

International Securities Law Handbook

Securities Law in Malaysia

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1. DESCRIPTION OF THE SECURITIES MARKET

Bursa Malaysia Securities Berhad is the stock exchange in Malaysia ('Bursa Securities'). Bursa Securities is a wholly owned subsidiary of Bursa Malaysia Berhad ('Bursa Malaysia'). The shares of Bursa Malaysia are quoted on Bursa Securities.

Bursa Securities is made up of two separate markets:

- (a) the Main Market, which is the principal market; and
- (b) the Access, Certainty and Efficiency (ACE) Market, which is an alternative market open to companies of all sectors and sizes.

Other markets operating in Malaysia include:

- (a) Bursa Malaysia Derivatives Berhad ('Bursa Derivatives'), which is an exchange for trading in derivatives and offers both futures and options contracts; and
- (b) The Labuan International Financial Exchange Inc. (LFX), which is an offshore financial exchange based in Labuan, Malaysia's international offshore financial centre, both of which are subsidiaries of Bursa Malaysia.

Bursa Malaysia can be contacted at:

Customer Care Centre
Bursa Malaysia Berhad
Lower Ground Floor
Bukit Kewangan
50200 Kuala Lumpur
Tel: + 603 2732 0067

Email: customerservice@bursamalaysia.com

Website: www.bursamalaysia.com

2. THE LISTING/MARKET AUTHORITY

Bursa Securities is a public company limited by shares and has its own Memorandum and Articles of Association. There are two sets of rules governing the conduct of its members, namely the Rules of Bursa Securities and Rules of Bursa Malaysia Securities Clearing Sdn Bhd.

The Listing Requirements of the Bursa Securities ('Bursa Malaysia Listing Requirements') set out, among other things, the requirements that must be complied with by all companies seeking to list on Bursa Securities, all listed issuers, their directors, advisers and all other persons to whom the Bursa Malaysia Listing Requirements are specified to apply. Separate Bursa Malaysia Listing Requirements have been prescribed for the Main Market and the ACE Market respectively. The Bursa Malaysia Listing Requirements are to be read together with the Practice Notes (in the case of the Main Market) and Guidance Notes (in the case of the ACE Market) issued by Bursa Securities from time to time as necessary.

Bursa Securities is responsible for regulating the securities market and the enforcement of its listing requirements with regard to the listing criteria, transactions undertaken by listed companies, continuing listing obligations, continuing disclosure requirements and standards required to be maintained by the listed companies.

The automated clearing and settlement system of Bursa Securities is the Central Depository System (CDS) and is operated and maintained by Bursa Malaysia's subsidiary, Bursa Malaysia Depository Sdn Bhd (BMD). The CDS was implemented in 1993 and introduced a scripless system where securities are transferred by way of book entry. BMD has a set of rules known as the 'Rules of the Bursa Malaysia Depository Sdn Bhd'.

Bursa Malaysia Securities Clearing Sdn Bhd (BMSC), another wholly owned subsidiary of Bursa Malaysia, provides clearing and settlement facilities for contracts made between clearing members of the Bursa Securities. BMSC has its own set of rules, known as the 'Rules of Bursa Malaysia Securities Clearing Sdn Bhd'.

3. THE REGULATORY AUTHORITY

In Malaysia, the Securities Commission (SC) regulates:

- (a) securities and derivatives;
- (b) takeovers and mergers of companies;
- (c) matters relating to unit trusts and licensing; and
- (d) supervises licensed persons as well as oversees compliance with securities laws.

The SC approves proposals for, among other things, the offering, issue and listing of securities. It has investigatory and enforcement powers and may issue such written notices, circulars or guidelines as it considers desirable. Non-compliance with the notices, circulars or guidelines by a person may result in a fine, public reprimand or such other actions as the SC may consider appropriate.

The Companies Commission of Malaysia (CCM) monitors companies and ensures compliance with the Companies Act 1965 (CA). With respect to securities offerings, the CCM's powers are limited to regulating the offer of shares or debentures to the public by 'unlisted recreational clubs', that is, corporations which provide the holder of the shares or debentures with the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange.

For IPOs, approval such as those of the Ministry of International Trade and Industry (MITI) or the Ministry of Finance (MOF) (in respect of licensed financial institutions), is required for the identification of Bumiputra (Malay indigenous) investors and the allocation of up to 50% of the public spread requirement shares to these Bumiputra investors.

