QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS
(As at 1 January 2022)

CHAPTER 8 – CONTINUING LISTING OBLIGATIONS

Security holding spread

8.1 Pursuant to paragraph 8.02(1) of the Main LR, a listed issuer must ensure that at least 25% of its total listed shares (excluding treasury shares) or listed units are in the hands of public security holders. Do these public security holders need to hold at least 1 board lot, i.e. 100 shares each?

No, there is no minimum number of shares that need to be held by these public security holders.

8.2 On 5 August 2009, *D Bhd's* public security holding spread is 18% of its total listed shares (excluding treasury shares).

(a) What are *D Bhd's* key obligations under the Main LR in relation to this non-compliance?

D Bhd must take immediate steps to comply with the public security holding spread requirement.

Pursuant to paragraph 8.02(3) of the Main LR, *D Bhd* must immediately announce to Bursa Securities that it does not comply with the required security holding spread prescribed under paragraph 8.02(1). *D Bhd* must include the information set out in paragraph 3.2 of Practice Note 19 in its announcement. After that, *D Bhd* must announce the status of its efforts to comply with the public security holding spread requirement for each quarter of its financial year in accordance with paragraphs 3.3 and 3.4 of Practice Note 19.

If *D Bhd* requires an extension of time to rectify its situation, it must request for an extension under paragraph 8.02(4) of the Main LR. However, even though an extension of time is granted, *D Bhd* must comply with the public security holding spread requirement as soon as possible.

(b) On 30 August 2009, *D Bhd's* public security holding spread is 9% of its total listed shares (excluding treasury shares). What is *D Bhd's* additional obligation in regard to its public security holding spread of 9%?

In addition to the disclosure obligations under Question (a) above, *D Bhd* must immediately announce to Bursa Securities the information set out in paragraph 5.4 of Practice Note 19.

(c) When will the trading of securities of *D Bhd* be suspended after its announcement in Question (b) above?

Pursuant to paragraph 16.06(2)(a) of the Main LR, Bursa Securities shall suspend trading of securities of *D Bhd* upon expiry of 30 market days from the date of *D Bhd's* announcement. However, if the public security holding spread of *D Bhd* increases to above 10% before the expected date of suspension, *D Bhd* should immediately inform Bursa Securities of its improvement in its public spread and seek its confirmation on whether the suspension will still be imposed.

In addition, where appropriate, Bursa Securities may also take such enforcement action as it deems fit against *D Bhd* pursuant to paragraph 16.19 of the Main LR.

8.3 On 5 August 2009, pursuant to a take-over offer, *Company P* holds 76% of the listed shares (excluding treasury shares) of *Y Bhd*, a listed issuer. If *Company P's* intention is to maintain *Y Bhd's* listing status, what are *Y Bhd's* key obligations in regard to its non-compliance with the public security holding spread requirement prescribed under paragraph 8.02(1) of the Main LR?

Y Bhd must take immediate steps to comply with the public security holding spread requirement.

Pursuant to paragraph 8.02(3) of the Main LR, *Y Bhd* must announce that it does not comply with the required security holding spread prescribed in paragraph 8.02(1) of the Main LR. *Y Bhd* must include the information set out in paragraph 3.2 of Practice Note 19 in its announcement.

Y Bhd must announce the status of its efforts to comply with the public security holding spread requirement for each quarter of its financial year in accordance with paragraphs 3.3 and 3.4 of Practice Note 19.

If *Y Bhd* requires an extension of time to rectify its situation, it must request for an extension under paragraph 8.02(4) of the Main LR. However, even though an extension of time is granted, *Y Bhd* must comply with the public security holding spread requirement as soon as possible.

8.4 On 19 August 2009, pursuant to a take-over offer, *Company X* holds 91% of the listed shares (excluding treasury shares) of *Z Bhd*, a listed issuer.

If *Company X's* intention is not to maintain *Z Bhd's* listing status, what must *Z Bhd* do?

Pursuant to paragraph 9.19(48) of the Main LR, *Z Bhd* must announce that 90% or more of its shares are being held by *Company X*. *Z Bhd* must include the information set out in Part J of Appendix 9A in the announcement.

After that, *Z Bhd* may withdraw its listing from the Official List of Bursa Securities under paragraph 16.07 of the Main LR. In requesting to withdraw its listing, *Z Bhd* need not comply with the requirements under paragraph 16.06 of the Main LR including the requirement to obtain shareholder approval.

Lower security holding spread

8.4A Do "security holding" and "securities" under the public security holding requirements in paragraphs 3.06 and 8.02 of the Main LR include securities other than shares or units?

In the context of public security holding requirements under paragraphs 3.06 and 8.02 of the Main LR, securities refer only to shares (excluding treasury shares) in a corporation and units in a collective investment scheme such as the real estate investment trust or business trust.

8.4B Pursuant to paragraph 2.2 of Practice Note 19, the Exchange may accept a public security holding percentage of lower than the 25% threshold as prescribed in paragraph 3.06(1) and paragraph 8.02(1) of the Main LR if the quantitative market capitalisation criteria[1] under paragraph 2.2(a) of Practice Note 19 and qualitative criteria[2] under paragraph 2.2(b) of Practice Note 19 are met. In this regard, how would the Exchange assess whether the qualitative criteria have been met?

