SECTION 1 BACKGROUND

A. Brief History

17.1.1 Until 1973, there was no statutory regulation of the Stock Exchange of Singapore ('SES') (now Singapore Exchange or 'SGX'). In that year the Securities Industry Act was enacted. For the most part, however, the SES was self-regulating. This changed dramatically in 1985. In December 1985, the SES and the Kuala Lumpur Stock Exchange were closed for three days after the collapse of Pan-Electric Industries. The Pan-El crisis precipitated a thorough overhaul of the regulatory framework. The Securities Industry Act 1973 was repealed and replaced by the Securities Industry Act 1986. From that point, there was a general tightening up of securities regulation up to the Asian financial crisis in 1997. Since then, there have been changes to the regulatory balance of the market, culminating in the enactment in 2001 of the Securities and Futures Act (Chapter 289, 2002 Revised Edition), which came into force in various stages in 2002. Amendments since then have largely been to take into account market developments.

B. Present Structure

17.1.2 Under the present regulatory scheme, the Monetary Authority of Singapore ('MAS') supervises the securities industry. It has less oversight of an exchange's disciplinary procedures and rule changes. The day to day supervision of the market is still left with the SGX, which is now a for-profit company. The internal management of the SGX is regulated by its constitution. Trading in securities is regulated by the SGX Rules. The criteria for listing and the obligations of listed companies are found in the SGX Listing Manual.

C. Legislation

17.1.3 In addition to the Securities and Futures Act, the other major piece of legislation impinging on securities regulation is the Companies Act (Chapter 50, 2006 Revised Edition). This makes provision for matters such as the formation of audit committees for publicly listed companies. Provisions governing the offer of securities were found in the Companies Act but these were moved to the Securities and Futures Act, when that came into force in 2002.

17.1.4 Besides the two major Acts, the securities industry is also regulated by subsidiary legislation. The Companies Regulations and Securities and Futures Regulations are promulgated under the respective Acts. In practice, other non-statutory rules also apply. Foremost among these is the Singapore Code on Take-overs and Mergers ('Take-over Code', see Section 8 below), a non-statutory code enforced by the Securities Industry Council ('SIC', see Section 17.2.6 below), as well as the Code on Collective Investment Schemes.

D. Securities Markets in Singapore

17.1.5 SGX maintains two boards, the SGX Main Board and Catalist (formerly 'SGX SESDAQ'). SGX SESDAQ was established in 1987 to enable companies that did not meet the criteria for the SGX Main Board listings to raise money from the public. In 2008, this was replaced by Catalist, which is the first sponsor-supervised listing platform in Asia.

17.1.6 As of August 2014, there were 770 domestic and foreign companies listed on the main board and on Catalist. Total market capitalization was S$1017 billion. Total turnover in August 2014 for the mainboard and the Catalist was about S$21 billion.

SECTION 2 REGULATORY AUTHORITIES

A. The Monetary Authority of Singapore

17.2.1 The Monetary Authority of Singapore ('MAS') is Singapore's de facto central bank. It is established under the Monetary Authority of Singapore Act. In addition to supervising the securities and futures market, MAS also oversees the banking and insurance industries.

1. MAS is the relevant licensing authority

17.2.2 MAS is the licensing authority for holders of a capital markets services licence, who are permitted to carry on a business in the regulated activities of dealing in securities, trading in futures contracts, leveraged foreign exchange trading, fund management, advising on corporate finance, securities financing, real estate investment trust management, providing custodial services for securities, or providing credit rating services. MAS used to license the individual representatives of such persons but today firms only have to notify them of its representatives.

2. MAS and its powers

17.2.3 MAS has the power to require production of books and information by an approved securities exchange, a clearing house, a trade repository, a holder of a capital markets services licence or its representatives, and indeed any person if it relates to a matter under investigation. MAS may require a holder of a capital markets services licence or an exempt person to disclose the names of persons behind any acquisition or disposal of securities or futures contracts. MAS may also require the person to disclose the nature of the instructions given regarding the acquisition or disposal of securities.

17.2.4 In addition to its powers to obtain information from the securities exchange, clearing house, trade repository and licensed persons, MAS may also require a person who has acquired, held or disposed of securities to disclose whether he did so as a trustee or agent of another person, and if so, who that person was and what instructions were given. It has power to order disclosure of information by officers of listed companies where it is necessary to prohibit trading in securities. If necessary, MAS can order investigations to determine if there has been a contravention of the law, perform its duties under the Act or to ensure regulatory compliance.

