



CONSULTATION PAPER NO. 4/2019
PROPOSED AMENDMENTS TO THE MAIN MARKET AND ACE MARKET LISTING REQUIREMENTS IN
RELATION TO ANTI-CORRUPTION MEASURES AND CORPORATE EXERCISES DIGITISATION

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Bursa Malaysia Berhad (“Bursa Malaysia”) invites your written comments on the issues set out in this Consultation Paper by 25 October 2019 (Friday) via:

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Respondents to this Consultation Paper are requested to use the reply format as stipulated in the Attachment.

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Please see our Personal Data Notice as set out in the Appendix to this Consultation Paper.

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A. INTRODUCTION

This Consultation Paper seeks views and comments from the public on the proposed amendments to Bursa Malaysia Securities Berhad (“**the Exchange**”) Main Market Listing Requirements (“**Main LR**”) and ACE Market Listing Requirements (“**ACE LR**”) (collectively the “**LR**”) in relation to 2 key areas namely, anti-corruption and whistle-blowing measures, as well as digitisation of corporate exercises.

B. BACKGROUND

Anti-corruption and whistle-blowing measures

Combating corruption has now become a main priority of the Malaysian government and this can be seen through the various initiatives undertaken to eradicate corruption in both the private and public sectors. These initiatives include -

- (a) the establishment of the Governance Integrity and Anti-Corruption Centre (“**GIACC**”) in June 2018;
- (b) the launch the 5-year National Anti-Corruption Plan 2019 - 2023 (“**NACP**”) in January 2019;
- (c) recent amendments to the Malaysian Anti-Corruption Commission Act 2009 (“**MACC Act**”) (e.g. Section 17A on Corporate Liability¹) which takes effect in June 2020; and
- (d) the introduction of the Guidelines on Adequate Procedures² (“**GAP**”).

The above demonstrates the government’s strong political will and commitment to eradicate corruption and improve governance and integrity in the country.

In conjunction with the above, the Securities Commission Malaysia (“**SC**”) announced, on 22 July 2019, that it would be implementing an action plan with the main objectives of supporting the NACP and with the view to improve Malaysia’s ranking in the biennial Corporate Governance Watch survey by the Asian Corporate Governance Association. A key recommendation³ for this includes mandating all listed issuers to -

¹ Section 17A of the MACC Act states that a commercial organisation commits an offence if a person associated with the organisation corruptly gives, agrees to give, promises or offers to any person any gratification, whether for the benefit of that person or another person, with intent to obtain or retain business for the commercial organisation, or to obtain or retain an advantage in the conduct of business for the commercial organisation.

² The GAP was derived on the basis of 5-principles and these principles may be used as reference points for any anti-corruption policies, controls and procedures which the organisation may choose to implement. The GAP will take effect from 1 June 2020.

³ The recommendation was approved by the Cabinet Special Committee on Anti-Corruption (“**JKKMAR**”) chaired by the Prime Minister on 18 July 2019.

- (a) establish and implement an anti-corruption compliance programme including having policies and objectives that addresses corruption risks;
- (b) include a review of corruption risk in the listed issuers' risk assessment framework; and
- (c) establish and implement policies and procedures on whistleblowing consistent with the Whistleblower Protection Act 2010.

The above will be implemented through the LR and guided by the GAP. These measures are in line with the objectives of Strategy 6 of the NACP to provide for greater resilience of corporate entities against the threat of corruption.

Digitisation of corporate exercises

Innovation in the capital market has now become a necessity especially in an increasingly digital world. This has also become a key agenda for the regulators. Hence, with the common aim to drive digitization within the Malaysian financial industry, the SC and Bank Negara Malaysia (“BNM”) had established the Brokerage Industry Digitisation Group (“BRIDGE”)⁴. BRIDGE is a joint working group between regulators (encompassing SC, BNM and the Exchange) as well as the industry (such as the brokers, banking institutions and share registrars). It aims to accelerate digitisation of the stockbroking industry to enhance operational efficiencies and service standards.

One of the key recommendation by BRIDGE was to digitise corporate exercises. For this purpose, it was proposed that securities holders be given the option to subscribe for rights shares, exercise convertible securities and elect to participate in a Dividend Investment Scheme (“DRS”)⁵, electronically. Accordingly, we have reviewed the requirements relating to new issue of securities under the LR to facilitate the said recommendation. This review complements our various digital initiatives to enhance customer experience and further develop an efficient and effective market ecosystem.

C. KEY PROPOSALS

Based on the above, we formulated the following key proposals (collectively “the Proposed Amendments”):

- (a) Strengthening the governance of listed issuers to prevent corruption, misconduct and fraud by requiring a listed issuer's board of directors to -
 - (i) establish and maintain policies and procedures on anti-corruption and whistle-blowing;

⁴ The establishment of BRIDGE was [announced on 15 March 2018](#).