In assessing or determining that the qualitative criteria have been met, the Exchange may consider or take into account (among others) the following:

Qualitative criteria	**Consideration**
Sufficient liquid market	• The concentration of security holdings in the applicant or listed issuer • Number of securities in issue in the applicant or listed issuer • The spread between the bid and ask price and trading volume of the securities of the listed issuer
Orderly and fair trading	• Any queries issued to the listed issuer relating unusual market activities • Any circumstances indicating manipulative activities or any issuance of market alerts in respect of the securities of the applicant or listed issuer.
Satisfactory corporate governance conduct and compliance record	• If there is any enforcement proceeding or action commenced or taken against the applicant or listed issuer or its directors by the relevant authorities, including the Exchange and the Securities Commission.

[1] A listed issuer must meet the quantitative market capitalisation of RM1 billion or more but less than RM3 billion for minimum acceptable lower spread of 20% or market capitalisation of RM3 billion or more for minimum acceptable lower public spread of 15%.

[2] In respect of the qualitative criteria, the Exchange may accept lower public spread for an applicant or listed issuer if the Exchange is satisfied that:

(a) there is, or will be, sufficient liquid market in the securities of the applicant or listed issuer;
(b) there is, or will be, orderly and fair trading in the securities of the applicant or listed issuer;
(c) the applicant or listed issuer and its directors have satisfactory corporate governance conduct and compliance record with the Listing Requirements and securities laws; and
(d) there is reasonable justification necessitating the Lower Public Spread for the applicant or listed issuer.

Qualitative criteria	Consideration
Reasonable justification necessitating the lower public spread	• All relevant facts and circumstances that warrant a lower public spread such as actual non-compliance of required public spread • Where the circumstance is that of actual non-compliance of required public spread, whether the non-compliance is beyond the reasonable control of the listed issuer, its controlling shareholders or its directors.

8.4C Pursuant to paragraph 2A.1 of Practice Note 19, a listed issuer that has been granted with lower public spread is required to immediately notify the Exchange when it becomes aware of any of the Specified Decreases[3]. What are the examples of instances when a listed issuer would be deemed to become aware of any of the Specified Decreases?

A listed issuer would be deemed to become aware of the Specified Decrease (if any) -

- when it requests for a copy of the Record of Depositors from Bursa Malaysia Depository Sdn Bhd;
- during the preparation of its semi-annual returns or annual reports; or
- when it undertakes a corporate exercise or corporate proposal;

as the listed issuers would have sufficient information in the said circumstances to be able to reasonably discover whether there is any Specified Decrease.

Notwithstanding the above, a listed issuer must also immediately notify the Exchange if it becomes aware of any Specified Decrease in any circumstances other than those stated above.

Cash Companies

8.5 If a listed issuer's assets on a consolidated basis, consist of 70% or more of cash or short term investments, or a combination of both ("Cash Criterion"), is the listed issuer automatically considered a "Cash Company"?

No, it is not. The listed issuer must notify Bursa Securities immediately of the fact and Bursa Securities will determine as to whether the listed issuer should be considered a "Cash Company". Bursa Securities will notify the listed issuer of its determination.

[3] Under paragraph 2A.1 of Practice Note 19, a listed issuer approved with a lower public spread must immediately notify the Exchange when it becomes aware of any of the following:

(a) any decrease in its issued share capital;
(b) any decrease in the percentage of the public spread below the percentage approved by the Exchange; and
(c) any decrease of the said listed issuer's average market capitalisation for the preceding 12 months to below the prescribed threshold as set out in paragraph 2.2(a) above.

(collectively "**the Specified Decreases**").

8.6 What are the "short-dated securities" referred to in paragraph 8.03(4) of the Main LR?

"Short-dated securities" include money market instruments, structured deposits, debt securities, or any other type of deposit or products which are short term in nature (i.e. less than 12 months) offered by financial institutions.

8.7 *A Bhd* has disposed of its core business resulting in it triggering the Cash Criterion. Before it is classified as a Cash Company, *A Bhd* has existing investments in short-dated securities with institutions other than financial institutions licensed by Bank Negara Malaysia ("BNM"). How does *A Bhd* comply with paragraph 8.03(4) of the Main LR?

Upon triggering the Cash Criterion, these short-dated securities must be placed with a custodian. When these short-dated securities mature or are converted into cash, *A Bhd* must immediately place the funds with an account opened with financial institutions licensed by BNM, and operated by the custodian.

8.8 In year 2010, *X Bhd* disposes of its core business relating to printing and has been classified as a Cash Company by Bursa Securities. *X Bhd* intends to expand its other existing business, which is cartridge manufacturing. Can *X Bhd* regularise its condition by developing this cartridge manufacturing as its new core business?

No, a regularisation proposal under paragraph 8.03 of the Main LR must involve an acquisition of a **new** core business and not by developing the Cash Company's existing business.

8.9 Once a Cash Company submits its proposal to acquire a new core business to the SC for approval within 12 months from the date it is considered as a Cash Company by Bursa Securities, is there any timeframe for the Cash Company to procure the SC's approval?

No, the Main LR does not prescribe the timeframe by which a Cash Company must procure the SC's approval for the proposal. However, a Cash Company is expected to take all reasonable steps to procure the SC's approval expeditiously. Since the Cash Company has submitted its proposal to the SC for approval, Bursa Securities will await the outcome of the Cash Company's application to the SC.

8.10 Is a Cash Company required to disclose its failure to comply with any obligation imposed pursuant to paragraph 8.03(5)(a) of the Main LR?