17.2.5 MAS may issue directions, for example, to a securities exchange for ensuring fair and orderly markets, ensuring the integrity and proper management of systemic risks in the markets, and where it is in the public interest to do so. MAS also has the power to carry out civil enforcement actions where it can obtain treble damages from contravening persons (see Section 17.7.3 below).

B. The Securities Industry Council

17.2.6 The Securities Industry Council ('SIC') was established under section 3 of the Securities Industry Act 1973 and continues to exist as if constituted under section 138 of the present Securities and Futures Act. Its main purpose is to oversee the administration of the Singapore Code on Take-overs and Mergers ('Take-over Code', see Section 8 below). The SIC consists of such representatives of business, government and the MAS as the Minister may appoint. The SIC enforces the Code where a take-over or merger occurs. It issues rulings on the interpretation of the Code and lays down the practice to be followed by the parties concerned in a take-over or merger.

SECTION 3 CORPORATE FUNDRAISING

A. Listed Companies

17.3.1 Any public company that desires to have its shares listed on the SGX may apply for a listing either on the SGX Main Board or on Catalist (formerly SGX SESDAQ). The criteria for listing are found in the SGX Listing Manual.

1. Obligation to comply with terms of listing manual

17.3.2 Once a company is listed on the SGX, it is obliged to comply with the terms of the listing manual. The SGX supervises the activities of listed companies by virtue of its continuing listing requirements and corporate disclosure policy. This obligation arises by virtue of the listing undertaking signed by all listed companies when the SGX agrees to quote their securities. SGX may also apply to court to enforce those rules, under section 25 of the Securities and Futures Act.

17.3.3 The listing rules are not statutory in nature. They are made by the SGX itself, subject to any requirements that are prescribed by the MAS under the Securities and Futures Act. A contravention of the SGX's listing rules does not presently lead to a fine. SGX may punish in various other ways such as through reprimanding a person or de-listing a company.

B. Corporate Securities

17.3.4 "Securities" for the purposes of the Securities and Futures Act means:

a. debentures or stocks issued or proposed to be issued by a government;
b. debentures, stocks or shares issued or proposed to be issued by a corporation or unincorporated body; c. any right or option or derivative in respect of such debentures, stocks or shares;
d. any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
    i. the value or price of any such debentures, stocks or shares;
    ii. the value or price of any group of any such debentures, stocks or shares;
    or iii. an index of any such debentures, stocks or shares; or
e. any unit in a "collective investment scheme";
f. any unit or derivative of a unit in a "business trust"; or
g. such other product or class of products as the MAS may prescribe.

1. Exclusion of certain contracts

17.3.5 The definition specifically excludes futures contracts which are traded on a futures market, bills of exchange, promissory notes and certificates of deposit issued by banks or finance companies and such other product or class of products as the MAS may prescribe.

2. Definition of a debenture for the purposes of prospectus registration

17.3.6 Under the Act, for the purposes of prospectus registration (where "securities" has a narrower meaning and covers debentures, shares and units of debentures and shares), a debenture is "any debenture stock, bond, note and any other debt securities issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer", with some specified exceptions. Cases have established that a debenture means a document which either creates a debt or acknowledges it. For the purposes of regulation, a debenture is a medium to long-term debt security created by a company. Bonds and notes are examples of debentures.

3. Types of shares

17.3.7 Shares are basically divided into two types: voting shares and non-voting shares. Non-voting shares usually carry a fixed preferential rate of dividend, and also priority in a winding up, although its exact terms are determined by contract.. The rights of ordinary shares are set out in the Companies Act, although in the case of listed companies this could be supplemented by the listing

rules of a securities exchange. ‘Covered’ or ‘structured’ warrants are options over issued shares giving the holder the right to buy a specified number of shares in a particular company at a pre-determined price from the writer of the warrant.

17.3.8 ‘Collective Investment Schemes’ cover a multitude of other schemes that business entities employ to raise money from the public. The term is defined to mean:

a. an arrangement in respect of any property —
    i. under which —
        A. the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
        B. the property is managed as a whole by or on behalf of a manager; and
    ii. under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and
    iii. the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —
        A. to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of exercise of the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
        B. to receive sums paid out of such profits, income, or other payments or returns; or
    iv. an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the MAS as a collective investment scheme by notice published in the Gazette.

17.3.9 There is a long list of exclusions. In practice, unit trusts and a growing number of real estate investment trusts, constitute almost all the regulated collective investment schemes in Singapore. MAS has consulted on whether the requirements in (i) (B) and (ii) above should be in the alternative: Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets: 21 July 2014.

