



## MAIN MARKET, ACE MARKET AND LEAP MARKET

### ISSUERS COMMUNICATION

#### BURSA MALAYSIA'S ENFORCEMENT/DISCIPLINARY PROCEEDINGS & PROCESSES ("ICON-DP") (ICN 2/2017)

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#### A. Introduction

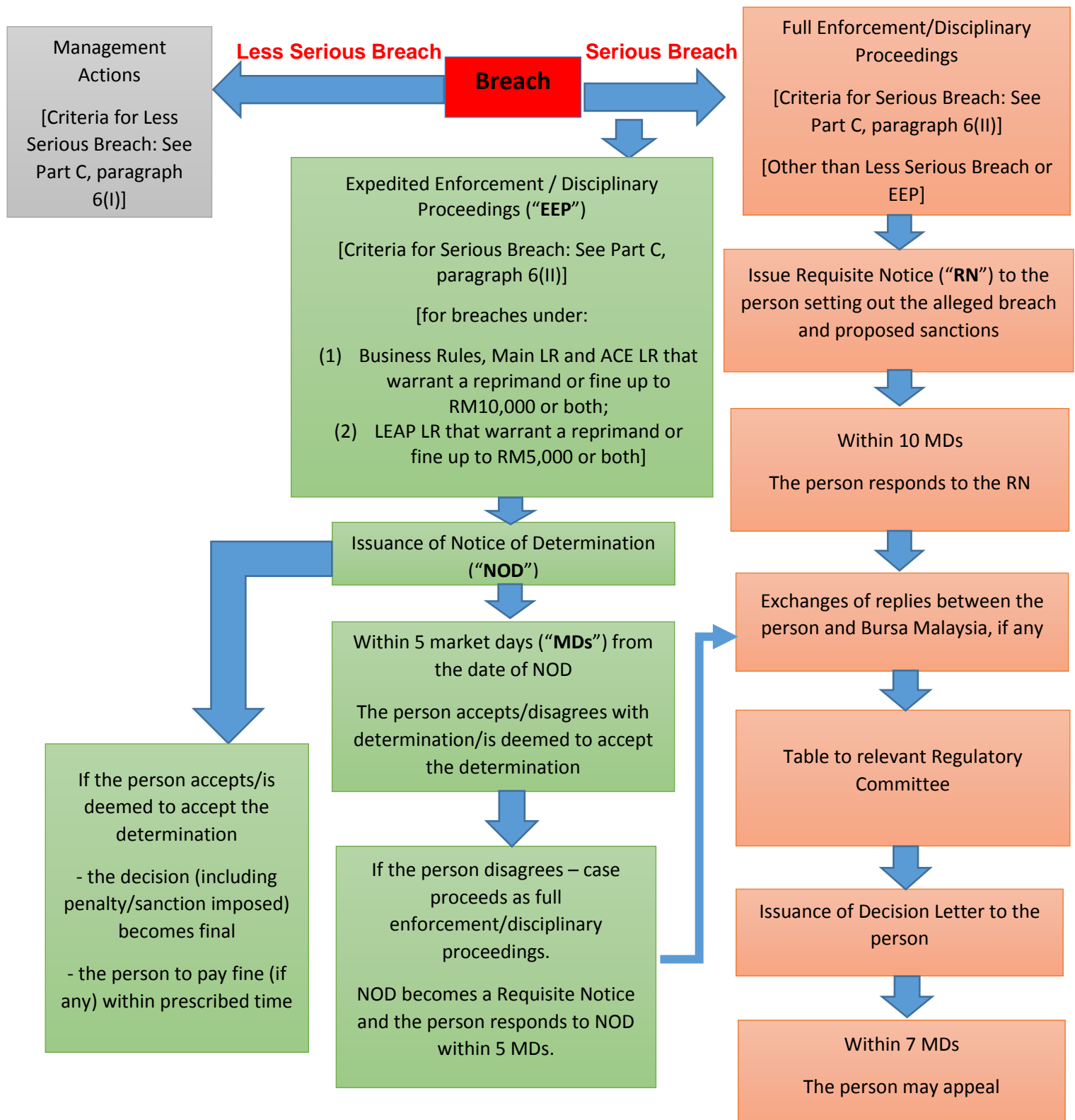
1. This communication ("ICON-DP") is intended to provide an overview of and clarity on the enforcement/disciplinary proceedings and processes applicable to both Intermediaries and Issuers under the relevant rules administered by Bursa Malaysia, namely:-
  - (a) the Business Rules as follows:-
    - the Rules of Bursa Malaysia Securities Berhad ("**Bursa Securities**");
    - the Rules of Bursa Malaysia Depository Sdn Bhd ("**Bursa Depository**");
    - the Rules of Bursa Malaysia Securities Clearing Sdn Bhd ("**Bursa Securities Clearing**");
    - the Rules of Bursa Malaysia Derivatives Berhad ("**Bursa Derivatives**");
    - the Rules of Bursa Malaysia Derivatives Clearing Berhad ("**Bursa Derivatives Clearing**"); and
  - (b) the Listing Requirements ("**LR**") as follows:-
    - the Main Market Listing Requirements ("**Main LR**");
    - the ACE Market Listing Requirements ("**ACE LR**"); and
    - the LEAP Market Listing Requirements ("**LEAP LR**").
2. The enforcement/disciplinary procedures and processes adopted are set out in the Business Rules and LR (collectively "**the Rules**") and further supplemented under/via this ICON-DP. Notwithstanding this, the processes, procedures and timeframes set out in the Rules and this ICON-DP are not exhaustive/cast in stone and may be varied depending on the circumstances of each case.
3. In this ICON-DP, unless the context otherwise requires:-
  - (a) a reference to a person includes a firm, partnership or corporation against whom/which enforcement/disciplinary proceedings are commenced under the Rules;
  - (b) market day/MD refers to the day on which the stock market is open for trading;
  - (c) the singular includes the plural and vice versa; and
  - (d) words importing gender include all genders.

