

Our Ref: SR/TAC(pt)/LD10/14

22 July 2014

The Company Secretary
(Listed Issuers)

Via email

Dear Sir/Madam,

1. **AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS REGARDING AN INDEPENDENT ADVISER'S ROLE IN RELATION TO A MAJOR DISPOSAL AND VOLUNTARY WITHDRAWAL OF LISTING.**
 2. **BEST PRACTICE GUIDE IN RELATION TO INDEPENDENT ADVICE LETTERS**
 3. **CLARIFICATION OF THE DISCLOSURE REQUIREMENTS IN ANNUAL REPORTS**
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1. INTRODUCTION

- 1.1. Disclosure is a key component of a robust corporate governance ecosystem and is critical in promoting investor protection. As such, Bursa Malaysia Securities Berhad ("**Bursa Securities**") is enhancing disclosures in the marketplace with a view to aid securities holders and investors to make informed investment decisions through the following: -
- (a) amending the Main Market Listing Requirements ("**Main LR**") in relation to the role of an independent adviser ("**IA**") when commenting on the fairness and reasonableness of a Major Disposal and voluntary withdrawal of listing pursuant to section 9 of the Capital Markets and Services Act 2007 ("**CMSA**");
 - (b) introducing a Best Practice Guide in relation to independent advice letters ("**IALs**") issued by IAs to securities holders pursuant to corporate proposals which involve the appointment of IAs; and
 - (c) clarifying the disclosure requirements of annual reports with regard to a listed issuer's diversity policy in relation to its board of directors and workforce.

1. **AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS REGARDING AN INDEPENDENT ADVISER'S ROLE IN RELATION TO A MAJOR DISPOSAL AND VOLUNTARY WITHDRAWAL OF LISTING**
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A. AMENDMENTS TO THE MAIN LR REGARDING AN INDEPENDENT ADVISER'S ROLE IN RELATION TO A MAJOR DISPOSAL AND VOLUNTARY WITHDRAWAL OF LISTING AND INTRODUCTION OF A BEST PRACTICE GUIDE IN RELATION TO INDEPENDENT ADVICE LETTERS

2. BACKGROUND & OBJECTIVES

Major Disposal

- 2.1 At present, an IA is required to comment on the fairness and reasonableness of a Major Disposal¹ and its related proposals in so far as the securities holders are concerned.
- 2.2 According to the Practice Note 15 ("PN15") issued by the Securities Commission ("SC") pursuant to the Malaysian Code on Take-Overs and Mergers 2010 ("TOM Code"), the term 'fair and reasonable' should generally be analysed as two distinct criteria i.e. whether the offer is 'fair' and whether the offer is 'reasonable', rather than as a composite term. As such, an IA is expected to explain both its quantitative assessment (i.e. fairness of the pricing or consideration) and qualitative assessment (i.e. reasonableness of the terms and conditions) of the corporate proposal to securities holders. This is to promote greater disclosures and transparency on the assessment done by an IA to securities holders.
- 2.3 As the requirements relating to a Major Disposal under the LR were introduced to provide parity of regulation in respect of the other modes of privatisation² and align the safeguards to securities holders, an IA must adopt the same approach under PN 15 when commenting whether a Major Disposal is 'fair and reasonable'.
- 2.4 Accordingly, with regard to a Major Disposal, Bursa Securities has amended Paragraph 10.11A of the Main LR to clarify the role of an IA and to require an IA to comply with the relevant provisions relating to an independent adviser's recommendation pursuant to PN 15.