⁵ Dividend Reinvestment Scheme or DRS means a scheme which enables shareholders to reinvest cash dividend into new shares.

- (ii) conduct annual review of such policies and procedures, and publish them on the listed issuer’s website; and
 - (iii) include corruption risk in its annual risk assessment framework.
- (b) Promoting operational efficiency and efficacy through digitising corporate exercises, by requiring a listed issuer to facilitate the following actions by its securities holders electronically:
- (i) subscription and payment for rights issue;
 - (ii) conversion and payment for convertible securities; and
 - (iii) election to participate in a DRS.

D. STRUCTURE OF THE CONSULTATION PAPER

Details of the Proposed Amendments, where relevant, and their rationale are provided in the “**Details of Proposals**” in **Parts 1 and 2** of this Consultation Paper.

The Proposed Amendments are provided in **Annexures A and B** and are reflected in the following manner:

- portions underlined are text newly inserted/added/replaced onto the existing rules; and
- portions struck through are text to be deleted.

The table below provides a snapshot of the relevant details of the Proposed Amendments as well as the related Parts and Annexures for ease of reference:

Part No.	Details of Proposals	Proposed Amendments (Annexure)
1.	Strengthening the governance of listed issuers to prevent corruption, misconduct and fraud	<ul style="list-style-type: none"> • Annexure A for the Main LR • Annexure B for the ACE LR
2.	Promoting operational efficiency and efficacy through digitising corporate exercises	

Issues for Consultation

We invite comments on the Proposed Amendments as discussed below. Comments can be given by filling up the template as attached in the **Attachment**.

Note:

As the Proposed Amendments are open to comments and feedback from the public, the final amendments may be different from those stated in this Consultation Paper. Further, the Proposed Amendments have NOT been approved by the Securities Commission Malaysia (“SC”) and as such are not the final amendments. The Exchange will submit the Proposed Amendments to the SC for approval after receipt of comments pursuant to this Consultation Paper and making the relevant changes, where appropriate, to the Proposed Amendments.

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E. DETAILS OF PROPOSALS

PART 1 STRENGTHENING THE GOVERNANCE OF LISTED ISSUERS TO PREVENT CORRUPTION, MISCONDUCT AND FRAUD

PROPOSAL 1: INTRODUCING REQUIREMENTS ON ANTI-CORRUPTION AND WHISTLE-BLOWING

1. As highlighted in the Background section of this Consultation Paper, our government takes a strict stance against corruption. This is particularly evident with the corporate liability provision in section 17A of the MACC Act, which has far-reaching implications to directors and corporations.
2. Come 1 June 2020, a commercial organisation (including a listed issuer) may be found liable for acts of corruption committed by any persons associated with the organisation (such as its directors or employees).
3. Section 17A also deems any director, controller, officer, partner or manager of the commercial organisation to be personally liable for the same offence if the commercial organisation is found liable, unless the relevant individual can prove that the offence was committed without his or her consent, and that he or she had exercised the requisite due diligence to prevent the commission of the offence.
4. The only defence available to the organisation is that there are adequate procedures in place to prevent persons associated with the organisation from undertaking the corrupt conduct.
5. Although it is now imperative for listed issuers and their board of directors to take anti-corruption seriously, only 59% of listed issuers have an anti-corruption policy, and most of these policies contain gaps when compared to the GAP⁶. This calls for the need for listed issuers and their boards to step up in managing corruption within their companies and businesses.
6. In light of the above and given the serious threat that corruption poses not only to corporates but also to the country as a whole, it has been viewed to be necessary for the LR to encapsulate anti-corruption measures through prescriptive requirements which are in addition to the statutory provisions under the law. This will provide greater accountability and transparency to securities holders, as well as a measure of assurance to the board and senior management. In this regard, we propose to mandate a listed issuer to ensure that its board of directors does the following⁷:

⁶ This was noted by the SC in its review as at 31 May 2019 and announced in its [press release dated 22 July 2019](#).

⁷ New paragraph 15.29 of the Main LR / new Rule 15.28 of the ACE LR.

