

Mineral, Oil and Gas Companies - Listing on SGX.

New eligibility criteria and on-going obligation requirements

Background

In September 2013, Singapore Exchange Securities Trading Limited (the “SGX”) issued new rules for companies classified as mineral, oil and gas (“MOG”) companies, seeking a listing on, or who are already listed on, the SGX.

These rules provide key information on the eligibility criteria for MOG companies as well as their on-going obligations following listing. There are **transitional periods** for certain of these on-going obligations.

The new rules are important for companies considering a listing on the SGX, as being classified as an MOG company brings with it benefits as well as obligations.

What is an MOG company?

An MOG company is defined as a company:

*“whose **principal activities**¹ consist of exploration for, or extraction of, minerals, oil or gas.”*

Where an issuer is, for example, heavily involved in downstream or processing activities (such as refining and smelting) or trading, but certain assets trigger this result, the SGX will need to be consulted on a case-by-case basis as to whether that issuer will or will not be classified as an MOG company.

Eligibility criteria

Resource base

¹ Where the mineral, oil and gas activity of the issuer and/or its subsidiaries, based on the issuer’s latest audited consolidated financial statements: (i) represents 50% or more of the total assets, revenue or operating expenses of the group; or (ii) is the single largest contributor based on any of the tests in (i) above.

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To qualify as an MOG company, the issuer must establish the existence of an **adequate resource**. For minerals, this must be an **indicated resource** and for oil and gas, a **contingent resource**. Where an issuer holds a diverse portfolio of assets, some of which fall within these standards and some of which do not, the SGX has not set out detailed guidelines on how this will be interpreted as they will assess the portfolio as a whole. This is designed to facilitate a dialogue with the SGX as part of the eligibility discussions.

Any issuer will, however, need to be able to exercise an element of “control” over these assets, with an ability to influence decisions on the extraction of the relevant resources, and this will need to be discussed with the SGX on a case by case basis.

Qualified Person’s Report

The resource base set out above must be substantiated by a report (a “**QPR**”) prepared by an independent qualified person (an “**IQP**”) who must meet certain criteria. The SGX rules set out certain content requirements for the QPR as well as the standard to which it should be produced.

It should be noted that the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves (or “**SAMREC**”) is not one of these specified permitted codes, but the list is not exhaustive and the SGX may accept an “equivalent” standard to those listed, such as SAMREC.

Where the MOG company’s portfolio contains a number of assets with varying degrees of materiality, the SGX does not currently provide for exceptions to be made in respect of QPRs being produced across the portfolio, meaning that even immaterial resource assets will require a QPR. This will need to be raised with the SGX.

Governance

An MOG company must have at least one independent director with appropriate industry experience and expertise. The SGX will consider this requirement as part of the eligibility process. It is not necessary, however, for the individual to have specific experience with the same key minerals mined by the issuer.

Track record

Because of their early-stage nature, MOG companies may not meet the standard qualitative criteria and profit and financial liquidity tests set out by the SGX. In these circumstances, an MOG company is still eligible for listing where:

- it lists with a market capitalisation of not less than \$300m; and
- it discloses its plans and milestones to advance to production, which are substantiated in the QPR. In practice, we expect this to mean that the IQP deems the plans to be “reasonable” based on the relevant circumstances, with a clear path to production evident.

The SGX will also expect, in these circumstances, a period of management continuity of approximately one year prior to listing, showing that the management team can work together and has the appropriate expertise.

Working capital

All MOG companies must demonstrate that they have sufficient working capital to meet their present requirements and for at least 18 months following listing. The SGX rules provide detailed guidance on what working capital for MOG companies includes, but it can include new money raised as part of the listing, although the issuer will need to cover any planned CAPEX in that period.

This would, in theory, lead to applicants determining that it is in their best interests to delay certain CAPEX plans just outside this 18 month period so as to avoid the need to provide for such CAPEX as part of the working capital required at listing. However, this risk should be mitigated, in part, by the investing community's desire to see money raised to be spent well and on a timely basis.

Due diligence

The issue manager must confirm to the SGX that, following due diligence, it has no reason to believe that the MOG company: (i) does not hold all material governmental licences and permits; (ii) is not in compliance with relevant laws and regulations, and (iii) does not possess title to its assets and hold valid and enforceable rights over them.

In practice, the issue manager will need to assess the suitability of the relevant legal adviser as well as the scope of such adviser's engagement. This will, of course, depend on the nature of the assets and the country in which they are located.

On-going obligations

Use of funds

The requirement to make quarterly announcements on use and projected use of funds ceases to apply to an MOG company (i) once it meets the relevant profit criteria set out in the SGX rules or (ii) once its **principal MOG assets** are in production.

The interpretation of this will need to be discussed with the SGX on a case by case basis as an assessment of an issuer's principal MOG assets may change over time.

Announcement obligations

An MOG company must make an immediate announcement involving any **material changes** to its reserves or resources.

This announcement must include a statement that the reserve and resource estimates stated in the announcement have been reviewed by a qualified person and in accordance with the relevant disclosure requirements.

The announcement must be followed by a QPR (which does not require IQP sign-off) as soon as practicable.

Furthermore, where the announcement involves the reporting of **new material reserves or resources** that have not been previously disclosed, or a **50% change** or more in reserves or resources that have been previously reported on, the QPR must be signed off by an IQP.

These provisions impose extra disclosure obligations on listed MOG companies. There is no guidance on the classification of whether reserves or resources are material and, therefore, issuers will need to discuss this with the SGX and they will need to build into their organisational planning the capacity to prepare full QPRs in such circumstances and within the required timescales.

Annual reports

An MOG company must include a QPR, dated no earlier than the end of the issuer's financial year, in its annual report. This QPR does not require IQP sign-off but will still require significant work from MOG companies as the rules do not provide for exceptions based on materiality.

This **annual obligation** to prepare and issue a full QPR on potentially all MOG assets will be a matter likely to cause would-be applicants considerable pause when considering the SGX as a venue, as it would potentially result in a significant compliance burden in comparison with annual update obligations in other listing venues that are popular with MOG companies.

Acquisitions and disposals

The tests set out in the SGX rules for determining the materiality of transactions include, in addition to the usual size test considerations applicable to all SGX-listed companies, a test based on the **proportion of reserves to be disposed** of against the aggregate reserves of the relevant group.

This is designed to stop issuers disposing of parts of their asset base that would not otherwise be caught by the usual tests. This bespoke reserves test does not apply to acquisitions, which are judged on the normal size tests.

If a major transaction relates to an acquisition or disposal of an MOG asset, the circular must contain a QPR prepared by an IQP. Where access to information is limited, we would expect that disclosure may be permitted initially based on publicly-available information with a full QPR to follow once access is possible.

Where the proposed acquisition by an MOG company is in respect of assets similar to those already managed by the MOG company, the SGX may not require the acquisition to be subject to shareholder approval despite certain size tests being enlivened.

This may be seen favourably by would-be applicants when considering the SGX in comparison with certain other common listing venues where shareholder approval will still be required if size tests are triggered, irrespective of the fact that such transactions are merely an expansion of the relevant party's existing line of business.

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