Yes, the Cash Company must announce its failure to comply with a particular obligation imposed pursuant to Practice Note 16 and ensure that the announcement complies with the standard of disclosure set out in paragraph 9.35A of the Main 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.

8.11 Can a Cash Company include the announcement on the status of its proposal as required under paragraph 2.1(b) of Practice Note 16 ("status report") in its quarterly report?

No, the quarterly announcement of the status report must be made separately.

8.12 *X Bhd* has been classified as a Cash Company by Bursa Securities. Pursuant to paragraph 8.03(5)(a)(i) of the Main LR, *X Bhd* submits a proposal to acquire a new core business to the SC for approval. While *X Bhd* is awaiting SC's approval, it has ceased to trigger the Cash Criterion. Can *X Bhd* apply to Bursa Securities for it to be no longer considered a Cash Company?

No, pursuant to paragraph 8.03(8) of the Main LR, *X Bhd* **must** complete the implementation of the proposal before it can apply to Bursa Securities for it to be no longer considered a Cash Company. So, even though *X Bhd* has ceased to trigger the Cash Criterion, that would not entitle it to be no longer considered as a Cash Company until it has completed its proposal to regularise its condition.

Listed issuers with inadequate level of operations

8.13 Is there any difference in the obligations of an affected listed issuer[4] under the previous framework set out in Practice Note 17 and the new framework in paragraph 8.03A of the Main LR?

Under the new framework in paragraph 8.03A of the Main LR, generally the obligations of the affected listed issuer remain the same as that of a PN17 Issuer including the requirement to submit and implement a regularisation plan within the prescribed timeframe. However, taking into consideration that there are differences between these listed issuers (an affected listed issuer vis-a-vis a PN17 Issuer), under the new framework -

(a) an affected listed issuer will not be tagged or classified as a "PN17" Issuer;

(b) if the affected listed issuer fails to regularise its condition, the Exchange has the discretion to suspend and delist its securities, whilst in the case of a PN17 Issuer, the suspension and delisting is automatic; and

(c) there is an express provision in paragraph 8.03A for the affected listed issuer to apply not to undertake any regularisation plan if it is able to demonstrate to Bursa Securities' satisfaction that its remaining business is viable, sustainable and has growth prospects with appropriate justifications, and its level of operations remains suitable for continued listing.

8.14 Which regularization obligation must a listed issuer comply with in the following scenarios:

Scenario 1

The listed issuer first triggers the criteria for inadequate level of operations set out in paragraph 8.03A of the Main LR and subsequently triggers the Prescribed Criteria set out in Practice Note 17.

[4] As stipulated in paragraph 8.03A(3) of the Main LR, an affected listed issuer refers to a listed issuer which has triggered the criteria of inadequate level of operations under paragraph 8.03(2) of the Main LR namely that the listed issuer has –

(a) suspended or ceased all of its business or its major business; or
(b) suspended or ceased its entire or major operations; or
(c) an insignificant business or operations.

Scenario 2

The listed issuer first triggers the criteria for inadequate level of operations set out in paragraph 8.03A of the Main LR and subsequently triggers the Cash Criterion in paragraph 8.03 of the Main LR.

The general principle is that the listed issuer must comply with the stricter obligations.

Hence in Scenario 1, the listed issuer must comply with the obligations imposed on a PN17 Issuer under paragraph 8.04 and Practice Note 17 of the Main LR.

In Scenario 2, the listed issuer must comply with the obligations imposed on a Cash Company under paragraph 8.03 and Practice Note 16 of the Main LR.

In both the Scenarios, the timeframe for the listed issuer to regularize its condition commences 12 months from the date the listed issuer announces that it triggers the criteria for inadequate level of operations under paragraph 8.03A of the Main LR.

PN17 Issuers

8.15 When must a listed issuer assess whether it is a PN17 Issuer?

All listed issuers must on a continuing basis undertake a self assessment of their financial condition and level of operations. At any given time if a listed issuer finds that it triggers any one or more of the criteria prescribed in paragraphs 2.1 or 2.1A of Practice Note 17 ("**Prescribed Criteria**"), the listed issuer must comply with the requirements of paragraph 8.04 of the Main LR and Practice Note 17.

8.16 *X Bhd* is a PN17 Issuer. Pursuant to paragraph 8.04(3)(a)(i)(bb) of the Main LR, *X Bhd* submits a plan to regularise its conditions to Bursa Securities for approval. While *X Bhd* is awaiting Bursa Securities' approval, it has ceased to trigger the Prescribed Criteria. Can *X Bhd* apply to Bursa Securities for it to be no longer considered a PN17 Issuer?

No, pursuant to paragraph 8.04(8) of the Main LR, *X Bhd* **must** complete the implementation of the plan to regularise its condition before it can apply to Bursa Securities for it to be no longer considered a PN17 Issuer. So, even though *X Bhd* has ceased to trigger the Prescribed Criteria, that would not entitle it to be no longer considered as a PN17 Issuer until it has completed its plan to regularise its condition.

8.17 Which type of accounts can be used by a listed issuer in order to make a determination of "shareholders' equity", "total assets employed", "major" and "insignificant business or operations" under the Prescribed Criteria?

The determination of "shareholders' equity", "total assets employed", "major" and "insignificant business or operations" under the Prescribed Criteria must be based on either the audited or unaudited accounts, which includes the management accounts of the listed issuer.

