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1 September 2021

Bursa Malaysia Berhad
Regulatory Policy and Advisory
Bursa Malaysia Securities Berhad
9th Floor Exchange Square
Bukit Kewangan
50200 Kuala Lumpur

By email: rpa@bursamalaysia.com

Dear Madam / Sir,

Re: Consultation Paper No.1/2021 Proposed Amendments to the Main Market and ACE Market Listing Requirements in Relation to Director Appointment and Independence

CFA Institute¹ and CFA Society Malaysia² are pleased to provide you with our perspectives on areas for consideration to the consultation paper issued by Bursa Malaysia Berhad (“Bursa Malaysia”) on the proposed amendments to the listing requirements in relation to director appointment and independence (the “Proposal”).

Our comments are consistent with the objective of CFA Institute and CFA Society Malaysia to promote good corporate governance, which in turn protects the interests of investors and improves their trust in capital markets, driving investment performance. We consider improving corporate governance standards an essential part of our advocacy efforts. As noted in the 2021 CFA Institute report *Independent Directors in Asia Pacific*,³ board independence is one of the cornerstones of corporate governance, and we support regulators’ continued focus on enhancing the effectiveness and raising the standards of independent directors.

The first part of the Proposal offers to (1) tighten the computation of independent directors’ tenure, to include time served by independent directors on boards of companies that are related to each other;

¹ CFA Institute is a global, not-for-profit professional association of nearly 171,400 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 164,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 154 member societies in 77 countries and territories.

² CFA Society Malaysia is a local member society of CFA Institute global network. Founded in 1997, CFA Society Malaysia is the leading association of investment professional in the Malaysian financial industry with over 850 members across national and global organizations. The Society focuses on advocacy initiatives on investment standards, financial education, and ethics in the capital market.

³ “Independent Directors in Asia Pacific: Regulations and Practice in Selected Markets”, CFA Institute, June 2021, <https://www.cfainstitute.org/en/advocacy/policy-positions/independent-directors-in-asia-pacific>

(2) allow independent directors to return to a board as independent directors after a cooling-off period of three years; and (3) provide a transition period of 12 months for issuers to comply. The second part of the Proposal offers to require issuers to develop and publish a fit and proper policy for appointment and re-appointment of directors. In this letter we provide some high-level comments on the Proposal. Details of our response can be found in the attached template.

Overall, we acknowledge Bursa Malaysia's effort in strengthening the independence of directors. In particular, the scrutiny of directors serving on related companies is welcomed. Governance issues arising for issuers within a larger listed group are more complex than those with simpler structures. Many conglomerates in Malaysia tend to appoint the same independent directors to the boards of multiple listed companies within the same group. When companies within a group have common independent directors but different sets of minority shareholders, conflicts of interest issues are likely to happen. The Proposal provides a timely reminder that when computing tenure, it is important to look at the relationship with the entire group as a whole and not to focus narrowly on individual companies within that group.

Likewise, it is important to have a holistic view of the proposed reforms as a "package". The Proposal assumes a term limit of 12 years for an independent director, who can potentially return to the same board as an independent director after a cooling-off period of 3 years. Rather than looking at each element on an individual basis, it may be helpful to consider how each component would fit into the broader picture.

- **Returning independent directors:** Given concerns about entrenchment and loss of independence for long-tenured directors, allowing independent directors to return to the same board as independent directors, even after a cooling-off period, is hard to justify, particularly when the term limit is already a lengthy 12 years. We believe Bursa Malaysia can go further by setting an expectation that independent directors should not return to the same board in the same capacity once they have reached the term limit. There are other ways they can contribute if they were to stay with the same company, for example as non-independent non-executive directors. Their skills as independent directors will also be valuable to other issuers. A returning independent director should be an exception rather than the norm.
- **Term limit:** Two factors need to be considered when in relation to the maximum tenure of directors. First, long tenure allows independent directors to learn the business and the industry, boosting their ability to add value. Second, long-tenured directors may become entrenched, indifferent to shareholder concerns, and deferential to management. Research on director tenure and firm performance shows that optimum average maximum tenure of independent directors is 9 or 10

years, a period that strikes balance between effectiveness and entrenchment.⁴ Among the 50 markets reviewed in the *OECD Corporate Governance Factbook 2021*, 28 impose or recommend limits on the tenures of independent directors. Most commonly, maximum tenures are between 8 and 10 years, although some are as low as 5 years or as high as 15 years.⁵

We note that in the April 2021 update of the *Malaysian Code on Corporate Governance* (“MCCG”), the trigger for seeking approval to re-appoint an independent director through a two-tier voting process was shortened from 12 to 9 years. Further, Bank Negara Malaysia expects that tenure limits for independent directors in financial institutions should generally not exceed nine years. While the Proposal is silent on this, **we believe Bursa Malaysia can go further by setting out its aspirations to bring the term limit from 12 to 9 years over time.** This is particularly pertinent if issuers were to have the option to let independent directors return. In this scenario, the term limit should be brought down to 9 years within a much shorter time period.

