



DIGITAL ASSETS SERIES: CHAPTER 5

LEGAL UPDATE
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Chapter 5: A General Comparison between IEO and IPO in Malaysia

Having discussed the regulatory regime of initial exchange offering (“**IEO**”) as an emerging and alternative fundraising avenue in Malaysia, in this Chapter 5 of our Digital Assets Series, we make a general comparison between IEO and initial public offering (“**IPO**”) in Malaysia.

1. Introduction

1.1 In Malaysia, an eligible company which chooses to go public may seek admission of its shares on any of the three approved markets available on the stock exchange of Malaysia, Bursa Malaysia Securities Berhad (“**Bursa Securities**”), namely:

- (a) the Main Market, the prime market for established companies which satisfy any of the quantitative admission criteria (as set out under paragraph 2.1 below);
- (b) the Access, Certainty, Efficiency (“**ACE**”) Market (formerly known as the MESDAQ Market prior to 3 August 2009), a sponsor-driven market for companies with growth prospects; and
- (c) the Leading Entrepreneur Accelerator Platform (“**LEAP**”) Market, an adviser-driven market for emerging companies, including small and medium-sized enterprises (“**SMEs**”).

1.2 Any company intending to list on the Main Market, ACE Market or LEAP Market by undertaking an IPO is required to, in addition to other applicable laws and/or guidelines, comply with the respective listing requirements issued by Bursa Securities for each of the markets (“**Listing Requirements**”), and the Equity Guidelines issued by the Securities Commission Malaysia (“**SC**”) (to be complied with by Main Market listing applicants only).

1.3 This Article aims to provide a comparison of certain key aspects between IEO and IPO that an issuer may wish to consider when planning for its fundraising exercise in Malaysia.

2. Comparison

2.1 We set out below a brief comparison between IEO and IPO on the following key aspects:

	IEO	IPO		
		Main	ACE	LEAP
Who can undertake IEO/IPO (“applicant”)	Either a: (a) company (excluding an exempt private company and public-listed company*); or	In addition to specific applicants*, either a: (a) public company incorporated in Malaysia; or	Either a: (a) public company incorporated in Malaysia; or (b) foreign company	Public company incorporated in Malaysia.

	IEO	IPO		
		Main	ACE	LEAP
	<p>(b) limited liability partnership (“LLP”) incorporated in Malaysia, the main business operations of which must be carried out in Malaysia.</p> <p>* Note: An unlisted subsidiary or a special purpose vehicle (SPV) of a public-listed company may, however, qualify as an issuer.</p>	<p>(b) foreign company registered under the Companies Act 2016 (“CA”).</p> <p>* Note: Specific applicants include, among others, closed-end funds, special purpose acquisition companies (“SPAC(s)”) and management companies of real estate investment trusts (“REIT(s)”), to which additional and/or different requirements may apply.</p>	<p>registered under the CA.</p> <p>Note: A subsidiary or holding company of a corporation currently listed on the Main Market or ACE Market cannot seek listing on its own unless the Sponsor (as defined below) is satisfied, among others, that the applicant has a distinct and viable business of its own and no intra-group competition or conflict of interests exist between the applicant and all the other corporations within the holding company’s group.</p>	
Minimum paid-up capital requirements	<p>(a) Other than LLP: minimum paid-up capital of RM500,000 and shareholders’ funds of RM500,000 maintained at all times.</p> <p>(b) LLP: minimum capital of RM500,000 maintained at all times.</p>	Not specified under the Main Market Listing Requirements.	Not specified under the ACE Market Listing Requirements.	Not specified under the LEAP Market Listing Requirements.
Suitability of applicant to be assessed by	IEO operator	Principal Adviser (being any person approved to act as a Principal Adviser by SC).	Sponsor (being any person approved to act as a Sponsor by Bursa Securities).	Approved Adviser (being any person approved to act as Approved Adviser by Bursa Securities).

