

APPENDIX 2

QUESTIONS AND ANSWERS

BURSA MALAYSIA SECURITIES BERHAD ACE MARKET LISTING REQUIREMENTS

(as at 13 August 2020)

PART A - QUESTIONS & ANSWERS ARISING FROM THE AMENDMENTS RELATING TO THE CONTINUING DISCLOSURE OBLIGATIONS AND OTHER AMENDMENTS

CHAPTER 1 - DEFINITIONS AND INTERPRETATION

1.2 Definition of “independent director”

- (i) Is there a difference between the definition of “officer” in sub-Rules (b) and (d) of the said definition of “independent director” in Chapter 1 of the ACE LR (“the said definition”)?

Yes. For the purpose of sub-Rule (b) of the said definition, “officer” shall have the meaning set out in section 2 of the Companies Act 2016 (e.g. director, secretary or employee of a corporation) whereas for the purpose of sub-Rule (d) of the said definition, “officer” has been defined in Rule 1.01 of the ACE LR to be the chief executive, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of an applicant, a listed corporation or its related corporation, by whatever name called.

- (ii) Mr Y is currently a non-executive director of C Bhd, a listed corporation. Can Mr Y subsequently be designated as an independent director of C Bhd?

Mr Y can only be designated as an independent director -

- after he observes a cooling-off period of 3 years as prescribed in sub-Rule (b)¹ of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

¹ Sub-Rule (b) of the said definition stipulates that an independent director is one who is not, and has not been within the last 3 years, an officer (except as an independent director) of the applicant, listed corporation or any related corporation of such applicant or listed corporation. For this purpose, “officer” has the meaning given in section 2 of the Companies Act.

- (iii) Would an independent director of a subsidiary of a listed corporation, who is proposed to be appointed as an independent director of such listed corporation, be disqualified from acting as an independent director of such listed corporation pursuant to sub-Rule (b) of the said definition?

No, an independent director of a subsidiary will not be disqualified from acting as an independent director of such listed corporation pursuant to sub-Rule (b) of the said definition.

- (iv) If Mr A were to be appointed by a listed corporation to act as a non-executive director of the listed corporation's unlisted subsidiary, would such appointment disqualify him from being an independent director of the listed corporation pursuant to sub-Rule (e) of the said definition?

No, the appointment of Mr A by the listed corporation as a non-executive director of a non-listed subsidiary of a listed corporation would not disqualify him from being an independent director of such listed corporation pursuant to sub-Rule (e) of the said definition.

- (v) What are the examples of "adviser" used in sub-Rule (f) of the said definition?

"~~a~~Adviser" is as defined in Rule 1.01 of the ACE LR and includes, amongst others, Advisers or Sponsors, advocates and solicitors, licensed investment banks, universal brokers, tax consultants, accounting firms, auditing firms etc offering professional advisory services to the listed corporation or its related corporation.

- (vi) Paragraph 5.1 of Guidance Note 9 in relation to sub-Rule (g) of the said definition states that a person is disqualified from being an independent director of a listed corporation if he -

- had engaged personally in transactions with the listed corporation or its related corporation (other than for board services as an independent-non-executive director) within the last 23 years; or
- is presently a partner, director or major shareholder of a firm or corporation ("the Entity") (other than subsidiaries of the listed corporation) which has engaged in transactions with the listed corporation or its related corporation within the last 23 years,

and the consideration in aggregate exceeds 5% of the gross revenue on a consolidated basis (where applicable) of the person or the Entity or RM1 million, whichever is the higher ("the said Threshold").

Mr A is an independent director of *X Bhd*, a listed corporation. If *Mr A* were to purchase a car from *X Bhd* for his own use, the value of which exceeds the said Threshold, would he be disqualified from being an independent director of *X Bhd* pursuant to sub-Rule (g) of the said definition and Paragraph 5.1 of Guidance Note 9?

As clarified under paragraph 5.2(a) of Guidance Note 9, an acquisition of a car from the listed corporation will not be considered a “transaction” where it is purchased for personal use provided that the transaction is on normal commercial terms. Therefore, *Mr A* would not be disqualified from being an independent director of *X Bhd* pursuant to sub-Rule (g) of the said definition and paragraph 5.2(a) of Guidance Note 9 due to the purchase of the car, provided that the purchase is on normal commercial terms.

- (vii) *Mr X* is a director (and not a major shareholder) of *A Bhd*, a listed corporation. He is proposed to be appointed as an independent director of *B Bhd*, another listed corporation. *A Bhd* and *B Bhd* are engaged in transactions, the consideration of which exceeds the said Threshold. Would paragraph 5.1 of Guidance Note 9 preclude *Mr X* from being appointed as an independent director of *B Bhd*?

