CONSULTATION PAPER NO. 3/2019
PROPOSED AMENDMENTS TO THE MAIN MARKET AND ACE MARKET LISTING REQUIREMENTS IN RELATION TO NEW ISSUE OF SECURITIES AND OTHERS

Date of Issue: 30 August 2019

Bursa Malaysia Berhad ("Bursa Malaysia") invites your written comments on the issues set out in this Consultation Paper by 31 October 2019 (Thursday) via:

- **E-mail : norlailamohamad@bursamalaysia.com**
- **Facsimile : 603 - 2732 0065**
- **Mail : Regulatory Policy & Advisory**
  Bursa Malaysia Securities Berhad
  9th Floor Exchange Square
  Bukit Kewangan
  50200 Kuala Lumpur

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

Kindly contact the following persons if you have any queries in relation to this Consultation Paper:

Name	Email	Direct Line
(a) Rowena Ooi Lyn See	rowena@bursamalaysia.com	603 - 2034 7515
(b) Kartina Abd Rahman	kartina@bursamalaysia.com	603 - 2034 7298

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A. INTRODUCTION

This Consultation Paper seeks views and comments from the public on the proposed amendments to Bursa Malaysia Securities Berhad ("**the Exchange**") Main Market Listing Requirements ("**Main LR**") and ACE Market Listing Requirements ("**ACE LR**") (collectively the "**LR**") in relation to new issue of securities and others.

B. BACKGROUND

The Exchange reviews the LR from time to time to enhance the regulatory framework for listed issuers, commensurate with the level of growth of our market and risk-based regulatory approach adopted by the Exchange. Maintenance of market integrity remains the Exchange's key focus in formulating our proposals and in so doing, we strive to provide adequate levels of investor protection whilst ensuring that they do not result in burdensome compliance costs nor impede ease of doing businesses and growth.

Since 2018, we embarked on a progressive simplification of the LR, which commensurate with the state of development in our market. We started by focusing on the continuing disclosure obligations of listed issuers such as the contents of transaction circulars and announcements as well as Corporate Disclosure Policies and immediate announcements of prescribed events.

In this review, we are proposing to continue simplifying the requirements under the LR by focusing on the area of new issue of securities. In this regard, we propose to enhance the flow of information in announcements and circulars as well as require key disclosures to aid shareholders' understanding of the corporate proposals. We are also proposing changes which will not only provide ease of doing business or practicality that the market requires but also strengthen investor protection.

At the same time, we also propose to focus on the definition of independent directors with a view to strengthen the independence of such directors and the integrity of board of directors of listed issuers.

As part of our review, we undertook benchmarking studies and considered the issues and observations noted from our supervision and monitoring activities, as well as queries raised by listed issuers or their advisers.

In line with our consultative approach, we also conducted robust discussions internally and engaged with stakeholders[1] to seek their feedback on certain key areas of review.

[1] The Exchange undertook informal stakeholder consultation with selected listed issuers and advisers at various focus group sessions held in May 2019. We also sought feedback from certain industry associations via email, on certain key areas of review.

C. KEY PROPOSALS

Based on the findings and feedback above, we formulated the following key proposals (collectively "**the Proposed Amendments**"):

(a) Enhancing requirements for new issue of securities to facilitate better understanding of corporate proposals by shareholders, promote greater business efficacy for listed issuers and strengthen investor protection, such as the following:

(i) enhancing the presentation and contents of announcements and circulars by clustering information for better flow and requiring value-add disclosures;

(ii) allowing announcement of the issue price for shares from Dividend Reinvestment Schemes at a later date i.e. before or on the books closing date, to better reflect the market price of the listed securities; and

(iii) imposing a limit to an exercise or conversion of convertible equity securities, (i.e. not exceeding 50% of the total number of a listed issuer's issued shares), to mitigate the dilution effect to shareholders.

(b) Addressing gaps and enhancing board integrity for greater shareholder protection and confidence through the following:

(i) enhancing transparency on material loan covenants, conditions or restrictions linked to controlling shareholders;

(ii) enhancing transparency and regularisation requirements for unlisted subsidiaries or associated companies undertaking corporate rescue mechanisms pursuant to the Companies Act 2016 ("**CA 2016**"); and

(iii) strengthening the definition of independent directors.

In addition to the above, we are also proposing other amendments to provide greater clarity on the application of the LR.

D. STRUCTURE OF THE CONSULTATION PAPER

Details of the Proposed Amendments, where relevant, and their rationale are provided in the "**Details of Proposals**" in **Parts 1 to 3** of this Consultation Paper.

The Proposed Amendments are provided in **Annexures A and B** and are reflected in the following manner:

- portions underlined are text newly inserted/added/replaced onto the existing rules; and
- portions struck through are text to be deleted.

The table below provides a snapshot of the relevant details of the Proposed Amendments as well as the related Parts and Annexures for ease of reference:

Part No.	Details of Proposals	Proposed Amendments (Annexure)
1.	Enhancing requirements for new issue of securities to facilitate better understanding of corporate proposals by shareholders, promote greater business efficacy for listed issuers and strengthen investor protection	• **Annexure A for the Main LR** • **Annexure B for the ACE LR**
2.	Addressing gaps and enhancing board integrity for greater shareholder protection and confidence	
3.	Improving clarity of requirements to aid understanding and other amendments	

Issues for Consultation

We invite comments on the Proposed Amendments as discussed below. Comments can be given by filling up the template as attached in the ***Attachment***.

