
“APPENDIX 5”**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD LISTING REQUIREMENTS
FOR THE ACE MARKET ON DISCLOSURE AND OTHER OBLIGATIONS
(As at 22 September 2011)****CHAPTER 2 - GENERAL*****Qualification of directors, chief executive and chief financial officer***

1. **A listed corporation must ensure that each of its directors, chief executive and chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, of the listed corporation. How does the listed corporation comply with this requirement as set out in Rule 2.20A of the ACE LR¹?**

In ensuring that its directors, chief executive and chief financial officer meet the requirements set out in Rule 2.20A of the ACE LR, a listed corporation should, as a minimum, be guided by the recommendations and best practices set out in Part 2(AA) of the Malaysian Code of Corporate Governance, particularly paragraph VIII. In addition, the listed corporation should also take into account time commitment of the candidate in discharging his duty.

This assessment should be undertaken whenever –

- (i) the listed corporation appoints, elects or re-elects its directors, chief executive or chief financial officer, as the case may be; or
- (ii) the listed corporation conducts its yearly assessment on the performance of its directors, chief executive or chief financial officer, as the case may be; or
- (iii) material information involving the said persons comes to the knowledge of the listed corporation.

¹ Rule 2.20A of the ACE LR provides that a listed corporation must ensure that each of its directors, chief executive and chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, of the listed corporation.

CHAPTER 6 – NEW ISSUE OF SECURITIES***Employee Share Scheme***

2. **Can a listed corporation establish more than 1 Share Issuance Scheme at any point in time?**

Yes, a listed corporation may establish more than 1 Share Issuance Scheme provided that the aggregate number of shares available under all the Share Issuance Schemes does not exceed 30% of its issued and paid-up capital (excluding treasury shares).

Dividend Reinvestment Scheme

3. **Will the shareholders having registered addresses outside Malaysia be entitled to participate in the Dividend Reinvestment Scheme?**

In addition to the requirements in Chapter 6 of the ACE LR, a listed corporation which intends to issue shares pursuant to a Dividend Reinvestment Scheme must also comply with the relevant provisions of law governing such issuance.

Hence, the listed corporation must ensure that there is no prohibition under the relevant laws in determining whether shareholders having registered addresses outside Malaysia are entitled to participate in the Dividend Reinvestment Scheme.

CHAPTER 7 – ARTICLES OF ASSOCIATION***Enhancements to proxy requirements***

4. **Under Rule 7.21 of the ACE LR, where a member of a listed corporation is an exempt authorised nominee, there is no limit to the number of proxies which the exempt authorized nominee may appoint in respect of each omnibus account it holds. Who is an “exempt authorised nominee” for purposes of Rule 7.21 of the ACE LR?**

Under the Rules of Bursa Depository, an authorised nominee is defined as a person who is authorised to act as a nominee in accordance with the schedule prescribed under Part VIII of the Rules. This means that such person can hold securities on behalf of another person. On the other hand, an exempt authorised nominee is an authorised nominee who may hold deposited securities for more than one beneficial owner in respect of each securities account it holds, or commonly known as the omnibus account.

5. **Are individual members or authorised nominees of a listed corporation allowed to have unlimited number of proxies pursuant Rule 7.21 of the ACE LR?**

No, only an exempt authorised nominee holding omnibus accounts is allowed to appoint unlimited number of proxies pursuant to Rule 7.21 of the ACE LR. The number of proxies which may be appointed by individual members and authorised nominees is not regulated under the ACE LR. The listed corporation is free to determine this through its articles of association.

CHAPTER 9 – CONTINUING DISCLOSURE***Immediate announcement of appointment/cessation of office of chief financial officer***

6. **A Bhd does not have a chief financial officer. Financial matters fall under the responsibility of its general manager, Mr. X. These matters include signing cheques, monitoring cash flow, financial planning and preparing the financial statements. Mr. X is also responsible for signing the statutory declaration in relation to the accounts of A Bhd. Mr. X has recently resigned from A Bhd. Must A Bhd announce Mr. X's resignation and provide reasons for the resignation in accordance with Rule 9.19(14A)(b) of the ACE LR?**

Under Rule 9.19(14A) of the ACE LR, A Bhd is required to announce the cessation of office of its chief financial officer and to include the reasons for such cessation. Rule 1.01 of the ACE LR further defines “**chief financial officer**” to mean the person primarily responsible for the management of the financial affairs of the corporation (such as record keeping, financial planning and financial reporting) by whatever name called. As Mr. X is primarily responsible for the management of A Bhd’s financial affairs, Mr. X would fall within the definition of “**chief financial officer**”. Hence, A Bhd is required to make the relevant announcement under Rule 9.19(14A)(b) of the ACE LR in relation to the resignation of Mr. X.

