



CONSULTATION PAPER NO. 1/2021  
PROPOSED AMENDMENTS TO THE MAIN MARKET AND ACE MARKET LISTING REQUIREMENTS  
IN RELATION TO DIRECTOR APPOINTMENT AND INDEPENDENCE

Date of Issue: 21 July 2021

Bursa Malaysia Berhad (“Bursa Malaysia”) invites your written comments on the issues set out in this Consultation Paper by 1 September 2021 (Wednesday) via:

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Respondents to this Consultation Paper are requested to use the reply format as stipulated in the Attachment.

If you have any queries in relation to this Consultation Paper, kindly contact us at the e-mail address above.

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Please see our Personal Data Notice as set out in the Appendix to this Consultation Paper.

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## A. INTRODUCTION

1. This Consultation Paper seeks views and comments from the public on the proposed amendments to Bursa Malaysia Securities Berhad (“**the Exchange**”) Main Market Listing Requirements (“**Main LR**”) and ACE Market Listing Requirements (“**ACE LR**”) (collectively, “**LR**”) in relation to director appointment and independence.

## B. BACKGROUND

2. A high performing, effective board is essential for a well-functioning and well-governed listed issuer. Hence, board quality and independence continue to be a key focus of regulators as these underpin board integrity and shareholder confidence.
3. In this regard, the Exchange had, in August 2020, enhanced the requirements and eligibility of independent directors in the LR by lengthening the cooling-off period from 2 years to 3 years for an officer, adviser or transacting party of prescribed transactions, of a listed issuer or its related corporation, and extending such prescribed cooling-off period to a non-independent non-executive director.
4. The Securities Commission Malaysia (“**SC**”) had in addition, taken steps to refine the Malaysian Code on Corporate Governance (“**MCCG**”) and on 28 April 2021, issued the revised edition which took effect immediately.
5. The revised MCCG, among others, introduced improved board policies and processes with the aim of promoting board leadership such as:
  - (a) recommending that the board chairman should not be a member of the audit committee, nominating committee or remuneration committee;
  - (b) recommending that any re-appointment of independent directors beyond 9 years is subject to shareholder approval via the 2-tier voting process; and
  - (c) discouraging a listed issuer from appointing active politicians as directors.

## C. KEY PROPOSALS

6. Recognising the importance of board quality and effectiveness, the Exchange together with the SC have identified and proposed the following key enhancements to the LR (collectively, “**the Proposed Amendments**”):
  - (a) encouraging board renewal and enhancing independence by limiting the tenure of an independent director to not more than a cumulative period of 12 years; and

- (b) improving board quality and promoting greater transparency by requiring a listed issuer to have and publish a fit and proper policy for the appointment and re-appointment of directors of the listed issuer and its subsidiaries.
7. Details of the Proposed Amendments and their rationale are provided in “**Section D: Details of the Proposed Amendments**” of this Consultation Paper.
  8. The full text of the Proposed Amendments to the Main LR and ACE LR are provided in **Annexures A and B** respectively and are reflected in the following manner:
    - (a) portions underlined are text newly inserted, added or replaced onto the existing rules; and
    - (b) portions struck through are text deleted.
  9. The Exchange invites comments on the Proposed Amendments as discussed below. Comments can be given by filling up the template as attached in the **Attachment**.

**Note:**

*As the Proposed Amendments are open to comments and feedback from the public, the final amendments may be different from those stated in this Consultation Paper. Further, the Proposed Amendments have NOT been approved by the SC and as such, are not the final amendments. The Exchange will submit the Proposed Amendments to the SC for approval after receipt of comments pursuant to this Consultation Paper and making the relevant changes, where appropriate, to the Proposed Amendments.*

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## D. DETAILS OF THE PROPOSED AMENDMENTS

### **PROPOSAL 1: LIMITING THE TENURE OF AN INDEPENDENT DIRECTOR TO NOT MORE THAN A CUMULATIVE PERIOD OF 12 YEARS**

1. Directors' independence is fundamental in ensuring board effectiveness. In this regard, independent directors ("IDs") play an important function and role in advancing the overall interests of a listed issuer by providing the required checks and balances and ensuring that decisions are made objectively without undue influence from management or interested parties.
2. Whilst it is widely recognised that familiarity with the management provides valuable contribution, the risk of a long period of service compromising the independence and objectivity of IDs cannot be ignored. In light of this, the Exchange is reviewing the LR to address this issue.