8.18 Paragraph 2.2(a) of Practice Note 17 provides that "shareholders' equity" refers to the equity attributable to equity holders of the listed issuer. Is non-controlling interest included in determining "shareholders' equity"?

No, shareholders' equity excludes non-controlling interest.

8.19 Paragraph 2.1(c) of Practice Note 17 sets out a criterion of a winding up of the listed issuer's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis ("Criterion 2.1(c)").

(a) If a winding-up order has been made against such subsidiary or associated company of a listed issuer but the winding-up order is either stayed or under appeal, will the listed issuer still be classified as a PN17 Issuer?

Yes, a stay order only has the effect of suspending the operation of the winding-up order. It does not change the fact that Criterion 2.1(c) has been triggered. Thus the classification as a PN17 Issuer will take effect. Similarly, if the winding-up order is pending appeal, the listed issuer will nonetheless be classified as a PN17 Issuer, pending the outcome of the appeal.

(b) Will a winding-up order against a listed issuer, instead of such subsidiary or associated company of a listed issuer, trigger Criterion 2.1(c)?

No. However, pursuant to paragraph 16.11(2)(d) of the Main LR, Bursa Securities shall de-list a listed issuer where a winding up order has been made against the listed issuer itself.

8.20 The auditors of *XYZ Bhd* highlighted a material uncertainty related to going concern on *XYZ Bhd* in its latest audited financial statements for the financial year ended 30 June 2017 ("Financial Statement"). *XYZ Bhd's* shareholders' equity on a consolidated basis based on the Financial Statement was 60% of its share capital (excluding treasury shares).

However, *XYZ Bhd's* subsequent quarterly results for the period ended 30 September 2017 ("quarterly results") shows that its shareholders' equity has reduced to 35% of its share capital (excluding treasury shares).

Will *XYZ Bhd* trigger the Prescribed Criteria upon the release of its quarterly results?

Yes, since *XYZ Bhd's* auditors have highlighted a material uncertainty related to going concern on *XYZ Bhd* in its latest Financial Statement and based on *XYZ Bhd's* latest available results which is the quarterly results, its shareholders' equity is less than 50% of its share capital (excluding treasury shares), *XYZ Bhd* will trigger the Prescribed Criteria pursuant to paragraph 2.1(e) of Practice Note 17. In this event, *XYZ Bhd* must immediately make the First Announcement under paragraph 4.1(a) of Practice Note 17 upon the release of its quarterly results.

8.21 Are the obligations of a PN17 Issuer whose securities have been suspended from trading different from the obligations of a PN17 Issuer whose securities have not been suspended from trading?

No, the obligations are the same irrespective of whether the securities of the PN17 Issuer have been suspended or not from trading.

8.22 On 3 February 2010, *X Bhd* triggers the Cash Criterion and announces that it is a Cash Company. On 2 June 2010, *X Bhd* also triggers one of the Prescribed Criteria and announces that it is a PN17 Issuer.

(a) Must *X Bhd* comply with the regularisation obligations set out in paragraph 8.03 (as a Cash Company) or 8.04 (as a PN17 Issuer) of the Main LR?

X Bhd must comply with the stricter obligations i.e. those imposed on a Cash Company under paragraph 8.03 and Practice Note 16 of the Main LR. Among others, the listed issuer must place at least 90% of its cash and short-dated securities in an account opened with a financial institution licensed by Bank Negara Malaysia and operated by a custodian.

(b) What is the applicable timeframe for *X Bhd* to submit its proposal to regularise its condition as a Cash Company and PN17 Issuer?

X Bhd must regularise its condition by submitting a proposal to SC within 12 months from the date *X Bhd* announces that it is a Cash Company, i.e. by 2 February 2011.

(c) Must *X Bhd* regularise its condition by undertaking a regularisation proposal/plan under paragraph 8.03(5)(a) or that under paragraph 8.04(3)(a)(i) of the Main LR?

X Bhd must undertake a regularisation proposal under paragraph 8.03(5)(a) of the Main LR. This proposal must be able to regularise *X Bhd's* condition as a Cash Company and PN17 Issuer. In this regard, the proposal must be one to acquire a new core business as required under paragraph 8.03(5)(a)(i) of the Main LR, and which will also fulfill the conditions set out in paragraphs 5.4 and 5.5 of Practice Note 17.

8.23 What are the measures that will be taken by Bursa Securities to assist investors in identifying listed issuers which are PN17 Issuers?

The full list of PN17 Issuers and announcements relating to them are available on Bursa Malaysia's website. Hence, investors may access Bursa Malaysia's website to be kept informed and updated on the status of the financial condition of the PN17 Issuers.

Compliance with enhanced regularisation plan requirements

8.24 *X Bhd* triggers the Prescribed Criteria under Practice Note 17 on 29 December 2014 but has not submitted its regularisation plan to Bursa Securities. Is *X Bhd* required to comply with the enhanced requirements on regularisation plan in paragraphs 5.5, 5.6 and 5.7 of Practice Note 17 which takes effect on 27 January 2015?

X Bhd must comply with the enhance requirements on regularisation plan in paragraphs 5.5, 5.6 and 5.7 of Practice Note 17 if it submits its regularisation plan to Bursa Securities on or after 27 January 2015.

8.24A *Y Bhd* is a PN17 Issuer which intends to undertake a regularisation plan which will not result in a significant change in its business direction or policy. 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 Main LR that *Y Bhd* must comply with in relation to the disclosure of financial forecast in the regularisation plan?