SECTION 4 SECURITIES OFFERINGS

A. Prospectus Requirements

17.4.1 The issue of a prospectus is necessary when there is an offer of securities that is not an excluded or exempted offer. In addition, a company that issues units in a collective investment scheme or business trust must also issue a prospectus. In Singapore, under the Securities and Futures Act all offers of securities are prima facie subject to the prospectus requirements of the Securities and Futures Act unless the offer is excluded or exempted from the prospectus requirements.

1. The importance of a prospectus

17.4.2 A prospectus is a document designed to inform the investing public of the business, assets and nature of the company, in order to enable an investor to make an informed decision whether to subscribe for or purchase the securities. All prospectuses issued by a company must be registered with the MAS before they are circulated. The MAS may, after giving the person who lodged the prospectus an opportunity to be heard, decline to register the prospectus for certain specified reasons, including if:

a. It contains any statement or matter that is misleading;
b. It does not comply with all the requirements of the Act; or

c. It appears not to be in the public interest to do so.

17.4.3 Any person aggrieved by the refusal of the Registrar to register a prospectus may apply to the Minister of Finance within 30 days. The Minister's decision is final.

17.4.4 A prospectus must be signed by all the directors and proposed directors (or by their authorised agents). A prospectus must be dated; no shares or debentures may be issued on the basis of a prospectus after 6 months from its date of issue. No one can contract out of the prospectus requirements prescribed in the Securities and Futures Act. The MAS may, however, exempt a person from any requirements of the Securities and Futures Act pertaining to the form or content of a prospectus if compliance with the requirements is unduly burdensome.

2. The contents of a prospectus

17.4.5 A prospectus, in the case of an initial public offering of shares of a listed company, must contain the documents and information prescribed in the 5th Schedule of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005, which are largely consistent with the International Organisation of Securities Commission (IOSCO) International Disclosure Standards for Cross Border Offerings and Initial Listings by Foreign Issuers. Section 243 of the Securities and Futures Act also provides that issuers and their advisers must disclose all information that investors and their professional advisers would reasonably require to make an informed assessment of the relevant securities. If the company seeks a listing on the stock exchange, the prospectus must also comply with the Listing Rules.

17.4.6 Advertisements calling attention to an offer of shares or debentures are prohibited unless they contain only very restricted information or unless permitted by the relevant provisions of the Securities and Future Act. These provide the conditions under which there can be publicity concerning the offer before and after the prospectus has been registered, and also specific exceptions for book-building, road shows and research reports.

3. Consequences of Issuing a Misleading Prospectus

17.4.7 If there is any false or misleading statement or non-disclosure of a material fact in a prospectus, those persons (see Section 17.4.8 below) that were involved in the preparation of the prospectus will be liable to prosecution. A person may escape criminal liability only if:

a. the statement or non-disclosure was not materially adverse from the point of view of the investor; or
b. he had made all inquiries (if any) that were reasonable in the circumstances and after doing so had reasonable ground to believe that the statement was true or not misleading (this is also a defence to civil liability); or
c. he had reasonably relied on information given to him by someone other than his employee or agent and (where the person is a corporation) its director (this is also a defence to civil liability).

17.4.8 In addition to criminal liability, section 254 of the Securities and Futures Act provides for civil liability in respect of false or misleading statements and non-disclosures of material facts. If there is a false or misleading statement or a non-disclosure of a material fact in any prospectus, then the following persons are liable to pay compensation to all persons who subscribe for or purchase shares in the corporation on the faith of that prospectus in respect of any loss or damage sustained by reason of the false or misleading statement or non-disclosure:

a. The person making the offer or invitation;
b. If the offeror is an entity, the directors or equivalent persons of the entity;
c. If the offeror is an entity, and the entity is also the issuer, the persons who were named in the prospectus with their consent as proposed directors or equivalent persons of the entity;
d. Where the issuer is controlled by the offeror, one or more related parties of the offeror, the issuer, the director or equivalent persons of the issuer and persons who were named in the prospectus with their consent as proposed directors or equivalent persons of the issuer;

e. An issue manager to the offer of securities name in the prospectus with his consent (for criminal liability this is only if the misstatement was made intentionally or recklessly);
f. An underwriter (but not a sub-underwriter) named in the prospectus with his consent (for criminal liability this is only if the misstatement was made intentionally or recklessly);
g. A person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement in the prospectus is based, but only in respect of the inclusion of that statement (for criminal liability this is only if the misstatement was made intentionally or recklessly);
h. Any other person who made the false or misleading statement or omission but only in respect of the inclusion of the statement of the omission to state the information or circumstance (for criminal liability this is only if there is deceit). If the misrepresentation is made negligently, there may be recovery of damages in negligence if the investor can establish that a duty of care was owed to him. The persons liable will usually be the directors of the company who authorised the issue of the prospectus or the company itself. Experts who made inaccurate statements in the prospectus may also be liable.

