Cross-Border Listings Guide - Bursa Malaysia

Continuing obligations/periodic reporting

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# Continuing obligations/periodic reporting

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*Continuing listing obligations*

A foreign or domestic company with a primary listing on the Main Market must comply with the continuing listing obligations prescribed under Chapters 8 and 10 of the MMLR. Among other matters, these obligations include:

Complying with the public shareholding spread requirement and making the relevant announcement on Bursa Malaysia when the company becomes aware that it is no longer in compliance with this requirement.

Submitting to Bursa Malaysia semi-annual returns (based on an electronic template with prescribed information) as at 30 June and 31 December of each calendar year, within two months from each date. This requirement is separate from the quarterly financial information.

Ensuring that the company's proxy form allows a securities holder appointing a proxy to indicate how the holder would like the proxy to vote on each resolution.

Providing Bursa Malaysia, upon request, with an external auditor's confirmation to the effect that the issuance of securities by the company is in accordance with the MMLR.

Where there are circumstances to signify that a change in the classification of the company in a specific sector has taken place, the proposed change in classification is subject to the approval of Bursa Malaysia.

Seeking shareholder approval of related party transactions and certain transactions that trigger the relevant threshold under the MMLR and/or announcing such transactions to Bursa Malaysia.

Keeping any accounting and other records required to sufficiently explain the financial position or operations of the company, together with its subsidiaries.

Where any agreement has been entered into by a company or its subsidiaries in connection with any acquisition or disposal of assets or any transaction outside the ordinary course of business, making a copy of the relevant agreement available for inspection at the company's registered office for three months after the date of the announcement.

In addition, a foreign listed company with a primary listing on the Main Market must, among other matters:

Ensure that it has established transfer and registration of securities facilities in Malaysia.

Ensure that its directors comply with the minimum residency requirement.

Ensure that it has appointed an agent or representative in Malaysia to be responsible for communication with Bursa Malaysia.

Announce to Bursa Malaysia concurrently all information required to be publicly disclosed to its domestic regulatory authority and other stock exchanges.

Distribute to all its shareholders in Malaysia all notices of general meetings to be held, annual reports, accounts and other documents or information that it is required to distribute in its place of incorporation and other stock exchanges, and ensure that sufficient notice is given to the Malaysian shareholders to comply with the terms of the notice.

Announce to Bursa Malaysia the appointment of a director and include the director's principal place of residence in the announcement.

Announce to Bursa Malaysia any change in the interest(s) of a substantial shareholder in its voting shares upon notification by the substantial shareholder.

Ensure that financial statements announced to Bursa Malaysia are prepared on a consolidated basis and in accordance with the approved accounting standards prescribed under the Malaysian Financial Reporting Act 1997.

Ensure that the annual audited financial statement is accompanied by a statutory declaration signed by the director or person responsible for the company's financial management.

Ensure that, as far as practically reasonable, all new issues of securities are admitted and quoted on Bursa Malaysia on the same day as they are admitted and quoted on any other stock exchange.

Ensure that any change in the laws of its country of incorporation or the laws in the country of incorporation of its foreign principal subsidiaries which may affect the rights of its shareholders is immediately announced.

Ensure that the audit committee has at least one independent director who has his/her principal or only place of residence in Malaysia.

The specific requirements with which a foreign listed issuer with a secondary listing on the Main Market must comply are largely similar to the specific requirements imposed on a foreign listed company with a primary listing on the Main Market.

*Continuing disclosure*

The continuing disclosure requirements in Chapter 9 of the MMLR apply to a foreign or domestic company with a primary listing in Malaysia. Broadly, the listed company must disclose to the public all material information necessary for informed investing and take reasonable steps to ensure that all who invest in its securities enjoy equal access to this information. For this purpose, the MMLR establishes six guiding policies for a listed issuer to follow, covering:

Immediate disclosure of material information.

Thorough public dissemination.

Clarification, confirmation or denial of rumors or reports.

Response to unusual market activity.

Types of unwarranted promotional disclosure activity.

Prohibitions on insider trading.

As a general rule, a listed foreign or domestic company must make immediate public disclosure of any material information. Information is considered material if it is reasonably expected to have a material effect on the price, value or market activity of the listed company's securities, or the decision of a security holder or an investor in determining his/her choice of action. Material information may include information regarding:

The listed company's assets and liabilities, business, financial condition or prospects.

Dealings with employees, suppliers, customers and others.

Any event affecting the present or potential dilution of rights or interests of the listed company's securities.

Any event materially affecting the size of the public holding of its securities.

In exceptional circumstances, a company may temporarily refrain from publicly disclosing material information if complete confidentiality is maintained. However, the material information must not be retained for an unreasonable period of time. Examples of exceptional circumstances include situations when:

Immediate disclosure would prejudice the company's ability to pursue its corporate objectives.

The facts are in a state of flux and a more appropriate moment of disclosure is imminent.

The laws prohibit the disclosure of such information.

Notwithstanding the foregoing, the listed issuer must immediately announce information to Bursa Malaysia where:

The material information is (or is believed to have been) inadvertently disclosed to third parties or has become generally available through the media or otherwise.