Note:

*As the Proposed 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 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 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 Amendments.*

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E. DETAILS OF PROPOSALS

PART 1 ENHANCING REQUIREMENTS FOR NEW ISSUE OF SECURITIES TO FACILITATE BETTER UNDERSTANDING OF CORPORATE PROPOSALS BY SHAREHOLDERS, PROMOTE GREATER BUSINESS EFFICACY FOR LISTED ISSUERS AND STRENGTHEN INVESTOR PROTECTION

PROPOSAL 1.1: ENHANCING PRESENTATION OF ANNOUNCEMENTS AND CIRCULARS RELATING TO NEW ISSUE OF SECURITIES TO IMPROVE THEIR READABILITY

1. Pursuant to the LR amendments issued in May 2019, the Exchange had enhanced presentation of transaction announcements and circulars by re-arranging and clustering the prescribed information under key areas of transactions. These were aimed at ensuring that transaction circulars and announcements are coherent, relevant and easy to understand.

2. Currently, the prescription of information in an announcement and circular relating to new issue of securities in Appendix 6A and Appendix 6B of the LR respectively are not set out in any particular order or arranged according to any specific categories. As such, similar to the revisions made to transaction announcements and circulars as stated above, the Exchange proposes to enhance the presentation of announcements and circulars relating to new issue of securities through this LR review.

3. Information required to be disclosed in an announcement and circular relating to new issue of securities as prescribed in Appendix 6A and Appendix 6B of the LR respectively will be re-arranged and categorised according to key areas for better flow. This is to guide the listed issuers to prepare the documents in a holistic and structured manner. Further, this will also enhance the cohesiveness of the information presented to the investors in order to facilitate better understanding of the new issue of securities.

4. In this connection, the Exchange proposes to cluster the prescribed information in Appendix 6A and Appendix 6B of the LR into the following key areas:

   (a) cover page;

   (b) introduction;

   (c) details of the proposals;

   (d) rationale and justification for the proposal;

   (e) utilisation of proceeds;

   (f) effects of the proposal;

(g) approvals required;

(h) conditionality of the proposal;

(i) interest of directors, major shareholders, chief executive and persons connected;

(j) recommendation and basis of recommendation;

(k) timeframe for completion / implementation;

(l) further / additional information; and

(m) appendices.

5. The above proposed clustering of information is intended to improve the readability of the announcements and circulars relating to new issue of securities so that shareholders and investors will have better insights on the proposals. This will empower them to make better informed investment decisions.

Proposal 1.1 - Issue(s) for Consultation:

1. Do you agree with the proposed clustering of the prescribed information in the announcements and circulars relating to new issue of securities under Appendix 6A and Appendix 6B of the LR into the following key areas for better flow and improved readability?

   (a) cover page;

   (b) introduction;

   (c) details of the proposals;

   (d) rationale and justification for the proposal;

   (e) utilisation of proceeds;

   (f) effects of the proposal;

   (g) approvals required;

   (h) conditionality of the proposal;

   (i) interest of directors, major shareholders, chief executive and persons connected;

(j) recommendation and basis of recommendation;

(k) timeframe for completion / implementation;

(l) further / additional information; and

(m) appendices.

Please state the reasons for your views.

2. Besides the proposed clustering of information above, do you have any other suggestion to improve the quality and readability of the announcements and circulars relating to new issue of securities?

Please state your suggestions and the reasons for the suggestions.

PROPOSAL 1.2: ENHANCING THE CONTENTS OF ANNOUNCEMENT AND CIRCULAR RELATING TO NEW ISSUE OF SECURITIES

6. In addition to Proposal 1.1 above, the Exchange also proposes to enhance certain provisions in the announcements and circulars relating to new issue of securities under Appendix 6A and Appendix 6B of the LR respectively. This is to ensure that shareholders and investors continue to receive key information necessary for them to make better informed investment decisions. Additionally, the proposed enhancements also seek to formalise our existing practices.

7. Details of the proposed enhancements to the **contents of circulars** relating to new issue of securities are set out in the table below.

Proposal	Rationale
Rationale and justification for the proposal	
(a) Details of previous fund-raising exercises [NEW] Currently, a listed issuer is only required to disclose the purpose and justification for embarking on a new issue of securities rather than other available options, as part of the rationale for the corporate proposal.	• The Exchange believes that the information on recent fund-raising exercises undertaken by a listed issuer and the status of such exercises are important to determine whether the proposed new issue of securities is necessary. • Hence, the proposed disclosure will ensure that shareholders are given value add information for informed investment decision-making.