Mr X would not be disqualified from being an independent director of *B Bhd* pursuant to sub-Rule (g) of the said definition and paragraph 5.2(b) of Guidance Note 9 if *Mr X* is not involved in the transactions entered into between *A Bhd* and *B Bhd*, i.e. *Mr X* is not the initiator, promoter, agent or is not a party to such transactions, and provided that such transactions are on normal commercial terms.

- (viii) *Mr X* is an executive director of *A Bhd*, a listed corporation and is proposed to be appointed as an independent director of *B Bhd*, another listed corporation. *A Bhd* is a telecommunications corporation and provides telecommunications services to *B Bhd*, the amount of which exceeds the said Threshold. *Mr X*, being the executive director of *A Bhd*, is directly involved in the transactions entered into with *B Bhd*. Would sub-Rule (g) of the said definition preclude *Mr X* from acting as an independent director of listed corporation *B Bhd*?

Mr X would not be disqualified from being an independent director of *B Bhd* pursuant to sub-Rule (g) of the said definition and paragraph 5.2(c)(i) of Guidance Note 9 provided that the services rendered by *A Bhd* are based on a non-negotiable fixed price or rate, which is published or publicly quoted, and the material terms including the prices or charges are applied consistently to all customers or classes of customers.

- (viiiix) In order to come within the ambit of “published or publicly quoted” as provided under paragraph 5.2(c) of Guidance Note 9, must the prices be advertised to the public?

In order to satisfy the criterion of “published or publicly quoted” under paragraph 5.2(c) of Guidance Note 9, the prices need not be advertised. So long as the pre-determined prices are or can be made readily available to the public or customers, this criterion is deemed satisfied.

- (ix) *Mr A is appointed a director of X Bhd, a listed corporation on 5 August ~~2009~~2010. Mr A is also a major shareholder of Y Sdn Bhd. 5% of Y Sdn Bhd's gross revenue for the financial years ending 31 December 2007, ~~and~~ 31 December 2008, ~~and~~ 31 December 2009 amounted to RM800,000. Y Sdn Bhd supplied X Bhd with raw materials in March ~~2009~~2010 and April ~~2009~~2010, the value of which amounted to RM900,000. Is Mr A disqualified from being an independent director of X Bhd?*

The relevant threshold to be considered pursuant to paragraph 5.1 of Guidance Note 9 is RM1 million or 5% of Y Sdn Bhd's gross revenue for the last ~~2~~3 financial years whichever is the higher. As 5% of the gross revenue of Y Sdn Bhd for the last ~~2~~3 financial years amounted to only RM800,000, the relevant threshold is RM1 million. Pursuant to paragraph 5.1 of Guidance Note 9, Mr A will not be disqualified from being an independent director of X Bhd because the value of the transactions entered into with Y Sdn Bhd of which Mr A is a major shareholder does not exceed RM1 million.

- (xi) *Mr A is an independent director of X Bhd, a listed corporation. Mr A entered into a contract to provide technical services to a subsidiary of X Bhd, the consideration of which is RM5 million and constitutes 10% of Mr A's gross revenue. Does this mean that Mr A is disqualified from being an independent director insofar as that transaction is concerned?*

The disqualification to act as an independent director is not specific to a transaction. As Mr A had entered into a transaction that exceeds the said Threshold, Mr A is disqualified from being an independent director. Mr A would not qualify to act as an independent director of X Bhd until such time when he fulfils all the requirements of the said definition.

- (xii) *Would the issuance of shares by a listed corporation or its subsidiary to a director of such listed corporation constitute a "transaction" as used in sub-Rule (g) of the said definition?*

No, the issuance of shares by a listed corporation or its subsidiary to a director of such listed corporation would not constitute a "transaction" for the purposes of sub-Rule (g) of the said definition.

- (xiii) *Mr X will receive remuneration from the listed corporation for services rendered to the listed corporation as a director. Would Mr X be disqualified from being an independent director pursuant to sub-Rule (g) of the said definition, for receiving remuneration from the listed corporation, particularly if the remuneration exceeds the said Threshold?*

No, the receipt of remuneration for services rendered to the listed corporation as a director would not constitute a "transaction" for the purposes of sub-Rule (g) of the said definition.

