



Suruhanjaya Sekuriti
Securities Commission
Malaysia



PUBLIC RESPONSE PAPER

No. 3/2011

**PROPOSED AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD
LISTING REQUIREMENTS ON
PRIVATISATION OF LISTED COMPANIES VIA DISPOSAL OF ASSETS**

The Securities Commission Malaysia (SC) and Bursa Malaysia Securities Berhad (Bursa Malaysia) issue this Public Response Paper pursuant to the feedback received on the Joint Consultation Paper dated 19 March 2010 on the Proposed Amendments to Bursa Malaysia Securities Berhad Listing Requirements on Privatisation of Listed Companies via Disposal of Assets.

This Public Response Paper is dated 28 January 2011

PART (1): INTRODUCTION

- 1.1. On 19 March 2010, the SC and Bursa Malaysia published a Joint Public Consultation Paper on the Proposed Amendments to Bursa Malaysia Securities Berhad Listing Requirements (**LR**) on Privatisation of Listed Companies via Disposal of Assets. The Joint Public Consultation Paper invited feedback on the SC's proposals to review the requirements relating to the privatisation of listed companies via disposal of assets.
- 1.2. For a listed company disposing all or substantially all of its assets resulting in the listed company being no longer suitable for continued listing on Bursa Malaysia (**Asset Disposal**), we had put forth the following proposals:
- (i) A listed company be required to obtain the approval of its shareholders for the Asset Disposal with:
 - (a) At least 75% of the shareholders present and voting in terms of value (**75% Approval Threshold**);
 - (b) More than 50% in number of shareholders present and voting (**50% Approval Threshold**); and
 - (c) Not more than 10% of the shareholders present and voting in terms of value objecting to the Asset Disposal (**10% Dissenting Threshold**).
 - (ii) A listed company be required to appoint an independent adviser (**IA**) to provide independent advice to its shareholders; and
 - (iii) A listed company to have a concurrent proposal to acquire new assets that qualify for listing (**New Plan**) or for the acquirer to make a concurrent exit offer (**Exit Offer**) to the shareholders of the listed company in the absence of such a plan.

- 1.3. After the issuance of the Consultation Paper, the SC and Bursa Malaysia held extensive consultations with members of the public, including relevant industry participants. The consultations included special dialogue sessions with selected industry participants to discuss the proposals in depth. We have received responses on the issues raised in the Consultation Paper from public listed companies, fund managers, investment banks, securities houses/boutique corporate advisers, international accounting firms, institutional investors, special interest groups and other relevant professionals. We thank all respondents for their feedback and comments.
- 1.4. We have reviewed and considered thoroughly all responses received. While a majority of the respondents either supported or had no objections to the proposals, there were some comments on certain aspects of the proposals. These comments were comprehensively considered by the SC and updated data and information were assessed to evaluate the possible impact and implications of the proposals.
- 1.5. In reviewing the feedback received, the SC and Bursa Malaysia took into consideration the importance of ensuring that minority shareholders are adequately and appropriately protected and that investor confidence is enhanced while at the same time ensuring that the mergers and acquisitions (**M&A**) market remains open as an avenue for value creation.

PART (2): SUMMARY OF SC'S PROPOSALS AND FEEDBACK RECEIVED

2.1 The Proposed 75% Approval Threshold

- 2.1.1. Moving forward, the SC and Bursa Malaysia propose that a listed company must obtain the approval of 75% or more of shareholders present and voting in terms of value for the Asset Disposal when undertaking a privatisation.

Feedback from respondents

2.1.2. A majority of the respondents had either supported or did not object to the proposed 75% Approval Threshold on the grounds that:

- (i) There is currently a regulatory gap that compromises investor protection;
- (ii) A listed company needs to pay attention to a larger body of shareholders and the sale of a listed company's core business is so fundamental that the decision should require a higher threshold than the present simple majority. It was noted that changes to the Articles of Association of a company also require at least 75% approval of shareholders;
- (iii) As the shareholding structure of listed companies in Malaysia is fairly concentrated, an Asset Disposal via a simple majority may be easily achieved. This means that virtually half of shareholders' voice can be disregarded despite the significant impact of the asset disposal on the listed company; and
- (iv) The 75% Approval Threshold would facilitate strategic investments by investors who demand stronger investor protection, thereby strengthening the attractiveness of the Malaysian capital market. It was also argued that the merits in merging businesses should be dictated by economic considerations rather than be encouraged by low shareholders' approval thresholds.

2.1.3. However, some respondents expressed disagreement with the changes and have commented that:

- (i) The 75% Approval Threshold is too restrictive as it would discourage potential acquirers from exploring M&A activities. This may stop value creation as well as reduce Malaysia's competitiveness vis-à-vis other regional markets;

- (ii) The higher threshold may affect the liquidity of the market as controlling shareholders may have the tendency to increase their shareholdings closer to 75% to ensure that an Asset Disposal can be carried out with certainty; and
- (iii) Strategic investors may not be able to exit their investment at all as a transaction may never happen if the threshold is set higher at 75%. This may potentially stifle M&A activities in Malaysia.

