



COVID-19: THE EFFECTS ON THE MALAYSIAN CAPITAL MARKET

Introduction:

On 16 March 2020, the Prime Minister of Malaysia, had announced the imposition of a fourteen (14) days movement control order (“**MCO**”) from 18 March to 31 March 2020 nationwide to curb the spread of the COVID-19 infection in Malaysia.[1] Subsequently on 25 March 2020, the Prime Minister further announced that the MCO is to be extended to 14 April 2020.[2] This MCO is enforced under the Control and Prevention of Infectious Diseases Act 1988 and the Police Act 1967, and encompasses, among others, the closure of all government and private premises except those involved in essential services (water, electricity, energy, telecommunications, post, transportation, irrigation, oil, gas fuel, lubricants, broadcasting, finance, banking, health, pharmacy, fire prevention, prisons, ports, airports, security, defense, cleaning, food supply & retail).

Notwithstanding the closure of non-essential businesses, Bursa Malaysia Berhad (“**Bursa Malaysia**”) had on 17 March 2020 announced that Bursa Malaysia and its subsidiaries will continue to operate as normal during the MCO.

For companies planning for listing and those already listed on the exchanges in Malaysia, against the backdrop of the COVID-19 pandemic, MCO, profit warnings, plunging capital market and business uncertainty, there may be many concerns regarding the viability of their intended Initial Public Offering (“**IPO**”), the cost of listing and fees on any other corporate exercises, the time limit for submission of financial statement and to hold the Annual General Meeting (“**AGM**”) and the conduct of due diligence for corporate exercises that requires physical meeting or visit among others.

In this article, we will highlight:

- the measures introduced by the Malaysian Government, Securities Commission Malaysia (“**SC**”) and Bursa Malaysia to assist or lessen the burdens of the companies seeking listing or already listed on the exchanges in Malaysia affected by the MCO or the pandemic; and
- other potential impacts or effects of the MCO or the pandemic on the companies seeking listing or already listed on the exchanges in Malaysia.

Measures taken by Government, SC & Bursa Malaysia:

Among the earliest measures taken by the Government, SC and Bursa Malaysia to mitigate the unprecedented scale of challenges faced by the capital market due to the MCO or the pandemic are as follows:

(a) Waiving the listing fees by SC and Bursa Malaysia for one year for companies seeking listing on Leading Entrepreneur Accelerator Platform (LEAP) or Access, Certainty, Efficiency (ACE) markets, as well as companies with market capitalisation of less than RM500 million seeking listing on the Main Market.[3]

(b) To ensure consistency of market practice, imposing the tick rule to permitted short-selling activities of the Investment Accounts (IVTs) and Market Makers.[4]

(c) Suspension of short-selling until 30 April 2020 involving intraday short-selling (IDSS) and regulated short-selling (RSS), as well as intraday short-selling by proprietary day traders. The suspension does not however apply to permitted short-selling (PSS).[5]

(d) For listed corporations which may only hold their AGMs within the prescribed 6-month period as stipulated under the Companies Act 2016, can apply to defer their AGMs with the Companies Commission Malaysia (“SSM”).

(e) For listed REITs, where management companies are required to hold an AGM within the prescribed 4-month period as stipulated in the SC’s Guidelines on Listed Real Estate Investment Trusts, SC has granted a two-month extension for REIT[6]s managers of listed REITs with a financial year-end of 31 December 2019 to hold AGMs by 30 June 2020.[7]

On 24 March 2020, the SC further announced relief measures which will benefit 231 licensed entities, 30 registered audit firms and 9663 licensed individuals. The relief measures are:-[8]

(a) Waiving annual licensing fees for 2020 on the core regulated activity of all Capital Markets Services Licence (CMSL) entities with Profit Before Tax of RM5 million or less during financial year 2019. Entities that have already paid their fee will be offered credit for next year’s fees.

(b) Waiving annual licensing fees for 2020 for individual CMSL holders and Capital Markets Services Representative’s Licence (CMSRL) holders. CMSRL holders who paid the fees already will be offered a credit for next year’s fees.

(c) Reducing the minimum Continuing Professional Education (CPE) requirements from 20 CPE points to 10 CPE points effective 1 July 2020 for 12 months for all CMSRL holders and Employees of Registered Persons (ERPs).

(d) Reducing the minimum training requirements from five to three days effective 1 July 2020 for 12 months for Trading Representatives and Marketing Representatives.

(e) One-off training subsidy for registered firms of Audit Oversight Board (AOB) with less than 10 audit partners, up to RM30,000 per firm for Approved Training Programmes conducted by the Malaysian Institute of Certified Public Accountants (MICPA).

On 26 March 2020, Bursa Malaysia made another announcement of a new set of relief measures to help lessen the financial burden and provide greater flexibility for market participants to navigate this challenging period of the MCO and pandemic. The relief measures are:-[9]

(a) Rebate of 50% of the annual listing fees for the year 2020 for listed issuers that:

- have a market capitalisation below RM500 million as at 31 December 2019; and
- report financial losses as measured by Group loss after tax in their quarterly report for a quarter ended on any date between 1 April 2020 to 30 June 2020 (inclusive) notwithstanding the date of the submission of the same.

