



Suruhanjaya Sekuriti
Securities Commission
Malaysia



JOINT PUBLIC CONSULTATION PAPER

NO. 3/2010

**PROPOSED AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD
LISTING REQUIREMENTS ON
PRIVATISATION OF LISTED COMPANIES VIA DISPOSAL OF ASSETS**

The Securities Commission (SC) and Bursa Malaysia Securities Berhad (Bursa Securities) invite your written comments on the issues set out in this Joint Consultation Paper by **8 April 2010** via:

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Respondents to this Joint Consultation Paper are requested to use the reply format in Appendix 1.

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This Joint Public Consultation Paper is dated 19 March 2010

1. Introduction

- 1.1 As part of the continuous efforts of the Securities Commission (**SC**) and Bursa Malaysia Securities Berhad (**Bursa Securities**) to enhance investor protection and ensure parity of regulation, SC and Bursa Securities are reviewing the requirements relating to the privatisation of listed companies via disposal of assets in the manner discussed below.
- 1.2 Currently, a listed company in Malaysia may be privatised through various means, including the following:
- (a) A take-over offer being made in accordance with the Malaysian Code on Take-Overs and Mergers 1998 (**Code**);
 - (b) Scheme of compromise, arrangement, amalgamation (**SOA**) under section 176 of the Companies Act 1965 (**CA**);
 - (c) Selective capital reduction (**SCR**) under section 64 of the CA;
 - (d) A voluntary withdrawal of its listing status from the Official List of Bursa Securities; or
 - (e) The listed company disposing all or substantially all of its assets¹ resulting in the listed company being no longer suitable for continued listing on Bursa Securities (**Asset Disposal**).
- 1.3 Although the result of a privatisation exercise may be the same, i.e. the listed company will be de-listed from the Official List of Bursa Securities, the level of shareholders acceptance or approval required to implement these corporate exercises are different.
- 1.4 Currently, under the Code, a take-over offer must be accepted by shareholders of the target company amounting to at least 90% or more of the voting shares of the target company which is not held by the acquirer, in order for the acquirer to undertake a compulsory acquisition for the remaining voting shares of the target company via section 34 of the Securities Commission Act 1993.
- 1.5 On the other hand, the shareholder approval thresholds in a SOA, SCR, voluntary withdrawal of listing and Asset Disposal can be summarised as follows:

¹ In this context, "assets" means all types of assets including securities and business undertakings.

- (a) Under CA, section 176, a SOA must be approved by a **majority in number (i.e. more than 50%) and at least 75% in value** of the company's members/creditors present and voting either in person or by proxy at the general meeting;
 - (b) Under CA, section 64 , a SCR must be approved by a special resolution, i.e. it must be approved by a majority of **not less than 75%** of the company's members present and voting either in person or by proxy at the general meeting;
 - (c) Under Bursa Securities Main Market and ACE Market Listing Requirements (collectively "**LR**"), paragraph 16.06, a listed issuer may request to withdraw its listing status, provided that the listed issuer convenes a general meeting to obtain shareholders' approval. The resolution for the withdrawal of listing must be approved by **more than 50% in number and at least 75% in value** of the shareholders present and voting either in person or by proxy at the general meeting. In addition, the shareholders who object to the withdrawal must **not be more than 10% in value** of the shareholders present and voting either in person or by proxy; and
 - (d) Under CA, section 132C, an Asset Disposal may be approved by a **simple majority (i.e. more than 50%)** of those shareholders present and voting at the company's general meeting.
- 1.6 The disparity in the shareholder approval thresholds as illustrated above provides differing levels of protection to the shareholders. This gives rise to the concern that potential acquirers may privatise a listed company via the least stringent mode which in turn provides a lesser level of protection to shareholders. While the SC and Bursa Securities do not believe in unnecessary regulation that stifles business, we are also clear on the need to ensure that, where there are different routes that lead to the same result, the rules would need to be aligned.
- 1.7 The SC and Bursa Securities have been taking steps to ensure parity of regulation and to strengthen shareholder protection, including reviewing and enhancing the LR to address Asset Disposals.

2. DETAILS OF THE PROPOSALS

2.1 Shareholder approval threshold for Asset Disposal

2.1.1 In order to address the disparity in the shareholder approval thresholds as discussed above, the following is proposed:

- (a) An Asset Disposal must be approved by more than 50% in number and at least 75% in value of the shareholders present and voting either in person or by proxy at the general meeting; and
- (b) The shareholders who object to the Asset Disposal must not be more than 10% of the value of the shareholders present and voting either in person or by proxy at the general meeting.