Our Response

- 2.1.4. The privatisation of a listed company affects shareholders' interest. This necessitates the alignment of the threshold for shareholders' approval in privatising a company. Given that other similar privatisation routes require a 75% approval threshold and have similar outcomes as an Asset Disposal, we are of the view that the 75% Approval Threshold is necessary to ensure parity in the level of investor protection.
- 2.1.5. We are also of the view that M&A activities should be driven by economic considerations and pricing, and not by shareholder approval thresholds. The higher shareholders' approval threshold under the other routes for privatisation has not hindered M&A activities in Malaysia. Our research of various jurisdictions also shows that M&A activities in other markets were not adversely impacted by having the threshold.
- 2.1.6. On the concern that the liquidity of the Malaysian capital market may be impacted by promoters increasing or maintaining their stakes closer to 75%, we are of the view that promoters do not hold a large interest in a listed company with the intention of selling the underlying assets of the listed company. Promoters list a company on an exchange for the purposes of, inter alia, accessing capital market for funding. It is in the interest of promoters that sufficient liquidity is maintained in the shares of a listed company for price discovery purposes.

2.2 The Proposed 50% Approval Threshold and 10% Dissenting Threshold

- 2.2.1. After reviewing the feedback from respondents, SC and Bursa Malaysia have decided not to implement the 50% Approval Threshold and 10% Dissenting Threshold.
- 2.2.2. We note the concerns of respondents on both these issues and have concluded that the objectives of the proposals can be adequately achieved with the 75% Approval Threshold, independent advice and clear and detailed disclosure on the utilisation of disposal proceeds.

2.3. Appointment of an IA

- 2.3.1. The SC and Bursa Malaysia propose that a listed company be required to appoint an IA to advise its shareholders on the Asset Disposal.

Feedback from respondents

- 2.3.2. A majority of the respondents agreed or had no objections to the proposal as it would provide an avenue for shareholders to assess the proposal and make informed decision based on an independent view. Nevertheless, some respondents expressed the view that the appointment of an IA may duplicate the role of a main adviser, who is also required to ensure that the Asset Disposal is carried out on fair and reasonable terms and conditions. In an Asset Disposal which does not involve any related party, the requirement of an IA seems to cast doubt on the ability of a main adviser to act impartially.

Our response

- 2.3.3. We are of the view that the appointment of an IA does not undermine the main adviser's role as the IA would focus solely on the fairness and reasonableness of the Asset Disposal and whether or not shareholders should vote in favour on it. The main adviser, on the other hand, will be involved in advising on the transaction as a whole. In this regard, the IA's opinion must set out the reasons for the key assumptions made, and factors taken into consideration in forming the opinion. In

arriving at such opinion, the IA should comply with the relevant provisions of Chapter 12 of the Guidelines on Contents of Applications relating to Take-Overs and Mergers on Independent Adviser's Recommendation issued by the SC.

- 2.3.4. As such, we are of the view that the IA is necessary to provide an assessment on the fairness and reasonableness of the Asset Disposal to assist shareholders in making an informed decision.

2.4. Proposed New Plan or Exit Offer

- 2.4.1. The SC and Bursa Malaysia propose that a listed company either be required to have a New Plan or the acquirer be required to undertake an Exit Offer to the shareholders of the listed company in the absence of such a plan.

Feedback from respondents

- 2.4.2. Some respondents argued that tabling both resolutions together i.e. the New Plan and the Asset Disposal would not be feasible as a listed company normally requires a longer time to find a suitable new business. The timeline for the shareholders to decide on the Asset Disposal may not give the listed company sufficient time to put in place the New Plan. This may lead to a loss of opportunity to the listed company especially if the offer for the Asset Disposal is attractive. As such, a listed company would generally dispose of its assets first and then table the proposal for an acquisition (if any) later.
- 2.4.3. It was also argued that requiring an acquirer to undertake an Exit Offer with the proposal to acquire the assets would incur additional cost and would be burdensome for the acquirer.
- 2.4.4. In contrast, other respondents agreed that an Exit Offer should be undertaken if no New Plan is proposed as there has been a fundamental change in the company as a result of the Asset Disposal. The Exit Offer would provide an opportunity for shareholders to receive the proceeds earlier as compared to a winding-up or capital repayment subsequent to the Asset Disposal.

Our response

- 2.4.5. After taking into consideration the comments on the requirement for the listed company to have a New Plan, we are of the view that flexibility should be given to the listed company and the acquirer be given an option as to whether or not an Exit Offer should be undertaken. However, a listed company will be required to provide clear and detailed disclosure on the utilisation of proceeds from the Asset Disposal when the proposal is tabled to its shareholders.

PART (3): CONCLUSION

- 3.1 We are mindful of the need to have a balanced approach when framing the regulatory framework governing privatisations via Asset Disposal. The framework must be robust and take into account the interests of both minority and major shareholders. We believe that this new policy will strike a balance between business efficacy and shareholder protection.
- 3.2 The new requirements will be effected through amendments to the LR and will apply to all announcements on new Asset Disposal proposals made **on and after 28 January 2011**. The LR can be viewed through www.bursamalaysia.com.my.