The SC can be contacted at:

Securities Commission

3, Persiaran Bukit Kiara

Bukit Kiara

Kuala Lumpur

50490 Malaysia

Tel: 603-6204 8777

Email: cau@seccom.com.my

Website: www.sc.com.my

4. PRINCIPAL LAWS REGULATING THE SECURITIES MARKETS

The securities markets in Malaysia are principally regulated by:

- (a) the Capital Markets and Services Act 2007 (CMSA);
- (b) the Securities Commission Act 1993 (SCA);
- (c) the Securities Industry (Central Depositories) Act 1991 (SI(CD)A); and
- (d) the Companies Act 1965 (this has been defined in section 3 above).

The Bursa Malaysia Listing Requirements, guidelines, practice notes and guidance notes issued by the Bursa Securities are also relevant.

The CMSA is the main statute regulating the securities industry. It provides for the establishment of the stock market operated by Bursa Securities, registration of

persons dealing in securities, regulation of the activities of licensed persons and prohibitions on market manipulation, market rigging and insider trading. The CMSA further regulates derivatives and establishes the derivatives exchange in Malaysia. It also provides for the registration and conduct of persons (whether as principals or agents) dealing in derivatives and their respective representatives in respect of such activities.

The SCA establishes the SC and provides it with wide regulatory powers. It sets out those proposals relating to securities that require the SC's prior approval as well as the form and content requirements for prospectuses and trust deeds relating to debentures and unit trust schemes. The SCA also establishes the SC's investigatory and enforcement powers, which were further strengthened when the CMSA came into effect. Today, the SC regulates offences such as insider trading and market rigging or manipulation and ensures compliance with standards of corporate governance and accounting.

The SC has prescribed its own set of guidelines in relation to the securities market. These include the 'Equity Guidelines', 'Prospectus Guidelines', 'Guidelines on Securities Borrowing and Lending' and 'Guidelines for Principal Advisers'.

The SI(CD)A regulates central depositories in Malaysia and contains provisions relating to the deposit, holding and withdrawal of, and dealings in, deposited securities.

The CA provides for the incorporation and winding-up of companies, registration of foreign companies and regulates the behaviour of companies and their officers in Malaysia.

The Malaysian Code on Takeovers and Mergers 2010 ('Takeover Code') governs takeovers (refer to section 21 below).

The securities market in Labuan is principally regulated by the Labuan Financial Services and Securities Act 2010 (which repealed the Labuan Offshore Securities Industry Act 1998). The LFX, which was established under the repealed Labuan Offshore Securities Industry Act 1998, is deemed to be an approved offshore financial exchange under the Labuan Financial Services and Securities Act 2010. The Labuan Financial Services and Securities Act 2010 also provides for the regulation of private and public mutual funds.

5. PARTICIPANTS IN THE SECURITIES MARKETS: REQUIREMENTS FOR LICENSING

A person who carries, or who holds himself out as carrying, on a business in any regulated activity must hold a Capital Markets Services Licence, unless he is a registered person or is expressly excluded by the CMSA. Registered persons are persons listed in Schedule 4 of the CMSA, registered by the SC, or recognized as a self-regulatory organization and approved by the SC. Registered persons under Schedule 4 include, amongst others, licensed banks, Islamic banks and financial institutions carrying out certain activities in accordance with that Schedule. The phrase 'regulated

activity' is widely defined by the CMSA and includes activities such as dealing in securities, dealing in derivatives, funds management, advising on corporate finance, investment advice, financial planning and dealing in private retirement schemes.

A person who is a representative, or who holds himself out as being a representative in any regulated activity must hold a Capital Markets Services Representative's Licence for that regulated activity, unless he is a registered person with respect to that regulated activity.