#### *Current framework*

3. Currently, the LR does not prescribe or limit the tenure of an ID.
4. Instead, such requirement is set out in the MCCG as a Practice. Under the 2017 edition of the MCCG, it was recommended that the tenure of an ID should not exceed a cumulative term limit of 9 years and the board should justify and seek annual shareholders' approval if it intends to retain an ID beyond 9 years. If the board intends to retain the ID after the 12<sup>th</sup> year, the board should seek annual shareholders' approval through a two-tier voting process<sup>1</sup>.
5. In the revised MCCG, SC has upgraded its Practice by recommending annual shareholders' approval through the two-tier voting process for re-appointment of an ID beyond 9 years (instead of 12 years previously).

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<sup>1</sup> Under the two-tier voting process, the appointment of the long-serving ID must be approved by:

- (a) Tier 1: Large Shareholders; and
- (b) Tier 2: Shareholders other than Large Shareholders

**Large Shareholder** refers to a person who -

- is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company;
- is the largest shareholder of voting shares in the company;
- has the power to appoint or cause to be appointed a majority of the directors of the company; or
- has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to.

### ***Issues and challenges of long-serving IDs***

6. It has been observed that notwithstanding the recommendation of the 2017 edition of the MCCG, the re-appointment of long-serving IDs remains prevalent. In the Corporate Governance Monitor 2020<sup>2</sup>, it was reported that as at 1 January 2019, there were 498 IDs with tenure of more than 13 years on the boards of 312 listed companies. Based on latest data from the SC as at 30 June 2021, 463 IDs have tenures of more than 12 years, out of which 91 IDs have served on the same board for more than 20 years.
7. In fact, stakeholders are increasingly concerned about the effectiveness of a long serving ID on the board, as the long tenure of service may compromise such director's independence. While an ID with a longer tenure has a deeper understanding of the listed issuer and its affairs, such familiarity may also significantly compromise the objectivity and independence of the ID.
8. The issue with long-serving ID was also emphasised in the revised MCCG where it was stated that a long serving ID's close relationship with the board and management may give rise to such ID being too sympathetic to management's interests or too accepting of management's work<sup>3</sup>.
9. The boardroom is where strategic decisions are made, governance is exercised, and risk are overseen. Hence, periodic board renewal is necessary to attract new ideas and foster diverse perspectives in the boardroom. This is especially essential for IDs to avoid entrenchment and to ensure that they continue to provide more rounded consideration of issues, foster constructive challenge and guard against any biases or group think.

### ***Proposed enhancements***

10. In view of the above, the Exchange proposes to enhance the definition of "independent director" under the LR by specifying that an ID is one who has not served as an ID of an applicant/listed issuer or its related corporations for a cumulative period of more than 12 years from the date of his first appointment as an independent director<sup>4</sup>.

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<sup>2</sup> The Corporate Governance Monitor 2020 is available at:  
<https://www.sc.com.my/api/documentms/download.ashx?id=ff69ce0d-a35e-44d4-996a-c591529c56c7>

<sup>3</sup> See Guidance 5.3 of the revised MCCG. Similar points were highlighted in the Corporate Governance Monitor 2020 as well.

<sup>4</sup> This is provided in the proposed subparagraph (h) of the definition of "independent director" in paragraph/Rule 1.01 of the LR.