- **Cooling-off period:** Although the proposed cooling-off period of three years is in line with existing rules, we note that a discussion of the cooling-off period is only meaningful when taken in conjunction with other aspects outlined above. If returning independent directors are to be discouraged, and if the term limit is set towards the high end of the range (e.g. 12 years), then the cooling-off period should be longer than 3 years.

Conclusion

We believe Bursa Malaysia’s effort to enhance the effectiveness of independent directors is a worthwhile one. This is a great opportunity to convey aspirations and market signals on an important topic. We thank you for your consideration and welcome the opportunity to discuss our letter with you. Please do not hesitate to contact us.

⁴ Bursa Malaysia Corporate Governance Guide. <https://bursa-malaysia.s3.amazonaws.com/reports/Pullout-I-14-Practice-4-2-and-Step-Up-4-3.pdf>. pg 3.

⁵ OECD Corporate Governance Factbook. 2021. <https://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf>. pg 147.



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Yours Sincerely,

For CFA Institute:

A handwritten signature in black ink, appearing to read "Mary Leung".

Mary Leung, CFA

Head, Advocacy, Asia Pacific

For CFA Society Malaysia:

A handwritten signature in black ink, appearing to read "justin ong".

Justin Ong, CFA

President, CFA Society Malaysia

**ATTACHMENT
TABLE OF COMMENTS****COMMENTS TO ISSUES RAISED IN CONSULTATION PAPER NO. 1/2021****PROPOSED AMENDMENTS TO THE MAIN MARKET AND ACE MARKET LISTING REQUIREMENTS
IN RELATION TO DIRECTOR APPOINTMENT AND INDEPENDENCE**

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NAME OF RESPONDENT	: Mary Leung, CFA, Head, Advocacy, Asia Pacific, CFA Institute Sivananth Ramachandran, CFA, Director, Capital Markets Policy, India, CFA Institute Piotr Zembrowski, CFA, Manager, Advocacy Research and Content, Asia Pacific, CFA Institute Justin Ong, CFA, President, CFA Society Malaysia Caroline Ng, Executive Director, CFA Society Malaysia
NAME OF COMPANY	: CFA Institute CFA Society Malaysia
CONTACT PERSON & CONTACT NUMBER	: Caroline Ng, +6011 2430 0884
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ISSUES		COMMENTS
1.	<p>Do you agree that the computation of 12 years should take into account the service as an independent director (“ID”) in the related corporations of an applicant/listed issuer?</p> <p>Please state the reasons for your views.</p>	<p><input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><u>Reasons:</u></p> <div style="border: 1px solid black; padding: 5px;"> <p>Click or tap here to enter text.</p> <p>Yes, we agree that the computation of tenure should take into account the service of an independent director in the related corporations of an applicant or listed issuer.</p> <p>In a group structure in which there are multiple companies with some common shareholders, in practice it is often not clear to whom an independent director owes duty, even though technically they should be accountable to all shareholders of their company. An independent director of one company within a group structure may have close relationships within another company in the same group. Moreover, they may be loyal to the controlling shareholder of the group, rather than to shareholders of each company on whose board they sit. Both of these situations would cloud independence.</p> <p>Also, when group companies have common independent directors, conflicts of interest issues will inevitably arise. This is particularly pertinent in related-party transactions, in which the same independent director could be on both sides of the transaction. In addition, Bursa Malaysia’s corporate governance guide notes that directorships in multiple entities within the group potentially may create undue dependence in terms of remuneration received by</p> </div>

ISSUES		COMMENTS
		<p>independent directors, thus raising concerns on the objectivity of these directors. ¹</p> <p>In July 2020, Securities Commission Malaysia released its guidelines for conduct of directors in listed companies and its subsidiaries², encouraging companies to establish policies and procedures to manage potential conflict-of-interest situations between a director and the listed company, and the listed company and its subsidiary. Bursa Malaysia may oversee the implementation of Securities Commission Malaysia guidelines and provide additional guidance as needed.</p>
2.	<p>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?</p> <p>Please state the reasons for your views.</p>	<p><input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><i>Reasons and/or suggestions:</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Click or tap here to enter text.</p> <p>As pointed out in the consultation paper, there is increasing concern about the effectiveness of a long serving independent director on the board because of his/her relationships with the other board members and with management. Allowing a former independent director to return to the board as an independent</p> </div>

¹“Presence of Independent Directors on the Board,” in *Corporate Governance Guide* (Bursa Malaysia), pull-out 1, <https://bursa-malaysia.s3.amazonaws.com/reports/Pullout-I-13-Practice-4-1.pdf>.

² Securities Commission Malaysia, “Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries,” SC-GL/4-2020 (Securities Commission Malaysia, Kuala Lumpur, July 2020), <https://www.sc.com.my/api/documentms/download.ashx?id=89757255-2711-4cff-bbe2-71d4346f5197>.

