

APPENDIX 2

QUESTIONS AND ANSWERS

AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD ACE MARKET LISTING REQUIREMENTS
RELATING TO THE CONTINUING DISCLOSURE OBLIGATIONS AND OTHER AMENDMENTS

(As at 8 May 2019)

CHAPTER 6 - NEW ISSUES OF SECURITIES*General requirements for new issue of securities*

- 6.11 The minimum information that is to be disclosed in an announcement or circular in relation to a new issue of securities has been prescribed in Chapter 6 of the ACE LR. Would a listed corporation be in compliance with the disclosure requirement if it ~~were to merely comply~~ with the minimum content of information prescribed in Chapter 6?

No, in addition to complying with the minimum content of information prescribed under the ACE LR, a listed corporation must always also ensure compliance with other applicable disclosure obligations such as the standard of disclosure prescribed under Rules ~~9.16 and 9.34~~ 9.35 of the ACE LR, ~~as may be applicable~~.

CHAPTER 8 - CONTINUING LISTING OBLIGATIONS*Cash Companies*

- 8.13 Is a Cash Company required to disclose its failure to comply with any obligation imposed pursuant to Rule 8.03(5)(a) of the ACE LR?

Yes, the Cash Company must announce its failure to comply with a particular obligation imposed pursuant to Guidance Note 2 and ensure that the announcement complies with the standard of disclosure set out in Rule ~~9.16~~ 9.35 of the ACE LR with regard to the contents of the announcement. In addition, the Cash Company must also include the consequences of such failure in its announcement.

Compliance with enhanced regularisation plan requirements

- 8.31A *Y Bhd* is a GN3 Company which intends to undertake a regularisation plan to regularize its financial condition pursuant to Rule 8.04 and GN3 of the ACE LR. In the regularisation plan submitted to Bursa Securities, *Y Bhd* has included information relating to its financial forecast. What are the specific requirements under the ACE LR that *Y Bhd* must comply with in relation to the disclosure of financial forecast in the regularisation plan?

Y Bhd and its Sponsor or Adviser must ensure that the preparation and disclosure of the financial forecast in the regularisation plan ~~complies~~ with Chapters 12 and 13 in Part I, Division 1 of the SC's Prospectus Guidelines in relation to future financial information ("SC FFI Standards") as required under Rule 2.19A of the ACE LR. *Y Bhd* must also ensure that its reporting accountant reviews and reports on the underlying accounting policies and assumptions relied on in the preparation of the financial forecast in accordance with the SC FFI Standards.

In addition to the above, *Y Bhd* must, amongst others, ensure that -

- the contents of the regularisation plan submitted to Bursa Securities comply with the requirements as set out in Rule 2.18 of the ACE LR; and
- the draft circular submitted to Bursa Securities together with the regularisation plan complies with the standard of disclosure for circulars as prescribed under Rule [9.349.35](#) of the ACE LR.

GN3 Companies

8.25 Paragraph 2.2(a) of Guidance Note 3 provides that “shareholders’ equity” refers to the equity attributable to equity holders of the listed corporation. Is [minoritynon-controlling](#) interest included in determining “shareholders’ equity”?

No, shareholders’ equity excludes [minoritynon-controlling](#) interest.

Material variation

8.34 Rule 8.24(1)(b) of the ACE LR requires [thea](#) listed corporation to issue a circular to its shareholders and seek its shareholder approval for any material amendment, modification or variation to a proposal which has been previously approved by shareholders in general meeting. When is an amendment, modification or variation considered as “material”?

Pursuant to Rule 8.24(2)(b) of the ACE LR, an amendment, modification or variation is considered material if it can be reasonably expected to have a material effect on the decision of a holder of securities of the listed corporation in relation to such proposal.

8.35 Pursuant to Rule 8.24(3) of the ACE LR, an amendment, modification or variation to a proposal which has been approved by shareholders resulting from the direction or condition imposed by the relevant authorities does not require shareholder approval under Rule 8.24(1)(b) of the ACE LR.

