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STAMP DUTIES ACT (CHAPTER 312)

STAMP DUTIES (RELIEF FROM STAMP DUTY UPON ACQUISITION OF SHARES OF COMPANIES) RULES 2013

ARRANGEMENT OF RULES

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In exercise of the powers conferred by sections 15A and 77 of the Stamp Duties Act, the Minister for Finance hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Stamp Duties (Relief from Stamp Duty upon Acquisition of Shares of Companies) Rules 2013 and shall come into operation on 1st April 2010.

Definitions**2. In these Rules —**

“local employee” means an employee of the acquiring company —

- (a) who is a citizen of Singapore or a Singapore permanent resident; and
- (b) who makes contributions in respect of income derived from his employment with the acquiring company to the Central Provident Fund which are obligatory under the Central Provident Fund Act (Cap. 36),

but excludes a director as defined under section 4 of the Companies Act (Cap. 50);

“ultimate holding company” has the same meaning as in section 5A of the Companies Act.

Prescribed qualifying period

3. For the purposes of section 15A(4)(b) of the Act, the prescribed period which an acquiring company may elect to replace the qualifying period referred to in section 15A(4)(a) of the Act is as follows:

- (a) in the case where the qualifying period in the first instance is the financial year of the acquiring company in which the acquisition referred to in section 15A(3)(a) of the Act occurs, a period of 12 months ending on and including the date of —
 - (i) the acquisition referred to in section 15A(3)(a) of the Act; or
 - (ii) a subsequent acquisition of ordinary shares in the target company by the acquiring company or the acquiring subsidiary that takes place before the end of the financial year of the acquiring company in which the acquisition referred to in sub-paragraph (i) falls; or

- (b) in the case where the qualifying period in the first instance is the financial year of the acquiring company in which the acquisition referred to in section 15A(3)(c) of the Act occurs, either of the following periods:
- (i) the shorter of the following:
 - (A) a period of 12 months ending on and including the date of the acquisition referred to in section 15A(3)(c) of the Act; or
 - (B) a period commencing immediately after the date of the latest acquisition of ordinary shares in a target company by the acquiring company or acquiring subsidiary, as the case may be, that occurs in a qualifying period in relation to an acquisition referred to in section 15A(3)(a) of the Act and in respect of which a deduction under section 37L of the Income Tax Act (Cap. 134) has been claimed, and ending on and including the date referred to in sub-paragraph (A); or
 - (ii) the shorter of the following:
 - (A) a period of 12 months ending on and including the date of an acquisition that occurs after but in the same financial year as that in which the acquisition referred to in section 15A(3)(c) of the Act occurs; or
 - (B) a period commencing immediately after the date of the latest acquisition of ordinary shares in a target company by the acquiring company or acquiring subsidiary, as the case may be, that occurs in a qualifying period in relation to an acquisition referred to in section 15A(3)(a) of the Act and in respect of which a deduction under section 37L of the Income Tax Act has been claimed, and ending on and including the date referred to in sub-paragraph (A),

provided that at the end of that financial period of the acquiring company in which the acquisition referred to in paragraph (a)(i) or (b)(i)(A), as the case may be, falls, the acquiring company and its acquiring subsidiaries own together in total more than 50% (in the case of paragraph (a)) or 75% or more (in the case of paragraph (b)) of the total number of ordinary shares in the target company.

Conditions precedent for relief

4.—(1) For the purposes of section 15A(1) of the Act, the conditions precedent for relief from ad valorem stamp duty on an instrument made for the purposes of or in connection with a qualifying acquisition in a target company by an acquiring company or any acquiring subsidiary are as follows:

(a) in the case of an acquisition referred to in section 15A(3)(a) or (c) of the Act —

(i) the acquiring company —

(A) is carrying on a trade or business in Singapore on the date of the acquisition of the shares;

(B) has in its employment at least 3 local employees at all times during the period of 12 months immediately before that date;

(C) is not connected to the target company for at least 2 years immediately before that date, unless paragraph (2) applies; and

(D) in a case where the acquiring company is a subsidiary of another company within the meaning of section 5 of the Companies Act (Cap. 50), has a Singapore company as its ultimate holding company on that date;

(ii) where the acquisition is made by the acquiring subsidiary, the acquiring subsidiary —

(A) does not carry on a trade or business in Singapore or elsewhere on the date of the acquisition of the shares; and