2.1.2 Before the terms of the Asset Disposal are agreed upon, the listed company must appoint an independent adviser (**IA**) to–

- (a) comment as to whether or not the Asset Disposal is fair and reasonable so far as the shareholders are concerned. Such opinion must set out the reasons for, the key assumptions made and the factors taken into consideration in forming that opinion; and
- (b) advise the listed company's shareholders on whether or not they should vote in favour of the Asset Disposal.

The IA must take all reasonable steps to satisfy itself that it has a reasonable basis to make the comments and advice in paragraphs (a) and (b) above.

2.1.3 The proposals in the paragraphs above are aimed at providing parity in protection to investors affected by any exercise that will yield to the same outcome. A situation where a listed company disposes all or substantially all of its assets would tantamount to an intention to de-list. Hence, the rights of the minority shareholders will be affected. In this regard, the same level of protection should be accorded to minority shareholders as provided under paragraph 16.06 of the LR.

2.1.4 We note that the proposals are also in line with the recent developments in other jurisdictions like Hong Kong, Thailand and New Zealand. Under Hong Kong's Code on Takeovers and Mergers and Share Repurchases, the threshold for shareholder approval for an asset disposal has been raised to 75% and the votes cast against the asset disposal must not be more than 10%. In Thailand, the rules of the Stock Exchange of Thailand require an asset disposal with a value of more than 50% but less than 100% to be approved by at least 75% of disinterested shareholders present and voting.

In New Zealand, the Companies Act 1993 requires special resolution, i.e. the approval by a majority of 75% of shareholders present.

2.2 Proposals concurrent with an Asset Disposal

- 2.2.1 A listed company intending to undertake an Asset Disposal must concurrently undertake a proposal to acquire a new asset which complies with the relevant admission requirements under the SC's Equity Guidelines or Bursa Securities' ACE Market Listing Requirements, as the case may be, as if it were a new listing application (**New Plan**). The New Plan must be approved by the SC (for Main Market) or Bursa Securities (for ACE Market), as the case may be. Such New Plan must be tabled for approval by the listed company's shareholders at the same general meeting convened for the Asset Disposal.
- 2.2.2 If no New Plan is proposed under paragraph 2.2.1 above, the listed company must ensure that an exit offer is made by the acquirer of the Asset Disposal to acquire all the voting shares in the listed company in accordance with the Code. The exit offer must be made concurrently with the acquirer's offer to acquire the assets in relation to the Asset Disposal. Such exit offer may be conditional upon the Asset Disposal but must not be subject to any minimum level of acceptance².
- 2.2.3 The listed company must ensure that the Asset Disposal is inter-conditional upon the New Plan pursuant to paragraph 2.2.1 above.

2.3 Exit offer

- 2.3.1 Where an exit offer is made by the acquirer of the Asset Disposal under paragraph 2.2.2 above, Bursa Securities will de-list the listed company if the exit offer results in 90% or more of a listed company's listed shares (excluding treasury shares) being held by the acquirer, either individually or jointly with associates of the acquirer (**90% Threshold**).
- 2.3.2 Where the exit offer does not trigger the 90% Threshold, the listed company may comply with the requirements relating to a Cash Company³ and regularise its condition in accordance with paragraph/Rule 8.03 and Practice Note 16/Guidance Note 3 of the LR respectively (**Cash Company Framework**).

² In this instance, the minimum level of acceptance in a voluntary offer under the Code will not be applicable.

³ A Cash Company means a listed issuer whose assets on a consolidated basis, consist of 70% or more of cash or short term investments, or a combination of both, which has been considered and notified by Bursa Securities that it is a Cash Company.

2.3.3 Under the Cash Company Framework, a listed company must submit a proposal to acquire a new core business to the SC (for Main Market) and Bursa Securities (for ACE Market) for approval within 12 months. The proposed new core business must comply with the relevant admission requirements under the SC's Equity Guidelines or the ACE Market Listing Requirements, as the case may be.

We welcome your views on the above proposals.

APPENDIX 1

**COMMENTS TO THE JOINT PUBLIC CONSULTATION PAPER ON PROPOSED AMENDMENTS
TO BURSA SECURITIES LISTING REQUIREMENTS ON PRIVATISATION OF
LISTED COMPANIES VIA DISPOSAL OF ASSETS**

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No.	COMMENTS