Proposal	Rationale
In addition to the existing requirements above, if a listed issuer is embarking on a new issue of securities for fund-raising purposes, we propose to also require disclosure on the **details of previous fund-raising exercises** in the **past 12 months before the announcement** of the new issue of securities. The listed issuer must include the following information in the announcement: (a) the **description** of the fund-raising exercise; (b) the **total proceeds** raised; and (c) the **details and status of the utilisation** of proceeds. If there is no such previous fund-raising exercises, the listed issuer must provide a **negative statement** to that effect[2].	• This is benchmarked with the requirements in Singapore[3] and Hong Kong[4].
Details of the proposal	
(b) <u>Particulars on corporate placee</u> Presently, in the case of issues of shares or convertible securities on a non-pro rata basis, the LR requires disclosure on, among others, particulars of the persons to whom the securities will be issued[5].	• This is to codify our existing practice and ensure that shareholders are informed of the persons running or controlling the corporation.

2 New paragraph 21 in Part A of Appendix 6B, Main LR; and new paragraph 22 in Part A of Appendix 6B, ACE LR.

3 See proposed Rule 814(1)(k) of the Mainboard Rules in the Consultation Paper on Enhancements to Continuous Disclosures issued by the Singapore Exchange on 7 December 2017.

4 See Rule 13.28(9) of the Main Board Listing Rules.

5 Renumbered paragraph 18(a) in Part A of Appendix 6B, Main LR; and renumbered paragraph 19(a) in Part A of Appendix 6B, ACE LR.

Proposal	Rationale
In this respect, we propose to enhance disclosure of such person particularly if it is a **corporation** by requiring the **names of its directors and substantial shareholders** together with their respective **direct and/or indirect shareholdings**.	
Utilisation of Proceeds	
(c) <u>Details on utilisation of proceeds</u> Currently under the LR, a listed issuer must disclose a statement with regards to its proposed utilisation of proceeds arising from the new issue of securities. Specific information is also prescribed if the proceeds are to be utilised for certain particular purposes. In this regard, if the proceeds are utilised for investment purposes, a listed issuer is required to disclose details of the investment, or if the investment has not been identified, a statement to that effect in the circular (**"investment disclosure"**)[6]. On this note, we propose to enhance the investment disclosure by requiring a statement of **how the proceeds will be utilised in the meantime, pending identification of the investments**. In addition to the above, we also propose to require **details and breakdown** if the proceeds are utilised for **working capital purposes**.[7]	• This promotes greater granularity on the utilisation of proceeds for investment and working capital purposes. • This also codifies our existing practice of requiring such information to be disclosed by the listed issuer.

[6] Renumbered paragraph 22(b)(iii) in Part A of Appendix 6B, Main LR; and renumbered paragraph 23(b)(iii) in Part A of Appendix 6B, ACE LR.

[7] Renumbered paragraph 22(b)(iv) in Part A of Appendix 6B, Main LR; and renumbered paragraph 23(b)(iv) in Part A of Appendix 6B, ACE LR.

8. In respect of the contents of announcements in Appendix 6A of the LR, the Exchange proposes to incorporate the proposed enhancements relating to the details of previous fund-raising exercises under paragraph 7(a) for similar reasons as stated above.

9. We do not propose to make similar enhancements as discussed in paragraphs 7(b) and (c) above in an announcement of new issue of securities (i.e. enhanced disclosures on particulars of corporate placee and details on utilisation of proceeds), as such detailed information may be too premature to be disclosed at the announcement stage. The Exchange believes that the following information currently required for purposes of announcement is sufficient:

   (a) the persons to whom the new issue of securities will be allotted/issued[8]; and

   (b) the gross proceeds from the issue of securities and a detailed statement with regard to the utilisation of such proceeds, where applicable[9].

Proposal 1.2 – Issue(s) for Consultation:

3. Do you agree with the proposed enhancements to the contents of circular relating to new issue of securities under Appendix 6B of the LR as set out in the table in paragraph 7 above?

   Please state the reasons for your views.

4. Do you agree with the proposal to require disclosure of details of previous fund-raising exercises in the announcement relating to new issue of securities under Appendix 6A of the LR as set out in paragraph 8 above?

   Please state the reasons for your views.

5. Do you agree that the existing announcement on persons to whom the new issue of securities will be allotted/issued, and the gross proceeds from the issue together with a detailed statement on the utilisation of such proceeds, should be retained without any enhancements, as discussed in paragraph 9 above?

   Please state the reasons for your views.

6. Apart from the proposals above, is there any other information which should be included in, or removed from, the contents of announcement or circular for the new issue of securities?

   Please state your suggestions and the reasons for the suggestions.

[8] Renumbered paragraph 2 in Part A of Appendix 6A, LR.

[9] Renumbered paragraph 15 in Part A of Appendix 6A, LR.

PROPOSAL 1.3: ALLOWING ANNOUNCEMENT OF THE ISSUE PRICE FOR SHARES FROM DIVIDEND REINVESTMENT SCHEMES AT A LATER DATE

10. Currently, the LR allows listed issuers to pay dividends in shares to their shareholders through the Dividend Reinvestment Scheme" ("**DRS**"). Under the DRS framework, shareholders will be given a 14-days period[10] ("**election period**") to choose whether to receive cash or reinvest their cash dividends into new shares for their dividend entitlement ("**DRS shares**"). The price of the DRS shares is also prescribed to be not more than 10% discount to the weighted average market price for the 5 market days before the price-fixing date. Further, to give shareholders early notice about the issue price, a listed issuer must announce the issue price ***before or when it announces its intention to fix a books closing date*** under paragraph/Rule 9.19(1) of the LR.[11]