Y Bhd and its Recognised Principal Adviser must ensure that the preparation and disclosure of the financial forecast in the regularisation plan complies with Chapters 9 and 10 in Division 1, Part II of the SC's Prospectus Guidelines in relation to future financial information ("**SC FFI Standards**") as required under paragraph 2.19A of the Main 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 paragraph 2.18 of the Main 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 paragraph 9.35A of the Main LR.

PN17 Business Trust

8.25 *ABC Trust* is a PN17 Business Trust. As part of its proposal to regularize its condition, *ABC Trust* proposes to do the following:

(a) Scenario 1

***ABC Trust* proposes to issue new securities via a rights issue as part of its regularization plan. Which regulator should *ABC Trust* submit its regularization plan to?**

ABC Trust should submit its regularisation plan to Bursa Securities for approval pursuant to paragraph 8.04(3)(a)(i)(bb) of the Main LR as it involves only a rights issue.

(b) Scenario 2

***ABC Trust* proposes to undertake a proposal which results in a significant change in the business direction or policy of *ABC Trust* together with a rights issue as part of its regularisation plan. Which regulator should *ABC Trust* submit its regularisation plan to?**

ABC Trust should submit its regularisation plan to SC for approval pursuant to paragraph 8.04(3)(a)(i)(aa) of the Main LR. So long as the regularisation plan involves a proposal which requires the SC's approval, such regularisation plan must be submitted to the SC. Hence, in addition to the existing requirement for submission to the SC of a regularisation plan which will result in a significant change in the business direction or policy of the business trust, any regularisation plan which involves the new issue of units other than a rights issue, must also be submitted to the SC for approval.

8.26 Under paragraph 5.3 of Practice Note 17, a PN17 Business Trust must, among others, record either a net profit or positive operating cash flow in 2 consecutive quarterly results immediately after the completion of the implementation of the regularisation plan. If a PN17 Business Trust records positive cash flow but negative profits, would the PN17 Business Trust be considered as complying with this obligation to regularise its condition?

Yes. So long as any one of the requirement is fulfilled (whether it records a net profit or positive operating cash flow), the PN17 Business Trust is deemed to have complied with the requirement.

Material variation

8.27 Paragraph 8.22(1)(b) of the Main LR requires a listed issuer 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 paragraph 8.22(2)(b) of the Main 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 issuer in relation to such proposal.

8.28 Pursuant to paragraph 8.22(3) of the Main 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 paragraph 8.22(1)(b) of the Main 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 paragraph 8.22(1)(b) of the Main 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.

8.28A *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):

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

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 paragraph 8.22(1)(a) of the Main 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%.

8.29 Is paragraph 8.22 of the Main LR only applicable to proposals where Bursa Securities will conduct a full review of the circulars i.e. the Full Review Circulars?

No, the approved proposal referred to in paragraph 8.22 of the Main LR covers all proposals that require shareholder approval.

Securities holders approval

8.30 Where the Main LR specifies that a transaction or corporate proposal requires the approval of shareholders, would ratification of the transaction or corporate proposal by the shareholders be acceptable?

No, a listed issuer must obtain its shareholder approval before completing or implementing its transaction or corporate proposal.

Financial assistance

8.31 Paragraph 8.23(1) of the Main LR stipulates that the requirements relating to the provision of financial assistance in the Main LR are applicable to a listed issuer and its subsidiaries which are not listed on any stock exchange. Does this mean that a subsidiary listed on a stock exchange outside Malaysia is not required to comply with paragraph 8.23 of the Main LR if such subsidiary provides financial assistance?

Yes, the subsidiary listed on a stock exchange outside Malaysia is not subjected to the requirements under paragraph 8.23 of the Main LR. Instead, such subsidiary, in giving financial assistance, will be required to comply with its home exchange rules.

8.32 What are the disclosure requirements of a listed issuer in respect of financial assistance provided by the listed issuer or its subsidiaries not listed on any stock exchange pursuant to paragraph 8.23(1)(ii) of the Main LR?

Pursuant to paragraph 3.1 of Practice Note 11, the listed issuer must announce any financial assistance provided by such listed issuer or its subsidiaries not listed on any stock exchange pursuant to paragraph 8.23(1)(ii) of the Main LR for each quarter of its financial year, simultaneously with its quarterly results pursuant to paragraph 9.22 of the Main LR and in any event no later than 2 months after the end of each quarter of its financial year. In this respect, the listed issuer must ensure that the announcement includes such information as set out in Annexure PN11-A of Practice Note 11 and Appendix 8D (if applicable) of the Main LR.

8.33 Will a listed issuer (other than a listed issuer whose activities are regulated by any written law relating to banking, finance companies or insurance and are subject to supervision by Bank Negara Malaysia or an equivalent foreign regulatory authority as Bursa Securities deems appropriate) which lends money pursuant to a moneylending licence ("Moneylending") be exempted from compliance with paragraph 8.23 of the Main LR?

No, a listed issuer which is involved in Moneylending is subject to and hence, must ensure compliance with paragraph 8.23 of the Main LR notwithstanding that it has a valid moneylending licence.

8.34 Will the Moneylending carried out by a listed issuer automatically fall within the ambit of paragraph 8.23(1)(ii) of the Main LR, as being those "necessary to facilitate the ordinary course of business of the listed issuer or its subsidiaries"?