ISSUES	COMMENTS
	<p>director, even after a cooling off period, may not be sufficient to alleviate such concerns. Hence we recommend lengthening the cooling off period to five years as a minimum for long serving independent directors.</p> <p>The purpose of cooling off period is two-fold: (1) to allow long-term decisions (such as strategic plans) that were approved when the independent director was at the helm, to roll off, allowing the returning independent director to adopt a fresh perspective; and (2) to avoid creating an environment where the presence of a captive, former insider pool disincentivizes companies from looking at a broader pool of diverse candidates. Short of an outright ban on returning independent directors, a longer cooling off period is necessary.</p> <p>We acknowledge that three years is the norm in several APAC markets, including India, Singapore, and Australia, for most former relationships, with a minimum of two years in Hong Kong SAR, and going up to ten years in Japan. However, we believe three years is inadequate for the reasons stated above. As we pointed out in our research report “Independent Directors in Asia Pacific”³, independent directors are valued for their fresh perspective, and individuals with recent experience might not only be uncritical of existing approaches but also actively discourage new ideas.</p> <p>As we described in our accompanying cover letter, proposed regulations concerning returning independent directors should be considered holistically, taking into account tenure, cooling-off</p>

³ CFA Institute. Independent Directors in Asia Pacific. 2021. <https://www.cfainstitute.org/en/advocacy/policy-positions/independent-directors-in-asia-pacific>.

ISSUES	COMMENTS
	<p>period, and other ways the directors could return (for example as non-independent, non-executive directors). If the maximum tenure is set at 12 years, then the cooling-off period must be longer than three years.</p>
<p>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?</p> <p>Please state the reasons for your views.</p>	<p><input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><u>Reasons and/or suggestions:</u></p> <p>Click or tap here to enter text.</p> <p>As with the above discussion of the cooling-off period, we suggest that the transition period for complying with the proposed enhancements should be viewed holistically. The proposal should take into consideration the proportionality of the requirements for the independent director's maximum tenure and the cooling-off period, in relation to the company's size and complexity, the number of impacted directors, the extent of the independent director's involvement, and the time to find a replacement(s).</p> <p>Hence, it is our view that a grace period longer than 12 months would facilitate a more orderly transition and would be less disruptive to the impacted companies and the capital market, especially if the maximum tenure is set at nine years and the cooling-off period is longer than three years, as suggested above.</p> <p>Notwithstanding, all companies should take gradual measures towards meeting the proposed requirements during the transition period. In particular, appointment of independent directors during</p>

ISSUES		COMMENTS
		<p>the transition period would help facilitate the company's transition towards full compliance by the effective date.</p>
4.	<p>Do you agree with the proposal in paragraph 19 of this Consultation Paper which requires a listed issuer to do the following:</p> <p>(a) put in place a fit and proper policy for the appointment and re-appointment of directors of the listed issuer and its subsidiaries;</p> <p>(b) ensure the policy addresses board quality and integrity;</p> <p>(c) make available the policy on its website; and</p> <p>(d) disclose the application of the fit and proper policy in the Nominating Committee Statement?</p> <p>Please state the reasons for your views.</p>	<p><input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><u>Reasons:</u></p> <div style="border: 1px solid black; padding: 5px;"> <p>Click or tap here to enter text.</p> <p>A fit and proper policy that focuses on integrity, character, and competence of directors complements the code. It may further incentivize companies to address concerns around appointing directors stemming from their perceived closeness to controlling shareholders, political linkages, or other reasons which have little to do with their qualifications and experience.</p> <p>In addition to the fit and proper policy itself, an issuer should set out how each board candidate or director satisfies such policy and, if there are concerns, explain why the issuer would still wish to proceed with the appointment.</p> <p>We note that the fit and proper policy is the first step in the identification and recruitment of directors and focuses on each director at an individual level. It is also important for the board to assess its collective expertise and skills on a holistic basis and</p> </div>

ISSUES		COMMENTS
		<p>ensure that recruits to the board bring additive skills and perspectives that are relevant to that particular issuer.</p>
5.	<p>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 Corporate Governance Guide (“CG Guide”)?</p> <p>Please state the reasons for your views.</p>	<p><input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><u>Reasons:</u></p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Click or tap here to enter text.</p> <p>A top-down approach to fit and proper policy may not address the contextual nature of the company’s business (ownership profile, regulated / unregulated nature of activities, or additional governance risks in case of multinationals). Companies should be allowed to tailor their fit and proper policies, and to explain their rationale through disclosures. However, in addition to the proposed aspects in paragraph 21 of the consultation paper, Bursa Malaysia may consider providing further guidance on the minimum expectations of each aspect that the company is to be guided by.</p> </div>
6.	<p>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?</p> <p>Please state the reasons for your views.</p>	<p><input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> No comment</p> <p><u>Reasons and/or suggestions:</u></p>

ISSUES	COMMENTS
	<p data-bbox="1073 467 1900 688">Click or tap here to enter text.</p> <p data-bbox="1073 532 1900 656">The management of conflicts of interest is a key component of a fit and proper policy, and should be emphasized. It is the company's responsibility to recognize and manage real and perceived conflicts among independent directors during appointment and afterwards.</p>

[End of Attachment]