



CONSULTATION PAPER NO. 1/2019
PROPOSED AMENDMENTS TO THE RULES OF BURSA MALAYSIA DEPOSITORY SDN BHD, THE
MAIN MARKET AND ACE MARKET LISTING REQUIREMENTS TO FACILITATE
DEMATERIALIZATION
Date of Issue: 15 April 2019

Bursa Malaysia Berhad (“Bursa Malaysia”) invites your written comments on the proposals set out in this Consultation Paper by 24 May 2019 (Friday) via:

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

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A. INTRODUCTION

Dematerialisation signifies a scripless environment where there will no longer be any physical share certificate or other document issued as evidence of title or ownership of securities. The legal ownership of listed securities and shareholders' rights shall be evidenced in the register of members of a corporation and Bursa Malaysia Depository Sdn Bhd's ("**Bursa Depository**") record of depositors respectively.

This Consultation Paper seeks to consult the public on the proposed rule amendments in relation to the dematerialised framework for all securities deposited with Bursa Depository and changes to facilitate our listed corporations' migration towards dematerialisation.

B. BACKGROUND & BENEFITS

In the past, the primary law governing corporations in Malaysia i.e. the Companies Act 1965 stipulated that a certificate under the common or official seal of a company specifying any shares held by any member of the company is the *prima facie* evidence of the title of the member to the shares¹. On this basis, all companies depositing their securities with Bursa Depository are required to issue share certificates under the name of 'Bursa Malaysia Depository Nominees Sdn Bhd' before deposit of such relevant securities can take place.

Premised on this, the provisions in the Securities Industry (Central Depositories) Act 1991 ("**SICDA**") cater for an environment where share certificates (scrips in SICDA) exist and are required to be presented to Bursa Depository before any securities can be deposited with the central depository.

Subsequently, the Companies Act 2016 ("**CA 2016**") revised the position on share certificates and at present, the company's register of members is *prima facie* evidence of shareholders' legal title in the shares vested in them². Additionally, a company is no longer required to issue a share certificate unless an application has been made by a shareholder or otherwise provided by its constitution³. In relation to securities deposited with Bursa Depository, section 147(1) of CA 2016 stipulates that a depositor named in the Record of Depositors ("**ROD**") maintained by Bursa Depository shall be deemed to be a member of the company and shall be entitled to the number of securities stated in the ROD. Section 147(5) further states that the ROD shall be *prima facie* evidence of any matters inserted in it as required or authorised by the CA 2016.

Accordingly, the Securities Commission Malaysia ("**SC**") will be issuing regulations under SICDA to cater for a dematerialised framework for the securities of companies that are deposited with Bursa Depository.

¹ Section 100 of the repealed Companies Act 1965.

² Section 101 of the Companies Act 2016.

³ Section 97 of the Companies Act 2016.

Likewise, both Bursa Depository and Bursa Malaysia Securities Berhad (“**the Exchange**”) have also proposed amendments to the Rules of Bursa Depository and Main Market (“**Main LR**”) and ACE Market Listing Requirements (“**ACE LR**”) (collectively the “**Listing Requirements**”) respectively, to facilitate dematerialisation.

Additionally, the migration to a dematerialised framework also provides an opportune time to improve and enhance the operational framework in relation to deposit of securities with Bursa Depository. The proposed revision will make the deposit of securities a more seamless process that will benefit not only the securities holders but the issuers and Bursa Depository as well.

Bursa Depository targets to facilitate dematerialisation concurrently with the coming into effect of the regulations under SICDA in 2019.

C. KEY PROPOSALS

The proposed amendments to the Rules of Bursa Depository and the Listing Requirements for consultation are as summarised below:

- (a) **Rules of Bursa Depository**
- (i) Removing references to scrips, where relevant, and the requirement to deposit a jumbo certificate bearing the name of Bursa Malaysia Depository Nominees Sdn Bhd;
 - (ii) Setting out the altered roles and functions of the Authorised Depository Agents (“**ADAs**”) and issuer/company registrars under the revised operational framework in a dematerialised environment in relation to deposit of securities with Bursa Depository;
 - (iii) Simplifying the process in relation to the deposit of securities with Bursa Depository by doing away with the prescribed deposit request forms and transfer forms;
 - (iv) Introducing ‘transitional provisions’ to deal with the existing scrips that are deposited with Bursa Depository where the same will be returned to the respective issuers/company registrars for cancellation; and
 - (v) Simplifying the rules, where relevant for ease of understanding and compliance.