A. Exemptions from the Requirement to Issue a Prospectus

17.4.10 The MAS may exempt a person from any requirements of the Act pertaining to the form or content of a prospectus if compliance with the requirement is unduly burdensome. The MAS also has power to dispense with the issue of a prospectus altogether in the case of an offer or invitation or a class of offers or invitations to which that offer or invitation belongs.

17.4.11 Under the Securities and Futures Act, all offers of securities must, prima facie, be accompanied by a prospectus unless the offer is excluded or exempted from the prospectus requirements. The Securities and Futures Act provides for certain situations in which a prospectus may be dispensed with such as:

a. An issue or transfer of securities for no consideration;
b. Small personal offers where the total amount raised from such offers within any 12-month period does not exceed $5 million or such other amounts as may be prescribed by the MAS;
c. An offer to no more than 50 persons within any period of 12 months and under certain conditions; d. An underwriting agreement relating to securities;
e. certain offers of securities of an entity made to existing members or debenture holders of that entity; f. A compromise or scheme of arrangement in a winding up or a takeover scheme;
g. An offer to qualifying persons like employees of the corporation or its related corporations under the specified conditions;
h. An offer to institutional investors;
i. An offer to specified persons, including accredited investors.
j. An offer of securities by a company whose securities are already listed for quotation, whether by means of a rights issue or otherwise. An offer information statement in the form prescribed in the Sixteenth Schedule of the Securities and Futures (Offers of Investment) (Shares and Debentures) Regulations 2005 has to be lodged with the MAS. This statement is treated as a prospectus for the purposes of liability under the Securities and Futures Act;
k. An offer of international debentures. The debentures must be issued by a corporation incorporated outside Singapore whose shares are listed on a recognized stock exchange. The debentures must be denominated in foreign currency with a face value equivalent to US$5,000 or its equivalent in another currency; or
l. An offer of debentures by the government or an international financial institution of which Singapore is a member.

17.4.12 The MAS may revoke any exemption it considers necessary in the public interest or for the protection of investors.

A. Continuing Disclosure Requirements

1. The importance of price-sensitive information

17.5.1 Once a company is listed, it becomes subject to the jurisdiction of the SGX. Timely disclosure of price-sensitive information is the cornerstone of SGX's regulatory policy. To ensure that such information is released to the market on a timely basis, listed companies are obliged to comply with the rules relating to corporate disclosure in Chapter 7 of the SGX Listing Manual and SGX's Corporate Disclosure Policy in Appendix 7.1 of the of the SGX Listing Manual.

2. Non-exclusive list of situations requiring immediate public announcements

17.5.2 Rule 703 requires a listed company to keep its shareholders and the SGX informed of any material information relating to the group's activities in order to avoid the establishment of a false market in its securities or that might be price-sensitive. Paragraph 8 of Appendix 7.1 provides a non-exclusive list of matters which are considered to require immediate public announcement:

1. A joint venture, merger or acquisition;
2. The declaration or omission of dividends or the determination of earnings;
3. Firm evidence of significant improvement or deterioration in near-term earnings prospects;
4. A sub-division of shares or stock dividends;
5. The acquisition or loss of a significant contract;
6. The purchase or sale of a significant asset;
7. A significant new product or discovery;
8. The public or private sale of a significant amount of additional securities;
9. A change in effective control or a significant change in management;
10. A call of securities for redemption;
11. The borrowing of a significant amount of funds;
12. Events of default under financing or sale agreements;
13. A significant litigation;
14. A significant change in capital investment plans;
15. A significant dispute or disputes with sub-contractors, customers or suppliers, or with any parties;
16. A tender offer for another company's securities;
17. A valuation of real assets that has a significant impact on the financial position and / or performance.

17.5.3 The continuous disclosure requirements in the listing rules are given statutory backing by Section 203 of the Securities and Futures Act. Under this section, non-disclosure attracts both civil and criminal liability, depending on the state of mind of the disclosing entity.

