
**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD ACE MARKET LISTING REQUIREMENTS
(As at 10 January 2023)**

CHAPTER 2 – GENERAL

Guidance Notes

2.1 If a listed corporation breaches a requirement set out in a Guidance Note, will it be in breach of the ACE LR?

Yes, Guidance Notes form part of the ACE LR. Hence, a listed corporation that fails to comply with a Guidance Note would be in breach of the ACE LR and would be subject to enforcement action by Bursa Securities.

Letters of compliance

2.2 What should be contained in a "letter of compliance" referred to in Rule 2.12 of the ACE LR and to whom must the "letter of compliance" be addressed?

The "letter of compliance" must be addressed to Bursa Securities and should confirm that the provisions of the document to which it relates, comply with the ACE LR and the Rules of Bursa Malaysia Depository Sdn Bhd.

2.3 Can a listed corporation provide a letter of compliance which contains certain qualifications, for example, that generally a particular document complies with the ACE LR except for a few provisions, which are specifically set out in the letter of compliance itself?

Listed corporations must ensure that the constitution, trust deed, deed poll or bylaws of a Share Issuance Scheme and any amendments to the said documents comply with the ACE LR. As such, a letter of compliance must not contain any qualifications. The letter of compliance must state that the whole document complies with the ACE LR and the Rules of Bursa Malaysia Depository Sdn Bhd.

2.4 Who should write the letter of compliance?

Pursuant to Rule 2.12 of the ACE LR, the letter of compliance must be written by a person with legal qualifications provided that in circumstances set out below, it may be written by the following additional persons:

- (a) in the case of bylaws of a Share Issuance Scheme (and any amendment to the bylaws), by the listed corporation's advisers; and
- (b) in the case of an amendment to constitution, by the listed corporation's advisers or its company secretary.

2.5 Can the in-house legal adviser of a listed corporation write the letter of compliance to Bursa Securities?

Yes, the in-house legal adviser of a listed corporation may write the letter of compliance to Bursa Securities.

Qualification of directors, chief executive and chief financial officer**2.6 A listed corporation must ensure that each of its directors, chief executive and chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, of the listed corporation. How does the listed corporation comply with this requirement as set out in Rule 2.20A of the ACE LR¹?**

In ensuring that its directors, chief executive and chief financial officer meet the requirements set out in Rule 2.20A of the ACE LR, a listed corporation should, as a minimum, be guided by the principles, recommendations and commentaries set out in the Malaysian Code of Corporate Governance 2012, particularly Principle 2 and Principle 4. This assessment should be undertaken whenever –

- (a) the listed corporation appoints, elects or re-elects its directors, chief executive or chief financial officer, as the case may be; or
- (b) the listed corporation conducts its yearly assessment on the performance of its directors, chief executive or chief financial officer, as the case may be; or
- (c) material information involving the said persons comes to the knowledge of the listed corporation.

2.6A What are some of the factors which a listed corporation and its nominating committee should consider when assessing whether a director has the *time* to effectively discharge his or her role as director pursuant to Rule 2.20A of the ACE LR?

In undertaking the assessment on the director's time commitment, the listed corporation and its nominating committee should evaluate whether sufficient time and attention is given to the affairs of the listed corporation, in light of the position(s) the director holds in the listed corporation. In this regard, the listed corporation and its nominating committee should consider, among others, the director's –

- attendance at board or committee meetings, major company events, briefings or site visitations;
- participation in continuing training programmes;
- directorships in other listed corporations, public companies and corporations incorporated and listed outside Malaysia; and
- other commitments or positions and the time commitment involved.

¹ Rule 2.20A of the ACE LR provides that a listed corporation must ensure that each of its directors, chief executive and chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, of the listed corporation.

Undertaking by adviser**2.7 Are advisers required to file undertakings with Bursa Securities?**

Under Rule 2.21 of the ACE LR, only advisers who present, submit or disclose an application, circular or any information or other document to Bursa Securities on behalf of an applicant or a listed corporation, must file undertakings with Bursa Securities.