(“**Proposed Amendments to the Rules of Bursa Depository**”); and

(b) **Listing Requirements**

- (i) Requiring a listed corporation to include in its constitution, a provision stating that the listed corporation shall not issue, and its member shall not apply for, any certificate evidencing title or ownership in respect of listed securities deposited with Bursa Depository;
- (ii) Clarifying that a foreign corporation seeking primary listing on the Exchange is not required to incorporate the provision set out in paragraph (b)(i) above in its constitution, if such provision contravenes the laws of the place of its incorporation; and
- (iii) Making other consequential changes arising from the dematerialised framework such as removing provisions relating to the form and content of share certificates as well as the requirement to submit specimen share certificates as part of the listing application for Malaysian incorporated listed companies.

(“Proposed Amendments to the Listing Requirements”)

The Proposed Amendments to the Rules of Bursa Depository and the Listing Requirements (collectively referred to as “the Proposals”) will be discussed in greater detail below.

The benefits of dematerialisation of securities deposited with Bursa Depository and the proposed enhanced operational framework will, amongst others, promote:

- (a) greater efficiency and faster time-to-market, arising from simplification of operational processes and reduction of administrative works;
- (b) ease of doing business and cost savings for issuers and Bursa Depository, as jumbo certificates will no longer be required; and
- (c) better sustainable practices by elimination of paper certificates and dispensation of physical forms.

D. STRUCTURE OF THE CONSULTATION PAPER

Details of the proposed dematerialised framework, where relevant, and their rationale are provided in the “Details of Proposals” in Section E of this Consultation Paper.

The Proposed Amendments to the Rules of Bursa Depository and Proposed Amendments to the Listing Requirements are provided in **Annexures A, B and C**, and are reflected in the following manner:

- portions underlined are text newly inserted/added/replaced onto the existing rules; and
- portions struck through are text to be deleted.

The table below provides a snapshot of the relevant details of the Proposals as well as the related Parts and Annexures for ease of reference:

Part No.	Details of Proposals	Proposed Amendments (Annexure)
1.	The Proposed Amendments to the Rules of Bursa Depository	Annexure A
2.	Proposed Amendments to the Main LR	Annexure B
3.	Proposed Amendments to the ACE LR	Annexure C

Note:

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

E. DETAILS OF PROPOSALS

PART 1 PROPOSED AMENDMENTS TO THE RULES OF BURSA DEPOSITORY

Bursa Depository proposes to make amendments to the Rules of Bursa Depository to reflect the necessary changes to enable a dematerialised framework in relation to securities that are deposited with it as well as to reflect proposed changes to the operational framework governing the deposit of securities.

PROPOSAL 1.1: CONSEQUENTIAL CHANGES TO THE DEFINITIONS AND OTHER RELATED PROVISIONS AND SIMPLIFIED DRAFTING

1. Presently, Bursa Depository holds jumbo certificates bearing the name of Bursa Malaysia Depository Nominees Sdn Bhd for all securities deposited in it.
2. These jumbo certificates were issued by the respective issuers at the point the securities were deposited into Bursa Depository by the relevant shareholders. This was premised on the original document of title (i.e. scrips) bearing the name of the shareholders being cancelled and such jumbo certificates being issued.
3. However as stated above, pursuant to CA 2016, companies in Malaysia no longer need to issue share certificates in the name of the shareholders as the entry of the name of the shareholder in the register of members of the issuer is prima facie evidence of ownership to such shares.
4. The name of Bursa Depository Nominees Sdn Bhd will be entered in the register of members by the issuer/company registrar in respect of all securities deposited in Bursa Depository. The shareholders entitlement will be as captured in the ROD that will be issued by Bursa Depository on the request of the relevant issuers. In this regard, section 147(1) of CA 2016 provides that depositors named in the ROD is deemed to be a member of the issuer and shall be entitled to the number of securities stated in the ROD.
5. Based on the above, the relevant provisions referring to the lodgement of scrips with Bursa Depository will be deleted as the same will no longer apply under the dematerialised framework. Similarly, amendments are made to remove references to the 'certificates' and moving forward, the issuer will be required to confirm to Bursa Depository that its nominee company has been registered /entered into the register of members. We have also taken this opportunity where possible to simplify the drafting of some relevant existing provisions which presently refer to 'certificates'.
6. Nevertheless, we will still maintain the terminology of 'scrip' as defined under the SICDA since there are provisions in the Rules of Bursa Depository which refer to the same (e.g. depositors are not permitted to request for deposited securities in the form of physical scrips, etc.).