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Key approving authority	IEO operator, subject to SC's final decision.	SC	Bursa Securities	Bursa Securities
Quantitative admission criteria	Not specified under the Guidelines on Digital Assets ("DA Guidelines"). However, the IEO operator may impose quantitative requirements as part of its assessment process, subject to the SC's concurrence.	<p>An applicant must satisfy any of the following tests:</p> <p>(a) <u>Profit Test</u>: Aggregate uninterrupted profit after tax ("PAT") of at least RM20 million for 3 to 5 full financial years ("FY"), PAT of at least RM6 million for the most recent FY, and have been operating in the same core business over at least the profit track record prior to submission.</p> <p>(b) <u>Market Capitalisation Test</u>: Total market capitalisation of at least RM500 million upon listing, with incorporated and generated operating revenue for at least 1 full FY prior to submission.</p> <p>(c) <u>Infrastructure Project Corporation Test</u>: Have the right to build and operate an</p>	No minimum operating track record or profit requirement.	No minimum operating track record or profit requirement.

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		infrastructure project in or outside Malaysia (with project costs of which are not less than RM500 million), and have been awarded with concession or licence for the infrastructure project by a government or a state agency, in or outside Malaysia, with remaining concession or licence period of at least 15 years from the date of submission.		
Maximum fundraising limit	20 times the issuer's shareholders' funds (or issuer's capital, in the case of an LLP) within any continuous 12-month period, subject to a ceiling of RM100 million.	No limit.	No limit.	No limit.
Public spread	Not applicable.	At least 25% of the total number of shares for which listing is sought and minimum of 1,000 public shareholders holding not less than 100 shares each.	At least 25% of the total number of shares for which listing is sought and minimum of 200 public shareholders holding not less than 100 shares each.	At least 10% of the company's total number of ordinary shares at admission.
Bumiputera distribution	Not applicable.	Allocation of 50% of the public spread requirement to Bumiputera investors at the point of listing	No requirement at point of listing. Allocation on best effort basis of 12.5% of the	No requirement at point of listing.

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		<p>on a best effort basis.</p> <p>Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.</p>	<p>enlarged share capital to the Ministry of International Trade and Industry (MITI)-recognised Bumiputera investors:</p> <p>(a) within 1 year after achieving Main Market profit track record; or</p> <p>(b) 5 years after being listed on ACE Market,</p> <p>whichever is the earlier.</p>	
Sponsorship	Not applicable.	<p>Not applicable.</p> <p>Applicant is however required to submit its listing application through a Principal Adviser registered with the SC.</p>	<p>A Sponsor shall be engaged to assess the suitability for listing and submit the listing application on behalf of the applicant.</p> <p>Sponsorship is required for at least 3 full FY post-listing (or at least 1 full FY after the applicant has generated operating revenue, whichever is the later) and the Sponsor who submitted the listing application must act as the Sponsor for at least 1 full FY upon admission.</p> <p>Note: For ACE Market corporations that have met the Main Market admission</p>	<p>An Approved Adviser shall be engaged to assess the suitability for listing and submit the application on behalf of the applicant.</p> <p>A Continuing Adviser shall be engaged for at least 3 full FY post-listing (or at least 1 full FY after the applicant has generated operating revenue, whichever is the later) and the Approved Adviser who submitted the listing application must act as the Continuing Adviser for at least 1 FY upon admission.</p>

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			criteria, sponsorship is for 1 full FY.	
Core business requirements	Not specified but under the DA Guidelines, the applicant must demonstrate to the IEO operator that its IEO project provides an innovative solution or a meaningful digital value proposition for Malaysia.	An identifiable core business which it has majority ownership and management control, and the core business must not be holding of investment in other listed companies.	Core business must not be holding of investment in other listed companies.	A clearly identifiable core business.
Management continuity and capability	Not specified under the DA Guidelines.	Continuity of substantially the same management for at least 3 full FY prior to submission; or. For Market Capitalisation Test or Infrastructure Project Corporation Test, since the commencement of operations (if less than 3 full FY).	Continuity of substantially the same management for 3 full FY prior to submission or since its incorporation (if less than 3 full FY).	Not applicable.
Financial position and liquidity	Not specified under the DA Guidelines.	(a) Sufficient level of working capital for at least 12 months from the date of prospectus; (b) Positive cash flow from operating activities for listing via Profit Test and Market Capitalisation Test; and (c) No accumulated losses based on its latest	Sufficient level of working capital for at least 12 months from the date of prospectus.	Not applicable.

