

Explanatory Note (November 2023) (Last updated in December 2023)

Malaysia-incorporated Company's Compliance with Core Shareholder Protection Standards and Applicable Laws and Regulations in Malaysia

The purpose of this note (the “**Note**”) is to explain, based on information submitted by an applicant as of February 2022, how a Malaysia-incorporated company complies with the core shareholder protection standards under Appendix 3-A1 (the “**Core Shareholder Protection Standards**”) of the Listing Rules (the “**Rules**”) and applicable laws and regulations in Malaysia.

Important note: This Note does not override the Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this Note and the Rules, the Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Rules or this Note.

*The information contained in this Note on foreign laws, regulations and market practices is based on information provided by an applicant, its adviser or officials from the relevant jurisdiction (where applicable). We have neither separately verified this information nor updated this information since its receipt. A potential applicant/an applicant should inform The Stock Exchange of Hong Kong Limited (the “**Exchange**”) of any changes in the laws, regulations and market practices described in this Note.*

Reference should also be made to the guidance materials published by the Exchange on overseas issuers from time to time.

Background

1. A Malaysia-incorporated company has brought our attention to how it complies with (i) the Core Shareholder Protection Standards under the Rules; and (ii) applicable laws and regulations in Malaysia.

Core Shareholder Protection Standards

2. Shareholder protection standards under applicable laws of Malaysia do not fully meet the Core Shareholder Protection Standards in respect of (i) restriction on shareholder voting; (ii) variation of class rights; and (iii) inspection of branch register, under Appendix 3-A1 to the Rules.
3. The Malaysia-incorporated company has amended its constitutional documents to include provisions equivalent to the relevant Core Shareholder Protection Standards, and such amendments also comply with laws of Malaysia.

Applicable laws and regulations in Malaysia

Securities-holding Reporting/Disclosure Obligations

4. Under laws of Malaysia, a substantial shareholder¹ of a Malaysia-incorporated company is obligated to disclose to the company in writing in a prescribed form, within five days² from the transaction: (i) when the person becomes a substantial shareholder; (ii) where there is a change in the interest of the substantial shareholder's voting shares in the company; and (iii) when the person ceases to be a substantial shareholder (the "**Substantial Shareholder Reporting and Disclosure Obligation**"). Upon receipt of the notification, the company (if listed on Bursa Malaysia) is obligated to announce the substantial shareholding information on Bursa Malaysia, and therefore becoming public information.
5. Further, a person who holds voting shares of a Malaysia-incorporated company on behalf of a non-resident (i.e. a person/corporate that is not a resident of/incorporated in Malaysia) is required to notify (in a prescribed form under the Companies Act 2016 ("**CA 2016**")) such non-resident (regardless of the amount of shareholding) about the Substantial Shareholder Reporting and Disclosure Obligation. Such notification must be done within 14 days after such person becomes the registered holder of the shares (the "**Non-resident Notification Obligation**") under CA 2016³.
6. The penalty for non-compliance with either the Substantial Shareholder Reporting and Disclosure Obligation or the Non-resident Notification Obligation is a fine of up to RM1 million and a further fine of up to RM1,000 for every day during which the offence continues. Further, failure to comply with the Substantial Shareholder Reporting and Disclosure Obligation may also affect the rights in relation to those shares⁴.
7. In view of the potential risk and impact of the Non-resident Notification Obligation, the Companies Commission of Malaysia (the "**CCM**") (i.e. the relevant competent Malaysia authority) provided a written confirmation to the Exchange in 2021 that the Non-resident Notification Obligation is imposed on the legal owners of the shares of a Malaysia-incorporated company (i.e. members who are registered in the register of members). In the context of a proposed listing of a Malaysia-incorporated company on

¹ A substantial shareholder is a person (including a corporation) who has an interest in not less than 5% of the aggregate voting shares in a company (Section 136 of CA 2016 (as defined in paragraph 5 above)).

² Three days if the company's shares are listed on Bursa Malaysia Securities Berhad ("**Bursa Malaysia**").

³ Pursuant to Section 57 of the Capital Markets and Services Act 2007, Bursa Malaysia is exempted from complying with the Non-resident Notification Obligation.

⁴ Under CA 2016, where a substantial shareholder breaches the Substantial Shareholder Reporting and Disclosure Obligation, a Malaysian court may, on the application of the CCM, make orders to restrain the rights of the shares held by such shareholder, such as restraining the substantial shareholder from disposing of any of the relevant interest, and restraining the exercise of any voting rights attached to the shares in which the substantial shareholder has an interest, etc.

the Exchange, such obligation is only imposed on (i) HKSCC Nominees Limited (“**HKSCCN**”) which holds the legal title in all shares listed and traded on the Exchange as a registered shareholder on record for CCASS participants; and (ii) other Hong Kong investors holding voting shares as legal owners outside CCASS. The Non-resident Notification Obligation does not extend to a person holding interest in the shares of a Malaysia-incorporated company but who is not the legal owner of the shares, such as CCASS participants and Hong Kong investors transacting in shares on the Exchange or over-the-counter settlement in CCASS by way of settlement instructions.