2.8 Must an adviser who is subject to Rule 2.21(1) of the ACE LR file an undertaking each time it acts for a listed corporation?

No, an adviser who is subject to Rule 2.21(1) has to file only 1 undertaking. Such undertaking will be applicable for all clients. The form of the undertaking has been prescribed in Appendix 2A of the ACE LR.

2.9 When must an adviser who is subject to Rule 2.21(1) of the ACE LR file an undertaking with Bursa Securities?

An adviser who is subject to Rule 2.21(1) must file an undertaking with Bursa Securities before the submission of documents to Bursa Securities.

If the adviser is involved in the application for admission of an applicant to the Official List, such adviser must provide the undertaking to Bursa Securities together with the submission of the pre-admission consultation pack under paragraph 2A.0 of Guidance Note 15.

Share registrar**2.10 How does a listed corporation ensure compliance with Rule 2.21A of the ACE LR in relation to the appointment of its share registrar?**

The requirements under Rule 2.21A of the ACE LR set out the general criteria and factors to be taken into account by a listed corporation when appointing and retaining a share registrar. The main objectives of the requirements are to facilitate the appointment and retention of suitable share registrars who are able to ensure the proper performance of the listed corporation's obligations under the ACE LR and provide better quality services in a professional manner.

Hence, a listed corporation in appointing a share registrar, must be satisfied that the share registrar is able to provide the services that meet with its needs and expectations in line with the objectives of the requirements. For this purpose, the listed corporation may, amongst others:

- (a) make reasonable due enquiries to ensure and satisfy itself that the share registrar complies with Rule 2.21A of the ACE LR prior to the appointment of the share registrar; and
- (b) reflect the relevant provisions in Rule 2.21A of the ACE LR in the terms of engagement or service agreements entered into between the listed corporation and the share registrar, where appropriate.

2.11 How does a listed corporation ensure that the share registrar it has appointed continues to comply with the provisions set out in Rule 2.21A of the ACE LR?

A listed corporation may, for instance, monitor and review the performance of the share registrar in providing its services from time to time. Again, the listed corporation must be guided by the requirements of Rule 2.21A where relevant, in making its assessment. For example, the listed corporation should take into account whether the share registrar had, from the last review, provided its services in a timely and efficient manner. In this regard, the listed corporation should take into account the feedback received from its shareholders, and also take the appropriate steps to investigate into complaints received from its shareholders in relation to the services provided by its share registrar.

Controlling Person**2.12 Who are the Controlling Person referred to in Rule 2.22 of the ACE LR?**

“Controlling Persons” is defined in Rule 2.22 as a person who is, pursuant to a court order or otherwise, appointed to take possession or control over all or major assets of, or becomes responsible for the management of a listed corporation. This includes an interim liquidator appointed by the court.

2.13 Must a Controlling Person file an undertaking each time it acts for a listed corporation?

Yes, a Controlling Person must file 1 undertaking for each listed corporation it acts for. The form of the undertaking has been prescribed in Appendix 2B of the ACE LR.

Issuance of documents through electronic means**2.14 Rule 2.19B of the ACE LR provides that a listed corporation may send any document required to be sent under the ACE LR to its securities holders (“Documents”), by electronic means subject to compliance with certain prescribed conditions. What constitutes electronic means under Rule 2.19B of the ACE LR?**

Some of the electronic means contemplated include electronic mail (“**email**”), listed corporation’s website, or other electronic mode of communication agreed between the listed corporation and its securities holders.

2.15 A listed corporation which intends to send Documents to its securities holders via electronic means must, among others, ensure that its constitution provides for the use of electronic means, specifies the manner in which the electronic means is to be used and states that the contact details of a securities holder as provided to the Depository shall be deemed as the last known address provided by the securities holder to the listed corporation for purposes of communication with the securities holder.