**B. The Relevant Rules on Enforcement/Disciplinary Proceedings**

4. The powers of Bursa Malaysia to initiate enforcement/disciplinary proceedings and the relevant provisions under the Rules governing enforcement/disciplinary proceedings are set out below:-

	<b>Rules</b>	<b>Provisions (Chapter/Rule/Part/Practice or Guidance Notes)</b>
(a)	Rules of Bursa Securities	Chapter 15
(b)	Rules of Bursa Depository	Chapter 39.0
(c)	Rules of Bursa Securities Clearing	Chapter 3
(d)	Rules of Bursa Derivatives	Rule 500
(e)	Rules of Bursa Derivatives Clearing	Chapter 9
(f)	Main LR	Part D, Chapter 16 & Practice Note 30
(g)	ACE LR	Part D, Chapter 16 & Guidance Note 21
(h)	LEAP LR	Part D, Chapter 8 & Appendix 8C

**Diagram I – Overview of Bursa Malaysia’s Process in Handling Breach**



*Note: The timeframes set out herein may be varied by Bursa Malaysia depending on the circumstances of each case.*

**C. Management Actions for Less Serious Breaches**

5. Management actions are taken by issuance of a caution/reminder/warning letter for less serious breaches.

6. **(I) Criteria/Considerations for Less Serious Breach:**

A breach is a less serious breach if (which criteria/considerations are not exhaustive):

- (a) the matter is self-reported (unless the breach is a Serious Breach – see *(II) below*);
- (b) the conduct is isolated/is not continuing;
- (c) the conduct is inadvertent, accidental and unintentional;
- (d) technical breaches with no market impact;
- (e) no damage or loss occasioned to any third party;
- (f) no/insignificant/negligible gain accrued to, or avoidance of loss by, the errant party/Participant/employee (for a sum less than RM1,000);
- (g) insignificant or no damage to market integrity or no impact to the market;
- (h) conduct is not indicative of systemic failings in the errant party's/ Participant's compliance process;
- (i) breach does not involve excessive delay; and/or
- (j) immediate rectification of the breach/action taken to remedy.