8. CCM also confirmed that HKSCCN will effectively discharge its obligation to comply with the Non-resident Notification Obligation if the following compliance measures are implemented by:
 - (i) Hong Kong Securities Clearing Company Limited and the Exchange to:
 - (a) include in the Exchange’s circular to CCASS participants and on the Exchange’s website details of the Substantial Shareholder Reporting and Disclosure Obligation and the Non-resident Notification Obligation, how to comply with such obligations and the consequences of failing to comply with them (the “**Relevant Information**”);
 - (b) assign a special range of stock codes to the applicant, and add the indicator of “MY” in its stock code and stock short name; and
 - (c) include an explanation of the aforementioned “MY” indicator and the special code in the information page of the applicant on the Exchange’s website; and
 - (ii) the applicant to:
 - (a) prominently disclose the Relevant Information in its offering documents, website, share certificates⁵, annual and interim reports, results announcements, circular to shareholders and notices of shareholders’ meeting, and the White Form eIPO website; and
 - (b) procure that its Hong Kong share registrar discloses the Relevant Information to each registered shareholder (other than HKSCCN) who submits transfer documents for registration of a transfer of title to voting shares.

⁵ The applicant will be required to include a short legend to be printed on its share certificates issued to persons who are registered on the Hong Kong branch register of members as shareholders, alerting them of the Substantial Shareholder Reporting and Disclosure Obligation and the Non-resident Notification Obligation that would apply to them as long as they hold their shares outside CCASS.

Israel-related Prohibition

9. According to the Direction on Dealings with Specified Person and in Restricted Currency (the “**Direction**”)⁶, a person in Malaysia (i.e. any individual or entity in Malaysia) is prohibited from undertaking or engaging in any dealing or transaction with or involving a specified person⁷ related to the State of Israel (the “**Israel-related Prohibition**”). The consequence of non-compliance with the Israel-related Prohibition could be an imprisonment for a term of up to 10 years, a fine of up to RM50 million, or both.
10. With regard to the applicability of the Israel-related Prohibition on Hong Kong Exchanges and Clearing Limited (“**HKEX**”) and/or its subsidiaries and affiliated entities (together, the “**HKEX Companies**”) and Hong Kong investors, the applicant has obtained written confirmation from the Bank Negara Malaysia (the “**BNM**”) and the view of the applicant’s Malaysian legal counsel that:
- (i) the Israel-related Prohibition does not apply to HKEX Companies, CCASS participants and any other professional parties in Hong Kong (e.g. Hong Kong share registrar) on the basis that none of them is a person in Malaysia. Hence, they will not have any obligation in connection with the Israel-related Prohibition;
 - (ii) the applicant has no obligation to ensure compliance with the Israel-related Prohibition with regard to the trading of its listed shares on the basis that it has no effective control over such trading, and the trading of shares on the stock exchanges is a dealing or transaction between one shareholder (seller) and another shareholder (purchaser), where it is not a party. Further, the applicant is not legally required to notify its shareholders of the Israel-related Prohibition under laws of Malaysia; and
 - (iii) the source of funding is irrelevant in relation to the Israel-related Prohibition, and HKEX Companies do not have any obligation to ascertain the source of funding behind a shareholder that trades the shares of companies incorporated in Malaysia that are listed on the trading platform of HKEX Companies.
11. However, public investors who are persons in Malaysia will be subject to the Direction. The applicant will (i) disclose details of the Israel-related Prohibition prominently in, among other things, its prospectus, associated application forms, formal notice, allotment results announcement, website, company information sheet to be posted on HKEX’s website, annual and interim reports, circulars to shareholders and notices of shareholder meetings to ensure that investors are aware of such prohibition; and (ii) inform the Exchange as soon as practicable of any changes in laws,

⁶ The Direction was issued by the BNM (as defined in paragraph 10 above), the Central Bank of Malaysia, on 30 April 2020.

⁷ “Specified person” is defined in the Direction as any person that is, or connected with, (i) the State of Israel or its governmental organisation, authority, or agency; (ii) a citizen or permanent resident, person incorporated, established or registered in the State of Israel or under its laws; (iii) any unincorporated person which is formed in the State of Israel or under its laws; and (iv) any person owned or controlled (directly or indirectly) by the aforementioned persons.

regulations and market practices of Malaysia with regard to the interpretation and application of Israel-related Prohibition during the vetting process of its listing application and post-listing.

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