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- (B) does not claim any deduction for any capital expenditure or transaction costs under section 37L of the Income Tax Act (Cap. 134) for the financial year in which the acquisition occurs or any stamp duty relief under section 15A of the Act for that financial year;
 - (iii) where the acquisition is made by the acquiring subsidiary and, on the date of the acquisition of the shares (being a date on or after 17th February 2012), the acquiring subsidiary is indirectly owned by the acquiring company through one or more intermediate companies, every such intermediate company —
 - (A) is wholly owned (whether directly or indirectly) by the acquiring company on that date;
 - (B) is incorporated for the primary purpose of acquiring and holding shares in other companies;
 - (C) does not carry on a trade or business in Singapore or elsewhere on that date; and
 - (D) does not claim any deduction for any capital expenditure or transaction costs under section 37L of the Income Tax Act for the financial year in which the acquisition occurs or any stamp duty relief under section 15A of the Act for that financial year; and
 - (iv) the target company, or a subsidiary wholly owned by the target company (directly, in the case of a qualifying acquisition the date of which is before 17th February 2012; or whether directly or indirectly, in the case of a qualifying acquisition the date of which is on or after 17th February 2012) —
 - (A) carries on a trade or business on the date of the acquisition of the shares; and

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- (B) has in its employment at least 3 employees at all times during the period of 12 months immediately before that date;
- (b) in the case of an acquisition referred to in section 15A(3)(d) of the Act —
- (i) the acquiring company —
- (A) is carrying on a trade or business in Singapore on the date of the acquisition of the shares;
- (B) has in its employment at least 3 local employees at all times during the period of 12 months immediately before that date;
- (C) is not connected to the target company for at least 2 years immediately before that date, unless paragraph (2) applies; and
- (D) in a case where the acquiring company is a subsidiary of another company within the meaning of section 5 of the Companies Act, has a Singapore company as its ultimate holding company on that date;
- (ii) where the acquisition is made by the acquiring subsidiary, the acquiring subsidiary —
- (A) does not carry on a trade or business in Singapore or elsewhere on the date of the acquisition of the shares; and
- (B) does not claim any deduction for any capital expenditure or transaction costs under section 37L of the Income Tax Act for the financial year in which the acquisition occurs or any stamp duty relief under section 15A of the Act for that financial year;
- (iii) where the acquisition is made by the acquiring subsidiary and, on the date of the acquisition of the shares (being a date on or after 17th February 2012), the acquiring subsidiary is indirectly owned by the

acquiring company through one or more intermediate companies, every such intermediate company —

- (A) is wholly owned (whether directly or indirectly) by the acquiring company on that date;
 - (B) is incorporated for the primary purpose of acquiring and holding shares in other companies;
 - (C) does not carry on a trade or business in Singapore or elsewhere on that date; and
 - (D) does not claim any deduction for any capital expenditure or transaction costs under section 37L of the Income Tax Act for the financial year in which the acquisition occurs or any stamp duty relief under section 15A of the Act for that financial year;
- (iv) the target company, or a subsidiary wholly owned by the target company (directly, in the case of a qualifying acquisition the date of which is before 17th February 2012; or whether directly or indirectly, in the case of a qualifying acquisition the date of which is on or after 17th February 2012) —
- (A) carries on a trade or business on the date of the acquisition of the shares; and
 - (B) has in its employment at least 3 employees at all times during the period of 12 months immediately before that date; and
- (v) the conditions specified in sub-paragraph (a) are also satisfied in relation to —
- (A) the qualifying acquisition referred to in section 15A(3)(a) of the Act, where the claim is for relief from stamp duty on an instrument made for the purposes of or in connection with a qualifying acquisition falling within the qualifying period in which a qualifying

acquisition referred to in section 15A(3)(a) of the Act occurs; and

(B) the qualifying acquisition referred to in section 15A(3)(c) of the Act, where the claim is for relief from stamp duty on an instrument made for the purposes of or in connection with a qualifying acquisition falling within the qualifying period in which a qualifying acquisition referred to in section 15A(3)(c) of the Act occurs; and

(c) in any case, the consideration paid by the acquiring company or the acquiring subsidiary (as the case may be) in respect of the qualifying acquisition consists only of cash or shares in the acquiring company or a combination of both.

(2) Paragraph (1)(a)(i)(C) or (b)(i)(C) shall not apply in respect of any qualifying acquisition where the date of the qualifying acquisition —

(a) is after the date of an acquisition referred to in section 15A(3)(a) or (c) of the Act (as the case may be); but

(b) on or before the end of the qualifying period in which the acquisition referred to in section 15A(3)(a) or (c) of the Act (as the case may be) occurs.