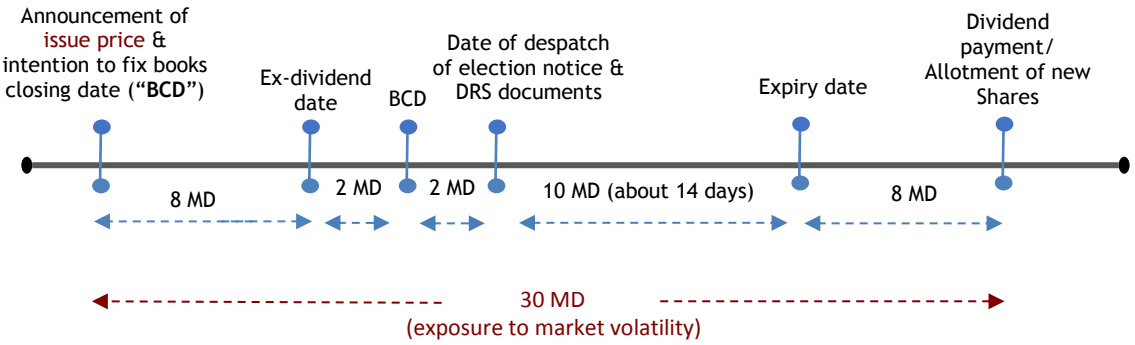
11. In this connection, we have received feedback that the requirement above has inadvertently given rise to longer exposure to market volatility where shareholders are exposed to risk that the market price of the DRS shares will fall below the issue price subsequent to the announcement. Consequently, this may result in withdrawal of acceptances by shareholders and cancellation of the DRS.

12. In order to address the issue above, the Exchange proposes to allow a listed issuer to announce the issue price of the DRS shares **before or on the books closing date**. With this proposal, the listed issuer can price its DRS shares closer to the election period which is more reflective of the market price of the shares. Accordingly, shareholders will also have information which is more relevant for their reinvestment decision.

For ease of reference, see Figure 1 below which illustrates the DRS timelines.

Figure 1 - Relevant DRS timelines

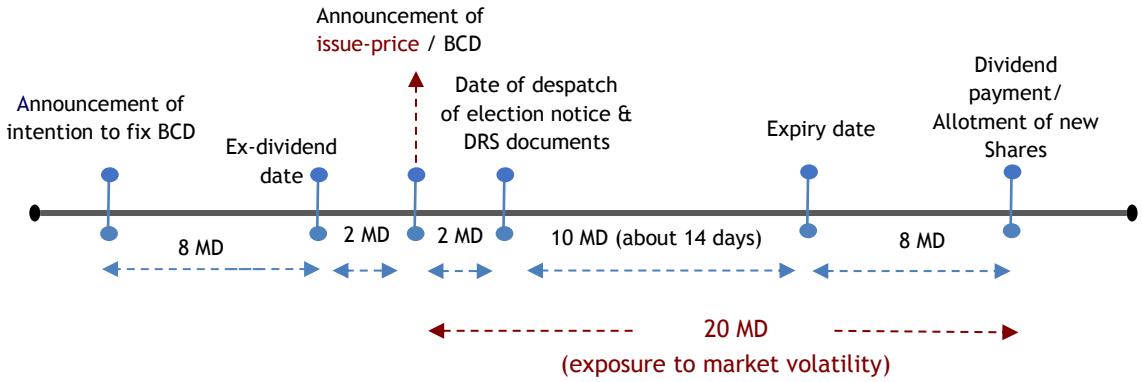
Current timeline



[10] Paragraph 6.45C(2) of the Main LR and Rule 6.46C(2) of the ACE LR prescribe that a listed issuer must allow shareholders to elect whether to participate in the DRS and give them at least 14 days from the dispatch of the election notice to submit the completed election notice.

[11] See paragraph 6.45D of the Main LR and Rule 6.46D of the ACE LR.

Proposed revised timeline



13. Although the timeframe between the announcement of the issue price until the listing of the new DRS shares is now shortened, investors' interests are not compromised as they still have adequate time i.e. at least 14 days (or 10 market days) to decide whether to participate in the DRS.

Proposal 1.3 - Issue(s) for Consultation:

7. Do you agree with our proposal for a listed issuer to announce the issue price of the DRS shares **before or on the books closing date**?

Please state the reasons for your views.

PROPOSAL 1.4: IMPOSING THE 50% LIMIT TO AN EXERCISE OR CONVERSION OF CONVERTIBLE EQUITY SECURITIES

14. Pursuant to paragraph 6.50/Rule 6.51 of the LR, a listed issuer which undertakes a new issue of warrants must ensure that the number of new shares which will arise from the exercise of all outstanding warrants, does not exceed 50% of the total number of its issued shares[12] at all times (**"50% Limit"**).

15. The 50% Limit is intended to safeguard shareholders against dilution on their shareholdings upon the exercise and conversion of the warrants.

[12] The total number of the listed issuer's issued shares is computed based on the total number before the exercise of the warrants and excludes treasury shares.

16. In this regard, we propose to accord similar safeguard applicable to warrants, to other convertible equity securities such as irredeemable or redeemable convertible preference shares, by extending the 50% limit to an exercise or conversion of such convertible equity securities. This means that a listed issuer which undertakes a new issue of convertible equity securities must ensure that the number of new shares which will arise from the exercise or conversion of all outstanding convertible equity securities, does not exceed the 50% Limit at all times.