A. Disclosure of Substantial Shareholdings

17.5.4 A listed company must maintain a register of substantial shareholders. The register of substantial shareholders will contain the names of the company's substantial shareholders together with details of these shareholders' interest in the shares of the company. A substantial shareholder is a person who has an interest in 5% or more of the voting shares of a company. This includes both natural persons (whether citizens or non-citizens) and artificial persons, even if they are not resident or carrying on business in Singapore.

17.5.5 The concept of an 'interest' in shares or securities goes beyond being registered as the holder. It includes beneficial ownership through nominees or a trust as well as control over voting or disposition of a share.

17.5.6 Failure to give notice to the company of a person's acquisition of, or changes in, substantial shareholdings is an offence. In addition, a Court may, on the application of the Minister, make certain orders including, restraining the defaulting shareholder from

dealing in the shares in which he has an interest, restricting his voting rights or entitlement to dividends, or selling the shares in question.

B. Register of Directors' Shareholdings

17.5.7 The Companies Act requires directors of all companies to notify the company of their interests in its securities (which is a wider concept than voting shares). All companies must maintain a register of directors' shareholdings. The register is open to inspection by the public and must be produced at each AGM. Changes in a director's interests have to be notified within 2 days. With the coming into effect of the Companies (Amendment) Act 2014, even chief executive officers who are not directors of unlisted companies will have to disclose their interests in certain securities.

17.5.8 In the case of listed entities, the Securities and Futures Act requires both directors and chief executive officers of corporations listed on the SGX to notify their companies of their interests in securities. The Securities and Futures Act also requires a listed company which has been notified by a director, chief executive officer or substantial shareholder to, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice, announce or inform the SGX of the details of such notifications received.

SECTION 6 FRAUD, MARKET MANIPULATION AND INSIDER TRADING

A. Insider Trading

17.6.1 The most important of the provisions regulating insider trading is Section 219 of the Securities and Futures Act, which adopts an 'information-connected' approach towards insider trading. Previously, a 'person-connected' approach was used, in that a series of connections between a body corporate and an insider, and in the case of a person not connected with the company, ie a tippee, an arrangement or association between an insider and that tippee for the communication of information, had to be established.

B. Elements of the Prohibition

17.6.2 The prohibited act is proved by:

a. Possession of information concerning securities that is not generally available and materially price-sensitive; and b. Subscribing, purchasing or selling those securities or procuring another person to subscribe, purchase or sell those securities or communicating the information where the securities are listed on an exchange and the insider knows, or ought reasonably to know, that the tippee would be likely to subscribe, purchase or sell the securities or procure another person to do so.

C. Proof of Knowledge

17.6.3 Section 219 of the Securities and Futures Act also provides that it must be shown that the insider knew of the nature of the information that was possessed although Section 220 of the Securities and Futures Act specifically states that there is no need to prove an intention to use that information. Connected persons like directors control the mechanisms for disclosure in the company, and may choose to self-deal based on undisclosed information. Section 218 of the Securities and Futures Act reverses the burden of proof in such cases, so that all that need be shown is that they were in possession of inside information. In such an instance, a presumption arises that they knew or ought to have known of the nature of that information when they traded.

D. Defences

17.6.4 It is a defence to any prosecution under section 218 and 219 of the Securities and Futures Act to show that the other party to the transaction knew or ought reasonably to have known of the information before entering into the transaction.

17.6.5 Other formal defences are provided in the Securities and Futures Act, as well as its Regulations. The most important of these is the 'Chinese Wall' defence. The Act provides an exception for corporations and partnerships where despite the attribution of knowledge to a corporation or partnership of the knowledge of its officer or partner respectively, the corporation or partnership will not be found to have breached the insider trading prohibition. The following requirements must be satisfied:

a. the decision to enter into the transaction or agreement was taken by a person other than the officer or partner who was in possession of the information;
b. the corporation or partnership had arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and
c. the information was not communicated and no such advice was given to the decision-maker.

17.6.6 The Securities and Futures (Amendment) Act 2009 has introduced a further requirement that corporate entities take reasonable steps to prevent market misconduct (which includes insider trading) by their employees. Rule 1207 of the SGX-ST Listing Manual also provides that a listed company should state in its annual report whether and how the company has adopted an internal compliance code to provide guidance to its officers with regard to dealings by the company and its officers in its securities. The annual report should also state whether the listed company and its officers dealt in the company's securities during the no-dealing period which commences two weeks before the announcement of the issuer's results for the first three quarters of its financial year or one month before the announcement of the half year or financial year results, as the case may be, and ending on the date of announcement of the relevant results. However, adherence to the guidelines and to any additional internal codes adopted by the company does not provide a defence to an action for insider trading under s 218 and 219 of SFA.

