

MEASURES ANNOUNCED BY BURSA MALAYSIA

On 16 April 2020, Bursa Malaysia Securities Berhad (“Bursa Malaysia”) announced additional relief measures for corporations whose shares are listed on Bursa Malaysia (“listed corporations”) to ease compliance and facilitate their capital raising during the challenging times triggered by COVID-19 pandemic and the inevitable movement restrictions ordered by the Malaysian Government.

In summary, the latest measures announced addressed compliance for submission of reports, increased of level of mandate of public corporations in issuing new securities and provided relief to listed corporations with unsatisfactory financial condition.

Compliance on Submission of Reports

In recognizing the challenging time factors faced by listed corporations and their appointed auditors in meeting their obligations to make the requisite reports by 31 May 2020, Bursa Malaysia granted to listed corporations on the Main Market and the ACE Market an extension of time until 30 June 2020 for the issuance of quarterly reports and annual reports, including audited financial statements and auditors’ as well as directors’ reports, that are due by 30 April 2020 and by 31 May 2020. With regards to listed companies on the LEAP Market, the extension of time to 30 June 2020 applies to financial statement which are due by 31 May 2020 whilst the time frame for filing financial statements due by 30 April 2020 remains to be fixed at 31 May 2020 as earlier announced by Bursa Malaysia.

It was emphasized by Bursa Malaysia that notwithstanding the extension of time till 30 June 2020, listed corporations are still required to observe and comply with the disclosure requirements imposed by the Listing Requirements issued by Bursa Malaysia. This means public corporations are still required to make the requisite announcements as and when the triggering events prescribed by the Listing Requirements occur. Bursa Malaysia further qualified the extension of time announced by alerting public corporations which are not adversely affected by the current Movement Restriction Order and which may still issue the quarterly reports or the annual reports, as the case may be, in accordance with the Listing Requirements, to submit the reports without any delay.

Increase of General Mandate

The Listing Requirements imposes a limit on the total number of new shares or convertible securities that a listed corporation is allowed to issue within a preceding period of 12 months. Before the announcement made on 16 April 2020, the limit imposed is 10% of the total number of issued shares, excluding treasury shares, of the listed corporation.

In recognizing the need to raise funds quickly and efficiently to ensure long-term sustainability, Bursa Malaysia allows listed corporations to seek a higher limit of 20%. The permission to issue new shares or convertible securities up to 20% of total number of issued shares, excluding treasury shares, is available provided the following conditions are met:

- 1) the listed corporation procures approval from its shareholders to issue new shares or convertible securities up to the limit of 20% of the total number of issues shares, excluding treasury;
- 2) the listed corporation complies with all applicable legal requirements, including those imposed by the Constitution or relevant constituent documents; and
- 3) in addition to those already required, the listed corporation must disclose the views and the basis of such views from its board of directors that the issuance of new shares up to the limit of 20% is in the best interest of the listed corporation.

The new shares or convertible securities under the new limit of 20% must be issued on or before 31 December 2020, failing which the current limit of 10% will be reinstated and continue to apply.

This relief measure is not applicable to listed corporations on the LEAP Market.

Relief to Listed Corporations with Unsatisfactory Financial Condition

At present, the Listing Requirements imposes the requirement that, in the opinion of Bursa Malaysia, the financial condition of all listed corporations on a consolidated basis warrants continued trading or listing. In forming its opinion, Bursa Malaysia is entitled to prescribe the criteria affecting the financial condition of listed corporations. For listed corporations on the Main Market the criteria is set out in Practice Note 17 (“PN17”) of the Main Market Listing Requirements whilst for listed corporations on the ACE Market, the criteria is set out in Guidance Note 3 (“GN3”) of the ACE Market Listing Requirements, both issued by Bursa Malaysia. If any of the criteria is triggered, then the listed corporation will be required to comply with requirements prescribed by Bursa Malaysia, failing which, trading of the shares of the listed corporation will be suspended and the listed corporation will be categorized as a PN 17 (for shares listed on the Main Market) or GN 3 (for shares listed on the ACE Market) listed corporation. The shares of the listed corporation may also be delisted from the stock exchange. Amongst others, the Listing Requirements require the PN17 listed corporation or G3 listed corporation, as the case may be, to regularize its financial condition within 12 months from the date Bursa Malaysia announced the listed corporation to be classified as such. On 26 March 2020, Bursa Malaysia had allowed PN 17 listed corporations an extension of 12 months from the prescribed 12 months to regularize their financial condition.