**(II) Criteria/Considerations for Serious Breach:**

A breach is a serious breach if (which criteria/considerations are not exhaustive):

- (a) intentional or reckless act resulting in breach;
- (b) shows attempt to conceal the breach;
- (c) damages the integrity of the market or affects the fair and orderly operation of the market;
- (d) threatens (or has the potential to threaten) the integrity and efficiency of the market;
- (e) causes loss/damage to, or imposes costs on others;
- (f) provides a benefit (in terms of profit accrued or loss avoided) to the person engaged in that conduct or any other person;
- (g) reveals serious or systemic weaknesses/problem, or both, in respect of the management systems or internal controls of the listed company/Participant in relation to trading activities or the organisation structure of the listed company/Participant;
- (h) indicative of a pattern of non-compliance;
- (i) repeat breach or displays disregard for the rule/requirement/directive; and/or
- (j) failure to rectify or address the breach.

**D. Expedited Enforcement/Disciplinary Proceedings**

7. Bursa Malaysia may initiate expedited enforcement/disciplinary proceedings (“**EEP**”) against a person whom enforcement/disciplinary action is proposed to be taken in respect of a breach of the:-

- (a) Business Rules, Main LR and ACE LR which does not typically attract a penalty/sanction beyond a reprimand or a fine of more than RM10,000 or both; or

- (b) LEAP LR which does not typically attract a penalty/sanction beyond a reprimand or a fine of more than RM5,000 or both.
8. EEP is initiated via issuance of a NOD to the person. The NOD sets out (“**the Determination**”):-
- (a) the breach(es) by the person; and
  - (b) the penalty(ies)/sanction(s) imposed for the breach(es).
9. Upon receipt of the NOD, the person may within 5 market days from the date of the NOD:
- (a) accept the Determination set out in the NOD by writing to Bursa Malaysia and notifying Bursa Malaysia of the same and the Determination, including the penalty(ies)/ sanction(s) imposed becomes final and is not appealable; or
  - (b) reply to the NOD, if the person disagrees with the Determination, in which case, the NOD becomes the RN and the matter will proceed as normal/full enforcement/disciplinary proceedings (**see Part E below, Steps 14 - 20**). Bursa Malaysia will not be bound by the Determination and may impose a higher penalty(ies)/sanction(s) based on the facts or evidence presented during the full enforcement/disciplinary proceedings.
10. If the person fails to write to Bursa Malaysia to accept the Determination and does not reply to the NOD within 5 market days from the date of the NOD, the person is deemed to have accepted the Determination and the Determination, including the penalty(ies)/sanction(s) imposed becomes final and is not appealable.
11. If the person accepts/is deemed to have accepted the Determination, the person must give effect to the penalty(ies)/sanction(s) imposed and any fine imposed must be paid:
- (a) upon the person informing Bursa Malaysia in writing of his/her/its agreement with the Determination; or
  - (b) within 14 days from the date the person is deemed to have agreed with the Determination.

**E. Full Enforcement/Disciplinary Proceedings**

12. Full enforcement/disciplinary proceedings are initiated by issuance of a RN to the person.
13. The RN sets out:-
- (a) the alleged breach(es) by the person; and
  - (b) the views of the management of Bursa Malaysia as to the penalty(ies)/sanction(s) imposable for the alleged breach(es) in the event a finding of breach is made.
14. Upon receipt of the RN, the person must reply to the RN/submit his/her/its written representations within 10 market days from the date of the RN or such extended time as allowed by Bursa Malaysia. At this juncture, the person may admit the alleged breach(es) and elect for an agreed settlement (**see Part G below**).