Company A obtains shareholder approval for its corporate proposal i.e. to purchase a 10% interest in *Company B*. Subsequently, before making a submission for approval to the relevant authority, *Company A* revises its proposed purchase to a 30% interest in *Company B*. *Company A* then submits the amended proposal to the relevant authority for approval. The amended proposal is approved by the relevant authority. Although the amendment is material, it is already approved by the relevant authority. Would *Company A* still need to obtain shareholder approval for the amendment?

Yes, the material amendment to *Company A*’s proposal would still require shareholder approval under Rule 8.24(1)(b) of the ACE LR. Although the amended proposal may have been approved by the relevant authority, the amendment was not made pursuant to a direction or condition imposed by such authority.

QUESTIONS & ANSWERS
CONTINUING DISCLOSURE & OTHER AMENDMENTS

8.35A ABC Bhd raised RM50 million in its initial public offering (“IPO”) for the purposes as set out in items (1) to (3) of the table below and as represented in its prospectus. As at 30 April 2019, ABC Bhd had utilized RM29 million from the total proceeds raised as set out in column (i) of the table below. Subsequent to its listing, ABC Bhd decides to change the utilisation of the balance IPO proceeds in order to purchase a new land amounting to RM13 million. As such, ABC Bhd proposes to utilise the balance IPO proceeds earmarked for purchase of equipment and machineries to settle the purchase consideration of RM13 million as follows (items 2 and 4 of the table):

<u>No.</u>	<u>Details of Utilisation</u>	<u>IPO Proceeds (RM'000)</u>	<u>Actual Utilisation as at 30 Apr 2019 (RM'000)</u> (i)	<u>Balance IPO Proceeds (RM'000)</u>	<u>Revisions to Utilisation (RM'000)</u>	<u>Balance Revised Utilisation (RM'000)</u>
<u>1.</u>	<u>Repayment of bank borrowing</u>	<u>10,000</u>	<u>10,000</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>2.</u>	<u>Purchase of equipment and machineries</u>	<u>36,000</u>	<u>15,000</u>	<u>21,000</u>	<u>(13,000)</u>	<u>8,000</u>
<u>3.</u>	<u>Estimated listing expenses</u>	<u>4,000</u>	<u>4,000</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>4.</u>	<u>Purchase of land</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>13,000</u>	<u>13,000</u>
	<u>TOTAL</u>	<u>50,000</u>	<u>29,000</u>	<u>21,000</u>	<u>-</u>	<u>21,000</u>

Is ABC Bhd required to seek shareholder approval for using its IPO proceeds for purchase of equipment and machineries to pay for its new land?

Yes, pursuant to Rule 8.24(1)(a) of the ACE LR, ABC Bhd is required to seek shareholder approval for the change to the utilisation of IPO proceeds since the proposed change of utilisation of proceeds amounting to RM13 million is material as it exceeds 25% of the total IPO proceeds raised:

RM13 million/RM50 million x 100 = 26%.

CHAPTER 9 - CONTINUING DISCLOSURE**General****9.1 Does the ACE LR impose an obligation on listed corporations to make an announcement on financial estimate, forecast or projection?**

The ACE LR does not impose an obligation on listed corporations to announce its financial estimate, forecast or projection.

However, if the listed corporations choose to announce their financial estimate, forecast or projection, the listed corporations must, amongst others, comply with the following:

- the requirements on the standard of disclosure prescribed for contents of announcement as set out in Rule 9.169.35 of the ACE LR and in particular, the preparation and the announcement of the financial estimate, forecast or projection must comply with Chapters 12 and 13 in Part I, Division 1 of the SC's Prospectus Guidelines in relation to future financial information ("SC FFI Standards") as required under Rule 9.16(1)(c)(v)9.35(2) of the ACE LR. This includes the obligation to ensure that the underlying accounting policies and assumptions of the financial estimate, forecast or projection are reviewed by the external auditors or reporting accountants, as the case may be, in accordance with the SC FFI Standards;
- the requirements as set out in Rule 9.19(37) of the ACE LR and Notes 3(b) and 4 of Appendix 9B of the ACE LR; and
- the disclosure must adhere to the Corporate Disclosure Policy prescribed under the ACE LR including the requirement that there should not be selective disclosure of the financial estimate, forecast or projection to the investors, press, analysts or any other parties prior to the release or simultaneous release, of the financial estimate, forecast or projection through Bursa Link.

