



CONSULTATION PAPER NO. 1/2020
PROPOSED AMENDMENTS TO THE LEAP MARKET LISTING REQUIREMENTS IN RELATION TO
ANTI-CORRUPTION AND WHISTLE-BLOWING MEASURES

Date of Issue: 6 March 2020

Bursa Malaysia Berhad (“Bursa Malaysia”) invites your written comments on the issues set out in this Consultation Paper by 20 March 2020 (Friday) via:

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

If you have any queries in relation to this Consultation Paper, kindly contact us at the e-mail address above or any of the following numbers i.e. 603-2034 7569 or 603-2034 7515.

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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

1. This Consultation Paper seeks views and comments from the public on the proposed amendments to Bursa Malaysia Securities Berhad (“**the Exchange**”) LEAP Market Listing Requirements (“**LEAP LR**”) in relation to anti-corruption and whistle-blowing measures.

B. BACKGROUND

2. On 5 April 2018, the Malaysian Parliament amended the Malaysian Anti-Corruption Commission Act 2009 (“**MACC Act**”) to incorporate, among others, a new Section 17A on corporate liability for corruption. 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. The defence available to the organisation’s liability is that there are adequate procedures in place to prevent persons associated with the organisation from corrupt conduct.
4. The Guidelines on Adequate Procedures¹ (“**GAP**”) was subsequently issued pursuant to section 17A(5) of the MACC Act to assist commercial organisations in understanding what are the adequate procedures that should be implemented to prevent the occurrence of corrupt practices in relation to their business activities.
5. At the Exchange, we take a strict stance against corruption as we recognise that it erodes value and has a very real cost to business and society. Hence, sound anti-corruption measures are key to enhance the integrity and attractiveness of the capital market.
6. In view of this, we had, on 18 December 2019, amended the Main Market Listing Requirements (“**Main LR**”) and ACE Market Listing Requirements (“**ACE LR**”) to encapsulate anti-corruption measures which are in addition to the statutory provisions under the law (“**Main and ACE Anti-Corruption Amendments**”). The Main and ACE Anti-Corruption Amendments will come into effect from 1 June 2020 onwards.

¹ 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.

C. PROPOSED LEAP ANTI-CORRUPTION AMENDMENTS

7. Section 17A of the MACC Act is applicable to any commercial organisation, including a LEAP Market listed corporation. Therefore, the Exchange believes that the introduction of anti-corruption and whistle-blowing measures in the LEAP LR is also necessary, to provide LEAP Market listed corporations with a measure of assurance and defence against the legal liability under Section 17A of the MACC Act.
8. We are mindful that the regulatory framework for LEAP Market adopts a more principle-based approach that emphasises on an appropriate and proportionate regulatory framework, commensurate with a qualified market meant for sophisticated investors². However, we also recognise that certain basic governance provisions must not be compromised, such as the importance of having in place the appropriate anti-corruption and whistle-blowing measures for the LEAP Market listed corporations.
9. The LEAP LR³ currently prescribes some basic functions of the board of directors (“board”) of a LEAP listed corporation, in addition to the duties of directors under the law. The board must, among others, discharge the following functions:
 - (a) ensure that the listed corporation has in place sufficient procedures, policies and controls to ensure compliance with the LEAP LR;
 - (b) ensure that there are in place adequate internal controls and risk management systems, including sufficient controls in monitoring transactions or conduct that raises questions of management’s integrity or gives rise to conflict of interest situation within the listed corporation or group, such as related party transaction; and
 - (c) review and approve the financial statements before issuance of the same to public and securities holders.
10. In this connection, we propose to extend the Board’s functions to encompass anti-corruption and whistle blowing measures in the LEAP LR (“**Proposed LEAP Anti-Corruption Amendments**”).

² A sophisticated investor means any person who falls within any of the categories of investors set out in Part I of Schedule 6 or Part I of Schedule 7 of the Capital Market Services Act 2007. Examples include corporations with total net assets exceeding RM10,000,000 or equivalent in foreign currencies based on last audited accounts, or individuals whose total net personal assets exceeds RM3,000,000 or equivalent in foreign currencies, or individuals who have a gross annual income exceeding RM300,000 or equivalent in foreign currencies in the preceding 12 months.

³ See Rule 6.05 of the LEAP LR.

Proposed LEAP Anti-Corruption Amendments

11. There are two options which the Proposed LEAP Anti-Corruption Amendments can be introduced, by adopting either a principle-based approach or a more prescriptive approach, akin to the Main and ACE Anti-Corruption Amendments.

11.1 Principle-Based Approach

Under the principle-based approach, we propose to require a LEAP Market listed corporation and its board of directors to ensure the establishment and maintenance of the following for the listed corporation and its group of companies:

- (a) policies and procedures on anti-corruption which as a minimum are guided by the GAP issued pursuant to section 17A(5) of the MACC Act; and
- (b) policies and procedures on whistle-blowing.

(“Principle-Based Requirements”)

11.2 Prescriptive Approach

Under this approach, similar prescriptive provisions under the Main and ACE Anti-Corruption Amendments will be adopted, by -

- (a) requiring a LEAP Market listed corporation and its board of directors to ensure that:
 - (i) the following are established and maintained for the listed corporation and its group of companies:
 - (aa) policies and procedures on anti-corruption that are, at a minimum, guided by the GAP issued pursuant to section 17A(5) of the MACC Act; and
 - (bb) policies and procedures on whistle-blowing;
 - (ii) the policies and procedures in subparagraph (i) above are reviewed periodically to assess their effectiveness, and in any event, at least once every 3 years; and
 - (iii) corruption risk is included in its annual risk assessment of the group.
- (b) requiring the LEAP Market listed corporation to publish its policy on anti-corruption and its policy and procedures on whistle-blowing, on its website.