In recognizing the possible adverse effect on the operations and financial condition of listed corporations following the unparalleled measures imposed by the Malaysian Government under the MCO, Bursa Malaysia announced the measures that will be available to any listed corporation on the Main Market that triggers the following criteria from 17 April 2020 until 30 June 2021 (“Relief Period”):

- (a) its shareholders’ equity on a consolidated basis is 25% or less of its share capital (excluding treasury shares) and such shareholders’ equity is less than RM40 million;

- (b) auditors have highlighted material uncertainty related to going concern or expressed a qualification on the listed corporation's ability to continue as a going concern in the latest financial statement of the listed corporation and its shareholding equity on a consolidated basis is 50% or less than its share capital (excluding treasury shares);
- (c) default in payment by the listed corporation, major subsidiary or major associate company, as the case may be as announced pursuant to the Listing Requirements and the listed corporation is unable to provide a solvency declaration to Bursa Malaysia.

Whilst for listed corporations on the ACE Market, those that trigger the following criteria during the Relief Period:

- (aa) its shareholders' equity on a consolidated basis is 25% or less of its share capital (excluding treasury shares);
- (bb) the listed corporation has incurred loss in any one full financial year commencing on or after its listing on ACE Market, which is equal to or exceeds the amount of its shareholders' equity at the end of the said full financial year and its shareholders' equity is equal or less than 50% of its share capital at the end of the said financial year;
- (cc) the listed corporation has incurred losses in any 2 consecutive financial years commencing on or after its listing on ACE Market;
 - (i) which exceed the amount of its shareholders' equity at the end of the 2 consecutive financial years;
 - (ii) the loss incurred in the second (2nd) financial year is 50% or more than the lost incurred in the first (1st) financial year; and
 - (iii) its shareholders' equity is equal to or less than 50% of its share capital at end of the 2 consecutive financial years.
- (dd) auditors have highlighted material uncertainty related to going concern or expressed a qualification on the listed corporation's ability to continue as a going concern in the latest financial statement of the listed corporation and its shareholding equity on a consolidated basis is 50% or less than its share capital (excluding treasury shares);
- (ee) default in payment by the listed corporation, major subsidiary or major associate company, as the case may be as announced pursuant to the Listing Requirements and the listed corporation is unable to provide a solvency declaration to Bursa Malaysia.

If any listed corporation triggers any of the criteria enumerated above during the Relief Period (“affected listed corporation”), the following relief will be applicable:

- 1) the affected listed corporation will not be classified as a PN 17 listed corporation or GN3 listed corporation, as the case may be;
- 2) the affected listed corporation will still be required to make the necessary immediate announcement that it has triggered the relevant criteria and the relief announced by Bursa Malaysia;
- 3) upon expiry of 12 months from the announcement made under paragraph (b) above, the affected listed corporation is required to re-assess its financial condition and announce whether the listed corporation continues to trigger any of the criteria prescribed by Bursa Malaysia under its Listing Requirements; and
- 4) if the listed corporation continues to trigger any of the criteria, the listed corporation will be classified as a PN17 listed corporation or a GN3 listed corporation, as the case may be, and is thereafter required to comply with the relevant requirements imposed by the Listing Requirements, including the requirement to submit its regularisation plan within 12 months from the announcement made pursuant to paragraph (b) above.

These relief measures do not apply to public corporations listed on the LEAP Market.

The latest relief measures announced by Bursa Malaysia add to the list of measures and economic stimulus announced by the Malaysian Government and its agencies. It is indeed a good and timely move by Bursa Malaysia in announcing the latest measures, as they underline Bursa Malaysia’s awareness of plight faced by the listed corporations and underscore Bursa Malaysia’s commitment to assist and support them during these unprecedented time of crisis.

The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.

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17 April 2020

Source: Bursa Malaysia