6. PROCEDURES AND METHODS FOR AN APPLICATION FOR LISTING

Generally, the procedures for listing are as follows:

- (a) the applicant submits a listing application to the SC;
- (b) the SC approves the listing;
- (c) the applicant files a listing application together with supporting documents with Bursa Securities;
- (d) the applicant files the final copy of the prospectus with the relevant authorities;
- (e) Bursa Securities grants approval for the admission of securities;
- (f) the applicant:
 - (i) issues the prospectus and, if the listing entails an offer of securities to the public, the offer period commences;
 - (ii) advertises the prospectus;
 - (iii) provides Bursa Securities with such number of copies of the printed prospectus as required by Bursa Securities from time to time; and
 - (iv) announces to Bursa Securities the indicative timetable of the initial public offering, containing information such as the opening and closing date of the offer period, the balloting date, the allotment date of the initial public offering securities and the tentative listing date;
- (g) if the listing entails an offer of securities to the public, the applicant announces the level of subscription and the basis of allocation;
- (h) the applicant issues securities and notices of allotment;
- (i) the applicant announces to Bursa Securities, among other things, the following relevant information:
 - (i) the actual date of listing;
 - (ii) the enlarged issued and paid-up capital of the listed issuer, indicating the number of shares and their par value (if any); and
 - (iii) the sector and market under which the securities will be listed, and
- (j) the securities are admitted to the Official List and quoted on Bursa Securities.

7. PROCEDURES AND METHODS FOR AN APPLICATION FOR LISTING: FOREIGN ISSUERS

In addition to the standard requirements set out under section 8 below, foreign corporations seeking listing on Bursa Securities are required to satisfy the following requirements.

Standards of Laws and Regulations

- (a) The foreign corporation must be incorporated in a jurisdiction that is subject to corporation laws and other laws and regulations which have standards at least equivalent to those of Malaysia, particularly with respect to corporate governance, shareholders' and minority interest protection and the regulation of takeovers and mergers, where appropriate.
- (b) Where the jurisdiction in which the applicant is incorporated does not provide standards of corporate governance, shareholders' and minority interest protection, and regulation of takeovers and mergers that are at least equivalent to those in Malaysia (but it is possible to provide those standards by means of varying the applicant's constituent documents), the SC may approve the listing of the application, subject to the application making such variations to its constituent documents. In relation to this, the applicant must submit a comparison of such standards of laws and regulations of the jurisdiction in which the applicant is incorporated with those provided in Malaysia, together with the proposed variations to its constituent documents to address any deficiency in those standards, in its listing application to the SC and Bursa Securities.
- (c) The securities of the applicant must be validly issued in accordance with the constituent documents of the applicant and the relevant laws in force in the country of incorporation of the applicant.
- (d) The foreign corporation must comply with all requirements relating to public companies seeking listing on the Main Market.

Approval of regulatory authorities of foreign jurisdiction

The applicant must obtain the approval of all the relevant regulatory authorities of the jurisdiction in which it is incorporated and carries out its core business, as may be required, before issuing its listing prospectus.

Registration under the Companies Act 1965

The applicant must have been registered with the Registrar of Companies under the CA.

Accounting Standards

The applicant must prepare its financial statements and reports in accordance with the approved accounting standards as defined in the Financial Reporting Act 1997, which include the International Accounting Standards. In this regard, a professional accountant qualified under the Accountants Act 1967 and from an international accounting firm must confirm that the applicant's financial statements comply with the said approved accounting standards.

Auditing Standards

The financial statements of the applicant must be audited in accordance with approved auditing standards applied in Malaysia or International Standards on Auditing.

Translation of Documents

All documents supplied by the applicant to the SC, including financial statements, which are in a language other than Bahasa Malaysia or English must be accompanied by a certified Bahasa Malaysia or English translation.

Currency Denomination

The applicant is to consult Bursa Securities and obtain the approval of the Controller of Foreign Exchange if it prefers its securities to be quoted in a currency other than Ringgit Malaysia (MYR).

Approval of Controller of Foreign Exchange

The applicant and/or offerors of the securities of the applicant must, where applicable, obtain the prior approval of the Controller of Foreign Exchange for the utilization of proceeds from the offering of securities.

Resident Directors

- (a) An applicant whose operations are entirely or predominantly Malaysian based must have a majority of directors whose principal or only place of residence is within Malaysia.
- (b) An applicant whose operations are entirely or predominantly foreign based must have at least one director whose principal or only place of residence is within Malaysia.

8. LISTING REQUIREMENTS

8.1. The Main Market

Companies seeking to list on the Main Market must satisfy the quantitative and qualitative requirements set out in the 'Equity Guidelines' issued by the SC.