17. This is in view that other convertible equity securities also share the same characteristics as warrants in terms of the conversion feature. Hence, similar concerns regarding the dilution effect on shareholding and impact to the shareholders are also applicable to the other convertible equity securities. As such, this proposal seeks to address this gap by applying the 50% Limit to all convertible equity securities and not only warrants.

Proposal 1.4 – Issue(s) for Consultation

8. Do you agree with the proposal in paragraph 16 above requiring a listed issuer undertaking a new issue of convertible equity securities to ensure that the number of new shares which will arise from the exercise or conversion of all outstanding **convertible equity securities**, **does not exceed the 50% Limit** at all times?

   Please state the reasons for your views.

[End of Part 1]

PART 2 ADDRESSING GAPS AND ENHANCING BOARD INTEGRITY FOR GREATER SHAREHOLDER PROTECTION AND CONFIDENCE

PROPOSAL 2.1: ENHANCING TRANSPARENCY ON MATERIAL LOAN COVENANTS LINKED TO CONTROLLING SHAREHOLDERS

18. Loans or borrowing of funds is presently cited in the LR as a commonly occurring event that may require immediate announcement[13] if such loan or borrowing has been assessed by a listed issuer to be material[14]. Guidance on the factors which the listed issuer may consider when undertaking the materiality assessment is set out in the Corporate Disclosure Guide[15].

19. In this regard, the Exchange notes that some loan agreements may contain conditions or covenants tied to the interest of controlling shareholders[16] (e.g. imposing a restriction on changes in control of the listed issuer), and such changes, if it happens, may cause complications to listed issuers who have entered into the loan agreements.

20. Whilst the LR currently does not prescribe the information to be disclosed in an immediate announcement of a material loan or borrowings, the Exchange believes that it is important for the shareholders to be aware or kept informed of such conditions or covenants in the loan agreements which relate to the interest of controlling shareholders, so that there is greater transparency on the potential impact on the listed issuers and that shareholders can make better informed decisions.

21. As such, the Exchange proposes to require that if a material loan or borrowing is announced pursuant to paragraph/Rule 9.03 of the LR and the relevant documents for such loan or borrowings contain conditions, covenants or restrictions relating to the shareholdings of a controlling shareholder, the announcement must include the following information:

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[13] Paragraph/Rule 9.04(e) of the LR.

[14] Paragraph/Rule 9.03 of the LR stipulates that an information is considered material if it is reasonably expected to have a material effect on the price, value or market activity of any of its securities; or investor's decision in determining his choice of action.

[15] This is accessible from Bursa Malaysia's website at the link below: http://www.bursamalaysia.com/misc/system/assets/2349/listing_requirement_guidelines_corporate_disclosure_guide.pdf

[16] **"Controlling shareholder"** means any person who is or a group of persons who together are entitled to exercise or control the exercise of more than 33% of the voting shares in a company (or such other percentage as may be prescribed in the Take-Overs and Mergers Code as being the level for triggering a mandatory general offer) or who is or are in a position to control the composition of a majority of the board of directors of such company.

(a) details of such **conditions, covenants or restrictions** including any restriction placed on change in control of the listed issuer; and

(b) the **aggregate level of the facilities that may be affected** by a breach of such conditions, covenants or restrictions.[17]

22. The information above is proposed to promote greater transparency and keep investors informed of material information pertaining to the listed issuer's loan or borrowings, in respect of the conditions or restrictions imposed on the controlling shareholders and the potential impact of its other credit facilities.

Proposal 2.1 – Issue(s) for Consultation

9. Do you agree with the proposal to require disclosure of the following information as set out in paragraph 21 above in the immediate announcement made by a listed issuer relating to a material loan or borrowing which contain conditions, covenants or restrictions relating to the shareholdings of a controlling shareholder:

(a) details of such conditions, covenants or restrictions including any restriction placed on change in control of the listed issuer; and

(b) the aggregate level of the facilities that may be affected by a breach of such conditions, covenants or restrictions?

Please state the reasons for your views.

PROPOSAL 2.2: ENHANCING TRANSPARENCY AND REGULARISATION REQUIREMENTS FOR UNLISTED SUBSIDIARIES OR ASSOCIATED COMPANIES UNDERTAKING CORPORATE RESCUE MECHANISMS PURSUANT TO THE CA 2016

23. The CA 2016 now allows financially distressed companies to consider 2 new options to restructure and revive their business - judicial management ("**JM**")[18] and corporate voluntary arrangement ("**CVA**")[19]. These are intended to complement the existing mode via schemes of arrangement ("**SOA**").

[17] New paragraph 9.19(40A) of the Main LR; and new Rule 9.19(41A) of the ACE LR.

[18] See Subdivision 2 under Division 8, Part III of the CA 2016.

[19] See Subdivision 1 under Division 8, Part III of the CA 2016.