Immediate announcement of reasons for cessation of office

7. **Listed corporations are now required to immediately announce the reasons given for cessation of office of a director², chief executive³ and chief financial officer⁴ including but not limited to any information relating to his disagreement with the board and a statement as to whether or not there are any matters that need to be brought to the attention of the shareholders. If the reasons for cessation are contentious in nature, for example, where the reasons are defamatory or where there is an existing dispute in relation to the cessation of office, how does a listed corporation ensure compliance with such requirement?**

Listed corporations must adhere to the standard of disclosure set out in Rule 9.16 under the ACE LR. Amongst others, the listed corporation must ensure that its announcement is factual, clear, unambiguous, accurate, succinct and contains sufficient information to enable investors to make informed investment decisions. Further, the announcement must be balanced and fair, and does not contain any language which is inflammatory, defamatory or scandalous of another person. In instances where the reasons for cessation of office are contentious in nature, the listed corporation should seek prior legal advice in the preparation of the announcement required.

² See Rule 9.19(12)(b) of the ACE LR.

³ See Rule 9.19(14)(b) of the ACE LR.

⁴ See Rule 9.19(14A)(b) of the ACE LR.

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8. **A director resigns from a listed corporation and does not provide reasons for his resignation. Is the listed corporation still required to provide reasons for the resignation of the director in the announcement under Rule 9.19(12)(b) of the ACE LR?**

Under Rule 9.19(12)(b), the listed corporation is required to disclose the reasons for the cessation of office of its director. Hence, the listed corporation must engage with the relevant director for the reasons of his resignation.

9. **If a listed corporation's shareholders requisition for the removal of a director or auditor of the listed corporation, is the listed corporation required to disclose the reasons for removal pursuant to the shareholders' requisition, under Rules 9.19(12)(b) or 9.19(15) of the ACE LR respectively?**

The listed corporation is expected to use its best endeavours to obtain the reasons for such removal from the shareholders making the requisition, and subsequently announce the reasons under Rules 9.19(12)(b) or 9.19(15) of the ACE LR, as the case may be.

10. **A chief executive resigns and provides the official reasons for his resignation in his letter to the listed corporation. The listed corporation makes the announcement required under Rule 9.19(14)(b) of the ACE LR. Subsequently, the actual reasons for the resignation of the chief executive surfaced. Will there be any enforcement action taken against the listed corporation in this instance by Bursa Securities?**

In making an announcement, the listed corporation must ensure adherence to the requirements under the ACE LR including Rule 9.16(1) which requires the listed corporation to make, amongst others, clear, factual and accurate announcements. Where there are discrepancies in the said announcement, Bursa Securities will investigate to see whether the listed corporation has done all that is necessary to ensure factual and accurate disclosure of facts. Additionally, under Rule 9.16(4) of the ACE LR, the listed corporation is required to immediately notify Bursa Securities when it becomes aware that the announcement does not fulfil the requirements of Rule 9.16(1) of the ACE LR, and do the necessary to rectify the earlier announcement made. If, in the course of Bursa Securities' investigation, it is found that the listed corporation has not taken the necessary steps to ensure accurate and complete disclosure of information, Bursa Securities may take the necessary enforcement action.

