
Corporate & Commercial

Anti-Corruption Efforts Intensify at the Stock Exchange

By *Kuok Yew Chen & Tan Yi Li*

Introduction

Bursa Malaysia Berhad (“**Bursa**”) announced anti-corruption and whistleblowing measures as additional corporate governance requirements under Chapter 15 of the Main Market and ACE Market Listing Requirements, respectively, at the end of last year. The requirements are slated to come into effect on 1 June 2020, complementing the new section 17A corporate liability provision under the Malaysian Anti-Corruption Commission Act 2009 (“**MACC Act**”).

The requirements aim to promote a culture of better governance and hold businesses to greater accountability to stakeholders.

Key Anti-Corruption and Whistleblowing Measures

Under the revised Chapter 15, a listed corporation and its board of directors must ensure that the corporation and its subsidiaries (“**Group**”) have:

- (a) policies and procedures on anti-corruption that, at a minimum, adopt the principles espoused under the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the MACC Act; and
- (b) policies and procedures on whistleblowing.

The policies and procedures in (a) and (b) above must be published on the corporation’s website. Further, the policies and procedures need to be reviewed periodically to assess their effectiveness and, in any event, at least once every three years. Companies which have yet to do so have little remaining time, as these policies and procedures should be tailored to the Group, as opposed to simply adopting general terms which do not reflect the culture, industry, or needs of the business.

Additionally, corruption risks must now be included in the annual risk assessment of the Group. This in turn raises questions, from what the scope of this new risk assessment entails, to whether corporations have the manpower and processes in place to enable such assessments and reporting, to the steps corporations should take in the event risks are identified.

Corporate & Commercial

Proposed Anti-Corruption and Whistleblowing Measures for LEAP Market

Hot on the heels of the announcement of the revisions to the Main Market and ACE Market Listing Requirements, Bursa issued a public consultation paper to seek feedback on the proposed introduction of similar measures in the LEAP Market Listing Requirements last week.

The LEAP Market is a platform for emerging companies, including small and medium-sized enterprises (“SMEs”), to have fund raising access and visibility to sophisticated investors in the market. As such, Bursa is conscious of the need to balance the compliance cost for SMEs on its platform against the requirement for them to conduct business in a corrupt free manner.

In this regard, Bursa is seeking feedback from the public on whether to impose prescriptive or principle-based requirements on corporations listed on the LEAP Market. Prescriptive requirements are the same requirements imposed on corporations listed on the Main Market and ACE Market discussed above, whereas principle-based requirements are more lax, and only require corporations to have policies and procedures on anti-corruption and whistleblowing.

Further details on the consultation paper are available at [Bursa](#).

Rationale for the New Measures

These measures are introduced in support of the National Anti-Corruption Plan 2019 – 2023. More importantly, these measures deter corrupt practices and, if implemented proportionately to a listed corporation’s corruption risk exposure, should offer assurance to stakeholders that the listed corporation has some elements of adequate procedures in place.

Adequate procedures are important since they are a defence to a corporate liability charge under the MACC Act. Corporate liability attracts a penalty of 10 times the value of the bribe or MYR1 million, whichever is higher, for the listed corporation, and up to 20 years’ jail for its Board of Directors and senior management. This is over and above the reputational impact and potential fallout with other companies disengaging with a company convicted of corporate liability given the possibility of these companies in turn infringing corporate liability and/or anti-money laundering laws.

Concluding Remarks

Local regulators are joining forces to step up anti-corruption efforts, from the Securities Commission recently recommending that anti-corruption updates be a standing agenda at annual general meetings, to Bursa revising the Listing Requirements to require listed companies to have adequate procedures in

Corporate & Commercial

place. Listed corporations are now exposed to the risk of breaching both the MACC Act and the Listing Requirements, in the event of non-compliance with anti-corruption laws.

Given the severe consequences of not having adequate procedures in place, large corporations and SMEs alike have to ensure they allocate sufficient time, effort and resources to comply with the MACC's adequate procedure requirements, which are not always as straightforward as they seem. For more details on what adequate procedures encompass, please [click here](#).

Contacts

Should you have any questions on, or if assistance is required in, putting in place adequate procedures or submitting feedback to Bursa's consultation paper, please feel free to contact our team below.



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