Public Shareholding Spread

A company is required to undertake a public issue or offer such that at least 25% of the total number of shares or units for which listing is sought are held by at least 1000 public shareholders, each holding not less than 100 shares.

Quantitative Tests

A company whose core business is not that of an infrastructure project must satisfy either the profit test or the market capitalization test. A company whose core business is that of an infrastructure project must satisfy the infrastructure project corporation test.

(a) Profit Test

- (i) profit requirements: The company (either at the corporation or group level) must have an uninterrupted profit of three to five full financial years, based on audited financial statements prior to submission to the SC, with an aggregate after-tax profit of at least MYR 20 million and an after-tax profit for the most recent financial year of at least MYR 6 million. In fulfilling the profit requirements, contributions from associated companies must not exceed those of subsidiary companies.
- (ii) pro forma accounts: Where the listing of a corporation is sought based on the financial strength of its group, at least one corporation (which is the qualifying corporation) within the group must be able to fulfil the profit requirements. If no single corporation is able to fulfil the profit requirements, listing based on the strength of the group's pro forma accounts may be considered, provided that the corporations in the group which collectively fulfil the profit requirements:
 - are involved in the same core business; and
 - have common controlling shareholders;over the profit track-record period.
- (iii) operating history: The company or the qualifying corporation must have been incorporated and have operated in the same core business over at least the profit track-record period prior to submission of an application to the SC.

Where listing is sought based on the strength of group pro forma accounts, the corporation which is the single largest contributor to the after-tax profits of the group on an average basis for the most recent three full financial years must satisfy the operating history requirements.

(b) Market Capitalization Test

- (i) market capitalization: The company's ordinary shares must have a total market capitalization of at least MYR 500 million based on the issue or offer price as stated in the listing prospectus and the enlarged issued and paid-up share capital upon listing.
- (ii) pro forma accounts: Where a group of corporations is seeking listing based on the strength of the group, the corporations within the group must have common controlling shareholders.
- (iii) operating history: The company, or the corporation within the group representing the core business, must have been incorporated and have generated operating revenue for at least one full financial year prior to submission to the SC.

(c) Infrastructure Project Corporation Test

- (i) the company, either directly or through its subsidiary company, must have the right to build and operate an infrastructure project, whether located in or outside Malaysia:
 - with project costs of not less than MYR 500 million; and
 - for which a concession or licence has been awarded by a government or a state agency, in or outside of Malaysia, with a remaining concession or licence period of at least fifteen years from the date of submission to the SC.
- (ii) the SC may consider a listing proposal by a company with a shorter remaining concession or licence period from the date of submission to the SC, if the company fulfils the profit requirements under the profit test.

Qualitative Requirements

The SC will also consider other factors that indicate a company's financial viability and strength or a company's suitability for listing, including the company's core business, its management continuity, the financial position and liquidity of the company and transactions with related parties. An applicant is also required to assess all aspects of its business to determine whether there are any conflicts of interest.

Special Purpose Acquisition Companies

Under the Equity Guidelines, Special Purpose Acquisition Companies (SPACs) are allowed to list on the Main Market. A SPAC, as defined in the Equity Guidelines, is a corporation which has no operations or income generating business at the point of IPO and has yet to complete a qualifying acquisition with the proceeds of IPO.

The requirements to be satisfied by SPACs include:

- (a) a minimum of MYR 150 million must be raised through its IPO;
- (b) at least 90% of the gross proceeds raised in its IPO must be deposited in a trust account immediately upon receipt of all proceeds;
- (c) a custodial arrangement must be secured at all times over the monies in the trust account until the termination of the trust account; and
- (d) members of its management team must have the experience, qualifications and competence necessary to achieve the SPAC's business objective and strategy as disclosed in the prospectus issued in relation to the IPO and to perform their individual roles, including an understanding of the nature of their obligations and those of the SPAC under the Equity Guidelines and other legal or regulatory requirements relevant to their roles.