24. A JM is a court supervised rescue plan that places the management of a company under a judicial manager (typically a qualified insolvency practitioner) appointed by the court. The court is empowered to grant a judicial management order if and only if –

(a) it is satisfied that the company is or will be unable to pay its debts; and

(b) it considers that the making of the order is likely to achieve one or more of the following purposes:

(i) the survival of the company or the whole or part of its undertaking as a going concern;

(ii) the approval of a compromise or arrangement between the company and its creditors;

(iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

Once a judicial management order is granted, the moratorium for judicial management commences and the company shall observe the restrictions stated under subsection 411(4) of the CA 2016 (e.g. no resolution shall be passed to wind up the company, no other proceedings or legal process shall be commenced or continued except with the consent of the judicial manager or leave of the court, no steps shall be taken to enforce security over the company's property or transfer any share of the company except with the leave of the court etc). During this time, the judicial manager will prepare a workable proposal and implement the same once it is approved by 75% of the total value of the creditors.

25. A CVA, on the other hand, is a management-driven restructuring process with minimal court involvement. It enables a company to enter into a plan or an arrangement with creditors without the need to have the plan or arrangement being approved by court. A moratorium for CVA will automatically commence when the relevant documents prescribed in section 398 of the CA 2016 is filed in court, and remains in force for 28 days during which no legal proceedings can be taken against the company, among other restrictions. At the company's meeting, a simple majority is required to approve the proposed CVA while at the creditors' meeting, the required majority is 75% of the total value of the creditors present and voting. With such approval, the CVA takes effect and binds all creditors.

26. It is also noted that although the CA 2016 excludes certain companies from undertaking a JM[20] or CVA[21], a listed issuer's subsidiaries or major associated companies[22] which are not listed on the Exchange, can avail themselves to these corporate rescue mechanisms.

27. In view of the above, we propose to enhance the LR as follows:

(a) **Immediate announcement of application for JM or CVA proposal by subsidiaries or major associated companies, and related matters**

We propose to require a listed issuer to immediately announce the following:[23]

(i) any application to the court to place any of its subsidiaries or major associated companies under JM;

(ii) any proposal for CVA by a listed issuer's subsidiaries or major associated companies filed with a court; and

(iii) any material developments arising from such application or proposal.

Further to the above, we also propose to require a listed issuer to immediately announce any appointment of, or change in, a judicial manager (which includes interim judicial manager)[24]. This is in addition to the existing announcement on appointment or change in receiver, manager, liquidator, special administrator or such other person of a similar capacity.

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20 Section 403 of the CA 2016 provides that JM is not applicable to a company which is –

(a) a licensed institution or an operator of a designated payment system regulated under the laws enforced by Bank Negara Malaysia; and

(b) subject to the Capital Markets and Services Act 2007.

21 Section 395 of the CA 2016 provides that CVA cannot be carried out by –

(a) a public company;

(b) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by Bank Negara Malaysia;

(c) a company which is subject to the Capital Markets and Services Acts 2007; and

(d) a company which creates a charge over its property or any of its undertaking.

22 Under paragraph/Rule 1.01 of the LR, a major associated company refers to an associated company which contributes 70% or more of the profit before tax or total assets employed of the listed issuer on a consolidated basis.

23 New paragraph 9.19(19A) of the Main LR and Rule 9.19(20A) of the ACE LR.

24 Paragraph 9.19(20) of the Main LR and Rule 9.19(21) of the ACE LR.

(b) **Additional criteria on financial condition in Practice Note 17/Guidance Note 3 ("PN17/GN3")**

Currently, if receivers or managers are appointed over the asset of a listed issuer, its subsidiary or associated company which assets account for at least 50% of the total assets employed of the listed issuer on a consolidated basis ("**Assets**"), the listed issuer must[25] –

(i) immediately announce that it has triggered the PN17/GN3 criteria; and

(ii) comply with the relevant requirements to regularise its condition.

Since the impact on the listed issuer's financial condition is similar regardless whether a judicial manager or receiver or manager is appointed over the Assets of the listed issuer's subsidiary or associated company, we propose to include, as a PN17/GN3 criteria, the appointment of a judicial manager over the Assets of a listed issuer's subsidiary or associated company and extend the PN17/GN3 framework to such instances.

28. The proposals above seek to enhance transparency on corporate rescue mechanisms undertaken by a listed issuer's subsidiaries or associated companies and provide parity of regulation under the LR for the various modes of restructuring exercises by financially distressed companies.

Proposal 2.2 – Issue(s) for Consultation

10. Do you agree with the proposal to require immediate announcement of -

(a) any application to the court to place any of its subsidiaries or major associated companies under JM;

(b) any proposal for CVA by a listed issuer's subsidiaries or major associated companies filed with a court; and

(c) any material developments arising from the application or proposal?

Please state the reasons for your views.

11. Do you agree with the proposal to include, as a PN17/GN3 criteria, the appointment of a judicial manager over the assets of a listed issuer's subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis, and to extend the PN17/GN3 framework to such instances?

Please state the reasons for your views.

[25] Paragraph 8.04 and Practice Note 17 of the Main LR; Rule 8.04 and Guidance Note 3 of the ACE LR

PROPOSAL 2.3: INCREASING THE COOLING-OFF PERIOD FOR INDEPENDENT DIRECTORS

29. Independent directors play an important role in assuring investor confidence. They are expected to be vigilant gatekeepers, acting as a check and balance on the listed issuer's management, with a view to safeguarding the assets of the listed issuer and protecting the interests of all shareholders as a whole. However, the issue of independent directors is always a challenging one, especially since their independence is a state of mind.