¹ *Major Disposal means a disposal of all or substantially all of a listed corporation's assets which may result in the listed corporation being no longer suitable for continued listing on the Official List under Paragraph 10.02(eA) of the Main LR.*

² *Other modes of privatisation include a take-over offer pursuant to the TOM Code, a selective capital reduction pursuant to section 64 of the Companies Act 1965, a scheme of compromise, arrangement or amalgamation pursuant to section 176 of the Companies Act 1965.*

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Voluntary Withdrawal of Listing

- 2.5 Apart from a Major Disposal, the LR also requires the appointment of an IA in connection with a request for voluntary withdrawal of listing³ by a listed issuer. An IA is required to be appointed to advise and make recommendations for the consideration of securities holders for the following:-
- (a) the proposed withdrawal of listing; and
 - (b) the fairness and reasonableness of the exit offer.⁴
- 2.6 As in a Major Disposal, the requirements relating to a voluntary withdrawal of listing under the LR are to provide parity of regulation and align the safeguards to securities holders where a listed issuer is being privatised.
- 2.7 Accordingly, with regard to a voluntary withdrawal of listing, Bursa Securities has amended Paragraph 16.06 of the Main LR to clarify the role of an IA and to require an IA to comply with the relevant provisions relating to an independent adviser's recommendation pursuant to PN 15.

Other Amendments

- 2.8 At present, the term 'listed corporation' is used in reference to a Major Disposal. As other listed issuers such as real estate investment trusts and business trusts should similarly comply with the requirements of a Major Disposal, Bursa Securities has extended these requirements to real estate investment trusts and business trusts by replacing the term 'listed corporation' with 'listed issuer' in Paragraphs 10.02 and 10.11A of the Main LR.
- 2.9 Other than the above, Bursa Securities has also extended the requirements in relation to 'shareholders' to 'unit holders' in Paragraphs 10.11A and 16.06 of the Main LR to ensure that unit holders of collective investment schemes such as real estate investment trusts and business trusts will also be able to give their approval on the proposed Major Disposal, proposed withdrawal of listing and exit offer, as the case may be, at a unit holder meeting.

³ Paragraph 16.06 of the Main LR

⁴ Paragraph 16.06(1)(d) of the Main LR

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3. FULL TEXT OF AMENDMENTS

- 3.1 The full text of the above amendments is attached in **Appendix 1**. For ease of reference, the amendments are reflected in the following manner:
- portions underlined are text newly inserted / added onto the existing rules; and
 - portions struck through are text deleted.

4. IMPLEMENTATION

- 4.1 The amendments set out in **Appendix 1** are **effective immediately**.

5. BEST PRACTICE GUIDE IN RELATION TO INDEPENDENT ADVICE LETTERS

- 5.1 Generally, an IA is responsible for advising securities holders on how they should vote in respect of the relevant corporate proposals based on their findings. An IA is required to comment on whether the proposed corporate proposal is fair and reasonable in so far as the securities holders are concerned. The IA must substantiate its opinion with the reasons for, the key assumptions made and the factors taken into account in arriving at its opinion. In doing so, the IA must take all the steps to satisfy itself that it has reasonable basis for its comments and advice to securities holders. The IAL must be attached to the circular to all the listed issuer's securities holders for their consideration.
- 5.2 In view of the above, Bursa Securities is also issuing a Best Practice Guide In Relation to Independent Advice Letters ("**IAL Guide**") which seeks to clarify the SC's and Bursa Securities' views on the role of an IA and to provide guidance on the standards of disclosures in IALs as well as to augment the SC's and Bursa Securities' continuous efforts in raising standards of corporate governance through the promotion of high quality disclosures. Bursa Securities would like to record its appreciation to SC for its input and support in the preparation and finalisation of the IAL Guide.
- 5.3 The IAL Guide is applicable to IALs prepared in respect of Major Disposals, related party transactions, voluntary withdrawal of listings and other corporate proposals under the Main LR, as well as IALs commissioned voluntarily. It sets out the requirements an IA should meet in accepting an engagement, how an IA should perform the engagement, valuation matters, contents of an IAL, the disclosure of forward-looking information in an IAL and the responsibilities of an IA after issuance of the IAL.
- 5.4 Bursa Securities expects the IAs to apply the IAL Guide, to the extent possible, when preparing their IALs. It is hoped that the IAL Guide will serve as a useful guide to the IAs

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in discharging their roles, which will in turn improve the quality of IALs issued by IAs to securities holders. This will result in greater transparency and enhanced investor protection which will in turn boost investor confidence in the Malaysian capital market.