(3) For the purposes of paragraph (1)(a)(i)(C) and (b)(i)(C), a company is connected to the other company if —

(a) at least 75% of the total number of ordinary shares in one company are beneficially held, directly or indirectly, by the other; or

(b) at least 75% of the total number of ordinary shares in each of the 2 companies are beneficially held, directly or indirectly, by a third company.

Conditions subsequent for relief

5.—(1) For the purposes of section 15A(1) of the Act, the conditions subsequent for relief from ad valorem stamp duty on an instrument

made for the purposes of or in connection with a qualifying acquisition in a target company by an acquiring company or its acquiring subsidiary are as follows:

- (a) the target company does not, at any time during the restriction period, issue additional ordinary shares which reduces the total ownership of the acquiring company and its acquiring subsidiaries of the ordinary shares in the target company to 50% or less;
- (b) the acquiring company —
 - (i) continues to carry on a trade or business in Singapore throughout the restriction period; and
 - (ii) has in its employment at least 3 local employees throughout the restriction period;
- (c) where the qualifying acquisition is the acquisition referred to in section 15A(3)(a) of the Act or an acquisition which falls within the qualifying period in which the first-mentioned qualifying acquisition occurs, the acquiring company or its acquiring subsidiary (as the case may be) does not divest of its shares in the target company which reduces the total ownership of the acquiring company and its acquiring subsidiaries of the ordinary shares in the target company to 50% or less at any time during the restriction period;
- (d) where the qualifying acquisition is the acquisition referred to in section 15A(3)(c) of the Act or an acquisition which falls within the qualifying period in which the first-mentioned qualifying acquisition occurs, the acquiring company or its acquiring subsidiary (as the case may be) does not divest its shares in the target company which reduces the total ownership of the acquiring company and its acquiring subsidiaries of the ordinary shares in the target company to below 75% at any time during the restriction period;
- (e) the acquiring company or, if the acquiring company is a subsidiary of another company within the meaning of

section 5 of the Companies Act (Cap. 50), its ultimate holding company continues to be a Singapore company throughout the restriction period;

(f) where the qualifying acquisition is made by the acquiring subsidiary, the acquiring subsidiary and every intermediate company through which the acquiring subsidiary is indirectly owned by the acquiring company —

(i) does not carry on any trade or business in Singapore or elsewhere at any time during the restriction period;

(ii) does not claim any deduction for any capital expenditure or transaction costs under section 37L of the Income Tax Act (Cap. 134) for the financial year in which the qualifying acquisition occurs or claim any stamp duty relief under section 15A of the Act for that financial year; and

(iii) is, throughout the restriction period, wholly-owned by the acquiring company —

(A) directly, in the case of a qualifying acquisition the date of which is before 17th February 2012; and

(B) whether directly or indirectly, in the case of a qualifying acquisition the date of which is on or after 17th February 2012; and

(g) the shareholders of the acquiring company are, to the satisfaction of the Comptroller, substantially the same throughout the restriction period, or the Minister or such person as he may appoint is satisfied that any substantial change in the shareholders during the restriction period is not for the purpose of deriving any tax benefit or obtaining any tax advantage.

(2) For the purposes of paragraph (1)(g) —

(a) the shareholders of the acquiring company at any date shall not be deemed to be substantially the same as the shareholders of that company at any other date unless, on

both those dates, not less than 50% of the total number of issued shares of the acquiring company are held by or on behalf of the same persons;

- (b) shares of the acquiring company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company; and
- (c) shares held by or on behalf of the trustee of the estate of a deceased shareholder or by or on behalf of the person entitled to those shares as beneficiaries under the will or any intestacy of a deceased shareholder shall be deemed to be held by that deceased shareholder.

(3) In this rule, “restriction period” means a period of 2 years after —

- (a) where the qualifying acquisition is the acquisition referred to in section 15A(3)(a) of the Act or an acquisition which falls within the qualifying period in which the first-mentioned qualifying acquisition occurs, the date of the latest acquisition of ordinary shares in a target company by the acquiring company or acquiring subsidiary, as the case may be, that occurs in a qualifying period in relation to the first-mentioned acquisition; or
- (b) where the qualifying acquisition is the acquisition referred to in section 15A(3)(c) of the Act or an acquisition which falls within the qualifying period in which the first-mentioned qualifying acquisition occurs, the date of the latest acquisition of ordinary shares in a target company by the acquiring company or acquiring subsidiary, as the case may be, that occurs in a qualifying period in relation to the first-mentioned acquisition.