30. Therefore, the benchmarked jurisdictions we examined (the United Kingdom, Australia, Hong Kong and Singapore) have verbalised this concept (either in the listing rules or corporate governance code) by defining who is an independent director and the factors affecting such director's independence, to provide some guidance and degree of certainty. We also noted that in recent times, these jurisdictions have undertaken a review of their respective independent director requirements.

31. To the Exchange, board effectiveness and independence is important. Hence, we believe it is timely for us to review our requirements on independent directors. In doing so, we are also mindful of the practical issues relating to independent directors including the limited pool of independent director candidates available in the market.

32. Paragraph/Rule 1.01 of the LR currently stipulates that an independent director is one who is independent of management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of a listed issuer. This is the subjective element of the definition. In addition to this, the definition also stipulates an objective test or baseline which includes, among others, that an independent director is one who -

    (a) has not been and is not an officer[26] (except as a non-executive director) of the applicant, listed issuer or any related corporation[27] of such applicant or listed issuer (each corporation is referred to as "**said Corporation**") within the last **2 years**;

    (b) has not been engaged as an adviser by the said Corporation or is not presently a partner, director (except as an independent director) or major shareholder of a firm or corporation which provides professional advisory services to the said Corporation within the last **2 years**;

    (c) has not been engaged in any transaction with the said Corporation or is not presently a partner, director or major shareholder of a firm or corporation (other than subsidiaries of the applicant or listed issuer) which has engaged in any transaction with the said Corporation within the last **2 years**.

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[26] "**Officer**" has the meaning given in section 2 of the CA 2016 and it includes a director, company secretary or employee.

[27] "**Related corporation**" is defined in paragraph/Rule 1.01 of the LR to mean a corporation which is –

(a) the holding company of another corporation;

(b) a subsidiary of another corporation; or

(c) a subsidiary of the holding company of another corporation.

33. In this regard, corporate governance advocates have raised the issue of the cooling off period. The cooling off period in the LR for former officer, adviser and person engaged in transactions with the said Corporation under paragraph 32 above is shorter than some of the benchmarked jurisdictions we have reviewed. Singapore, Australia and United Kingdom generally have longer cooling-off periods ranging from 3 to 5 years summarised as follows:

JURISDICTION	OFFICER	ADVISER & PERSON ENGAGED IN TRANSACTIONS
(a) Singapore	A director will not be independent if he is employed by the issuer or any of its related corporations for the current or any of the past **3 financial years**. *[The requirements are stipulated in the Listing Manual]*	A director should be deemed to be non-independent if the director, in the **current or immediate past financial year**, provided to or received from the company or any of its subsidiaries any significant payments or material services (which may include auditing, banking, consulting and legal services), other than compensation for board service. *[The requirements are stipulated in the Practice Guidance to the Corporate Governance Code]*
(b) Australia *[via the Corporate Governance Code]*	If a director is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least **3 years** between ceasing such employment and serving on the board, this might cause doubts about the independence of the director of an entity.	If a director is, or has been within the last **3 years**, in a material business relationship (e.g. as a supplier, professional adviser, consultant or customer) with the entity or any of its child entities, or is an officer of, or otherwise associated with, someone with such a relationship, this might cause doubts about the independence of the director of an entity.
(c) United Kingdom *[via the Corporate Governance Code]*	If a director is or has been an employee of the company or group within the last **5 years**, this is likely to impair, or could appear to impair, a non-executive director's independence.	If a director has, or has had within the last **3 years**, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company, this is likely to impair, or could appear to

JURISDICTION	OFFICER	ADVISER & PERSON ENGAGED IN TRANSACTIONS
		impair, a non-executive director's independence.

34. Further, we note that Hong Kong had, in 2018, moved to increase its cooling off period for independent directors in their Listing Rules as follows:

(a) in relation to persons with material interests in the issuer's principal business activities, from the no cooling off period to a one-year period; and

(b) in relation to former professional advisers, from the one-year cooling off period to a two-year period.

35. Hence, in order to align with international developments and practices, the Exchange believes that it may be appropriate to extend the 2-year cooling off period as set out in paragraph 32 above so as to provide more assurance on the independence of the proposed independent director.

36. We had sought views from stakeholders during our informal engagements. As expected, feedback received was diverse - some suggested for a cooling off period of 3 years[28] whilst others thought that 5 years[29] would be more appropriate to assess the independence of a proposed director as an increase of 1 year may not be of much value. Listed issuers that were consulted, on the other hand, suggested to maintain the 2-year period, largely due to the limited pool of eligible independent directors in our market place.

37. Given that the views from our informal engagements were mixed, the Exchange proposes to seek feedback from the public on the appropriate cooling off period before a person can be appointed as an independent director if he or she has been or is –

(a) an officer of the said Corporation;

(b) engaged as an adviser by the said Corporation or a partner, director (except as an independent director) or major shareholder of a firm or corporation which provides professional advisory services to the said Corporation; and

(c) engaged in any transaction with the said Corporation or a partner, director or major shareholder of a firm or corporation (other than subsidiaries of the applicant or listed issuer) which has engaged in any transaction with the said Corporation.