What are the details that a listed corporation’s constitution should specify relating to the manner in which the electronic means is to be used?

The listed corporation may set out operational details pertaining to the use of the electronic means such as information on –

- the type of electronic means adopted and specific provisions relating to such electronic means such as the requirement for separate notification for publication on website and proof of delivery for Documents issued via email;
- the type of Documents which may be issued via electronic means;
- the addresses or contact details in which the Documents will be sent to;
- when a Document is deemed delivered pursuant to the electronic means; and
- alternative arrangements to send the Documents to securities holders in the event of delivery failure.

2.16 If a listed corporation chooses website as the mode of communication with its securities holders, how may the listed corporation give the separate notification in writing as required under Rule 2.19B(b) of the ACE LR?

The listed corporation may give the separate notification in writing in hard copy (e.g. letter) or by way of electronic means other than through the listed corporation's website (e.g. email, short messaging service ("SMS")) or any other form of communication permitted under the listed corporation's constitution for purposes of notification.

2.17 Rule 2.19B(c) of the ACE LR stipulates that there must be proof of delivery if a Document or notification is sent to securities holders through email. How does a listed corporation show proof of email delivery?

An email is deemed delivered if there is no written notification of delivery failure and there is record of the email being sent. This would serve as proof of email delivery as required under the ACE LR.

2.18 Where a listed corporation sends the Documents via email to its securities holders, what should a listed corporation do in the event of a delivery failure?

In the event of a delivery failure, the listed corporation must immediately send the Documents to the affected securities holders by other appropriate means as permitted under the listed corporation's constitution, such as in hardcopies. In this regard, the listed corporation should ensure that its constitution sets out, among others, the manner of which the Documents are to be sent to the affected securities holders in the event of a delivery failure.

2.19 What are the additional information which a listed corporation should provide to its securities holders when sending them the Documents by electronic means?

A listed corporation should, among others, inform the securities holders that they have the right to request for a hard copy of the Documents and how may they make such a request.

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- 2.20 Rule 2.19B(e) of the ACE LR stipulates that a listed corporation must send documents required to be completed by securities holders for a rights issue or offer for sale (“Rights Issue and Offer for Sale Documents”) through electronic mail, in hard copy or in any other manner as the Exchange may prescribe from time to time. What are the documents that fall within the ambit of Rights Issue and Offer for Sale Documents?**

The Rights Issue and Offer for Sale Documents are documents or forms that securities holders need to complete and submit to the listed corporation within a specified timeframe in relation to a rights issue or offer for sale. These include, the notices of provisional allotment and rights subscription forms (in the case of a rights issue) notices of provisional offer and offer acceptance forms (in the case of an offer for sale).

- 2.21 Is the Notice of Election and Dividend Reinvestment Form (“DRS Document”) in relation to the Dividend Reinvestment Scheme subject to the requirements set out in Rule 2.19B(e) of the ACE LR which must be sent via email, hardcopy or in any other manner prescribed by the Exchange?**

No, the DRS Document is not subject to the requirements set out in Rule 2.19B(e). A listed corporation may determine how the DRS Document should be sent to its securities holders in accordance with its constitution to encourage greater participation.

- 2.22 Is a listed corporation in compliance with Rule 2.19B(e) of the ACE LR if it publishes its abridged prospectus in relation to a rights issue on its website and forward the rights subscription form in hardcopies to its securities holders?**

Yes. The listed corporation is in compliance with the requirement under the ACE LR so long as the documents which are required to be completed by securities holders in relation to the rights issue (e.g. notices of provisional allotment and rights subscription forms) are sent in hardcopy, by way of email, or in any other manner as the Exchange may prescribe from time to time.

- 2.23 A listed corporation has opted to send the Rights Issue and Offer for Sale Documents via email to its shareholders who have given their email addresses to the Depository. Must the listed corporation forward hard copies of the documents if these shareholders request for hard copies of the same?**

Yes, the listed corporation is still required to send hard copies of the notices of provisional allotment and rights subscription forms to its shareholders who request for the same pursuant to Rule 2.19B(d) of the ACE LR.