E. False Trading and Market Rigging

17.6.7 This is covered generally by section 197 of the Securities and Futures Act, which prohibits the following activities:

a. Creation of a false or misleading appearance of active trading in any securities on a securities exchange in Singapore with the purpose of so doing, or where the person knew or was reckless as to the effect of his conduct;
b. Creation of a false or misleading appearance with respect to the market for or price of any securities on a securities exchange in Singapore with the purpose of so doing, or where the person knew or was reckless as to the effect of his conduct;
c. Affecting the price of securities by way of purchases or sales that do not involve a change in the beneficial ownership of those securities;
d. Affecting the price of securities by means of any fictitious transactions or devices.

17.6.8 The object of the prohibition is to ensure that the market reflects the forces of genuine supply and demand. For the purposes of section 197 of the Securities and Futures Act, a purchase or sale of securities does not involve a change in the beneficial ownership of securities if the person who had an interest in the securities before the purchase or sale, or a person associated with him, has an interest in those securities after the completion of the transaction.

F. Stock Market Manipulation

17.6.9 Section 198(1) of the Securities and Futures Act provides that a person shall not carry out two or more transactions in securities of a corporation which will have the effect of affecting or maintaining the price of the securities, with intent to induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation.

Section 198(2) provides that a 'transaction' includes the making of offers to buy or sell securities, and invitations to treat.

G. Dissemination of False Information

17.6.10 Section 199 of the Securities and Futures Act prohibits a person from knowingly or recklessly making or disseminating false or misleading information and statements that are likely to induce subscription of or the sale or purchase of securities or which are likely to affect the market price of securities.

17.6.11 Section 200 of the Securities and Futures Act deals with the situation where a person fraudulently induces other persons to deal in securities. The accused must have made or published a statement, promise or forecast that was misleading either recklessly or with knowledge that it was misleading.

17.6.12 Section 202 of the Securities and Futures Act prohibits circulation or dissemination of any statement or information to the effect that the price of any securities of a corporation will rise, fall or be maintained by reason of transactions entered into in contravention of any of the provisions of Sections 197 to 201 of the Securities and Futures Act.

H. Employment of Manipulative or Deceptive Devices

17.6.13 Section 201 of the Securities and Futures Act is a catch-all provision that is designed to prohibit any other form of securities fraud that has not been specifically dealt with in any other section. It prohibits three things:

a. The employment of any device, scheme or artifice to defraud in connection with the purchase and sale of any securities;
b. Engaging in any act, practice or course of business in connection with the purchase or sale of any securities which operates as a fraud or deceit on any person;
c. Making an untrue statement of a material fact or omitting to state a material fact necessary to make statements made not misleading, in connection with the purchase or sale of any securities.

17.6.14 The provision is similar to rule 10b-5, promulgated under the US Securities Exchange Act 1934. The MAS may make regulations specifying the conduct that is prohibited under this section.

SECTION 7 CIVIL AND CRIMINAL LIABILITY

A. Criminal Liability

17.7.1 Criminal penalties in respect of a breach of the insider trading provisions of the Securities and Futures Act are provided for in Section 221 of the Securities and Futures Act. Section 333 of the Securities and Futures Act differentiates between natural persons and corporations in prescribing penalties. A natural person may be fined up to S$250,000 or sent to jail for up to seven years. A corporation may be fined up to twice the maximum amount prescribed for the relevant offence (i.e. S$500,000). In addition, where a corporation or unincorporated association is guilty of an offence under the Securities and Futures Act, any director, executive officer, secretary or similar officer of the corporation or unincorporated association who was knowingly concerned in or party to the commission of the offence shall also be guilty of that offence.

17.7.2 Similar penalties for all the offences in Division 1 of Part XII of the Securities and Futures Act, including market rigging and manipulation, are prescribed by Section 204 of the Securities and Futures Act. Both provisions expressly provide that criminal proceedings shall not be brought against a contravening person where a court has made an order against him for the payment of a civil penalty under Section 232 of the Securities and Futures Act in respect of that contravention.

17.7.3 Division 5 of Part XII of the Securities and Futures Act which came into effect in Nov 2012 now requires that corporate entities take reasonable steps to prevent market misconduct (which includes insider trading) by their employees. But does it by attributing *liability* where there is proof of "consent or connivance" or "neglect" on the part of a corporation. There is also reference to “corporate culture” as one factor to consider s 236B(8)(c).