There is unusual market activity in the company's securities, which signifies that a leak of the information may have occurred.

Rumors or reports about the information have appeared.

The listed company learns of signs that insider trading may be taking place.

A listed issuer is required to maintain its own website and must publish on the website all announcements made to Bursa Malaysia and the contact person for queries.

*Periodic disclosure*

A foreign or domestic company with a primary listing in Malaysia must provide to Bursa Malaysia an interim financial report that is prepared on a quarterly basis, as soon as the figures have been approved by the company's board of directors, and in any event not later than two months after the end of each quarter of a financial year.

An annual report, including audited financial statements together with auditors' and directors' reports, must also be issued to Bursa Malaysia and the company's shareholders within four months after the close of the company's financial year. The annual audited financial statements must be prepared using the appropriate accounting or auditing standards.

A foreign company or domestic company with a primary listing in Malaysia must immediately announce to Bursa Malaysia the status of any memorandum of understanding it has entered into with a third party, and that has been previously announced, at least once every quarter or more regularly, upon the occurrence of a material change, whichever is earlier.

*Market misconduct*

The following market misconduct regulations are applicable to foreign and domestic companies listed on the Main Market:

*False trading and market rigging transactions*. Under the Capital Markets and Services Act 2007 (CMSA), no person is allowed to create (or cause to be created or do anything that is calculated to create) a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any of those securities. The CMSA also restricts any person from purchasing or selling any securities in a manner that does not involve any change in beneficial ownership of those securities or from maintaining, inflating, depressing, or causing fluctuations in the market price of any securities by any fictitious transaction or device.

It is a defense for a person prosecuted for false trading and market rigging transactions if the defendant establishes that:

The purpose for which they did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

The defendant did not act recklessly, whether or not the defendant created a false or misleading appearance of active trading in securities on a stock market.

*Stock market manipulations*. The CMSA also prohibits any person from effecting, taking part in, engaging in, being concerned in or carrying out, either directly or indirectly, any number of transactions in securities of a corporation that have, or are likely to have, the effect of raising, lowering, pegging, fixing, maintaining or stabilizing the price of securities of the corporation on a stock market in Malaysia.

*False or misleading statements*. It is an offense under the CMSA for a person to make a statement, or disseminate information, that is false or misleading in a material particular and is likely to:

Induce the sale or purchase of securities by other persons.

Have the effect of raising, lowering, maintaining or stabilizing the market price of securities.

These activities are considered an offense if, when the person makes the statement or disseminates the information, that person either:

Does not care whether the statement or information is true or false.

Knows (or ought reasonably to have known) that the statement or information is false or misleading in a material particular.

*Fraudulently inducing persons to deal in securities*. It is also unlawful for a person to induce (or attempt to induce) another person to deal in securities by:

Making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive.

Dishonestly concealing any material facts.

Recklessly making or publishing (dishonestly or otherwise) any statement, promise or forecast that is misleading, false or deceptive.

Recording or storing (by means of any mechanical, electronic or other device), information that the person knows to be false or misleading in a material particular, unless the person can establish that when the information was recorded or stored, the person had no reasonable grounds for expecting that the information would be available to any person.

*Use of manipulative and deceptive devices*. It is an offense for any person, directly or indirectly, in connection with the subscription, purchase or sale of any securities, to:

Use any device, scheme or artifice to defraud.

Engage in any act, practice or course of business that operates (or would operate) as a fraud or deceit upon any person.

Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.

*Inside information*. Under the CMSA, an "insider" must not, whether as a principal or agent, in respect of any securities to which he has inside information:

Acquire or dispose of (or enter into an agreement for or with a view to the acquisition or disposal of) those securities.

Procure (in other words, by inciting, inducing, encouraging or directing an act or omission by another person), directly or indirectly, an acquisition or disposal of (or the entering into of an agreement for or with a view to the acquisition or disposal of) those securities.

Directly or indirectly communicate the inside information, or cause such information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would (or would tend to) either:

Acquire or dispose of (or enter into an agreement with a view to the acquisition or disposal of) those securities.

Procure a third person to acquire or dispose of (or enter into an agreement with a view to the acquisition or disposal of) those securities.

A person is considered an "insider" if that person:

Possesses information that is not generally available, which on becoming generally available a reasonable person would expect to have a material effect on the price or the value of securities (in other words, information that would or would tend to influence a reasonable person who invests in securities in deciding whether to acquire or dispose of, or enter into an agreement with a view to acquire or dispose of, the securities).

Knows or ought reasonably to know that the information is not generally available.

*Penalties*. Any person who commits any form of misconduct described above commits an offense under the CMSA. On conviction, such a person may be imprisoned for up to 10 years and given a fine of at least MYR1 million (approximately US$217,600).

*Domestic companies*. Except for the continuing listing obligations described above that would specifically apply to a foreign listed issuer with a primary or secondary listing on the Main Market, all documentation and requirements described in this section 4 would also apply to a domestic company.

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