15. The person may request for:-
- (a) an extension of time to reply to the RN; and/or
  - (b) oral representations (with or without legal counsel present) before the Regulatory Committee,
- by writing to Bursa Malaysia and setting out the reasons an extension of time and/or oral representations is required. Bursa Malaysia has the discretion to allow or disallow the person's request.
16. Upon receipt of the person's reply to the RN, the management of Bursa Malaysia may reply to the same and an exchange of replies may ensue between the person and the management of Bursa Malaysia.
17. All relevant documents (e.g. RN, investigation report, the person's reply and subsequent replies between the management of Bursa Malaysia and the person) will be tabled to the relevant Regulatory Committee for deliberation.
18. The relevant Regulatory Committee will deliberate and decide on the alleged breach(es) against the person and the penalty(ies)/sanction(s) imposable in the event a finding of breach is made. The relevant Regulatory Committee is not bound by the views of the management of Bursa Malaysia as to the alleged breach(es) and penalty(ies)/sanction(s) imposable for the alleged breach(es).
19. Thereafter, the decision of the relevant Regulatory Committee ("**1<sup>st</sup> Instance Decision**") will be communicated to the person in writing ("**1<sup>st</sup> Instance Decision Letter**").
20. If the person does not appeal against the 1<sup>st</sup> Instance Decision within 7 market days from the 1<sup>st</sup> Instance Decision Letter ("**Appeal Period**"), the penalty(ies)/sanction(s) imposed will take effect as prescribed/stipulated in the decision letter. Generally, the penalty(ies)/sanction(s) and implementation of the same are as follows:-

<b>Penalty(ies)/sanction(s) imposed</b>	<b>Effective date of penalty(ies)/sanction(s) if no appeal</b>
Fine	Must be paid within 14 days after the date of service of the 1 <sup>st</sup> Instance Decision Letter.
Suspension	Will be effected on the date specified in the 1 <sup>st</sup> Instance Decision Letter which is typically within 2 market days after expiry of the Appeal Period.
Striking Off	Will be effected on a date specified in the 1 <sup>st</sup> Instance Decision Letter which is typically the day after expiry of the Appeal Period.
Public reprimand	Media release and/or enforcement circular in respect of the public reprimand will be issued upon expiry of the Appeal Period.

Penalty(ies)/sanction(s) imposed	Effective date of penalty(ies)/sanction(s) if no appeal
Mandatory training	To be complied with within the timeframe stipulated in the 1 <sup>st</sup> Instance Decision Letter. For mandatory training imposed under the Business Rules, typically within 6 months or 12 months: - from the date of the 1 <sup>st</sup> Instance Decision Letter; or - where the person had ceased to be a Registered Person under the Business Rules, from the date of re-registration as a Registered Person.

**F. Appeal Process**

21. A person who is dissatisfied may appeal against the 1<sup>st</sup> Instance Decision within 7 market days from the date of the 1<sup>st</sup> Instance Decision Letter by giving Bursa Malaysia a notice in writing (“**Notice of Appeal**”). The Notice of Appeal should set out/include:-
  - (a) the decision against which the appeal is made; and
  - (b) the grounds of appeal together with representations to justify the ground(s) relied upon.
  
22. The person may produce evidence that was not presented at the initial enforcement/disciplinary proceedings (“**New Evidence**”) if:-
  - (a) the evidence was not available at the time of the initial enforcement/disciplinary proceedings; and
  - (b) the evidence would have been likely to have had a determining influence upon the decision appealed against.

The person must produce the New Evidence in the Notice of Appeal.
  
23. Upon receipt of the person’s Notice of Appeal, the management of Bursa Malaysia may reply to the same including to produce new evidence arising from the Notice of Appeal and an exchange of replies may ensue between the person and the management of Bursa Malaysia.
  
24. Once all replies have been exchanged, the appeal will be tabled to the relevant Regulatory Committee sitting in its appellate capacity (“**Appeals Committee**”) which will deliberate and make a decision on the appeal.
  