Proposal 1.1 - Issue for Consultation

1. Do you foresee any issue with the proposed migration to a dematerialised environment for securities deposited with Bursa Depository which no longer requires the deposit of any share certificate with Bursa Depository but is evidenced from the register of members?

If so, please state the reasons for your views.

PROPOSAL 1.2: SIMPLIFIED PROCESS FOR DEPOSIT OF SECURITIES RESULTING IN ENHANCED ROLE AND FUNCTION OF THE ISSUERS

7. Presently, the process for deposit of securities with Bursa Depository involves 4 parties, namely the securities holders, the ADAs, the issuers as well as Bursa Depository.
8. In summary, the deposit process entails the following steps:
 - (a) upon prescription of the relevant securities, the holders of such securities submit to the ADA, which maintains the securities holder's securities account, the completed Securities Deposit Request Form ("SDR Form"), the share certificate representing the securities that are being deposited and the transfer form to transfer the securities being deposited into the name of Bursa Depository's nominee company;
 - (b) the relevant ADA will check the securities account number of the securities holder as inserted into the SDR Form and credit the securities specified in the SDR Form into securities holder's securities account; such securities are marked as 'under suspense' pending the completion of the verification by the issuer;
 - (c) the ADA will then submit to Bursa Depository a list consisting details of all securities holders who have submitted the SDR Form as well as the supporting documents (share certificate and transfer form);
 - (d) Bursa Depository will onwards provide the list and the supporting documents received from the ADA to the relevant issuer for verification that the securities holder is named in the relevant register and for the issuer to effect the transfer by recording the name of Bursa Depository's nominee company into the register;
 - (e) the issuer will then issue a jumbo certificate bearing the name of the Bursa Depository's nominee company and submit the same to Bursa Depository; and
 - (f) upon receipt of the jumbo certificate from the issuer, Bursa Depository will change the status of the securities credited into the securities account of the securities holder from 'under suspense' to 'free balance' and the securities holder is able to trade the securities.

9. Moving forward, we propose to simplify and enhance the process for deposit of securities with Bursa Depository in a dematerialisation environment, where the issuer will be the primary party liaising with the securities holders, without involving any intermediary such as an ADA. The proposed simplified deposit process is set out below:
- (a) Bursa Depository notifies the issuer that its securities have been prescribed by the Exchange, and the commencement date for the period when their securities can be deposited with Bursa Depository;
 - (b) the issuer subsequently notifies its securities holders within 7 market days from the deposit date that the securities have become prescribed securities and the prescribed date by when the securities must be deposited with Bursa Depository;
 - (c) unless the issuers' securities are already dematerialised, a holder of a prescribed security submits the share certificate representing his security to the issuer for cancellation. The security holder must also provide the issuer with his securities account number and all other relevant details;
 - (d) the issuer validates the security holders' information against its register of members, before submitting a list to Bursa Depository containing details such as the name, the NRIC number, the securities account number and the number of securities being deposited by each of the securities holders;
 - (e) Bursa Depository verifies the name and securities account number of each depositor provided by the issuer with its own records, and notifies the issuer of the result of its verification;
 - (f) the issuer registers the name of Bursa Depository's nominee company into the register in respect of securities belonging to securities holders that were successfully verified. In respect of those that failed, the issuer will liaise with the relevant securities holders for clarifications;
 - (g) the issuer submits to Bursa Depository a letter confirming that the name of Bursa Depository's nominee company has been entered into the relevant register together with the relevant extract of the register;
 - (h) Bursa Depository credits the relevant securities into the securities account of the securities holders; and
 - (i) thereafter, the relevant securities holder may commence trading upon the issuer being listed on the stock exchange.
10. As evident from the above, the proposed simplified process for deposit of securities will promote greater efficiency and expediency, since the securities holders will only need to liaise with the issuer.