11. We formulated this proposal on the following basis:

- (a) The computation of the 12-year tenure includes the tenure as an ID in a related corporation<sup>5</sup> of the applicant/listed issuer. This means that the service as ID on a listed subsidiary, for example, will also be taken into account when computing the tenure of 12 years.
  - (i) Presently, the LR requires the independent assessment of a director to be reviewed and assessed holistically at the applicant/listed issuer group level<sup>6</sup>. This is to ensure that the director is truly independent and free from any material influence either at the listed issuer or group level.
  - (ii) Hence, consistent with the current approach, we propose to include a director’s tenure as an ID in a related corporation when computing the 12-year period.
  - (iii) Similar to a long serving ID in a listed issuer, we believe that serving on the board of any related corporation for a prolonged period may also increase the risk of such director becoming familiar with the listed issuer group and management which in turn impacts his independence. Hence, we believe our approach above is appropriate and seeks to give effect to the objective and substance of the requirement.
- (b) The 12-year period will be “refreshed” once an ID observes an appropriate cooling-off period.
  - (i) Under this approach, an ID who serves more than 12 years may be re-appointed as an ID again if he or she satisfies all the criteria on independence as set out in the LR and has observed the appropriate cooling-off period of a minimum 3 years.
  - (ii) This approach is in line with the existing policy of allowing an officer of the said Corporation (e.g. executive director or employee), an adviser of the said Corporation or a person transacting with the said Corporation, to be appointed as ID after such person has observed a 3-year cooling off period<sup>7</sup>.

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<sup>5</sup> Pursuant to paragraph/Rule 1.01 of the LR, related corporation of an applicant/listed issuer means -

- (a) the holding company of the applicant/listed issuer;
- (b) a subsidiary of the applicant/listed issuer; or
- (c) a subsidiary of the holding company of the applicant/listed issuer.

<sup>6</sup> This is prescribed in the definition of “independent director” in paragraph/Rule 1.01 of the LR. The independence of a director depends, among others, on whether he is an executive director, officer, major shareholder or adviser of **an applicant, listed issuer or any of its related corporation**, or whether he is a family member or nominee of such executive director or major shareholder, or whether he has engaged in a transaction with the **applicant, listed issuer or any of its related corporation**.

<sup>7</sup> This is provided in subparagraphs (b), (f) and (g) of the definition of “independent director” in paragraph/Rule 1.01 of the LR.

- (iii) Further, even though an ID who has served for a cumulative period of 12 years could return to the board and continue serving as an ID after he/she observes the 3-year cooling-off period, such an appointment is still subject to shareholders’ scrutiny and approval.

12. Consequential to the above proposal, we are also proposing the following amendments:

- (a) clarifying that an “**officer**” in paragraph (b) of the definition of “**independent director**” in paragraph/Rule 1.01 of the LR<sup>8</sup> excludes an independent director who has served for less than 12 years cumulatively; and
- (b) reflecting the consequential changes of the independent director definition in Practice Note 13 and Guidance Note 9.

**Implementation period**

13. Since the proposed enhancements as set out in paragraph 10 above may require some listed issuers to review and adjust their board composition, the Exchange proposes to provide a grace period of 12 months for listed issuers to comply with the proposed new requirement. This is aimed at providing affected listed issuers with a reasonable timeframe to find new IDs who are qualified and suitable for their companies.

**Proposal 1: Issue(s) for consultation**

1. Do you agree that the computation of 12 years should take into account the service as an ID in the related corporations of an applicant/listed issuer?  
Please state the reasons for your views.
2. Do you agree that a cooling off period of 3 years is appropriate for a long-serving ID before such person can be re-appointed as an ID? If not, what is your recommended cooling-off period?  
Please state the reasons for your views.
3. Do you agree that a grace period of 12 months is sufficient for a listed issuer to comply with the proposed enhancements as set out in paragraph 10 of this Consultation Paper? If not, what is your recommended grace period?  
Please state the reasons for your views.