25. The Appeals Committee may vary, affirm or set aside the 1<sup>st</sup> Instance Decision.
  
26. The person will be notified of the decision of the Appeals Committee in writing (“**Appeal Decision Letter**”) and the said decision is final and not appealable. Hence, the penalty(ies)/sanction(s) imposed will take effect as prescribed/stipulated in the decision letter. Generally, the penalty(ies)/sanction(s) will be implemented as follows:-

<b>Penalty(ies)/sanction(s) imposed</b>	<b>Effective date of penalty(ies)/sanction(s) after appeal</b>
Fine	Must be paid within 14 days after the date of service of the Appeal Decision Letter.
Suspension	Will be effected within 2 market days from the Appeal Decision Letter.
Striking Off	Will be effected immediately as notified in the Appeal Decision Letter.
Public reprimand	Media release and/or enforcement circular in respect of the public reprimand will be issued on the same day as the Appeal Decision Letter.
Mandatory training	To be complied with within the timeframe stipulated in the Appeal Decision Letter. For mandatory training imposed under the Business Rules, typically within 6 months or 12 months: <ul style="list-style-type: none"> <li>– from the date of the 1<sup>st</sup> Instance Decision Letter; or</li> <li>– where the person had ceased to be a Registered Person under the Business Rules, from the date of re-registration as a Registered Person.</li> </ul>

**G. Early Resolution/Agreed Settlement Framework**

27. In order to encourage and facilitate early resolution/settlement of cases, Bursa Malaysia has in place an Early Resolution/Agreed Settlement Framework whereby the penalty(ies)/sanction(s) imposable on a person may be reduced if the person admits/does not dispute the alleged breach(es) or elects for agreed settlement pursuant to the following rules:-

<b>Rules</b>	<b>Rule/Practice or Guidance Notes</b>
Rules of Bursa Securities	Rule 15.04
Rules of Bursa Depository	Rule 39.04
Rules of Bursa Securities Clearing	Rule 3.5
Rules of Bursa Derivatives	Rule 504
Rules of Bursa Derivatives Clearing	Rule 909
Main LR	Paragraph 16.29 & Practice Note 30
ACE LR	Rule 16.29 & Guidance Note 21
LEAP LR	Rule 8.20



28. A person under investigation/inspection/recipient of the RN/NOD may initiate settlement with Bursa Malaysia as follows:-
- (a) at Investigation/inspection stage – from commencement of investigation/inspection up to the time before a RN/NOD is issued; and
  - (b) at Enforcement stage – from receipt of RN/NOD up to before hearing of the alleged breach(es) by the relevant Regulatory Committee/acceptance of the breach(es) and penalty(ies)/sanction(s) stipulated in the NOD.

In this regard, the person under investigation will become aware of the commencement of the investigation against him/her/it when notified of the commencement of the investigation against him/her/it including request to attend an interview by Bursa Malaysia.

29. The agreed settlement is premised on the admission or non-dispute of the alleged breach by the person.
30. The types of reduced penalty(ies)/sanction(s) that Bursa Malaysia may consider can be in a form of:-
- (a) a reduction of the financial penalty/sanction up to 30% depending on how early the agreed settlement is reached; or
  - (b) a reduction of the type of penalty/sanction by one order of magnitude e.g. where the breach would typically attract a suspension of less than 3 months, instead of reducing the period of suspension, Bursa Malaysia may consider imposing a deferred suspension (and the suspension would come into effect in the event the person commits another breach of similar nature).

The reduced penalty(ies)/sanction(s) may be coupled with enforceable undertaking i.e. the person agrees to certain terms and conditions imposed by Bursa Malaysia which may include undertaking to take remedial steps/corrective measures as well as deferred sanctions (see paragraph 30(b) above) to ensure no further recurrence of the breach.

31. This framework as well as any agreement reached between Bursa Malaysia's management and the person on the proposed reduced penalty(ies)/sanction(s) ("**proposed settlement**") merely serves as a guide to the Regulatory Committee and it is not bound by the proposed settlement and is free and has the discretion to depart from the framework. In this regard, where based on the Regulatory Committee's assessment of the facts and circumstances, it is of the view that the reduction of penalty(ies)/sanction(s) would result in the imposition of penalty(ies)/sanction(s) which are disproportionately light or no reduction should be given in view of the extenuating/aggravating circumstances giving rise to the breach, the Regulatory Committee may reject, accept or vary the proposed settlement based on terms that the committee deems fit including impose any of the disciplinary actions as provided under the relevant Rules.