Waiver of conditions

6. The Minister or such person as he may appoint may, for any particular qualifying acquisition made on or after 17th February 2012, waive the requirement in rules 4(1)(a)(i)(D) and (b)(i)(D) and 5(1)(e) in relation to the ultimate holding company of the acquiring company,

subject to such conditions that the Minister or the person he has appointed may impose.

Statutory declaration

7. Where a claim is made for relief under section 15A(1) of the Act in respect of an instrument, the Commissioner may require the delivery to him of a statutory declaration in such form as he may direct, made by or on behalf of the target company, the acquiring company or the acquiring subsidiary or all of them, and such further evidence as the Commissioner considers necessary.

Commissioner to be notified of certain occurrences

8.—(1) Where a claim for relief under section 15A(1) of the Act has been allowed and any condition subsequent specified in rule 5 is not complied with, the acquiring company shall notify the Commissioner of the circumstances of the occurrence within 30 days after the date of the occurrence.

(2) Any company which fails to comply with paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

Application to business trusts

9.—(1) Section 15A of the Act and these Rules shall apply to a business trust registered under the Business Trusts Act (Cap. 31A) which satisfies the requirements in Part I of the Schedule, as it applies to a Singapore company if the trustee-manager of the registered business trust has incurred stamp duty to acquire ordinary shares in a target company in circumstances where (if it had been an acquiring company) that section would have applied to it, with the provisions specified in the second column of Part II of the Schedule modified in the manner specified in the third column of Part II of the Schedule.

(2) For the purposes of section 15A(9) of the Act —

- (a) where more than 50% of the units of a business trust are held directly, or indirectly through other business trusts, by one or more companies in a group of companies, the

business trust shall be treated as if it were a company in the group of companies; and

- (b) where the shares of any company form any part of the trust property of the business trust, the business trust shall be treated as a company holding shares in the first-mentioned company for the purposes of determining whether the first-mentioned company is part of the group of companies.

THE SCHEDULE

Rule 9

PART I

The requirements for the purposes of rule 9(1) are as follows:

- (a) the trustee-manager of the registered business trust in his capacity as such carries on a trade or business in Singapore;
- (b) the business of the registered business trust is controlled and managed in Singapore;
- (c) the registered business trust is established in Singapore; and
- (d) the trust deed of the registered business trust is executed in Singapore and is governed by Singapore law.

PART II

<i>S/No.</i>	<i>Provision</i>	<i>Modification</i>
1.	Rules 4(1)(a)(i)(A) and (b)(i)(A) and 5(1)(b)(i)	A reference to the acquiring company carrying on a trade or business in Singapore shall be read as a reference to the trustee-manager of the registered business trust referred to in rule 9(1) in his capacity as such carrying on a trade or business in Singapore.
2.	Rules 4(1)(a)(i)(B) and (b)(i)(B) and 5(1)(b)(ii)	A reference to the acquiring company having in its employment at least 3 local employees shall be read as a reference to the trustee-manager of the registered business trust referred to in rule 9(1) having in

THE SCHEDULE — *continued*

<i>S/No.</i>	<i>Provision</i>	<i>Modification</i>
		its employment at least 3 local employees in respect of the business of the registered business trust.
3.	Rule 4(1)(a)(i)(C) and (b)(i)(C) and (3)	<p>A reference to the acquiring company being connected to the target company shall be read as a reference to —</p> <p>(a) at least 75% of the units of the registered business trust referred to in rule 9(1) being beneficially held (directly or indirectly) by the target company or at least 75% of the shares of the target company being beneficially held (directly or indirectly) by the registered business trust referred to in rule 9(1); or</p> <p>(b) at least 75% of the units of the registered business trust referred to in rule 9(1) and at least 75% of the shares of the target company being beneficially held (directly or indirectly) by another company.</p>
4.	Rules 4(1)(a)(i)(D) and (b)(i)(D) and 5(1)(e)	A reference to an acquiring company having a Singapore company as its ultimate holding company shall be read as a reference to 50% or more of the units in the registered business trust referred to in rule 9(1) being held directly or indirectly by a Singapore company that is not itself a subsidiary of another person.

THE SCHEDULE — *continued*

<i>S/No.</i>	<i>Provision</i>	<i>Modification</i>
5.	Rule 5(1)(g) and (2)	A reference to the shareholders of the acquiring company shall be read as a reference to the unitholders of the registered business trust referred to in rule 9(1), and a reference to shares of the acquiring company shall be read as a reference to the units of the trust.

Made this 21st day of March 2013.

LIM SOO HOON
Permanent Secretary
(Finance) (Performance),
Ministry of Finance,
Singapore.

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