- 2.24 Rule 2.19B(d) of the ACE LR requires a listed corporation to forward a hard copy of the Document to the securities holder as soon as reasonably practicable after the receipt of the request. What is the reasonably practicable timeframe for a listed corporation to forward hard copies of the Document after the receipt of such request?**

Generally, hardcopies of the Rights Issue and Offer for Sale Documents, should be given within 2 market days after the receipt of the request. This is to ensure that securities holders have sufficient time to understand the procedures involved and act immediately or promptly to complete the forms within the specified timeframe for the rights issue or offer for sale.

As for Documents other than the Rights Issue and Offer for Sale Documents, hardcopies of such documents should be given within 4 market days after receipt of the request.

Obligation to comply with the ACE LR on a Surprise Holiday which is a market day

- 2.25 Will a listed corporation be required to fulfill its obligations under the ACE LR if the Exchange operates on a Surprise Holiday? Will the answer be any different if the listed corporation is not open on such day?**

Yes, a listed corporation is expected to make the necessary arrangements to execute its duties and obligations on the Surprise Holiday, irrespective whether it remains open or otherwise.

There may be some instances of Surprise Holidays that are sudden, or announced pursuant to the Holidays Act 1951 with short notice. The Exchange will take into consideration all facts and circumstances before deciding if any variation to the obligations or timelines applicable to the listed corporation under the ACE LR should be considered on a case-to-case basis, in such instances.

A listed corporation may consult the Exchange for guidance if it foresees any issues with meeting its obligations.

- 2.26 How will a period of market days be computed if there is a Surprise Holiday within that period where the Exchange is open for trading in securities?**

The Surprise Holiday will be included in the computation of the period of market days. This means that a listed corporation must also comply with, or give effect to, the provisions in the ACE LR within a stipulated timeframe which falls on, or includes, the Surprise Holiday.

Please see the Illustration below:

ILLUSTRATION**Facts:**

- *Mr. A* is a director of *ABC Berhad*, a listed corporation.
- *Mr. A* deals in the listed securities of *ABC Berhad* on 16 January 2023, which is outside a closed period.

Computation of time in respect of the listed corporation's obligations:

Under Rule 14.09 of the ACE LR, *Mr. A* must, within 3 market days after the dealing has occurred, give notice of the dealing in writing to the company secretary of *ABC Berhad* and *ABC Berhad* must immediately announce such notice to the Exchange.

Based on the scenarios above, the last day on which *Mr. A* and *ABC Berhad* must comply with their obligations is as follows:

Example	Monday 16.1.2023	Tuesday 17.1.2023	Wednesday 18.1.2023	Thursday 19.1.2023	Friday 20.1.2023
If there is no Surprise Holiday	* Dealing by <i>Mr. A</i>			<ul style="list-style-type: none"> ✓ <i>Mr. A</i> gives notice of dealing ✓ <i>ABC Berhad</i> makes immediate announcement of the notice 	
If there is a Surprise Holiday on the last day of the notice period i.e. Thursday, 19 January 2023 where the Exchange is open for trading	* Dealing by <i>Mr. A</i>			<ul style="list-style-type: none"> ✓ <i>Mr. A</i> gives notice of dealing ✓ <i>ABC Berhad</i> makes immediate announcement of the notice 	
If there is a Surprise Holiday in between the notice period i.e. Tuesday, 17 January 2023 where the Exchange is open for trading	* Dealing by <i>Mr. A</i>			<ul style="list-style-type: none"> ✓ <i>Mr. A</i> gives notice of dealing ✓ <i>ABC Berhad</i> makes immediate announcement of the notice 	

As illustrated above, there is no change to the computation of market days under the ACE LR if the Exchange is open for trading on a Surprise Holiday.