**[End of Proposal 1]**

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<sup>8</sup> Currently, paragraph/Rule 1.01(b) of the LR 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 said Corporation. For this purpose, “officer” has the meaning given in section 2 of the Companies Act.



**PROPOSAL 2: REQUIRING A LISTED ISSUER TO HAVE AND PUBLISH A FIT AND PROPER POLICY FOR THE APPOINTMENT AND RE-APPOINTMENT OF DIRECTORS OF THE LISTED ISSUER AND ITS SUBSIDIARIES**

14. Current disclosures by listed issuers or their nominating committees pertaining to director appointment and re-appointment can be improved for greater clarity and transparency. In this connection, we have received some feedback from stakeholders in the capital market, expressing the need for better disclosure and greater transparency in the directors’ selection criteria and nomination process.
15. On a related development, there is also increasing focus on the need for directors of listed issuers to be “fit and proper” for the role they are undertaking. In this regard, the Exchange has proposed enhancements as discussed in greater detail below.

***Current framework***

16. Under the LR currently, a listed issuer must, among others -
  - (a) ensure that its directors possess the character, experience, integrity, competence and time to effectively discharge their respective roles<sup>9</sup>; and
  - (b) disclose in its annual report, a statement about the activities of the nominating committee (“NC Statement”) including the following<sup>10</sup>:
    - (i) how the requirements in paragraph 16(a) above are met; and
    - (ii) the board nomination and election process as well as board and director assessment, together with the criteria used.

***Observations and feedback***

17. The Exchange has noted the following shortcomings in the practical application and compliance with the above requirements:
  - (a) the actual aspects of “character”, “experience”, “integrity”, “competence” and “time” being evaluated remain relatively opaque; and
  - (b) the disclosures relating to board election and assessment in the NC Statement tend to be “process-centric” rather than elaborative on the actual criteria adopted.

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<sup>9</sup> This is provided in paragraph/Rule 2.20A of the LR.

<sup>10</sup> This is provided in paragraph/Rule 15.08A(3) of the LR.

18. Apart from our observations, we have also received a number of feedback from capital market stakeholders such as the Institutional Investors Council (“IIC”) and the Minority Shareholders Watch Group (“MSWG”), urging regulators to require more transparency from listed issuers on the actual criteria used to assess current or potential directors (especially those relating to fit and properness). This would then form the basis of their engagements with their listed investee companies to foster the desired improvements.

***Proposed enhancements***

19. In view of the above, we propose to enhance the LR<sup>11</sup> by requiring a listed issuer to -
- (a) have a fit and proper policy for the appointment and re-appointment of directors of the listed issuer and its subsidiaries;
  - (b) ensure the policy addresses board quality and integrity;
  - (c) make available the policy on its website; and
  - (d) disclose the application of the fit and proper policy in the NC Statement.
20. The Exchange recognises the importance of applying corporate governance practices flexibly based on the listed issuer’s requirements and circumstances. On this basis, we have proposed a key obligation on the listed issuer to put in place a fit and proper policy, underpinned by the intended outcome that such policy will address board quality and integrity, without prescribing how each board of directors should formulate its own policy. The objective of the proposal is to have a written fit and proper policy, so that any board appointment will be subject to the review and assessment of the nominating committee, as well as shareholder approval, based on the established policy. In addition, to promote board quality holistically across the listed issuer group, the Exchange also proposes that the fit and proper policy covers the appointment and re-appointment of directors of the subsidiaries of the listed issuer.
21. As a complement to the framework and further guidance to listed issuers, the Exchange proposes to specify in the Corporate Governance Guide (“CG Guide”), the aspects together with illustrations and better practices relating to the fit and proper policy which a listed issuer must put in place. Among others, the Exchange is considering the following aspects:
- (a) Character and integrity
    - (i) Probity
    - (ii) Personal integrity
    - (iii) Financial integrity

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<sup>11</sup> This is provided in paragraphs/Rules 15.01A and 15.08A(3) of the LR.

