectives.

Funding rationalisation may also include the pushing down of acquisition financing to the operating company level. Offerors should consider the availability of retained earnings and capital reduction options as part of the refinancing plan, especially their tax implications.

Obtaining further access to capital – If a company seeks to delist to achieve its business transformation plans, it will often require additional funding post-delisting. The delisted firm could be restricted in its fundraising capabilities. The company does not receive any proceeds from the offer made for the delisting, and any funding of its business transformation plans will be subject to various factors.

Directors should consider:

- Shareholders' ability and willingness to provide additional capital injections to the company to fund growth / transformation plans.
- External financing from financial institutions and private capital providers, which may also be subject to corporate or personal guarantees given by family / promoter shareholders.
- Potential investment by strategic or financial investors for a majority stake.
- The use of hybrid debt-equity instruments, which are increasingly popular amongst private equity investors.

Maintaining access to shareholders – A delisting might not necessarily give rise to 100 per cent ownership. It is possible that a company could receive the necessary approvals for delisting and yet remain a delisted public company with minority shareholders continuing to hold shares in the company. CK Tang, for example, was delisted in 2009, but when a general offer was made for its shares again in 2016 (as a delisted company), some 500 shareholders with less 2 per cent of its shares continued to reject the offer.

In such a situation, directors ought to be mindful of not disenfranchising minority shareholders. Minority oppression laws may apply when the actions of the majority shareholder could be alleged to have unfairly prejudiced the rights of the minority shareholders. Directors should be aware that, for any subsequent post-delisting offers, the Code will continue to apply to Singapore incorporated public companies, including when it is not listed.

Finally, directors should always note that they owe fiduciary duties to the company under Singapore law, notwithstanding that the company has been delisted. They thus have to continue to act honestly, in good faith and in the best interests of the company. ■

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