No, the listed issuer must ascertain whether the Moneylending is "necessary to facilitate the ordinary course of business of the listed issuer or its subsidiaries" in accordance with Practice Note 11.

8.35 In the absence of a specific regulatory framework governing 'scheduled institutions' in the Financial Services Act 2013 which replaces the Banking and Financial Institutions Act 1989 ("BAFIA"), paragraph 8.23(4)(c) of the Main LR has been deleted, which previously exempted scheduled institutions which were registered and supervised by Bank Negara Malaysia under the BAFIA from complying with the requirements in paragraph 8.23. Does it mean that all corporations which were previously "scheduled institutions" under the BAFIA must now comply with paragraph 8.23 in full?

Only corporations which were previously "scheduled institutions" and which are no longer subjected to Bank Negara Malaysia's regulation and supervision [5] must now adhere strictly to the requirements set out in paragraph 8.23 when providing financial assistance.

On the other hand, previous "scheduled institutions" such as the development finance institutions which are prescribed under the Development Financial Institutions Act 2002[6], and therefore, still regulated and supervised by Bank Negara Malaysia will continue to enjoy the exemption from the provision on financial assistance under paragraph 8.23(4)(b) of the Main LR.

8.36 A listed issuer grants a corporate guarantee to a third party for services rendered by the third party to the listed issuer's non-wholly owned subsidiary. Is the corporate guarantee subject to disclosure requirements under Practice Note 11?

No, a corporate guarantee granted to a subsidiary by a listed issuer would not be subject to Practice Note 11 as it is provided pursuant to paragraph 8.23(1)(iii) of the Main LR and not paragraph 8.23(1)(ii). In the circumstances, the quarterly disclosure under paragraph 3.1 of Practice Note 11 is not applicable.

8.37 What is a moneylending company under paragraph 8.23 of the Main LR? Are corporate guarantees or loans granted to non-wholly owned subsidiaries and contractors regarded as moneylending under the Main LR?

A moneylending company is defined under paragraph 8.23(2)(a)(ii) of the Main LR as a listed issuer or its subsidiary that lends or advances money in the ordinary course of business as a moneylender pursuant to the Moneylenders Act 1951. As such, provision of corporate guarantees or advances necessary to facilitate the ordinary course of business of the listed issuer or its subsidiary (i.e. for purposes of getting a contract or to enable a sub-contractor to commence work) would not be regarded as moneylending operations.

8.38 Under paragraph 8.23(2)(c) of the Main LR, a listed issuer must procure its shareholders' prior approval for any provision of financial assistance to an associated company or joint arrangement where the aggregate amount provided compared to the net tangible assets of the group is 5% or more. In such circumstances, what is the prescribed content of the circular to be issued to the shareholders?

The minimum content of a circular for purposes of seeking shareholder approval for provision of financial assistance which is not a related party transaction is not specifically prescribed under the Main LR. However, a listed issuer can seek guidance from the minimum content prescribed for circulars in relation to transactions as set out under Appendix 10B of the Main LR.

---

[5] For example, corporations which carry out building credit business, factoring or leasing business or development finance institutions which are not prescribed under the Development Financial Institutions Act 2002.

[6] The existing prescribed development finance institutions are:

(a) Bank Pembangunan Malaysia Berhad;
(b) Bank Perusahaan Kecil & Sederhana Malaysia Berhad (SME Bank);
(c) Export-Import Bank of Malaysia Berhad (EXIM Bank);
(d) Bank Kerjasama Rakyat Malaysia Berhad;
(e) Bank Simpanan Nasional; and
(f) Bank Pertanian Malaysia Berhad (Agrobank)

8.39 Pursuant to paragraph 8.23(2)(a)(i) of the Main LR, where a listed issuer or any of its subsidiaries provides financial assistance, the board of directors must ensure, amongst others, that the provision of financial assistance is fair and reasonable to the listed issuer. What would be considered as "fair and reasonable"?

What would be considered as "fair and reasonable" is subjective and varies from case to case. To ascertain the fairness and reasonableness of the financial assistance granted, the board of directors is required to make an assessment of the circumstances and terms of the provision of financial assistance including comparisons with market practices. For instance, if the proposal is for a one-off lump sum payment to be given to a sub-contractor for services rendered in the listed issuer's housing development project when the market practice is typically for advances to be given by way of instalments and subject to certification of staggered work done by the sub-contractor, the board of directors should scrutinise the proposal to see whether there are exceptional circumstances to justify that such an advance is nonetheless fair and reasonable.

8.40 Pursuant to paragraph 8.23(2)(e) of the Main LR, a moneylending company must make quarterly disclosures of certain information as prescribed not later than 7 market days after the end of each quarter of a financial year ("Quarterly Disclosure"). A moneylending company does not lend or advance any money in a particular quarter. Does it still have to make the Quarterly Disclosure?

In a situation where there is no new money lending activities in that particular quarter and no outstanding advances or loans from the previous quarters, then for subsequent Quarterly Disclosure, the listed issuer would only need to make a negative statement to that effect in its Quarterly Disclosure. If there are still outstanding advances or loans, the listed issuer is required to comply with paragraph 8.23(2)(e) of the Main LR.

8.41 Can a listed issuer or any of its subsidiaries commence or continue to lend or advance monies to third party(ies) pursuant to its moneylending business?