A SPAC must complete a qualifying acquisition of a business (either domiciled locally or abroad) within thirty-six months of its listing on Bursa Securities. In relation to foreign businesses, the SPAC must also satisfy the foreign listing requirements of Bursa Securities. The qualifying acquisition, which may comprise more than one acquisition, must have an aggregate fair market value equal to at least 80% of the aggregate amount held in a trust account (net of any taxes payable). A SPAC which fails to complete a qualifying acquisition within the permitted time frame must be liquidated. The amount then held in the trust account(s) (net of any taxes payable and direct expenses related to the liquidation distribution), must be distributed to the respective holders of voting securities on a pro rata basis as soon as practicable. Any income earned from permitted investments accruing in the trust account will form part of the liquidation distribution.

8.2. The ACE Market

The conditions for listing on the ACE Market are set out under the ACE Market Listing Requirements, which include the following:

- (a) independence of business: The core business of the applicant must not be the holding of investments in other listed corporations.
- (b) working capital: The applicant must have sufficient working capital available for its present requirements and for at least twelve months from the date of its prospectus for an initial public offering.
- (c) management continuity: The applicant must have had substantially the same management at the level of executive directors and senior management continuously for three full financial years prior to submitting its listing application or since its incorporation (if this was less than three full financial years previously).
- (d) independent directors:
 - (i) the applicant must ensure that at least two directors, or one-third of the board of directors of the applicant, whichever is the higher, are independent directors.

- (ii) if the number of directors of the applicant is not three, or a multiple of three, then the number nearest to one-third must be used.
- (e) audit committee: The applicant must establish an audit committee comprising a majority of independent directors.
- (f) shareholding spread: At least 25% of the total number of shares for which listing is sought must be held by at least 200 public shareholders, each holding not less than 100 shares.

9. CONTINUING REQUIREMENTS FOR LISTED COMPANIES

The Bursa Malaysia Listing Requirements require listed companies to make periodic disclosures. A quarterly report must be released within two months after the end of each financial quarter. The annual audited financial statements together with the auditors' and directors' report must be announced to Bursa Securities within four months of the end of the financial year, unless the issuance of the annual report is within the period of four months of the end of the financial year. The annual reports of companies that include annual audited financial statements and reports from the auditors and directors are also required to be issued and publicly released within six months of the end of each financial year.

In addition, a listed company is required to make immediate disclosure of material information, that is, information that is reasonably expected to have a material effect on the price, value or market activity of the securities or the decision of a shareholder or an investor in determining their actions in respect of the securities. Such information includes, among other things, the acquisition or loss of a contract, franchise or distribution rights, the commencement of or the involvement in litigation and any material development arising therefrom and any change in general business direction. Immediate announcements are also required to be made upon any one of the events described in Chapter 9 of the Bursa Malaysia Listing Requirements occurring.

Apart from disclosure requirements, there are other requirements pertaining to acquisitions and disposals, related-party transactions, share buy-backs, corporate governance and dealings by directors and principal officers during closed periods (the periods prior to the dissemination and announcements of price-sensitive information and financial results).

10. CIVIL AND CRIMINAL LIABILITY FOR SECURITIES LAW BREACHES

Breaches of securities laws may result in:

- (a) an offence being committed resulting in a fine and/or imprisonment; and/or
- (b) civil liability.

Breaches which may result in civil and/or criminal liability include:

- (a) submitting information, or a statement, which is false or misleading, or from which there is a material omission, to the SC in connection with a proposal for, among other things, the making available, offer for subscription or purchase of securities which is required to be approved by the SC;
- (b) engaging in conduct which is misleading or deceptive;
- (c) short selling;
- (d) issuing a prospectus that contains a false or misleading statement or that contains a material omission; and
- (e) engaging in market manipulation, false trading and market rigging transactions.

The CMSA imposes severe sanctions for breaches, including imprisonment for up to ten years or a fine of up to MYR 3 million.

Under the CMSA, a person may recover losses or damages suffered as a result of any false or misleading statements in, or material omissions from, a prospectus.

Similarly, anyone who has suffered loss arising from any market manipulation, false trading or market rigging transaction may institute civil proceedings against the person with whom they had transacted, irrespective of whether the person has been charged or whether a contravention has been proved against the person. Furthermore, the SC has a separate right to institute civil proceedings against the offender. In this situation, the SC may, if it considers that it is in the public interest to do so, recover an amount of up to three times the gross amount of pecuniary gain made, or loss avoided, by such person and claim civil penalty in an amount considered appropriate by a court but in any case, not exceeding MYR 1 million.