(b) Extension of time to submit regularisation plan for PN17/GN3 and 8.03A listed issuers

For listed issuers that are in financial distress according to Practice Note 17/Guidance Note 3 (“PN17/GN3 Listed Issuers”) or do not have an adequate level of operations as set out in paragraph/Rule 8.03A of the Listing Requirements (“8.03A Listed Issuers”), the Exchange[10] will be extending the timeframe for submission of the regularisation plan from the existing 12 months to 24 months from the date they first announce they are PN17/GN3 Listed Issuers or 8.03A Listed Issuers. This applies to listed issuers that trigger the criteria in 2019 and 2020.

(c) Automatic 1-month extension to submit financial statements

Listed issuers are now granted an automatic 1-month extension for issuance of quarterly and annual reports for the Main and ACE Markets, as well as semi-annual and annual audited financial statements for the LEAP Market, that are due on 31 March 2020 and 30 April 2020. Notwithstanding the 1-month extension, listed issuers are reminded to comply with their continuing disclosure obligations under the Listing Requirements including the obligation to make immediate announcements of any material information to ensure that shareholders and investors continue to receive information in a timely manner.

(d) Greater flexibility for brokers to manage margin accounts

The Exchange will give more flexibility and discretion to brokers by removing the requirement to automatically liquidate their client's margin account if the equity in the margin account falls below 130% of the outstanding balance. Brokers will also not be required to make additional margin calls or impose haircuts on any collateral and securities purchased and carried in margin accounts due to an unusually volatile market.

(e) Expanding the list of collaterals for purposes of margin financing

The Exchange will allow brokers to accept other collaterals, such as bonds, collective investment schemes, unit trusts, gold and immovable properties for purposes of maintaining their clients' margin account if such collaterals are valued as per the broker's credit policy.

(f) Shortened counter service hours by market participants following the MCO

To safeguard the wellbeing of investors and employees of market participants, Bursa Malaysia strongly encourages all market participants which provide counter services to customers to limit their operational hours from 10.00 a.m. to 3.00 p.m. during the MCO period.

(g) Extension of time for submission of CDS transaction forms to Bursa Malaysia

All Authorised Depository Agents ("ADAs") are now given an extension of time for the submission of specified physical CDS transaction forms to Bursa Malaysia Depository Sdn.Bhd. The extension of time provided for the submission of physical CDS transaction forms are as follows:

- Transactions performed between 2 March 2020 to 31 March 2020 are granted an extension of time for submission by 30 April 2020; and
- Transactions performed between 1 April 2020 to 30 April 2020 are granted an extension of time for submission by 29 May 2020.

Other Impacts of the MCO or the Pandemic on the Capital Market:

Termination of an Agreement

There have been many commentaries in relation to the Force Majeure and Material Adverse Change clauses circulating since the outbreak of COVID-19 but they are mostly in the context of commercial contracts. In equity offerings, the underwriters and

issuer enter into an underwriting agreement for the sale of securities and a Force Majeure clause or a Material Adverse Change clause is often included under the termination provisions.[11]

There are concerns that since the MCO is already in place and the pandemic is ongoing, the signatories to the agreement must be alert as it would be unfair to sign an agreement where the termination provision could already be triggered as COVID-19 outbreak falls under “epidemics, pandemics and outbreak of disease”, that can be found in the standard force majeure provisions where the underwriters has a potential termination right. One solution could be to specify that the termination clause would only be triggered if the MCO is to prolong to an unforeseeable future or the pandemic escalated to the extent that it makes impracticable or inadvisable to market the securities or will prejudice the success of the offering.

Disclosure

Here, disclosure relates to disclosure of business risk and impact by a company in offering documents ("**Pre-listing Disclosure**") and in the company's continuing listing obligations ("**Post-listing Disclosure**").

Pre-listing Disclosure: A company preparing to list securities will need to prepare an offering document that discloses, among other things, the risks relating to its business. Although it is still not common here in Malaysia for a company to analyse a pandemic as one of its risk factors in an offering document unless such pandemic is having, or is likely to have, a material impact on a business operation or financial result of the company,[12] this requirement might be imposed by the relevant authority in the future considering the current impact of COVID-19 pandemic on many businesses and on the capital market or it might be a best practice to include this risk factor to satisfy the regulators or investors. However it would still be a challenge for a company to provide details about how a pandemic will affect the business of the company in the future and to explain to investors the specific steps that can be taken to ensure business continuity or profit during such pandemic.

Post-listing Disclosure: A Malaysian listed issuer must make immediate public disclosure of any material information, necessary for informed investing and take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. Information is considered material, if it is reasonably expected to have a material effect on- (a) the price, value or market activity of any of the listed issuer's securities; or (b) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action. Further, material information may include information which- (a) concerns the listed issuer's assets and liabilities, business, financial condition or prospects; (b) relates to dealings with employees, suppliers, customers and others; (c) relates to any event affecting the present or potential dilution of the rights or interests of the listed issuer's securities; or (d) relates to any event materially affecting the size of the public holding of its securities.