Pursuant to paragraph 8.23(1)(ii) of the Main LR, a listed issuer or any of its subsidiaries can provide such financial assistance where it is made pursuant to or where it is necessary to facilitate the ordinary course of business of the listed issuer or its subsidiaries. As such, loans/advances made to a third party by the listed issuer or any of its subsidiaries in the ordinary course of its moneylending business is permitted. However, unless the listed issuer or its wholly owned subsidiary is exempted under paragraph 8.23(4), the conditions set out in paragraph 8.23 of the Main LR must be satisfied and in particular, paragraph 8.23(2). In this respect, the board of directors of the listed issuer would have to oversee the moneylending operations and the management of credit risk of the moneylending company including ensuring adequate policies and procedures are in place in relation to the matters set out in paragraph 8.23(2)(a)(ii)(aa)-(dd).

In addition to this, the listed issuer will have to make the relevant quarterly announcements for each of the moneylending company not later than 7 market days after the end of each quarter of the financial year as prescribed under paragraph 8.23(2)(e) of the Main LR.

8.42 What are "problem credits" as referred to in paragraph 8.23(2)(a)(ii)(dd) of the Main LR?

"Problem credits" means such problems arising from, amongst others, the borrower's non-compliance with the terms of the financial assistance including failure to meet repayment of principal/interest or collateral obligations. It is to be noted that the assessment as to what "problem credits" are by the listed issuer/board of directors should not be limited to actual occurrence of default only but may include possible defaults such as signs of the borrower having difficulties in complying with the terms of the financial assistance (e.g. making or requesting for partial or late payments).

8.43 Do all listed issuers which are subject to the requirements in paragraph 3.1 of Practice Note 11 also have to make the quarterly disclosures stipulated in paragraph 8.23(2)(e) of the Main LR?

No, paragraph 8.23(2)(e) is only applicable where a listed issuer or its subsidiary lends or advances money in the ordinary course of its business as a moneylender.

Electronic payment of cash distributions

8.44 Must a listed issuer amend its constitution to allow for payment of cash dividends electronically to its shareholders pursuant to paragraph 8.26A of the Main LR?

By virtue of paragraph 7.36 of the Main LR, a listed issuer is in a position to pay cash dividends to its shareholders electronically pursuant to paragraph 8.26A of the Main LR regardless of what may be stated in its constitution in relation to cash dividend payment.

Notwithstanding this, to ensure that the listed issuer's constitution are updated and comprehensive, it should proceed to amend the relevant provisions in its constitution that may be inconsistent with the requirements for the listed issuer to pay cash dividends electronically as set out in paragraph 8.26A of the Main LR.

8.45 What should a listed issuer do if its securities holders have not provided their bank account information to the Depository?

A listed issuer must take all reasonable and appropriate steps to engage and communicate with its securities holders on the availability and benefits of the electronic payment of cash distributions, for example, in the various channels or means set out in the directive dated 19 February 2010 (Ref. No. SR/TAC/ro/LD07/10) ("**Directive**"), and encourage its securities holders to provide their bank account information to the Depository. If, after taking such steps, the securities holders still do not provide their bank account information to the Depository, the listed issuer may continue to pay cash distributions to these securities holders in the existing manner as authorized under the listed issuer's constituent documents or issuing documents such as the constitution, trust deed or terms of issuance.

8.46 Where can a listed issuer obtain its securities holders' relevant contact details for purposes of compliance with paragraph 8.26A(2) of the Main LR?

A listed issuer can obtain its securities holders' relevant contact details from the Depository when requesting for the bank account information.

8.47 Must a listed issuer notify <u>all</u> its securities holders electronically for purposes of electronic notification under paragraph 8.26A(2) of the Main LR?

Currently, a listed issuer must provide electronic notification to all its securities holders who have provided their email details to the Depository to receive electronic notification. In addition, the listed issuer may also, at its discretion, provide other means of electronic notification such as notification via SMS to securities holders who have provided their mobile phone numbers only.

8.48 For purposes of compliance with paragraph 8.26A(2) of the Main LR, must a listed issuer provide the electronic notification to its securities holders by itself?

No, while a listed issuer is at liberty to issue the electronic notification itself, this function can also be done by the listed issuer's service provider such as the bank which debits the cash distributions from the listed issuer's account or through its share registrar.

8.49 When must a listed issuer notify its securities holders electronically under paragraph 8.26A(2) of the Main LR?

A listed issuer must notify its securities holders electronically, as soon as practicable after the cash distributions have been paid out of its account.

8.50 Who can be the service providers for the electronic payment of cash distributions?

The service providers for the electronic payment of cash distributions include the share registrars (whether external or in-house), the paying agents providing cash management services for payment to third parties such as the banks or lead arrangers of the listed issuers who offer such facilities, and the Depository.

8.51 Can a listed issuer appoint another share registrar or the Depository to be its service provider for the electronic payment of cash distributions such as cash dividends whilst at the same time maintaining its existing share registrar for other services?

Yes, a listed issuer may appoint another share registrar or the Depository to be its service provider for the electronic payment of cash distributions such as cash dividends.

8.52 Does a listed issuer have to procure the consent of each of its securities holders to receive payment of the cash distributions electronically?

No. The consent will be procured by the Depository when the securities holders provide their bank account information to the Depository.

8.53 Is a listed issuer required to provide the services for electronic payment of cash distributions to its securities holders if payment of the dividend is satisfied by an issue of shares (dividend in specie) and in cash?