- (a) establishes and maintains policies and procedures on -
 - (i) anti-corruption that is guided by, the GAP issued pursuant to section 17A(5) of the MACC Act, or any other recognised framework which is similar to, or more stringent than GAP (e.g. the Corporate Integrity System Malaysia or the ISO 37001 - Anti-bribery management systems); and
 - (ii) whistle-blowing;
 - (b) reviews such policies and procedures annually, and publishes them on the listed issuer's website; and
 - (c) includes corruption risk in its annual risk assessment framework.
7. Key to tackling corruption among listed issuers is the clear commitment from their board of directors to set the course accordingly, being the party responsible, for the listed issuer's overall strategy and conduct. Hence, through the proposals above, we seek to ensure that structured policies and procedures on anti-corruption and whistle-blowing are put in place, and greater emphasis is given on corruption as part of the listed issuer's annual risk assessment framework under the oversight and review of the board. This will promote better governance culture and ethical behavior across all levels of the listed issuer which is necessary towards sustainability of the listed issuer's business in the long term.
8. In addition, the proposals would also provide a measure of assurance to listed issuers and their boards that there is suitable defence which can be used to protect them and their senior management from the liabilities under section 17A of the MACC Act. This is particularly so, as the courts are likely to take into account the existence of policies and procedures, and the manner of implementation, among other facts and circumstances.

Proposal 1 - Issue(s) for Consultation:

1. Do you have any comment on the proposals mandating a listed issuer to ensure that its board of directors does the following [*paragraph 6 of this Consultation Paper*]:
 - (a) establishes and maintains policies and procedures on -
 - (i) anti-corruption that is guided by, the GAP issued pursuant to section 17A(5) of the MACC Act, or any other recognised framework which is similar to, or more stringent than GAP; and
 - (ii) whistle-blowing;
 - (b) reviews such policies and procedures annually, and publishes them on the listed issuer's website; and

(c) includes corruption risk in its annual risk assessment framework?

Please state the reasons for your views.

[End of Part 1]

PART 2 PROMOTING OPERATIONAL EFFICIENCY AND EFFICACY THROUGH DIGITISING CORPORATE EXERCISES

PROPOSAL 2: FACILITATING ELECTRONIC SUBMISSION AND PAYMENT BY SECURITIES HOLDERS FOR CORPORATE EXERCISES

Current manual environment

9. Presently, securities holders subscribe for their rights shares or excess rights shares, convert their convertible securities into shares, or elect to participate in a DRS, manually.
10. This would generally entail the securities holder doing the following:
 - (a) complete and sign the relevant forms⁸ send to the said securities holder;
 - (b) prepare a banker's draft, cashier's order, money order or postal order as payment for acceptance of rights shares or excess rights shares and conversion or exercise of convertible securities; and
 - (c) submit the completed forms together with the requisite payment, if applicable, to the listed issuer's share registrar personally by hand or by post or courier before the expiry of the stipulated timeframe for acceptance or submission.
11. However, with greater innovation and advancement in technology, we believe it is timely now to modernise the current manual procedures above through digitisation of some of the steps.

Proposed eCorporate Exercise initiative

12. Hence, in line with the move towards greater digitisation of corporate exercises as recommended by BRIDGe⁹, we propose to require listed issuers to offer an option for its securities holders to perform the steps or procedures above electronically ("eCorporate Exercise").

⁸ This refers to the following:

- (a) in the case of rights issue, the rights subscription form;
- (b) in the case of an issue of convertible securities, the notice of conversion or exercise; and
- (c) in the case of a DRS, the election notice.

⁹ As highlighted in the Background section of this Consultation Paper above, BRIDGe had recommended that securities holders be given the option to to subscribe rights issue, exercise convertible securities and elect to participate in a DRS, electronically.

13. Under the eCorporate Exercise initiative, it is envisaged that a listed issuer will provide the electronic services via an internet or web-based facility made available to its securities holders through its share registrar or any other service providers who have in place the relevant infrastructure, systems and facilities, for such services. Bursa Malaysia Depository Sdn Bhd will also be one of the service providers for this purpose.
14. Depending on the terms and conditions for accessing such services, securities holders may be required to log in and register as a user of the services and subsequently perform the relevant eCorporate Exercise online.
15. We believe that the proposed eCorporate Exercise initiative is expected to provide the following benefits:
 - (a) greater efficiency and faster time-to-market for corporate exercises undertaken by listed issuers through expeditious electronic or online processes;
 - (b) greater convenience and improved customer experience for securities holders through electronic access of documents, as well as online applications and payments; and
 - (c) better sustainable practices through minimising the use of physical or paper forms.
16. Notwithstanding the above, we are also cognisant of the fact that some securities holders may not be familiar with electronic services or technologies, or may not even have efficient access to internet. We are mindful that some securities holders may just prefer the existing manual procedures. For such securities holders, they may continue to use the manual application or submission for their corporate exercises. Hence, listed issuers must continue to make available the manual method. The proposed eCorporate Exercise is intended to be an option, in addition to the manual mode.