32. Penalty(ies)/sanction(s) imposed pursuant to an agreed settlement are premised on the finding of breach by the relevant Regulatory Committee and guided by precedents of similar breach.
33. In the event the relevant Regulatory Committee:-
- (a) accepts the proposed settlement by the parties, the decision [including penalty(ies)/sanction(s)] will be final and not appealable; and
  - (b) varies the proposed settlement, the person may appeal against the varied sanction(s) only e.g. if the proposed settlement includes imposition of a public reprimand, fine, suspension and mandatory training and the relevant Regulatory Committee accepts all the sanctions but increases the fine imposed, the person may appeal only against the fine imposed.

**H. Conduct of Hearing before the Regulatory Committees**

34. In order to ensure that the significant regulatory decisions are made independently and justly, Bursa Malaysia has established independent Regulatory Committees, which include the following:-
- (a) Listing Committee (“**LC**”) – responsible to decide on matters relating to alleged breaches of the LR;
  - (b) Market Participants Committee (“**MPC**”) – responsible to decide on matters relating to alleged breaches of the Business Rules; and
  - (c) Appeals Committee (comprising of members who are not involved in the LC and MPC) – deciding on appeals from decisions of the LC and MPC.
35. The Regulatory Committees consist mainly of independent external parties or industry experts. Relevant information of the Regulatory Committees are published on Bursa Malaysia’s website as follows:-

<b>Information on Regulatory Committees</b>	<b>Relevant Link to Bursa Malaysia’s Website</b>
The Terms of Reference of the Regulatory Committees	<a href="http://www.bursamalaysia.com/corporate/about-us/corporate-governance/terms-of-reference/regulatory-committees/">http://www.bursamalaysia.com/corporate/about-us/corporate-governance/terms-of-reference/regulatory-committees/</a>
Details of the members of the Regulatory Committees	<a href="http://www.bursamalaysia.com/corporate/about-us/corporate-governance/membership-of-board-committees/">http://www.bursamalaysia.com/corporate/about-us/corporate-governance/membership-of-board-committees/</a>

36. Generally, the relevant Regulatory Committees will consider the documents presented to it in deliberating and deciding on a case. As such, the person must ensure that all representations are set out in his/her/its response in writing for the consideration of the Regulatory Committee.
37. Upon/after submission of the written response to the RN and/or the Notice of Appeal, the person may request for oral representation before the Regulatory Committee and provide justifications for his/her/its request. The Regulatory Committee has the

discretion to allow or disallow such request depending on the facts and circumstances of the case and the person's justifications. In this regard:-

- (a) The person who requested for oral representation may be required to be present on a standby basis on the date of the Regulatory Committee's meeting, in case his/her/its request is allowed.
  - (b) If allowed, the person will appear before the Regulatory Committee and present his/her/its representations.
38. If oral hearing is allowed, it will be conducted in the following manner (which may vary to adapt to the circumstances of the case if the need arises):-
- (a) oral representations by the person (together with legal counsel, if any);
  - (b) oral representations by the management of Bursa Malaysia; and
  - (c) replies by the person and/or legal counsel.

Members of the Regulatory Committee may ask any questions deemed necessary at any time in the proceedings and parties should so far as possible refrain from repeating the contents of its/their written representations.

39. The minutes of the proceedings are recorded by the Secretary of the Regulatory Committee.
40. The relevant Regulatory Committee will deliberate on the matter and the person will be notified in writing of the decision made in regard to the finding of breach and penalty(ies)/sanction(s) imposed.
41. In deliberating and deciding on a matter:-
- (a) the relevant Regulatory Committees are not bound by the strict rules of evidence under the Evidence Act 1950 as to the admissibility and relevance of evidence but may attach such weight to the evidence as they deem fit; and
  - (b) the relevant Regulatory Committees will not find an allegation proven unless the Regulatory Committees are satisfied that the allegation is proven on the balance of probabilities.