9.2 If a listed corporation chooses to announce its internal targets that are set as part of its business plan, is it required to comply with the SC FFI Standards in respect of such announcement?

No. The listed corporation need not comply with the SC FFI Standards. However, the listed corporation must comply with the following obligations instead when it announces its internal targets:

- the requirements on the contents of announcement as set out in Rule 9.169.35 of the ACE LR and in particular the announcement on its internal target must explain the nature of the internal targets in accordance with Rule 9.16(1)(f)9.35(1)(f) of the ACE LR;
- the immediate and periodic disclosures must comply with Rule 9.19(37) of the ACE LR and Notes 3(b) and 4 of Appendix 9B of the ACE LR; and
- the disclosure must adhere to the Corporate Disclosure Policy prescribed under the ACE LR including the requirement that there should not be selective disclosure of the internal targets to the investors, press, analysts or any other parties prior to the release or simultaneous release, of the internal targets through Bursa Link.

9.3 ~~Are key performance indicators (“KPIs”) considered internal targets which must comply with the disclosure obligations under the ACE LR?~~

~~KPIs are regarded as internal targets and as such, any listed corporation which makes disclosures of its KPIs would need to adhere to the disclosure obligations including Rule 9.16 of the ACE LR and provide the requisite updates as part of the quarterly reports under the ACE LR. [Deleted]~~

Immediate disclosure of material information

9.5A What are some of the examples where a listed corporation cannot rely on the exceptional circumstance of “prejudicing the ability of a listed corporation to pursue its corporate objectives” to delay disclosure of material information?

The following are some examples where the listed corporation cannot rely on this exceptional circumstance to delay disclosure of material information:

- (a) when there is a material default in a loan by a listed corporation and it is in the process of negotiating with the bank;
- (b) when a listed corporation is involved in a material litigation which adversely impacts the listed corporation; or
- (c) when there is a termination of a material contract and the listed corporation is renegotiating with the counter party.

In the above examples, while disclosure of the information may have an unfavourable impact to the listed corporation, such information is critical for investors to make informed investment decision. In such instances, non-disclosure of the material information is prejudicial to the interest of investors. Hence, announcement of the default, litigation or termination of contract must be made immediately.

9.5B Rule 9.05(2) of the ACE LR stipulates that disclosure of material information may be temporarily withheld if the facts are in a state of flux and a more appropriate moment for disclosure is imminent. In this regard, what constitutes facts that are in a state of flux?

This refers to information that, although material, is subject to rapid change. If the situation is about to stabilise or resolve itself in the near future, it may be proper to withhold public announcement until a firm announcement may be made, since successive public announcements concerning the same subject but based on changing facts may confuse or mislead the public rather than enlighten it.

As an illustration, a listed corporation is in negotiations for the acquisition of another corporation. In the course of the successful negotiation, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly after that, it may become apparent to the parties that it is likely an agreement can be reached. Finally, an agreement in principle is reached on specific terms.

In such circumstances, the listed corporation need not issue a public announcement at each stage of the negotiations to describe the current state of constantly changing facts, but may wait until agreement in principle is reached on specific terms. If, on the other hand, progress in the negotiations should stabilise at some other point, disclosure should then be made if the information is material.

9.5C Can a listed corporation withhold immediate disclosure of material information -

- due to confidentiality obligations pursuant to the terms of negotiations or agreements; or
- where consent is required from the counter party for the disclosure of the terms of the agreements?

No. A listed corporation must avoid putting itself in a position where it is bound by confidentiality obligations or requirement on consent from the counter party that may defeat its obligation to disclose material information on an immediate basis.