- (iv) Reputation
  - (b) Experience and competence
    - (i) Qualifications, training and skills
    - (ii) Relevant experience and expertise
    - (iii) Relevant past performance or track record
  - (c) Time and commitment
    - (i) Ability to discharge role having regard to other commitments
    - (ii) Participation and contribution in the board or track record
22. We believe the proposal above complements the existing LR requirements in improving the overall quality of directors and promoting greater transparency on the criteria for board appointments. Shareholders would then be better informed and be more proactive in exerting their influence in the appointment of directors guided by the fit and proper policy as well as enhanced disclosures in the NC Statement.

***Implementation period***

23. The Exchange proposes to give a 12-month grace period for compliance with this proposal, so that a listed issuer will have sufficient time to assess, review and formulate an appropriate fit and proper policy for the appointment and re-appointment of directors, which will uphold board quality and integrity of its board of directors including the directors of its subsidiaries.

**Proposal 2: Issue(s) for consultation**

4. Do you agree with the proposal in paragraph 19 of this Consultation Paper which requires a listed issuer to do the following:
- (a) put in place a fit and proper policy for the appointment and re-appointment of directors of the listed issuer and its subsidiaries;
  - (b) ensure the policy addresses board quality and integrity;
  - (c) make available the policy on its website; and
  - (d) disclose the application of the fit and proper policy in the NC Statement?
- Please state the reasons for your views.

5. Do you agree that a listed issuer should be given the flexibility to formulate the fit and proper policy, guided by the proposed aspects in paragraph 21 of this Consultation Paper which will be set out in the CG Guide?

Please state the reasons for your views.

6. Do you agree with the proposed aspects of fit and properness of directors in paragraph 21 of this Consultation Paper which will be set out in the CG Guide? Do you have any other recommended aspects for fit and properness of directors?

Please state the reasons for your views.

**CONSEQUENTIAL AMENDMENTS ARISING FROM THE MCCG**

24. In addition to the above, we are also proposing consequential changes in Practice Note 9 and Guidance Note 11 of the LR to streamline the cross-references to the relevant Intended Outcome, Practices and Guidance on risk management and internal control framework in the MCCG as cited in the LR.

**[End of Part D]**

## **E. FEEDBACK SOUGHT**

The Exchange invites and welcomes comments from the public on the Proposed Amendments as discussed above. Comments can be given by filling up the template as attached in the **Attachment**.

## **ANNEXURE A      PROPOSED MAIN LR AMENDMENTS**

*[Please see Annexure A enclosed with this Consultation Paper]*

## **ANNEXURE B      PROPOSED ACE LR AMENDMENTS**

*[Please see Annexure B enclosed with this Consultation Paper]*

## **ATTACHMENT                      TABLE OF COMMENTS**

*[Please see the Attachment setting out the Table of Comments enclosed with this  
Consultation Paper]*



## APPENDIX            BURSA MALAYSIA'S PERSONAL DATA NOTICE

In relation to the Personal Data Protection Act 2010 and in connection with your personal data provided to us in the course of this consultation, please be informed that Bursa Malaysia's personal data notice ("**Notice**") is available at [www.bursamalaysia.com](http://www.bursamalaysia.com). Kindly ensure that you read and are aware of the Notice.

If you are submitting personal data of an individual other than yourself ("**data subject**"), please ensure that prior to such submission, you have provided the data subject with written notice of the Notice unless section 41 of the Personal Data Protection Act 2010 ("**PDPA**") applies or Bursa Malaysia otherwise specifies in connection with the PDPA.

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Jika anda mengemukakan data peribadi individu pihak ketiga ("**Subjek Data**"), anda mesti memastikan bahawa Subjek Data telah diberi notis bertulis mengenai Notis tersebut terlebih dahulu kecuali seksyen 41 Akta Perlindungan Data Peribadi 2010 ("**APDP**") terpakai atau Bursa Malaysia sebaliknya menyatakan berkenaan dengan APDP.

[End of the Appendix]