Apart from civil and criminal liabilities, non-compliance with the SC Guidelines and Bursa Malaysia Listing Requirements may result in a public reprimand or a caution letter from the SC.

Non-compliance with securities laws by licensed persons may result in their licences being suspended or revoked.

11. OFFERING SECURITIES: DISTINCTION BETWEEN PUBLIC AND PRIVATE OFFERS

There is no longer a distinction between public and private offers in Malaysia. In terms of the prospectus requirement, the CMSA regulates all offers, issues and invitations except those exempted under sections 229 and 230, when read together with Schedules 6 and 7 to the CMSA (see section 16 below).

12. OFFERING SECURITIES: PROSPECTUS/DISCLOSURE REQUIREMENTS

The CMSA requires a prospectus to be issued before a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase securities. 'Securities' are defined in the CMSA to mean:

- (a) debentures, stocks or bonds issued, or proposed to be issued, by any government;
- (b) shares in or debentures of, a body corporate or an unincorporated body; or
- (c) units in a unit trust scheme or prescribed investments;

and includes any right, option or interest in respect thereof.

The prospectus must be registered with the SC and comply with the requirements of the CMSA.

The SC has various guidelines setting out its requirements with regard to the form and content of prospectuses.

In the case of an IPO, where the company is approved for listing on Bursa Securities, a summary advertisement of its prospectus must be published in widely circulated English and Bahasa Malaysia (national language) newspapers in Malaysia.

In some IPOs or rights issues, a preliminary prospectus is issued prior to the formal prospectus. This is usually issued to ascertain the level of interest in the offering and to assist in setting a price for the securities. A copy of the preliminary prospectus must be first delivered to the SC before its issue and it must only be issued to exempted persons (see section 16 below). However, no sale, purchase or subscription agreement should be entered into between the issuer and the recipient of the preliminary prospectus. When the final prospectus is issued, notice of any differences between the final prospectus and the preliminary prospectus, if any, must be given to the recipients. A copy of the notice must be delivered to the SC.

Where a company undertakes a renounceable rights issue, it must issue an abridged prospectus. The form and content of the abridged prospectus must comply with the requirements of the CMSA and the guidelines issued by the SC and must be registered with the SC.

13. QUASI SECURITIES: THE OFFER OF OPTIONS, COLLECTIVE (MANAGED) INVESTMENTS AND DERIVATIVES

Under the CMSA, 'capital market products' will include securities and derivatives as well as any product or arrangement which is based on securities or derivatives or any combination thereof. In view of this and the definitions that in turn are given under the CMSA for each of 'securities' and 'derivatives', the offering or trading of quasi securities such as options, interests in collective investments and derivatives are governed by CMSA.

In the case of options and interests in collective investments, these are likely to fall within the meaning of 'securities' and are therefore subject to the prospectus requirement in the sense that a prospectus is required to be registered before making such an offer. On the other hand, there is no comparable express requirement for a prospectus in respect of the offering of future contracts or derivatives within its ordinary meaning. It would be a question of fact as to whether the attributes of a particular derivative product would in substance fall within the definition of a 'security' under the CMSA and therefore be subject to the prospectus requirement.

Notwithstanding this, under the CMSA, the SC is empowered to specify the nature and extent of information to be given to persons who invest in capital market products including derivatives and such specification may include the risks of trading in such products, in addition to the key characteristics of the product and its essential terms.

14. PROSPECTUSES: FORM AND CONTENT

A prospectus (including a supplementary prospectus, shelfprospectus and abridged prospectus) should include all information which investors and their professional advisers would reasonably require, or reasonably expect to find in the prospectus, for the purpose of making an informed assessment of the following:

- (a) the assets and liabilities, financial position, profit and losses for the past five years and future prospects;
- (b) the rights attaching to the securities; and
- (c) the merits of investing in the securities and the extent of the risk involved in doing so.

Information that must be disclosed in a prospectus includes information within the knowledge of directors, promoters and principal advisers as well as stockbrokers, underwriters, auditors, bankers, advocates, valuers, other professional advisers and other persons named in the prospectus following consideration of the following issues:

- (a) the nature of the securities and the business of the company;
- (b) persons likely to consider acquiring the securities;
- (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers whom potential investors may reasonably expect to consult; and
- (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are holders of securities in the issuer and, if they are, to what extent relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of the stock exchange, if applicable, or otherwise.