Where payment of dividend is to be satisfied by an issue of shares (dividend in specie) and in cash, a listed issuer is still required to provide the services for electronic payment of cash distributions to its securities holders in respect of the cash dividend portion. However, electronic payment of cash distributions is not applicable to the dividend in specie.

8.54 Can a listed issuer pay other types of cash payments not falling within paragraph 8.26A(3) of the Main LR, to its securities holders electronically?

Yes, a listed issuer may voluntarily pay the other types of cash payments not falling within paragraph 8.26A(3) of the Main LR, to its securities holders via direct crediting into the bank accounts of its securities holders who have provided their bank account details to the Depository. For this, the listed issuer must refer to and comply with the relevant requirements set out in the Rules of the Depository.

Poll Voting

8.54A Under paragraph 8.29A(1) of the Main LR, a listed issuer must, among others, ensure that any resolution set out in the notice of any general meeting, is voted by poll. What is an example of a matter that is not set out in the notice of general meeting and therefore not subjected to the poll voting requirements?

Adjournment of general meeting due to unforeseen circumstances is an example of a matter that is not set out in the notice of general meeting.

8.54B Are resolutions set out in an addendum, errata or amendment to the notice of general meeting subjected to voting by poll under paragraph 8.29A(1) of the Main LR?

Yes, "notice of any general meeting" in paragraph 8.29A(1) of the Main LR includes any addendum, errata or amendment to the earlier notice of general meeting. Hence, any resolution set out in the addendum, errata or amendment to the notice of general meeting is subjected to voting by poll.

8.54C Under paragraph 8.29A(2) of the Main LR, a scrutineer appointed to validate the votes cast at the general meeting must fulfill the following requirements:

- **the scrutineer must not be an officer[7] of the listed issuer or its related corporation;**
- **the scrutineer must be independent of the person undertaking the polling process; and**
- **if the scrutineer is interested in a resolution to be passed at the general meeting, the scrutineer must refrain from acting as scrutineer for that resolution.**

(a) In view of the above, can a listed issuer's external auditor be appointed as a scrutineer for the general meeting?

Yes, the listed issuer's external auditor can be appointed as the scrutineer for the general meeting so long as the external auditor is independent of the person undertaking the polling process and refrains from acting in a resolution that it may be interested in, e.g. the resolution seeking its reappointment.

(b) If the external auditor must refrain from acting as the scrutineer in a resolution seeking its reappointment, who can be the scrutineer to validate the votes cast for such resolution?

[7] "**Officer**" has the meaning given in section 2 of the Companies Act 2016 and includes the director, company secretary and employees.

The listed issuer may appoint any other person to be the scrutineer for such resolution so long as the said person is not an officer of the listed issuer or its related corporation and is independent of the person undertaking the polling process.

8.54D Paragraph 8.29A(2) of the Main LR requires a listed issuer to appoint at least 1 scrutineer who, among others, must not be *an officer of the listed issuer or its related corporation*, to validate the votes cast at the general meeting. How does the requirement apply in the case of a listed real estate investment trust or a listed business trust?

A scrutineer appointed under paragraph 8.29A(2) of the Main LR must not be –

- in the case of a listed real estate investment trust, an officer of the management company or the related corporation of the management company; and
- in the case of a listed business trust, an officer of the trustee-manager or the related corporation of the trustee-manager.

Continuing obligation of a REIT and an exchange traded fund ("ETF")

8.55 Paragraphs 8.37 and 8.40 of the Main LR among others, require a REIT and an ETF respectively, to submit a draft circular and other documents proposed to be sent to its unit holders to Bursa Securities for perusal, within a reasonable time before printing. What is considered as a "reasonable time"?

A REIT or ETF should submit the draft circular and other documents proposed to be sent to its unit holders in accordance with paragraph 9.33 of the Main LR, i.e. as soon as possible and in any event not later than 2 months from the date of the announcement or the date of the last approval necessary for the proposal is obtained from the relevant authority, whichever is the later.

Continuing obligation of a REIT and business trust

8.55 [Deleted]

8.55A Must REITs and business trusts comply with the security holding spread requirement under paragraph 8.02?

Yes, both REITs and business trusts must comply with the security holding spread requirement under paragraph 8.02 of the Main LR.

Continuing obligation of a special purpose acquisition company ("SPAC")

8.56 Pursuant to paragraph 8.42 of the Main LR, a SPAC is not subject to certain continuing listing obligations. Will this still be applicable to a SPAC which has completed a qualifying acquisition?

No, once a SPAC completes a qualifying acquisition[8], it is regarded as a listed issuer and has to comply with all the requirements in the Main LR like any other listed issuer.

[8] Pursuant to paragraph 1.01 of the Main LR, a SPAC is considered to have completed a qualifying acquisition at the point of time where all conditions precedent set out in the sale and purchase agreement governing the qualifying acquisition have been fulfilled, and "complete the qualifying acquisition" will be construed accordingly.

8.57 Prior to the completion of a qualifying acquisition, is a SPAC required to comply with all the corporate governance provisions as set out in Chapter 15?

Yes. Apart from those obligations in Chapter 8 which a SPAC is exempted from complying with[9], all other continuing listing obligations including those relating to corporate governance are applicable to a SPAC prior to the completion of a qualifying acquisition.

[9] Pursuant to paragraph 8.42 of the Main LR, a SPAC is not subject to the continuing listing obligations set out in paragraph 8.11 and Parts D, E and G of Chapter 8.