Clarification, confirmation or denial of rumours or reports

9.5D Rule 9.10(1)(a) of the ACE LR requires a listed corporation to immediately announce a denial or clarification of erroneous rumour or report and take reasonable effort to bring the announcement to the attention of the party that initially distributed such rumour or report. How does the listed corporation comply with taking “reasonable effort to bring the announcement to the attention of the party that initially distributed the erroneous rumour or report”?

The listed corporation may do so by sending a copy of the announcement to such party, e.g. the newspaper’s editor (in the case of an erroneous newspaper article), or the broker responsible for the erroneous market report.

Thorough public dissemination

9.6 Is selective disclosure of material information allowed under the ACE LR?

Pursuant to Rule 9.08(2) of the ACE LR, listed corporations must ensure that under no circumstances disclosure of material information is made on an individual or selective basis to analysts, shareholders, journalists or other persons unless such information has previously been fully disclosed and disseminated to the public.

However, pursuant to Rule 9.08(3) of the ACE LR, under limited circumstances, selective disclosure to such persons where it is necessary towards achieving certain corporate objectives is permitted subject to the requirements in the said Rule. Hence, disclosure of unpublished material information to solicitors and advisers in undertaking a corporate or due diligence exercise is permitted provided that the strictest confidentiality is imposed and maintained, and the market activity of the listed corporation is closely monitored.

Prescribed events which require immediate announcement

- 9.10** Listed corporations are ~~now~~ required to immediately announce the reasons given for cessation of office of a director¹, chief executive² and chief financial officer³ 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(4)~~9.35 under the ACE LR. Amongst others, the listed corporations must ensure that its announcement is factual, clear, unambiguous, accurate, succinct and contains sufficient information to enable securities holders and 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.

- 9.13** 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(4)~~9.35(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)~~9.35(5) 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(4)~~9.35(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.

- 9.16** Does a listed corporation need to inform Bursa Securities when a listed corporation wants to utilise the balance of its initial public offerings proceeds which have been allocated for a project as disclosed in the prospectus, for another project?

Pursuant to Rule 9.19(33) of the ACE LR, a listed corporation must announce to Bursa Securities any change to the utilisation of proceeds raised from issuance of securities (including arising from initial public offerings) that deviates by 5% or more from the ~~original utilisation of total~~ proceeds raised.

¹ See Rule 9.19(12)(b) of the ACE LR.

² See Rule 9.19(14)(b) of the ACE LR.

³ See Rule 9.19(14A)(b) of the ACE LR.

- 9.19 *Z Bhd* has disclosed in its prospectus issued for the initial public offering of *Z Bhd* that it expects the gross proceeds from the public issue of approximately RM35million to be fully utilised as set out in column (i) of the table below. follows: Subsequent to the listing of *Z Bhd*, *Z Bhd* decides that it would need to purchase additional equipment and thus, *Z Bhd* would need a total of RM8.15 million towards the purchase of equipment. *Z Bhd* further decides that the additional RM2.15 million would be from its working capital as follows:

Details of proposed utilisation of proceeds	Proceeds (RM'000) (i)	Revisions to Utilisation (RM'000)	Balance Revised Utilisation (RM'000)
Acquisition of a new factory	5,000	-	5,000
Purchase of equipment	6,000	2,150	8,150
Repayment of bank borrowings	13,000	-	13,000
Working capital	10,000	(2,150)	7,850
Estimated listing expenses	1,000	-	1,000
Total	35,000	-	35,000

~~Subsequent to the listing of *Z Bhd*, *Z Bhd* decides that it would need to purchase additional equipment and thus, *Z Bhd* would need a total of RM6.4 million towards the purchase of equipment. *Z Bhd* further decides that the additional RM400,000 would be from its working capital. Is *Z Bhd* required to make an immediate announcement of these changes to its proposed utilisation of proceeds under Rule 9.19(33) of the ACE LR?~~