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		audited financial statements for listing via Profit Test.		
Type of investors	<p>All types of investors, subject to investment limits depending on the investor's classification:</p> <p>(a) retail investor – maximum of RM2,000 per issuer and not more than RM20,000 within a 12-month period;</p> <p>(b) angel investor – maximum of RM500,000 within a 12-month period; and</p> <p>(c) Sophisticated investor – No limit.</p>	All types of investors.	All types of investors.	<p>Sophisticated investors* only.</p> <p>* Note: Any person who falls within any of the category of investors as set out in Part I of Schedule 6 or Part I of Schedule 7 of the Capital Markets and Services Act 2007 ("CMSA").</p>
Constitution	Not specified under the DA Guidelines.	Applicant must incorporate the provisions set out in Chapter 7 of the Main Market Listing Requirements into its constitution and submit the constitution together with a letter of compliance (compliance checklist) to Bursa Securities.	Applicant must incorporate the provisions set out in Chapter 7 of the ACE Market Listing Requirements into its constitution and submit the constitution together with a letter of compliance (compliance checklist) to Bursa Securities.	Not specified under the LEAP Market Listing Requirements.
Composition of the board	At least two (2) directors whose principal or only	At least 2 directors or 1/3 of the board of directors, whichever is the higher, must be independent directors.		Not specified under the LEAP Market Listing Requirements.

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	place of residence is in Malaysia.			
<p>Moratorium</p> <p>("Promoter" includes a controlling shareholder, a person connected to a controlling shareholder and an executive director who is a substantial shareholder of the company)</p>	<p>(a) Directors and senior management must, in aggregate, own at least 50% equity holding in the issuer on the date of issuance of the digital tokens.</p> <p>(b) Post issuance of the digital tokens, the issuer's directors and senior management (including those who are subsequently appointed pursuant to their purchase of equity in the applicant) may only sell, transfer or assign not more than 50% of their respective equity holding until completion of the IEO project.</p>	<p>(a) Promoters' entire shareholdings for 6 months from the date of admission.</p> <p>(b) For any company listed under Infrastructure Project Corporation Test, moratorium will be lifted after 6 months from the date of admission if one full FY of audited operating revenue has been generated. If not, 45% must be retained and such moratorium can only be lifted upon achieving one full FY of audited operating revenue.</p>	<p>(a) Promoters' entire shareholdings for 6 months from the date of admission.</p> <p>(b) Subsequently, at least 45% must be retained for another 6 months and thereafter, further sell down is allowed on a staggered basis over a period of 3 years.</p> <p>(c) For promoters of ACE Market corporations that have met the Main Market admission criteria, moratorium is 6 months from the date of admission (and not subject to subsequent moratorium requirement as per (b) above).</p>	<p>(a) Promoters' entire shareholdings for 12 months from the date of admission.</p> <p>(b) Subsequently, at least 45% must be retained for another 36 months.</p> <p>(c) Where a listed corporation has not generated 1 full FY of operating revenue based on the latest audited financial statements, the moratorium in (b) above will continue to apply until the listed corporation has generated 1 full FY of operating revenue based on its latest audited financial statements.</p>
<p>Key documents involved</p>	<p>Application (including white paper) lodged with IEO Operator and SC.</p>	<p>(a) Prospectus lodged with SC; and</p> <p>(b) Listing Application lodged with Bursa Securities.</p>	<p>(a) Information Memorandum lodged with SC; and</p> <p>(b) Listing Application lodged with</p>	