11. The simplified process will also result in the issuer, instead of the ADAs, liaising with the securities holders for the purposes of deposit and this is appropriate considering that the securities that are being deposited are in fact of the said issuer. On this basis, the entire Chapter 6 of the Rules of Bursa Depository (which sets out the ADAs' role in the deposit process) is proposed to be deleted.
12. Additionally, the SDR Form and transfer form will no longer be required to be submitted by the securities holders under the revised process for deposit under dematerialisation.
13. Overall, the revised process and dispensation of issuance of scrips/jumbo certificates will reduce the administrative steps and costs for issuers and in turn, increase operational efficiency and shorten time to market for the deposit of securities with Bursa Depository. The proposed dispensation of forms also promotes environmentally friendly practices in the marketplace.

Proposal 1.2 - Issues for Consultation

2. Do you agree with the proposed enhanced and simplified process for deposit of securities with Bursa Depository, as set out in paragraph 9 above?

Please state the reasons for your views.
3. Do you foresee any issue with the proposed dispensation of forms, namely the SDR Form and transfer form for the deposit of securities with Bursa Depository?

If so, please state the reasons for your views.
4. Do you have any other suggestions to improve the existing operational process or Rules of Bursa Depository in a dematerialised environment?

PROPOSAL 1.3: TRANSITIONAL PROVISIONS

14. The Rules of Bursa Depository will also be amended to introduce provisions to deal with the existing share certificates that are deposited with Bursa Depository once dematerialisation framework comes into effect.
15. These transitional provisions will provide that the deposited share certificates will be returned to the respective issuers/company registrars for cancellation and that the issuers are to ensure that the legal title to all deposited securities belong to Bursa Depository or its nominee company and that no new share certificates are to be issued in respect of such securities.

16. However, it is to be noted that in the event any of the issuer cannot be located or the share certificates could not be returned for any reason whatsoever (for e.g. in cases where there are no company registrars acting for the relevant issuer particularly in relation to the delisted securities), Bursa Depository will still retain the same in our custody.

Proposal 1.3 - Issues for Consultation

5. Do you agree with the proposal for Bursa Depository to return the share certificates to the respective issuers/company registrars for cancellation?
- If not, please suggest other alternatives to cancel the share certificates.
6. Do you have any suggestions as to how Bursa Depository should deal with the share certificates in its custody, after the implementation of dematerialisation?

CHANGES TO PROCEDURES MANUALS

17. Please take note that as a result of the changes proposed above, corresponding amendments will be made in the relevant Procedures Manual to set out the processes and relevant requirements governing the depositors, ADAs and issuers/company registrars.

[End of Part 1]

PART 2 PROPOSED AMENDMENTS TO THE LISTING REQUIREMENTS

Apart from the Proposed Amendments to the Rules of Bursa Depository as discussed above, the Exchange also proposes to amend the Listing Requirements to facilitate the move to a full dematerialised framework for listed securities deposited with Bursa Depository. Details of the Proposed Amendments to the Listing Requirements are as discussed below.

PROPOSAL 2.1: NEW PRESCRIBED CONTENT OF CONSTITUTION ON DEMATERIALISED SECURITIES

Constitution of Malaysian incorporated listed companies

18. As discussed in Part B above, under section 97 of CA 2016, a company is no longer required to issue a share certificate unless an application has been made by a shareholder or otherwise provided by its constitution.
19. However, notwithstanding section 97 of CA 2016, the CA 2016, through section 147(2), also recognises that all rights, benefits, powers and privileges of listed securities deposited with Bursa Depository can be subject to liabilities, duties and obligations in respect of, or arising from such securities if they are conferred or imposed by the constitution.
20. Hence, in order to give effect to a full dematerialised framework for listed securities deposited with Bursa Depository, the Exchange proposes to require a listed company incorporated in Malaysia to include in its constitution, a provision stating that the listed company shall not issue, and its member shall not apply for, any certificate evidencing title or ownership in respect of listed securities deposited with Bursa Depository⁴.
21. This is to ensure that the listed companies' shareholders are aware of the dematerialised framework in respect of their listed securities deposited with Bursa Depository and that there is no option to require issuance of certificates for such securities. In this regard, shareholders' interests are not compromised as the CA 2016⁵ already deems a depositor named in the ROD as a shareholder of the company and codifies such depositor's entitlement to the securities stated in the ROD.

