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Bursa Malaysia As The One-Stop Centre For ACE Market IPOs: Amendments To The ACE Market Listing Requirements

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On 20 December 2021, the Securities Commission (SC) and Bursa Malaysia Securities Berhad (Bursa Securities) announced that Bursa Securities will be the sole approving authority for all ACE Market initial public offerings (IPOs) effective 1 January 2022.

Under the new regulatory framework, amendments have also been made to the ACE Market Listing Requirements (ACE LR) to facilitate Bursa Securities as the one-stop centre for all approvals in relation to ACE Market IPOs and prospectus registration (ACE One-Stop Centre Amendments).

The main ACE One-Stop Centre Amendments are summarised as follows:

1. Streamlined Regulatory Approach In Relation To The IPO And Prospectus Registration Process And Requirements

Mandatory pre-admission consultation

The Sponsor, along with the applicant and other key advisers (including the financial adviser, legal adviser, reporting accountant and valuer) is required to consult Bursa Securities before submitting an ACE Market IPO application to Bursa Securities. Such consultation is to be made after the due diligence on the applicant has been substantially completed.

Notwithstanding the above, an applicant is still encouraged to undertake voluntary consultation with Bursa Securities prior to the mandatory pre-admission consultation on key material or potential issues which may hinder the proposed listing.

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Submission of pre-admission consultation pack and listing application

The pre-admission consultation pack (i.e. prescribed documents or information) must be submitted to Bursa Securities prior to the consultation and at least 1 month before the IPO application. If the IPO application has not been submitted to Bursa Securities within 3 months from the date of submission of the pre-admission consultation pack, a new pre-admission consultation pack must be submitted.

In respect of any IPO application which has not been approved within 6 months from submission, a new IPO application must be submitted.

Investor interest as one of the key focus areas

In addition to the existing key factors for admission of an applicant which include its prospect, corporate governance record, conflict of interest and whether the admission of the applicant undermines public interest. Sponsors are now required to consider whether the admission of the applicant to the ACE Market is detrimental to the interest of investors.

Optional Independent Market Research Report (IMR Report)

The preparation of an IMR Report to be included in an IPO application and prospectus is now made optional at the discretion of the applicant.

If an applicant opts to have an IMR Report prepared to support its IPO application or preparation of the prospectus, the applicant must submit the IMR Report containing the prescribed information under paragraph 1(m) of Part B, Annexure GN15-A of the ACE LR to Bursa Securities and disclose the same in the prospectus.

Prospectus requirements for ACE Market IPOs

The requirements relating to ACE Market prospectuses are prescribed in the ACE LR (similar to those applicable

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for the Main Market under the CMSA and SC's Prospectus Guidelines) such as:

- (i) Requirement to register the prospectus with Bursa Securities.
- (ii) Contents of the prospectus.
- (iii) Circumstances where Bursa Securities may refuse registration of a prospectus.
- (iv) Advertising restrictions and requirements.
- (v) Electronic prospectus requirement and application.
- (vi) Circumstances for issuance of supplementary or replacement prospectus.
- (vii) Effect of registration of supplementary or replacement prospectus to a person subscribing for securities.
- (viii) Requirement for registration of abridged prospectus for rights issue.

In addition, a prospectus issued under the ACE LR is a prospectus under the CMSA to the extent that it relates to the liability of the applicant or its agent for any disclosure made therein.

Broader regulatory and enforcement ambit in an IPO application and prospectus

Prior to the ACE LR amendment, the responsibility to ensure clear, unambiguous and accurate disclosures in an IPO application and prospectus typically lies with the applicant, its directors, Sponsor and advisers.

Such responsibility has now been extended to the applicant's promoters (as defined under the CMSA) and chief executive officer, who is also involved in the preparation of the pre-admission consultation pack as well as IPO application.

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Moratorium on listed shares held by pre-IPO investors

A moratorium will be imposed on the entire shareholdings of a pre-IPO investor who is not a specified shareholder for 6 months from the date of admission to the Official List, if such investor has acquired the shares of the applicant:

- (i) within 12 months from the date of submission of the listing application to Bursa Securities.
- (ii) at a price lower than the issue price offered to the general public in conjunction with the IPO.

A “specified shareholder” means a controlling shareholder, a person connected to a controlling shareholder and an executive director who is a substantial shareholder of the applicant, or any other person as specified by Bursa Securities.

Completion of the Mandatory Accreditation Programme (MAP) by applicant’s directors prior to listing

It is now compulsory for directors of the applicants to complete the MAP prior to listing of an applicant on the ACE Market.

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2. Enhanced Sponsorship Framework

The role and accountability of the Sponsor and its key officers, namely the Senior Officer (SO) and Qualified Person (QP) involved in submitting Specific Proposals to Bursa Securities is also enhanced by subjecting such Specific Proposals to greater supervision and oversight by the Sponsor/Adviser and its key officers. This is complemented by the expanded enforcement framework over both the QP and SO.

“Specific Proposals” include an ACE Market IPO application, registration of ACE Market prospectus with Bursa Securities, an ACE Market reverse take-over and

major disposal under Rule 10.02(eA) of the ACE LR (Major Disposal).

Further, the prescription on how due diligence is to be conducted is removed. The Sponsor and the relevant advisers are required to undertake the due diligence exercise in accordance with industry best practices.

In that regard, reference can be made to the Malaysian Equity Capital Markets and Debt Capital Markets Due Diligence Guides issued by the Malaysian Investment Banking Association. Additionally, the relevant parties must also comply with the equivalent standards imposed under the SC's Guidelines on Submission of Corporate and Capital Market Product Proposals for submission of proposals to Bursa Securities as if the submission is made to the SC.

3. Improved Clarity And Certainty Of ACE LR

For clarity purposes, the following amendments are also incorporated in the ACE LR:

- (i) An independent adviser for a Major Disposal and voluntary withdrawal of listing must be a person who is appropriate to give competent independent advice under the Malaysian Code on Take-Overs and Mergers 2016 (read together with the Rules on Take-Overs, Mergers and Compulsory Acquisitions).
- (ii) Any listing or quotation applications submitted to Bursa Securities which are of unsatisfactory quality or which does not comply with the ACE LR will be returned.
- (iii) Bursa Securities may still take enforcement actions for breaches under the ACE LR in respect of returned or rejected applications.
- (iv) The undertakings template by advisers, valuers, applicants and their directors or key officers to comply with the ACE LR are to be *irrevocable and*

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unconditional and will apply at various stages of the application to the extent applicable.

Conclusion

In view of the ACE One-Stop Centre Amendments coming into force on 1 January 2022, the SC will continue registering ACE Market prospectuses that have been submitted to the SC prior to such date.

An applicant who has undertaken voluntary pre-admission consultation with Bursa Securities in December 2021 may still submit its IPO application in January 2022 provided that the relevant documents and information for such consultation have been submitted to Bursa Securities at least 1 month before the submission of its IPO application. It should be noted that all IPO applications made in February 2022 onwards must be in compliance with the amended ACE LR.

The ACE One-Stop Centre Amendments were implemented by Bursa Securities after taking into consideration the feedback and comments received in response to the public consultation paper issued on 3 August 2021. Our previous Legal Focus in relation to the public consultation paper can be found here:

<https://www.rdslawpartners.com/post/public-feedback-sought-proposed-amendments-to-the-ace-market-listing-requirements>

Authored by Diane Ngu Dai En, an Associate and Cindy Lim Xin Yi, a paralegal with the firm's Capital Markets and M&A practice.

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