In particular, the prospectus must contain information in relation to:

- (a) the details of the offer;
- (b) risk factors;
- (c) the background information on the company and group;
- (d) information on shareholders, promoters, directors and key management; and
- (e) financial information (including general, historical and future financial information, a pro forma consolidated balance sheet and a reporting accountants' letter).

There are separate and shorter guidelines setting out the form and content requirements for supplementary prospectuses.

15. PROSPECTUS: FILING AND CURRENCY REQUIREMENTS

A prospectus must be registered with the SC together with, amongst others, original copies of all letters of consent from any person who has made a statement included in the prospectus or on which a statement made in the prospectus is based, original or certified copies of any experts' reports disclosed in the prospectus, certified copies of all material contracts or documents referred to in the prospectus, original or certified copies of the latest audited financial statements of the corporation and its subsidiaries for the last three to five financial years (or such shorter period that the corporation/group has been in operation) preceding the date of prospectus and such other information as the SC requires.

A registrable copy of the prospectus, in English and in Bahasa Malaysia must be submitted to the SC. The registrable prospectus may be published on the SC's website to allow the public to view and comment on the information before the registration of the prospectus is approved. A copy of the prospectus submitted to the SC and the application form must also be lodged with the CCM.

No securities may be allotted or issued under a prospectus later than twelve months after the issue date of the prospectus.

16. OFFERING SECURITIES: EXEMPTIONS AVAILABLE

A prospectus is not required for 'excluded offers', 'excluded invitations' or 'excluded issues' which are listed in Schedules 6 and 7 to the CMSA. These include offers, invitations or issues made to:

- (a) a holder of a Capital Markets Services licence;
- (b) a closed-end fund approved by the SC;
- (c) a corporation with total net assets exceeding MYR 10 million or its equivalent in foreign currency;

- (d) an individual with total net personal assets exceeding MYR 3 million or its equivalent in foreign currency; or
- (e) a licensed financial institution or insurance company.

Other exemptions exist which do not depend on the identity of the offeree. These include trades that are effected on the Bursa Securities, private placements where the purchase consideration exceeds MYR 250,000 or its equivalent, and non-renounceable rights issues made by unlisted companies to existing members or debenture holders.

Despite the exemptions, if a person issues an information memorandum describing the business and affairs of the company, the information memorandum shall be deemed to be a prospectus to the extent that the person will be liable for any false or misleading statement or information contained in, or any material omission from, the information memorandum. The information memorandum must be deposited with the SC within seven days after its issue.

17. OFFERING SECURITIES FOR RESALE AND SECONDARY TRADING: FURTHER REQUIREMENTS AND EXEMPTIONS

If a person offers securities with a view to all or any of them being offered for purchase, any document by which the offer for purchase is made will be deemed to be a prospectus issued by the issuer and all laws regulating the content of prospectuses, and providing for liability in respect of statements in, and omissions from, prospectuses, shall apply. Hence, it is not possible to avoid the prospectus requirement by first issuing securities to an intermediary who then on sells the securities to the public.

However, the above does not apply to an offer or invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on Bursa Securities.

18. CONTINUING DISCLOSURE REQUIREMENTS & SUPPLEMENTARY/ REPLACEMENT PROSPECTUSES

Where a prospectus has been registered and the issuer becomes aware that:

- (a) a matter has arisen and information in respect of that matter would have been required by the CMSA, guidelines or under the Bursa Malaysia Listing Requirements to be disclosed had the matter arisen at the time the prospectus was prepared;
 - (b) there has been significant change affecting a matter disclosed in the prospectus;
 - (c) the prospectus contains a material statement or information that is false or misleading; or
 - (d) the prospectus contains a statement or information from which there is a material omission
- a supplementary or replacement prospectus must be issued and registered with the SC as soon as practicable. The supplementary prospectus must be

submitted to the SC at least three market days prior to the date on which the issuer intends to register the supplementary prospectus with the SC. After the supplementary prospectus has been registered, the issuer must notify all applicants under the original prospectus that a supplementary prospectus has been registered and allow them an opportunity to withdraw their applications within fourteen days from receipt of the notice. The issuer must ensure that the said notice is accompanied by a copy of the supplementary or replacement prospectus, as the case may be.