Constitution of foreign corporations seeking primary listing

22. In relation to foreign corporations seeking primary listing on the Exchange, currently, such foreign corporations are required to ensure that their constitution contains the provisions prescribed in Chapter 7 of the Listing Requirements. This would include the proposed requirement discussed in paragraph 20 above.

⁴ See paragraph/Rule 7.06A of the Listing Requirements.

⁵ See section 147(1) of CA 2016 as discussed in Part B of this Consultation Paper.

23. However, the Exchange is cognisant that such foreign corporations are subject to the laws of their place of incorporation and such laws may still require issuance of share certificates. In view of this, the Exchange proposes to clarify that a foreign corporation seeking primary listing will not be required to incorporate the provision set out in paragraph 20 above in its constitution, if such provision contravenes the laws of the place of its incorporation⁶.

Timeframe to amend constitution

24. The Exchange is mindful that listed corporations should be given sufficient grace period to effect the changes as proposed in paragraph 20 above, in their constitution. In this regard, the Exchange proposes that listed corporations must amend their constitutions within 2 years after the issuance of the amendments. We believe this would accord sufficient time for listed corporations to migrate to the dematerialised framework and comply with the new requirements.

Proposal 2.1 - Issue(s) for Consultation

7. Do you agree with the proposal to require a listed company incorporated in Malaysia to include the provision as set out in paragraph 20 above in its constitution?

Please state the reasons for your views.

8. In the case of a foreign corporation seeking primary listing on the Exchange, do you agree that such foreign corporation must be required to include the provision as set out in paragraph 20 above in its constitution, if the laws of the place of its incorporation permit dematerialised securities?

Please state the reasons for your views.

9. Do you agree that listed corporations should be granted a grace period of 2 years after the issuance of the amendments to effect the changes as proposed in paragraph 20 above in their constitution? Please state the reasons for your views.

Alternatively, if you have other suggestions for the grace period, please provide your suggestions together with your reasons.

⁶ See paragraph 4A.08 of the Main LR / Rule 5.07B of the ACE LR.

PROPOSAL 2.2: OTHER CONSEQUENTIAL CHANGES

25. In addition to the above, the Exchange also proposes to make other consequential changes to the Listing Requirements arising from the dematerialised framework. In this regard, we propose to remove provisions relating to share certificates in the Listing Requirements such as -
- (a) requirements on form and content of share certificates (e.g. the size of certificates, paper quality and watermark, presentation of number of securities)⁷;
 - (b) requirements for applicants or companies incorporated in Malaysia to submit specimen copy of share certificate as supporting document for listing applications⁸; and
 - (c) requirement to issue joint certificate by an issuer of stapled securities⁹.

Proposal 2.2 - Issue(s) for Consultation

10. Do you agree with the proposed removal of the provisions relating to share certificates from the Listing Requirements as set out in paragraph 25 above?

Please state the reasons for your views.

[End of Part 2]

⁷ See paragraphs 8.07 to 8.09 of the Main LR / Rules 8.09 to 8.11 of the ACE LR.

⁸ See paragraph 1(c), Part B of Annexure PN21-A, paragraph 1(c), Part B of Annexure PN23-I and paragraph 1(g), Part B of Annexure PN24-A of the Main LR / paragraph 1(c), Part B of Annexure GN15-A and paragraph 1(d) of Annexure GN16-A of the ACE LR.

⁹ See paragraph 5.2(c), Practice Note 31 of the Main LR.

F. FEEDBACK SOUGHT

We invite comments on the Proposals as discussed in this Consultation Paper. Comments can be given by filling up the template as attached in the **Attachment**.

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ANNEXURE A - C PROPOSED AMENDMENTS

[Please see Annexures A - C 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. 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.

Berhubung Akta Perlindungan Data Peribadi 2010 dan berkenaan semua data peribadi anda yang diberikan di dalam proses konsultasi ini, sila ambil maklum bahawa notis Bursa Malaysia mengenai data peribadi ("**Notis tersebut**") boleh didapati di www.bursamalaysia.com. Sila pastikan yang anda membaca dan memahami Notis tersebut.

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]