Proposed LR amendments relating to eCorporate Exercise

17. Accordingly, we propose to require that in addition to the manual method in place currently, a listed issuer must also facilitate its securities holders to perform the following electronically¹⁰:
 - (a) subscription and payment for rights issue;
 - (b) conversion and payment for convertible securities; and
 - (c) election to participate in a DRS.

¹⁰ New paragraph 6.08A(1)/Rule 6.09A(1) of the LR.

18. To provide greater clarity and aid compliance, we also propose to specify that “**electronically**” means through an internet-based facility made available to securities holders, the use of automated teller machines or any other electronic mode as may be prescribed by the Exchange¹¹.
19. The proposed definition above was formulated after taking into account the current mode or facility provided by some listed issuers for subscription of rights issue or election to participate in a DRS. We also plan to keep the framework flexible in order to accommodate new technologies and developments in the communication space.
20. In addition, we also propose to require a listed issue to include the following in the relevant notice/statement:
 - (a) procedures for electronic conversion in the notice of conversion or exercise¹² of convertible securities; and
 - (b) procedures for completing the election notice to participate in a DRS electronically in the statement accompanying the election notice¹³.

This is to provide greater clarity to securities holders on the relevant steps to be taken, so that they can complete the relevant corporate exercises electronically with ease.

21. In the case of a rights issue, the Prospectus Guidelines already requires disclosure on the procedures for application for the rights issue and excess rights in the abridged prospectus¹⁴. Therefore, we do not propose to amend the LR to prescribe such disclosure for purposes of electronic subscription and payment for rights issue.

Proposal 2 - Issue(s) for Consultation:

2. Do you agree with the proposal that in addition to the manual method in place currently, a listed issuer must also facilitate its securities holders to perform the following electronically [*paragraph 17 of this Consultation Paper*]:
 - (a) subscription and payment for rights issue;
 - (b) conversion and payment for convertible securities; and
 - (c) election to participate in a DRS?

Please state the reasons for your views.

¹¹ New paragraph 6.08A(2)/Rule 6.09A(2) of the LR.

¹² Paragraph 6.57(e)/Rule 6.58(e) of the LR.

¹³ Paragraph 6.45C(4)(c)/Rule 6.46C(4)(c) of the LR.

¹⁴ Paragraph 8.01, Chapter 8, Division 5 of the Prospectus Guidelines.

3. Do you agree with the electronic mode as proposed for purposes of facilitating the corporate actions by securities holders electronically i.e. “through an internet-based facility made available to securities holders, the use of automated teller machines or any other electronic mode as may be prescribed by the Exchange” *[paragraph 18 of this Consultation Paper]*?

Please state the reasons for your views.

4. Do you agree with the proposal to disclose the electronic procedures for conversion or exercise of convertible securities and completing the election notice to participate in a DRS, in the notice of conversion or exercise and statement accompanying the election notice respectively *[paragraph 20 of this Consultation Paper]*?

Please state the reasons for your views.

[End of Part 2]

F. FEEDBACK SOUGHT

We invite comments on the Proposals as discussed in this Consultation Paper. Comments can be given by filling up the template as attached in the **Attachment**.

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ANNEXURES A - B PROPOSED AMENDMENTS

[Please see Annexures A - B enclosed with this Consultation Paper]

ATTACHMENT

TABLE OF COMMENTS

[Please see the Attachment setting out the Table of Comments enclosed with this Consultation Paper]

APPENDIX BURSA MALAYSIA'S PERSONAL DATA NOTICE

In relation to the Personal Data Protection Act 2010 and in connection with your personal data provided to us in the course of this consultation, please be informed that Bursa Malaysia's personal data notice ("**Notice**") is available at www.bursamalaysia.com. Kindly ensure that you read and are aware of the Notice.

If you are submitting personal data of an individual other than yourself ("**data subject**"), please ensure that prior to such submission, you have provided the data subject with written notice of the Notice unless section 41 of the Personal Data Protection Act 2010 ("**PDPA**") applies or Bursa Malaysia otherwise specifies in connection with the PDPA.

Berhubung Akta Perlindungan Data Peribadi 2010 dan berkenaan semua data peribadi anda yang diberikan di dalam proses konsultasi ini, sila ambil maklum bahawa notis Bursa Malaysia mengenai data peribadi ("**Notis tersebut**") boleh didapati di www.bursamalaysia.com. Sila pastikan yang anda membaca dan memahami Notis tersebut.

Jika anda mengemukakan data peribadi individu pihak ketiga ("**Subjek Data**"), anda mesti memastikan bahawa Subjek Data telah diberi notis bertulis mengenai Notis tersebut terlebih dahulu kecuali seksyen 41 Akta Perlindungan Data Peribadi 2010 ("**APDP**") terpakai atau Bursa Malaysia sebaliknya menyatakan berkenaan dengan APDP.

[End of the Appendix]