CHAPTER 6 - NEW ISSUE OF SECURITIES**Issuance of convertible securities**

6.41 Can a listed corporation revise the provisions in its deed poll or trust deed pertaining to the following changes as set out in Rule 6.55(3) of the ACE LR (“said restrictions”):

- the tenure of the convertible securities; or
- the number of shares received for the exercise or conversion of each convertible security or pricing mechanism for the exercise or conversion price (other than adjustments following certain corporate exercises),

if there are provisions allowing for alteration or adjustment in the deed poll or trust deed and the listed corporation complies with such provisions?

No, and this is clarified in Rule 6.56(b)² of the ACE LR. The said restrictions are imposed on convertible securities (other than debt securities³) to provide certainty to the holders of such securities and avoid changes or adjustments to the terms and conditions of the convertible equity securities which may be detrimental to them.

PART B - UPDATES TO QUESTIONS & ANSWERS IN OTHER AREAS**CHAPTER 8 - CONTINUING LISTING OBLIGATIONS*****Compliance with enhanced regularisation plan requirements***

8.31A *Y Bhd* is a GN3 Company which intends to undertake a regularisation plan to regularize its financial condition pursuant to Rule 8.04 and GN3 of the ACE LR. In the regularisation plan submitted to Bursa Securities, *Y Bhd* has included information relating to its financial forecast. What are the specific requirements under the ACE LR that *Y Bhd* must comply with in relation to the disclosure of financial forecast in the regularisation plan?

Y Bhd and its Sponsor or Adviser must ensure that the preparation and disclosure of the financial forecast in the regularisation plan comply with Chapters ~~9~~¹² and ~~10~~¹³ in Division 1, Part II, Division 4 of the SC’s Prospectus Guidelines in relation to future financial information (“SC FFI Standards”) as required under Rule 2.19A of the ACE LR. *Y Bhd* must also ensure that its reporting accountant reviews and reports on the underlying accounting policies and assumptions relied on in the preparation of the financial forecast in accordance with the SC FFI Standards.

² Rule 6.56 of the ACE LR stipulates that a listed corporation may make an alteration or adjustment to the terms of the convertible securities during the tenure of the securities only if such alteration or adjustment -

- (a) is provided upfront in the deed poll or trust deed governing the securities; and
- (b) does not relate to the provisions set out in in Rule 6.55(3) above.

³ Rule 6.55(4) of the ACE LR.

In addition to the above, *Y Bhd* must, amongst others, ensure that -

- the contents of the regularisation plan submitted to Bursa Securities comply with the requirements as set out in Rule 2.18 of the ACE LR; and
- the draft circular submitted to Bursa Securities together with the regularisation plan complies with the standard of disclosure for circulars as prescribed under Rule 9.35 of the ACE LR.

CHAPTER 9 - CONTINUING DISCLOSURE

General

9.1 Does the ACE LR impose an obligation on listed corporations to make an announcement on financial estimate, forecast or projection?

The ACE LR does not impose an obligation on listed corporations to announce its financial estimate, forecast or projection.

However, if the listed corporations choose to announce their financial estimate, forecast or projection, the listed corporations must, amongst others, comply with the following:

- the requirements on the standard of disclosure prescribed for contents of announcement as set out in Rule 9.35 of the ACE LR and in particular, the preparation and the announcement of the financial estimate, forecast or projection must comply with Chapters ~~942~~ and ~~103~~ in Division 1, Part II, ~~Division 4~~ of the SC's Prospectus Guidelines in relation to future financial information ("SC FFI Standards") as required under Rule 9.35(2) of the ACE LR. This includes the obligation to ensure that the underlying accounting policies and assumptions of the financial estimate, forecast or projection are reviewed by the external auditors or reporting accountants, as the case may be, in accordance with the SC FFI Standards;
- the requirements as set out in Rule 9.19(37) of the ACE LR and Notes 3(b) and 4 of Appendix 9B of the ACE LR; and
- the disclosure must adhere to the Corporate Disclosure Policy prescribed under the ACE LR including the requirement that there should not be selective disclosure of the financial estimate, forecast or projection to the investors, press, analysts or any other parties prior to the release or simultaneous release, of the financial estimate, forecast or projection through Bursa Link.

CHAPTER 10 - TRANSACTIONS*Major Disposal*

10.54 What is meant by “substantially all of a listed corporation’s assets” under the definition of “Major Disposal” in Rule 10.02(eA) of the ACE LR?

Disposal of “substantially all of the listed corporation’s assets” refers to a disposal by a listed corporation of almost all of its assets, which is so material that upon the completion of the transaction, it will result in the listed corporation triggering the criteria for a cash company under Rule 8.03 and Guidance Note 2, the criteria for inadequate level of operations under Rule 8.03A, or any of the criteria prescribed under Rule 8.04 and Guidance Note 3 of the ACE LR.

[End of Appendix 2]