19. SPECIAL CASES: EMPLOYEE SHARE SCHEMES

Under the CMSA, a prospectus is not required to be issued in respect of offers, invitations or issues made to employees pursuant to employee share or employee share option schemes.

20. SPECIAL CASES: RIGHTS ISSUES

A prospectus need not be issued in respect of non-renounceable rights issues undertaken by unlisted companies.

However, for companies listed on Bursa Securities, the Bursa Malaysia Listing Requirements stipulate that rights issues must allow for renunciation, whether in part or in whole. For rights issues which are renounceable in favour of persons other than existing members or debenture holders, an abridged prospectus must be issued and registered with the SC. Nevertheless, there is nothing which prevents a full prospectus from being registered.

21. SPECIAL CASES: TAKEOVERS

Takeovers of public companies in Malaysia are currently governed by the CMSA and the Takeover Code.

The Takeover Code seeks to ensure that, among other things, all shareholders of the target company have equal opportunity to participate in benefits accruing from a takeover offer, including in the premium payable for control, and that all shareholders, especially the minority shareholders, receive fair and equal treatment.

A person triggers the obligation to extend a mandatory offer to purchase all the shares not already held by that person, or which the person is entitled to exercise, in either of the following two situations:

- (a) where a person has obtained 'control' in a company. 'Control' means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than 33%, or such other amounts as may be prescribed in the Takeover Code in a company, howsoever effected; or
- (b) where the person has acquired more than 2% of the voting shares or voting rights of a company in any period of 6 months and that acquirer's holding

was more than 33% but not more than 50% of the voting shares or voting rights of the company during that 6 months period,

irrespective of how control or acquisition is to be effected, including by way of a scheme of arrangement, compromise, amalgamation or selective capital reduction.

A mandatory offer would also apply to a person who intends to obtain or has obtained control in an upstream entity which holds or is entitled to exercise or control the exercise of more than 33% of the voting shares or voting rights of a downstream company and the upstream entity has a significant degree of influence in the downstream company.

In determining whether the acquirer has triggered the mandatory offer obligation under the Takeover Code, any disposal of voting shares or voting rights may not be netted off against purchases.

For all takeover offers, where 10% or more of the voting shares or voting rights of the offeree to which the takeover offer relates has been purchased by the offeror or the persons acting in concert with the offeror in exchange for securities in the 3 months prior to the commencement of and during the offer period, the offeror or the persons acting in concern is required to offer the securities as a consideration to all offeree shareholders.

In the case of a mandatory offer, the consideration to be paid by the offeror for the acquisition of the voting shares or voting rights to which the mandatory offer relates shall consist solely of a cash sum. Where the consideration to be paid for the acquisition of the voting shares or voting rights to which the mandatory offer relates is not solely of a cash sum, the offeror shall provide an alternative consideration consisting solely of a cash sum.

In the case of a voluntary offer, an offeror shall provide a cash sum as consideration for the takeover offer where:

- (a) 10% or more of the voting shares or voting rights of the offeree to which the takeover offer relates has been purchased for cash by the offeror or any person acting in concert with the offeror within 6 months prior to the beginning of the offer period;
- (b) any voting shares or voting rights in the offeree is acquired for cash by the offeror or any person acting in concert with the offeror during the offer period;
or
- (c) the SC determines that it is necessary to give effect to the requirements under paragraph 8 of the Takeover Code.

A prospectus need not be issued in a securities exchange offer if the takeover offer complies with the Takeover Code, the CMSA, the practice notes and the guidelines issued by the SC and the Bursa Malaysia Listing Requirements. There are additional disclosures to be made in the takeover offer document in the case of a securities exchange offer, such as the direct and indirect shareholdings in the offeror of the directors of the offeror, and persons acting in concert with, the offeror.

22. OTHER MATTERS

The CA regulates the issue and offer of interests other than shares or debentures, including interests in investment contracts and rights to participate or interests in any profits, assets or realization of a financial or business undertaking or scheme.

There is also a separate regulatory regime for offers or invitations in respect of shares or debentures made to the public by an unlisted recreational club.

The law as stated above is current as at 29 January 2014.