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				Bursa Securities.
Content of key documents	White paper must adhere to the requirements set out in the DA Guidelines.	Prospectus must adhere to the requirements set out in the Prospectus Guidelines and Equity Guidelines issued by the SC. Listing Application must be in such form and be accompanied with the relevant supporting documents as prescribed under the Main Market Listing Requirements.	Prospectus must adhere to the requirements set out in the Prospectus Guidelines issued by the SC. Listing Application must be in such form and be accompanied with the relevant supporting documents as prescribed under the ACE Market Listing Requirements.	Information Memorandum must adhere to the requirements set out in the LEAP Market Listing Requirements and the Guidance of Disclosures in Information Memorandum (ICN 1/2019) issued by Bursa Securities. Listing Application must be in such form and be accompanied with the relevant supporting documents as prescribed by Bursa Securities.
Under-subscription	In the event the target amount sought to be raised by an issuer has not been met due to under-subscription of digital tokens offered in an IEO, all monies collected from investors during the offer period of the IEO shall be refunded. It is to be noted that an IEO operator is prohibited from providing direct or indirect financial assistance to investors to invest in the digital tokens of an issuer hosted on its platform.	(a) Generally, companies will undertake re-allocation or underwriting arrangement(s) to address any potential under-subscription scenario. (b) However, in the event the public spread requirement is not met due to under-subscription of shares offered in an IPO, the company may not proceed with the listing (unless a lower	(a) Generally, companies will undertake re-allocation or underwriting arrangement(s) to address any potential under-subscription scenario. (b) However, in the event the public spread requirement is not met due to under-subscription of shares offered in an IPO, the company may not proceed with the listing (unless a lower	In the event the public spread requirement is not met due to under-subscription of shares offered in an IPO, the company may not proceed with the listing. In the event of non-listing, monies collected for all applications of shares in the IPO shall be refunded.

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		public spread % is accepted by Bursa Securities upon application). In the event of non-listing, monies collected for all applications of shares in the IPO shall be refunded.	public spread % is accepted by Bursa Securities upon application). In the event of non-listing, monies collected for all applications of shares in the IPO shall be refunded.	
Cooling-off right	An investor (except any investor who is a staff of the issuer) who has subscribed for any digital token during the offer period of an IEO has a cooling-off right to withdraw his/her/its subscription of digital tokens, and such right must be exercised within a minimum of 6 business days commencing from the closing of the offer period.	Not applicable.	Not applicable.	Not applicable.
Utilisation of proceeds	<p>(a) An issuer must provide a confirmation to the SC that the drawdowns have been utilised for the purposes stated in its white paper in such form and manner as the SC may specify.</p> <p>(b) Post-IEO, if an issuer proposes to make any changes to the utilisation of</p>	Post-IPO, if an issuer proposes to make a material change (being a change that is 25% or more of the total proceeds raised) to the utilisation of proceeds raised in its IPO, a circular must be issued to seek its shareholders' approval.	Immediate announcement to Bursa Securities must be made if there is any change to the utilisation of proceeds raised by the listed corporation from the issuance of securities that deviates by 25% or more from the original utilisation of proceeds.	

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	proceeds, the prior approval of token holders representing 75% of the total amount of digital tokens held by all token holders present and voting must first be obtained.			
Estimated timeline of IEO/IPO process	<p>Estimated to be shorter than IPO process and it depends on the assessment process imposed by the IEO operator.</p> <p>However, this remains to be seen as there has yet to be any precedent of a concluded IEO in Malaysia as of the date of this Article.</p>	8 to 11 months from the appointment of advisers up to listing, depending on the complexity and size of the IPO.		4 to 6 months from the appointment of advisers up to listing, depending on the complexity and size of the IPO.
Whether secondary trading is available for listed securities	<p>Secondary trading of issuer's digital tokens is subject to:</p> <p>(a) the prior approval of the SC; and</p> <p>(b) willingness of a digital asset exchange ("DAX") operator to facilitate such secondary trading.</p>	Yes	Yes	<p>Only for sophisticated investors or current securities holders*. A current securities holder is allowed to sell the existing securities held in corporation listed on the LEAP Market but is not allowed to trade in other listed securities on the LEAP Market (Rule 16.02(2) of the Rules of Bursa Malaysia Securities Berhad).</p> <p>* Note:</p>

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				<p>A current securities holder of a corporation listed on the LEAP Market includes:</p> <p>(a) an existing shareholder at the time the corporation was admitted to the LEAP Market, but is not qualified as a sophisticated investor; or</p> <p>(b) a securities holder who was qualified as a sophisticated investor at the time of the purchase of securities in the corporation admitted to the LEAP Market, but no longer qualifies as a sophisticated investor.</p>