Disclosure of detailed analysis of the performance of all operating segments of the group

11. **Paragraph 1 in Appendix 9B of the ACE LR now requires a listed corporation to disclose a detailed analysis of the performance of all operating segments of the group setting out the material factors affecting the earnings and/or revenue of each segment for the current quarter and financial year-to-date. What is the extent of information required to be disclosed that would be considered as a "detailed analysis"?**

In making the disclosure of a detailed analysis, a listed corporation must comment on the performance of each of its business activity (as segmented in the annual report) and the factors that resulted in the revenue or profits improving or declining as compared to the corresponding period. In this regard, the listed corporation's board of directors should discuss, among others, the following factors:

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- (a) the market condition of and demand for its goods and services;
- (b) a discussion on its level of operating activities;
- (c) the factors or circumstances affecting the changes to the revenue, costs and profit margin of each business activity or segment;
- (d) any unusual or one-off gains/losses affecting the revenue or profit; or
- (e) any other information which can provide a better understanding of listed corporation's performance.

A general statement that the revenue and profit for the period has increased/decreased by a certain percentage without any elaboration of the above factors is not acceptable.

Disclosure of listed corporation's prospects

12. To what extent must a listed corporation's board of directors comment on the listed corporation's prospects in the quarterly report pursuant to paragraph 3 of the Appendix 9B of the ACE LR⁵?

In commenting on the listed corporation's prospects under paragraph 3 of Appendix 9B of the ACE LR, the board of directors must discuss in detail the prospects on each segmented activities and the material factors that are likely to influence the listed corporation's prospects for the remaining period of the financial year. The commentary should include -

- (a) the prospects of each of the group's business segments, including contracts at hand, tender book value, competitive challenges, customers' trend and supply constraint;
- (b) significant changes in raw material costs and selling prices affecting demand and profit margins;
- (c) financial impact arising from currency fluctuation and steps taken to mitigate such fluctuation;
- (d) changes in product or service mix and their impact on profit margin;
- (e) financial impact from recently completed acquisition, disposal or merger;
- (f) new regulations or rules which may affect the group's operating activities; or
- (g) any changes in business direction or new development of the group which may have an impact on the prospects of any business segment.

⁵ Paragraph 3 of Appendix 9B of the ACE LR, among others, requires a listed corporation to provide in its quarterly report, a commentary on the prospects, including the factors that are likely to influence the listed corporation's prospects for the remaining period to the end of the financial year or the next financial year if the reporting period is the last quarter.

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A general statement such as the board is optimistic of achieving better performance for the financial year or the board expects the group's results for the remaining period to be profitable, without discussing the above matters is not acceptable.

Disclosure of details of major components on the operating, investing and financing activities in the statement of cash flows

13. **Listed corporations are now required to disclose, on a quarterly basis, the details of major components on their operating, investing and financing activities in their statement of cash flows pursuant to paragraph 17 in Appendix 9B of the ACE LR. How should the listed corporations make the additional disclosures in their statement of cash flows?**

In making the additional disclosures required under paragraph 17 in Appendix 9B of the ACE LR, listed corporations should provide the following details:

- (a) The details in respect of the operating activities may include –

- receipts from customers
- payments to suppliers, contractors and employees
- payment of finance cost
- payment of income taxes
- other receipts

Total Cash Flow from/(used in) operating activities

- (b) The details in respect of the investing activities may include –

- purchase of property, plant and equipment
- disposal of property, plant and equipment
- payment of intangible assets
- acquisition of investments
- disposal of investments
- disposal of assets held for sale
- advances to associates/jointly controlled entities
- repayment of advances from associates/jointly controlled entities
- interest received

Total Cash Flow from/(used in) investing activities

- (c) The details in respect of the financing activities may include –

- dividend paid to equity holders
- dividend received
- proceeds from borrowings
- repayment of borrowings
- proceeds from rights issue
- interest paid

Total Cash Flow from/(used in) financing activities

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Immediate announcement of material development to corporate proposals

14. Rule 9.19(47) of the ACE LR requires a listed corporation to make an immediate announcement of any material development to corporate proposals previously announced. What will be considered “corporate proposals” under Rule 9.19(47) of the ACE LR?

“**Corporate proposals**” for purposes of Rule 9.19(47) of the ACE LR refers to any proposals, transactions, arrangements or exercises by a listed corporation. Corporate proposals include but are not limited to capital raising exercises, transactions, rights issue, bonus issue, capital consolidation, scheme of arrangement, compromise, amalgamation capital reduction, capital repayment and employee share option schemes.

[End]