B. Civil Penalties

17.7.4 Under section 232 of the Securities and Futures Act, the MAS may obtain up to three times the amount of profit made or loss avoided by the contravening person. It is also provided under s 232(3) of the Securities and Futures Act that if a profit or loss avoided cannot be quantified or if there is none, a civil penalty of between $50,000 and $2 million can still be imposed. The Securities and Futures (Amendment) Act 2009 has also empowered the court to disgorge the whole or part of the benefit received by a third party on the application of the MAS or person who has suffered loss.

C. Civil Claims

17.7.5 Section 234, on the other hand, allows persons who have suffered loss when trading contemporaneously with the contravening person (which is calculated by measuring the difference between the price of the securities at which the securities were dealt with in that transaction and their likely price if the contravention had not been committed, except in the case of insider trading, where it is measured against the situation in which the information had been generally available) to seek an order against the contravening person for compensation.

17.7.6 Persons who traded contemporaneously with the contravening person have an independent cause of action that lasts for 6 years. Under this head of liability, the amount that the contravening person is liable for is limited to the profit made or loss avoided by him. In determining whether a person traded contemporaneously with the contravening person, the court takes into account the following factors:

a. the volume of securities of the same description traded between the date and time of the contravention, and the date and time of the dealing in securities;
b. the date and time the contravention, if it was affected by a transaction involving the subscription, purchase or sale of securities was cleared and settled;
c. whether the dealing in securities took place before or after the contravention;
d. whether the dealing in securities took place before or after the information to which the contravention relates became generally known in the case of continuous disclosure and insider trading;
e. such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

SECTION 8 REGULATION OF TAKE-OVER ACTIVITY

A. Take-overs

17.8.1 A take-over occurs when a company or person (the 'Offeror’) acquires voting control of another company (the 'Offeree company’). In Singapore, take-overs are regulated by sections 139 and 140 of the Securities and Futures Act and by a non-statutory code known as the Singapore Code on Take-Overs and Mergers (the ‘Take-over Code’) promulgated under section 139(2) of the Securities and Futures Act.

17.8.2 The Take-over Code is largely based on the United Kingdom’s City Code on Take-Overs and Mergers and is administered by the Securities Industry Council (‘SIC’). In addition, where the Offeree company’s shares are quoted on the SGX Main Board or on the

Catalist (formerly SGX SESDAQ), the provisions of Chapter 11 of the SGX Listing Manual or Section B: Rules of Catalist of the SGX Listing Manual (as the case may be) regarding take-overs must be complied with.

1. Scope of coverage of the Take-over Code

17.8.3 The Take-over Code was drafted primarily with listed companies in mind, but its letter and spirit should be observed in take-overs of unlisted public companies that have more than 50 shareholders and net tangible assets of more than S$5 million. Foreign companies that have a primary listing in Singapore are also subject to the Take-over Code, as are business trusts and REITs. Take-overs of private companies are not covered by the Take-over Code.

2. Possible censures for breach of duties

17.8.4 All Offerors, whether natural or artificial and including foreign corporations, are obliged to comply with both the Securities and Futures Act and the Take-over Code. A breach of the Take-over Code does not of itself attract criminal liability, but the SIC has a wide range of non-statutory sanctions that it can impose upon transgressors, e.g. public censure, director disqualification or suspension from the facilities of the market.

3. Aim of the Take-over Code and the relevant statutory provisions

17.8.5 The aim of the statutory provisions and the Take-over Code is to ensure that sufficient information is provided to shareholders and that the take-over is conducted fairly and in accordance with the proper standard of conduct to be expected in such situations.

B. Offer Announcement

1. Before the board of the Offeree company is approached

17.8.6 There must be absolute secrecy before the announcement of an offer. Before the board of the Offeree company is approached, the responsibility for making an announcement will normally rest with the Offeror or the potential Offeror. The Offeror or potential Offeror must make an announcement if the Offeree company is the subject of rumour or speculation about a possible offer, if there is undue movement in the Offeree company's share price or a significant increase in the volume of share turnover and there are reasonable grounds for concluding that the Offeror or potential Offeror's action directly contributed to the situation or if the Offeror acquires shares in the Offeree company which triggers a mandatory take-over obligation under the Take-over Code.

2. After the board of the Offeree company is approached

17.8.7 After the Offeror has approached the Offeree company, the primary responsibility for making an announcement will normally rest with the board of the Offeree company. The board of the Offeree company must make an announcement in, amongst others, the following situations:

a. when the board of the Offeree company receives notification of a firm intention to make an offer from the Offeror; and b. when, following an approach, the Offeree company is the subject of rumour or speculation about a possible offer.