**I. Guidelines on Imposition of Penalty(ies)/Sanction(s)**

42. The type of penalties/sanctions that may be imposed for a breach of the Rules generally ranged from issuance of a caution letter (for breaches of the LR) or reprimand (for breaches of the Business Rules) to a fine not exceeding RM1 million as set out in the following Rules:-

<b>Rules</b>	<b>Rule/Paragraph</b>
Rules of Bursa Securities	15.02
Rules of Bursa Depository	39.02
Rules of Bursa Securities Clearing	3.2
Rules of Bursa Derivatives	502
Rules of Bursa Derivatives Clearing	907
Main LR	16.19
ACE LR	16.19
LEAP LR	8.12

43. In determining and deciding on the penalty(ies)/sanction(s) to be imposed, the relevant Regulatory Committee will take into account, amongst others, the following:-
- (a) The nature of the breach(es) where the factors taken into consideration are, amongst others, as follows:
    - (i) the nature of business conducted/activities undertaken by the person;
    - (ii) the purpose of the transaction or event from which the breach arose;
    - (iii) the intention behind the transaction;
    - (iv) the materiality/detriment of the transaction in relation to:
      - the financial and operational impact arising from the transaction, both positive and negative;
      - the market and price sensitivity of the breach;
    - (v) the detriment to investors/shareholders and public.
  - (b) The disciplinary history/antecedent character and background of the person which includes the following factors:
    - (i) previous record of the person/whether the person is a repeat offender;
    - (ii) past behavior and the person's conduct in relation to previous breach.
  - (c) The mitigating/aggravating factors, amongst others, the following:
    - (i) admission/self-reporting of breach;
    - (ii) immediate rectification upon detection of the breach/direction from Bursa Malaysia;
    - (iii) voluntary rectification of the breach without direction from Bursa Malaysia;
    - (iv) positive steps taken to prevent recurrence of the breach;
    - (v) whether the acts or events were outside/within the reasonable control of the person;
    - (vi) adverse circumstances being suffered by the person e.g. financial hardship which incapacitate the person's ability to generate income whilst depleting his/her savings;
    - (vii) self-reported the breach(es) in a timely and comprehensive manner;
    - (viii) the deliberate refusal by the person to adhere to Bursa Malaysia's directives;
    - (ix) lack of co-operation with Bursa Malaysia;
    - (x) deliberate attempts to mislead Bursa Malaysia;
    - (xi) failure to report or attempt to conceal the breach(es);
    - (xii) length of delay in rectifying the breach(es);
    - (xiii) extent of the breach e.g. large volume of the transactions executed over a long period of time;
    - (xiv) whether the act or omission involved fraud, deceit, manipulation or deliberate or reckless disregard of the Rules;
    - (xv) the harm to the investing public resulting either directly or indirectly from such act or omission;
    - (xvi) the extent to which any person was unjustly enriched;
    - (xvii) the transactions are related party transactions (for breaches of the LR).
  - (d) The need to deter the person and/or other parties from commission of similar breach(es).

44. If a person raises/asserts mitigating factor(s), these assertions must be supported by independent and verifiable evidence. For example, assertion of financial hardship should be supported by, amongst others, the following:-
- (a) documents evidencing the person's income/revenue for the preceding and current years in the form of EPF statements, tax returns/EA and income tax form, salary slip/confirmation from employer;
  - (b) assets statements – declaration as to the person's assets (shares, properties, etc.) including assets jointly owned with other(s);
  - (c) list of the person's expenses/financial commitments e.g. loan payments etc.; and
  - (d) any other documents/information to substantiate the person's financial status/condition.
45. To ensure parity, consistency and reasonableness of the penalty(ies)/sanction(s) imposed, the relevant Regulatory Committee will also be guided by the penalty(ies)/sanction(s) imposed in other past cases of similar breaches.