[28] This was proposed by the adviser respondents.

[29] This was proposed by the institutional investor respondents.

Proposal 2.3 – Issue(s) for Consultation

12. Do you agree that the current the cooling off period of 2 years for an existing or former officer, adviser and person engaged in transactions with the said Corporation, should be increased before such person can be appointed as an independent director under the LR?

    Please state the reasons for your views.

13. If yes, what would be the appropriate cooling off period?

    (a) 3 years;

    (b) 5 years;

    (c) Others (Please specify).

    Please state the reasons for your views.

PROPOSAL 2.4: SUBJECTING NON-INDEPENDENT NON-EXECUTIVE DIRECTORS TO COOLING-OFF PERIOD

38. In addition to Proposal 2.3 above, the Exchange is also reviewing the ambit of officer in the definition of independent director under paragraph/Rule 1.01 of the LR, particularly the exclusion of a non-executive director from the cooling off period. Under the said paragraph/Rule, an independent director is defined as one who has not been within the last 2 years, and is not, an officer (except as a non-executive director) of the said Corporation.

39. In this regard, it has come to our attention that some listed issuers had re-designated their executive directors, nominees or representatives of the major shareholder or executive director (**"nominees/representatives"**), or long-serving employees in the executive capacity (e.g. chief financial officer), as their non-executive directors before appointing them as independent directors.

40. In some instances, such persons remained in the listed issuer without any break or interval between the time they were executive directors, nominees/representatives, or employees, up to the time of their appointment as independent directors.

41. Whilst the appointment of independent director as stated in paragraph 39 above does not appear to contravene the prescribed objective criteria highlighted in paragraph 38 above, such appointment has circumvented the spirit and intent of the LR requirements as it does not satisfy the subjective test of being "*independent of management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of the listed issuer*".

42. Hence, to address the issue above and provide greater clarity on the Exchange's expectation, we propose to subject a non-independent non-executive director to the relevant cooling off period arising from the outcome for Proposal 2.3 above. This means that a non-independent non-executive director cannot be appointed as an independent director shortly after being appointed as a non-executive director. Instead, he or she will need to comply with the cooling-off period like any other officer of the said Corporation, adviser or person engaged in any transaction with the said Corporation, before being appointed as an independent director. This approach is benchmarked with the requirements in Hong Kong[30].

43. An independent director plays an important role in ensuring checks and balances in a listed issuer as well as safeguarding the interests of minority shareholders. Therefore, the above proposal is necessary and appropriate to assure the independence of an independent director. Apart from this, the proposal also ensures that the relevant objective test which sets out the circumstance where a director is not independent, remains effective and aligned with the spirit and intent of the LR requirements on independent directors.

Proposal 2.4 – Issue(s) for Consultation

14. Do you agree that a non-independent non-executive director should be subjected to the relevant cooling off period before such person can be appointed as an independent director?

    Please state the reasons for your views.

15. Do you have any other views/suggestions to improve the independent director requirements under the LR?

    Please provide reasons for your views/suggestions.

[End of Part 2]

[30] Rule 3.13(7) of HKEx's Listing Rules provides that independence of a director is more likely to be questioned if the director is, or has at any time during the 2 years immediately prior to the date of his proposed appointment been, an **executive or director** (**other than an independent non-executive director**) of the listed issuer, of its holding company, or of any of their respective subsidiaries, or of any core connected persons of the listed issuer.

PART 3 IMPROVING CLARITY OF REQUIREMENTS TO AID UNDERSTANDING AND OTHER AMENDMENTS

PROPOSAL 3.1

44. The Exchange also proposes to make other miscellaneous amendments to the LR as set out in the table below to provide greater clarity and certainty.

45. Where appropriate, we have also simplified the drafting of the requirements for easy understanding and make other housekeeping amendments such as editorial changes and updates to cross references.

46. The proposed miscellaneous amendments are as follows:

No.	Paragraph/Rule	Proposal	Rationale
MAIN and ACE LR			
(a)	Paragraphs 6.54 and 6.55 of the Main LR; Rules 6.55 and 6.56 of the ACE LR.	Clarifying that the requirements permitting alteration or adjustment to the terms of the convertible securities in paragraph 6.55 of the Main LR and Rule 6.56 of the ACE LR, **do not apply** to provisions on the changes to – • tenure of convertible securities; • number of shares received for the exercise or conversion of convertible securities; or • pricing mechanism for the exercise or conversion price.	This is to provide clarity on the application of the requirements and facilitate compliance, by listed issuers.
MAIN LR			
(b)	Paragraph 10.02(g)(ix) of the Main LR.	Clarifying that the percentage ratio applicable to a transaction entered into by a real estate investment trust (**"REIT"**) is calculated based on the **value of the transaction** (instead of the total assets which are the subject matter of the transaction), compared with	This provides greater accuracy in the computation of percentage ratio for transactions entered into by REITs

No.	Paragraph/Rule	Proposal	Rationale
		the total asset value of the REIT.	

[End of Part 3]

ANNEXURES A – B PROPOSED AMENDMENTS

*[Please see **Annexures A – B** enclosed with this Consultation Paper]*

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.

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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]
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