3. Perspective

3.1 Undoubtedly, IPOs bring vast and exciting advantages for growing and established businesses. The gains that an issuer may receive include new capital (which is usually substantial, as compared to funds raised from other fundraising avenues such as equity crowd funding / peer-to-peer financing) that may be raised, provision of exit opportunities to stakeholders who have contributed significantly to the growth of the business, increased publicity and brand prestige, and reduced cost of capital for future fundraising. In 2019, there were 30 companies listed on the Main, ACE and LEAP Markets of Bursa Securities (recording the highest number of new listings on Bursa Securities since 2006). In the same year, a total of USD1.452 billion was raised from both primary and secondary markets on Bursa Securities¹. Despite the economic challenges in 2020 due to the Covid-19 global pandemic, we continued to see active new listing exercises in Malaysia, where 19 companies were listed on the Main, ACE and LEAP Markets of Bursa Securities in 2020².

¹ Integrated Annual Report 2020 of Bursa Malaysia Berhad

² https://www.bursamalaysia.com/listing/listing_resources/ipo/listing_statistic

- 3.2 However, the challenges of concluding an IPO can be burdensome if the process is not well considered or executed. Certain companies may remain hesitant about undertaking an IPO, and the factors contributing to this include the possibility of losing majority of the decision-making power in the business, the IPO transaction costs, the recurring compliance costs and operational burden contributed by higher corporate governance and regulatory compliance requirements. Company leadership may also face challenges due to market pressure especially when there is a mismatch between a company leader's long-term view or vision and that of the capital market (which may be short term and/or profit driven).
- 3.3 Certain players in the market hold the view that a security token offering (STO) or an IEO (in the context of Malaysia) may bring more advantages, as compared to an IPO. Often, such view is supported by the belief that the involvement of blockchain technology in an IEO / STO present benefits which are not available in traditional fundraising avenues, including:
- transactional or operational efficiency (driven by the non-requirement of an intermediary, thereby expediting the distribution and settlement process)
 - higher level of transparency (as all transactions occurring on a blockchain infrastructure are accessible by all its participants, unless it is a private blockchain where only authorised participants can have access)
 - improved traceability of tokenised assets; and
 - flexibility in structuring the digital tokens issuance (where the company is not limited to raising fund by selling its equity or incurring debt obligations).
- 3.4 However, as we have discussed in *Chapter 4 of our Digital Assets Series*, IEO may not be suitable for all businesses in Malaysia, as an issuer in an IEO must fulfil certain criteria which are not prerequisites in traditional fundraising avenues, such as IPO. Please refer to [*Chapter 4 of our Digital Assets Series*](#) for information in this regard.
- 3.5 An issuer in an IEO can raise up to 20 times of its shareholders' funds (or capital, in the case of a limited liability partnership) in an IEO in any 12-month period, subject to a maximum of RM100 million, which appears to be comparable to the proceeds that may be raised via an IPO on the ACE or LEAP Market of Bursa Securities. Therefore, if a company fulfils the criteria to undertake an IPO or an IEO, a comparison between such two fundraising avenue would be highly relevant. In such a case, it would be prudent for the company to consider all pertinent factors and consult with the relevant advisers, in order to make a well-informed fundraising decision.

In the previous chapters of our Digital Assets Series, we addressed:

[*Chapter 1: A brief introduction to digital assets and its regulatory framework in Malaysia*](#)

[*Chapter 2: IEO and the regulatory framework for IEO operators in Malaysia*](#)

[*Chapter 3: Digital asset custodian \("DAC"\) and the regulatory framework for DACs in Malaysia*](#)

[*Chapter 4: The regulatory framework for persons seeking to raise funds via IEO in Malaysia*](#)

*In the next chapter of our Digital Assets Series (Chapter 6), we make a general comparison between IEO and fundraising options in other recognised markets of Malaysia, namely equity crowdfunding ("**ECF**") and peer-to-peer financing ("**P2P**").*

This legal update is for general information only and is not a substitute for legal advice.

Further Information

Should you have any queries as to how these developments may affect your business, please do not hesitate to contact us.



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For more information on other insights shared by KhaiLing Yau Chambers, please click [here](#).