(“Prescriptive Requirements”)

- 11.3 The full text of the Proposed LEAP Anti-Corruption Amendments are provided in **Annexure A (Principle-Based Requirements)** and **Annexure B (Prescriptive Requirements)** with portions underlined reflecting the new insertion onto the existing rules.

Merits & Issues

12. In coming up with the Principle-Based Requirements and Prescriptive Requirements, the Exchange noted and considered the following merits and issues associated with these proposals:

	Merits	Issues
Principle-Based Requirements	<p>The Principle-Based Requirements -</p> <ul style="list-style-type: none"> • strike the right balance of being consistent with the principle-based regulatory approach which is a key feature of the LEAP Market, while still meeting the key objective of ensuring all LEAP Market listed corporations put in place anti-corruption and whistle-blowing policies and procedures; • provide more flexibility to the LEAP Market listed corporation in managing its compliance with the requirements; and • do not impose unnecessary cost of compliance to the LEAP Market listed corporation that are mainly small-medium enterprises (“SMEs”). 	<p>Despite requiring the anti-corruption policies and procedures to be guided by the GAP, the Principle-Based Requirements may not provide sufficient clarity and guidance as to how a LEAP Market listed corporation should implement the appropriate anti-corruption and whistle-blowing measures.</p> <p>Hence, a LEAP Market listed corporation may not put in place adequate procedures to enjoy the defence of adequate procedures under the MACC Act.</p>
Prescriptive Requirements	<p>The Prescriptive Requirements -</p> <ul style="list-style-type: none"> • provide greater clarity to the LEAP Market listed corporations on the specific obligations to be complied with in relation to adequate procedures; • help inculcate more regular, proper and structured oversight by the board of directors, in the LEAP listed corporation; and • are likely to provide adequate defence under the MACC Act. 	<ul style="list-style-type: none"> • The Prescriptive Requirements could be perceived as a departure from the key principles and features of the LEAP Market i.e. principles-based rules. ❖ The Main LR and ACE LR set out the minimum corporate governance (“CG”) requirements governing the conduct of the Main Market listed issuers and ACE Market listed corporations, including having an internal control and risk management system that

	Merits	Issues
		<p>should comply with the Malaysian Code of Corporate Governance and detailed recommendations of the Statement on Risk Management and Internal Control: Guidelines for Directors of Listed Issuers.</p> <ul style="list-style-type: none"> ❖ Presently, there are no similar express or prescribed CG requirements under the LEAP LR other than the provisions on the basic functions of the board as discussed in paragraph 9 above. • Adopting the Prescriptive Requirements may increase the LEAP Market listed corporations' cost of compliance. ❖ There will be increased regulatory compliance through the mandatory obligations imposed for undertaking <u>periodic</u> review (i.e. at least <u>once every 3 years</u>) of the anti-corruption and whistle-blowing policies and procedures, as well as conducting <u>annual</u> risk assessment of the group. ❖ Through the requirement for publication of the policies and procedures on the website, a LEAP Market listed corporation is compelled to have and maintain a website. There is currently no requirement under the LEAP LR for a LEAP Market listed corporation to maintain a website.

	Merits	Issues
		❖ This again may increase cost of compliance especially for listed corporations which have yet to set up websites.

F. FEEDBACK SOUGHT

13. In view that both the Principle-Based Requirements and Prescriptive Requirements have their merits and issues, the Exchange welcomes the views and feedback from the public on both requirements. Comments can be given by filling up the template as attached in the **Attachment**.

Issue(s) for Consultation:

1. Do you agree with the proposal to incorporate the Proposed LEAP Anti-Corruption Amendments in the LEAP LR?

Please state your reasons.
2. In your opinion, which proposal is more appropriate for the LEAP LR:
 - (a) Principle-Based Requirements; or
 - (b) Prescriptive Requirements?
 Please state the reasons for your views.
3. Do you have any other views or suggestions to improve the Principle-Based Requirements or the Prescriptive Requirements?

Please state the reasons for your suggestions.

Note:

As the Proposed LEAP Anti-Corruption 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 LEAP Anti-Corruption 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 LEAP Anti-Corruption 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 LEAP Anti-Corruption Amendments.

[End]

ANNEXURE A PROPOSED AMENDMENTS (PRINCIPLE-BASED REQUIREMENTS)

CHAPTER 6 CONTINUING LISTING OBLIGATIONS

PART B - CONTINUING LISTING OBLIGATIONS

6.05A Anti-corruption and whistle-blowing

A listed corporation and its board of directors must ensure that the following are established and maintained for the listed corporation and its group of companies:

- (a) policies and procedures on anti-corruption that are, at a minimum, guided by the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the Malaysian Anti-Corruption Commission Act 2009; and
- (b) policies and procedures on whistle-blowing.

[End of Annexure A]

ANNEXURE B PROPOSED AMENDMENTS (PRESCRIPTIVE REQUIREMENTS)

CHAPTER 6 CONTINUING LISTING OBLIGATIONS

PART B - CONTINUING LISTING OBLIGATIONS

6.05A Anti-corruption and whistle-blowing

(1) A listed corporation and its board of directors must ensure that -

(a) the following are established and maintained for the listed corporation and its group of companies:

(i) policies and procedures on anti-corruption that are, at a minimum, guided by the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the Malaysian Anti-Corruption Commission Act 2009; and

(ii) policies and procedures on whistle-blowing;

(b) the policies and procedures in sub-Rule (a) above are reviewed periodically to assess their effectiveness, and in any event, at least once every 3 years; and

(c) corruption risk is included in its annual risk assessment of the group.

(2) A listed corporation must also publish on its website -

(a) its policy on anti-corruption; and

(b) its policy and procedures on whistle-blowing.

[End of Annexure B]

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]