Listed issuers will need to consider the impact of COVID-19 on their business, operations, financial condition, prospects, assets and liabilities to assess whether such information constitutes material information.

For instance, listed issuers who have issued debt securities, COVID-19 could potentially impact their operations and consequently performance leading to inability to meet their principal and interest payment obligations under the terms and conditions of the bonds transaction documentations. Non-payment triggers event of default and possibly cross defaults of other financing facilities terms. Debt restructuring may be one of the options that a listed issuer may have to consider.

Conduct of Due Diligence

Securities offerings require due diligence. Underwriters, principal advisor and legal counsel among others will need to carefully assess their ability to conduct appropriate due diligence if site visits and in-person meetings become more difficult to arrange due to the imposition of the MCO.

In Malaysia, while principal advisor from the banking and finance sector is listed as essential service and exempted from the MCO,[13] the same cannot be said for other parties required to be involved in the due diligence exercise, thus will jeopardize the completion of the due diligence during this period.

AGM and Extraordinary General Meeting (“EGM”)

Section 340 of the Companies Act 2016 requires a public company to hold an AGM within 6 months of the company’s financial year end and not more than 15 months from the previous AGM. While an AGM is now allowed to be deferred as can be seen in the recent joint statement by SC and Bursa Malaysia dated 17 March 2020 by applying to the SSM[14], a company might still want or need to hold an EGM to pass a resolution pursuant to an urgent proposed corporate exercise or action. However in light of the MCO, holding a conventional general meeting for a public listed company with huge number of members has its own challenge.

Section 327(1) of the Companies Act 2016 allows a company to convene a meeting of members at more than one venue using any technology subject to the Constitution of the company, and Section 327(2) of the Companies Act 2016 provides that main venue of the meeting shall be in Malaysia and the chairperson shall be present at the main venue of the meeting. If there is no restriction on the venue under the Constitution of the company, virtual general meetings can be held via Zoom, FaceTime or any other electronic meeting channel provided that the chairperson is physically present at the main venue in Malaysia.[15]

However there is doubt over efficacy of the abovementioned electronic meeting channel for company with hundreds or thousands of members. Nevertheless, the spread of this pandemic and imposition of travel restriction will only accelerate the development of online voting in Malaysia as currently happening in Europe.[16] In Malaysia, for instance, Bursa Malaysia's 42nd AGM was held in Kuala Lumpur on Thursday, 28 March 2019 at 10.00 a.m. The shareholders who attended the 42nd AGM remotely through live streaming voted via online platform, which was made accessible from 10.30 a.m.[17] Listed issuers will need to be ready to invest and work with online platform service providers on the conduct of online voting for a general meeting of large scale.

Conclusion:

The magnitude of this pandemic and the unprecedented imposition of the MCO to the whole country will force businesses and government bodies to adopt new ways of working. Despite headwinds, with the introduction of the many relief measures by the relevant authorities, Malaysian companies can continue to persevere through these challenges and with that, the capital market activities will rebound in due course.

Important Information

Azmi & Associates has set up Azmilaw Task Force to look into all issues arising from COVID-19 and MCO. Clients are welcomed to contact their usual Partner who will bring their issues to Azmilaw Task Force for our further action.

1. [The Prime Minister's Special Message on COVID-19, 16 March 2020](#)
2. [The Prime Minister's Special Message, 25 Mac 2020](#)
3. [2020 Economic Stimulus Package, 27 February 2020](#)
4. [Bursa Malaysia to operate as normal, 17 March 2020](#)
5. [SC and Bursa Suspend Short-Selling Amid COVID-19 Volatility, 23 March 2020](#)
6. Real Estate Investment Trust
7. [Capital Market Regulators grant flexibility for Listed Issuers on AGMs and Issuance of Periodic Reports, 17 March 2020](#)
8. [Malaysian SC announces relief measures for capital market licensed entities, 24 March 2020](#)
9. [Bursa Malaysia Announces Additional Relief Measures to Alleviate the Impact of COVID-19 On Capital Market Players, 26 March 2020](#)
10. Bursa Malaysia Securities Berhad
11. [Coronavirus Under the Capital Markets Microscope, 9 March 2020](#)
12. [Analysis: COVID-19 Extends SEC Deadlines, Adds to IPO Risks, 9 March 2020](#)
13. [Prevention and Control of Infectious Diseases \(Measures within the infected local areas\) Regulations 2020, 18 March 2020](#)
14. [Capital Market Regulators Grant Flexibility for Listed Issuers on AGMs and Issuance of Periodic Reports, 17 March 2020](#)

15. [Coronavirus Movement Control and Company General Meetings, 20 March 2020](#)
16. [Swiss Tech Firm: Online Voting at AGMs in Demand as Coronavirus Spreads, 5 March 2020](#)
17. [Notes of the 42nd Annual General Meeting \(“AGM”\) of Bursa Malaysia, 28 March 2019](#)

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We hope that the above discussion is of assistance to you and your company. If your company has any question on any corporate exercise in the capital market, we are ready to assist you on your queries.

Corporate Communication

Azmi & Associates

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