Yes. As *Z Bhd* would now utilise RM8.156.4 million towards the purchase of equipment, *Z Bhd* would be required to make an immediate announcement of the changes including the deviation in the utilisation of the RM2.15 million~~400,000~~ which was originally proposed for working capital purposes pursuant to Rule 9.19(33) of the ACE LR. ~~The requisite announcement under Rule 9.19(33) of the ACE LR refers to instances of deviation to the amount allocated for a particular purpose. This is because the deviation amounts to more than 5% of the the total proceeds raised:~~

$$\text{RM2.15 million/RM35 million} \times 100 = 6.14\%$$

- 9.20 Based on the same facts as in Question 9.17 above, would *Z Bhd* be required to make an immediate announcement pursuant to Rule 9.19(33) of the ACE LR notwithstanding that *Z Bhd* has yet to proceed with the purchase of the additional equipment?

Yes, *Z Bhd* would be required to make the immediate announcement pursuant to Rule 9.19(33) of the ACE LR notwithstanding that *Z Bhd* has yet to proceed with the purchase. For purposes of Rule 9.19(33) of the ACE LR, listed corporations would be required to make the announcement once a decision has been made to change the proposed utilisation of proceeds which triggers the prescribed 5% threshold and not upon actual implementation of the change.

⁴ Rule 9.19(33) of the ACE LR requires a listed corporation to make immediate announcement on any change to the utilisation of proceeds raised by the listed corporation from the issuance of securities that deviates by 5% or more from the total proceeds raised.

Issuance of interim audited financial statements

9.35B Pursuant to Rule 9.23A of the ACE LR, what are the instances where Bursa Securities may not require the issuance of interim audited financial statements if a listed corporation extends its financial year end (“FYE”) to beyond 18 months from the last financial year end?

Amongst the instances where Bursa Securities may not require a listed corporation to issue an interim audited financial statement are when the change in FYE is to -

- (i) coincide with the financial year of the listed corporation’s holding company pursuant to section 247 of the Companies Act 2016; or
- (ii) allow a listed corporation to undergo a corporate restructuring exercise involving merger or acquisition.

Circulars and other requirements

9.48 What are the main obligations of a listed corporation or the adviser in respect of the Exempt Circulars given that such circulars will not be perused by Bursa Securities?

Pursuant to paragraph 3.2 of Guidance Note 22, the Exempt Circulars must include a statement that Bursa Securities has not perused the circular before its issuance. Further, a listed corporation must submit a checklist showing compliance with the relevant parts of the ACE LR immediately upon issuance of the Exempt Circulars to securities holders. The listed corporation, its director, Sponsor or adviser, as the case may be, must also ensure that the Exempt Circulars comply with the ACE LR, including the standard of disclosure prescribed in Rule 9.349.35 of the ACE LR and the prescribed minimum contents, if any, failing which, Bursa Securities may take enforcement action against the listed corporation, its directors, Sponsor or adviser, as the case may be.

9.48A What are the areas that Bursa Securities will focus on in respect of the Limited Review Circulars?

In conducting a limited review, Bursa Securities will only focus on key disclosure areas and not the entire circular. However, Bursa Securities may conduct a full review in circumstances where it deems fit. In any event, listed corporations, their directors, Sponsor or adviser, as the case may be, must ensure the accuracy and completeness of the Limited Review Circulars pursuant to Rule 9.349.35 of the ACE LR.

CHAPTER 14 - DEALINGS IN SECURITIES**14.10 Are the requirements relating to dealings in securities under Chapter 14 of the ACE LR applicable to securities borrowing and lending (“SBL”) transactions by directors and principal officers of listed corporations?**

No, the requirements under Chapter 14 of the ACE LR are not applicable to SBL transactions by directors and principal officers of listed corporations. This is because a SBL transaction merely involves a temporary transfer of securities from the lender to the borrower on a collateralised basis. Therefore, it falls outside the ambit of Chapter 14 of the ACE LR which serves to apprise the market of acquisitions or disposals of securities or interest in securities (i.e. dealings in securities) by, or trading activities and trends of, directors and principal officers who are privy to price-sensitive information of the company.

[End of Appendix 2]