3. Contents of the offer announcement

17.8.8 The offer announcement must set out the identity of the Offeror, the terms of the offer, the conditions of the offer (if any) and such other information as prescribed by the Take-over Code. A holding announcement that talks are taking place (without naming the potential Offeror) can be made if the announcement of a firm intention to make an offer is premature or inappropriate.

C. Mandatory Offers

17.8.9 An obligation to make a mandatory offer is triggered when:

a. a person acquires shares in the Offeree company which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or
b. a person who, together with persons acting in concert with him, holds at least 30% but not more than 50% of the voting rights of a company, acquires in any 6-month additional shares carrying more than 1% of the voting rights.

Persons acting in concert comprise individuals or companies who cooperate through the acquisition of shares to obtain or consolidate control of a company pursuant to an agreement or understanding, whether formal or informal. Certain parties are presumed to be acting in concert until the contrary is established, e.g. a company and its related corporations, a company and its directors and their close relatives, a financial adviser and its clients with respect to certain shareholdings.

17.8.10 Within 30 minutes of incurring an obligation to make a mandatory offer, the Offeror must either make an announcement, or request the SGX for a temporary trading halt of the Offeree company's shares and make an announcement before the trading halt is lifted.

D. Procedure on a Take-over

1. Important dates to note

17.8.11 The Offeror must post an offer document containing the matters set out in rule 23 of the Take-over Code not earlier than 14 days and not later than 21 days from the date of the offer announcement to shareholders of the Offeree company. Within 14 days of the posting of the offer document by the Offeror, the board of the Offeree company must despatch an offeree circular containing the matters set out in rule 24 of the Takeover Code to shareholders of the Offeree company. In particular, the offeree circular must indicate whether the directors who are independent for the purpose of the offer and the Offeree company's independent financial adviser recommend that the shareholders accept or reject the offer. An offer must be kept open for at least 28 days after the date on which the offer document was posted. This gives shareholders at least 14 days from receipt of the offeree circular to decide whether to accept or reject the offer.

2. The offer may be varied

17.8.12 The Offeror may vary the offer by increasing the offer price for the shares or by extending the period in which the offer remains open. Where a variation in the consideration is made, shareholders who agreed to sell before the variation are also entitled to receive the increased consideration.

E. Compulsory Acquisition of Minority Holdings

1. Offeror cannot force minority shareholders to sell shares

17.8.13 An Offeror has no power to force minority shareholders to sell their shares to it. Indeed, the provisions of the Securities and Futures Act and the Take-over Code are designed to ensure that shareholders are not coerced into accepting an offer. However, under certain circumstances minority shareholders' shares may be compulsorily acquired following an offer under section 215 of the Companies Act.

2. The Offeror must acquire 90% of the shares in the Offeree company before minority shareholders are required to sell their shares

17.8.14 If an Offeror acquires 90% of the shares of the Offeree company, it may by notice require that the dissenting shareholders sell its shares to it. In calculating the 90% threshold, shares held or acquired by the Offeror, its related corporations and their respective nominees are excluded. The notice must be sent within two months of the satisfaction of the 90% threshold. The shareholder whose

shares are thus to be acquired may apply to Court for an order that the Offeror is not entitled to acquire the shares, or specifying different acquisition.

3. Where Offeror has 90% of the shares in the Offeree Company, the minority shareholders can require the Offeror to acquire their holdings

17.8.15 Where an Offeror could acquire the holdings of minority shareholders but does not, a minority shareholder may serve a notice requiring the Offeror to do so. The Offeror is then obliged to acquire the shareholder's shares on the same terms as the other shares were acquired during the offer.

4. Application to both private and public companies

17.8.16 This power of compulsory acquisition may be exercised in relation to private as well as public companies.

5. Review of Companies Act and Companies (Amendment) Act 2014

17.8.17 The last comprehensive review of the Companies Act was conducted in 2002 by the Company Legislation and Regulatory Framework Committee, which recommended changes to the fundraising regime and capital maintenance rules. In view of the review of the company law framework in other countries since then, the Steering Committee for Review of the Companies Act in June 2011 made further recommendations to amend Companies Act. Most of its recommendations were incorporated in the Companies (Amendment) Bill 2014 which was passed by Parliament on 8 October 2014. It is expected that the changes will come into force in 2015, although this may happen in stages.