A copy of the IAL Guide is attached as **Appendix 2** for your kind reference.

B. CLARIFICATION OF THE DISCLOSURE REQUIREMENTS IN ANNUAL REPORTS

6. BACKGROUND

- 6.1 Globally, diversity in the boardroom has gained attention as an important element of a well-functioning organization. This has also been a priority in Malaysia as seen in the announcement by the Prime Minister on 27 June 2011 on the Government's policy approved by the Cabinet that women must comprise at least 30% of those in decision-making positions in the corporate sector within 5 years.
- 6.2 As a follow through from the announcement, various initiatives have been undertaken to inculcate diversity at the boardroom and workplace which encapsulates not only gender, but also age and ethnicity.
- 6.3 More recently also, the Prime Minister had, in his speech at the Sustainability and Diversity Roundtable Session organized by the Economic Planning Unit and the SC on 9 April 2014, spoken about the need for listed issuers to establish and disclose their diversity policies, covering gender, ethnicity and age for board and management. This is in view that diversity, if well managed, can drive performance and strengthen governance. Hence, in the Malaysian context of a multi-ethnic and multi-cultural society, diversity can be a source of strength as well as a market differentiator.
- 6.4 Further to the above, it is also recognized that institutional investors play a key role as stewards of listed issuers in monitoring and engaging with their investee companies on matters relating to corporate governance or sustainability issues. Hence, Principle 5 of the Malaysian Code for Institutional Investors 2014 which was launched on 27 June 2014 ("**II Code**"), states that institutional investors are recommended to incorporate corporate governance and sustainability considerations, including environmental, social and governance factors in their investment decision-making process. In particular, Guidance 5.2 of the II Code provides that the institutional investors should, among others, assess the quality of disclosures made by investee companies on the diversity targets and policies including gender, age and ethnicity.
- 6.5 Accordingly, we are now clarifying the disclosure requirements relating to diversity in the annual reports as set out in paragraph 7 below. This serves to complement the various initiatives launched to inculcate diversity in the boardroom and workplace.

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7. LISTED ISSUERS' OBLIGATIONS

- 7.1 A listed issuer is required to disclose in the annual report, its diversity policy for its board of directors and workforce in terms of gender, age and ethnicity. For this purpose, Bursa Securities wishes to clarify the following requirements:

NO.	CURRENT REQUIREMENTS	ENHANCED DISCLOSURE REQUIREMENTS	IMPLEMENTATION
(a)	Under paragraph 15.08A of the Main LR, a listed issuer is required to disclose in its annual report, its nominating committee's activities which must include, among others, the policy on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer.	In this regard, the listed issuer must, in the disclosure of its policy on board composition in the annual report, with respect to diversity, include not only the policy on gender diversity, but also diversity in ethnicity and age.	Applicable for all annual reports issued on or after 2 January 2015.
(b)	A listed issuer is also required, under paragraph 29, Part A, Appendix 9C of the Main LR, to disclose its corporate social responsibility activities or practices in its annual report. The disclosure generally is expected to cover the environment, community, workplace, and ethical marketplace activities or practices of the listed issuer.	In this connection, the listed issuer must, when describing its workplace practices, disclose the diversity policy for its workforce in terms of gender, ethnicity and age.	

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8. ADDITIONAL INFORMATION

- 8.1 This letter and all the above mentioned documents are also available at Bursa Malaysia Berhad's website at www.bursamalaysia.com.
- 8.2 If you have any queries on the above, please do not hesitate to contact the following persons from Listing Advisory & Development, Listing Division at 03-2034 7766:
- (a) Mr Chee Kai Mun;
 - (b) Ms. Tiffany Yan Wei Mee; or
 - (c) Pn. Razalina Suriati Abdullah.

Thank you.

Yours faithfully,



SELVARANY RASIAH
Chief Regulatory Officer

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