

ADDITIONAL QUESTIONS AND ANSWERS RELATING TO THE LISTING REQUIREMENTS OF BURSA MALAYSIA SECURITIES BERHAD FOR THE MESDAQ MARKET (“MMLR”)

CHAPTER 6 – NEW ISSUES OF SECURITIES

- (1) Pursuant to Rule 6.34 of the MMLR, the total number of shares to be issued under a share scheme for employees (“ESOS”) shall not exceed 30% of the issued and paid-up capital at any one time. How is this percentage calculated?**

Where a listed company has issued a percentage out of the 30% allowed under Rule 6.34 of the MMLR, for the following issue, the listed company would need to deduct from the total issued and paid-up capital, the number of shares already issued and paid under the ESOS. The result from the deduction would be the new basis for calculating the percentage allowed for the share scheme.

Illustration:

PLC A procured shareholders’ approval to implement a 5-years ESOS of up to 30% of its issued and paid up capital on 8 January 2007. PLC A has an issued and paid-up capital of RM20 million but arising from a rights issue implemented on 28 February 2007, the enlarged issued and paid-up capital is now RM25 million. In addition, arising from the exercise of all the options offered by PLC A pursuant to the ESOS, as at December 2008, new shares were issued amounting to RM5 million. Pursuant to Rule 6.34 of the MMLR, what is the number of ESOS that can be offered by PLC A to its employees in year 2009?

Based on this example, the computation of the ESOS that may be offered by PLC A is as follow:-

	Issued and paid-up capital
8 January 2007	RM20 million
February 2007 (Issuance of new shares arising from rights issue – RM5 million)	RM25 million
December 2008 (Total issuance of ESOS – RM5 million)	RM30 million

ESOS that can be offered by PLC A in year 2009
= (30% x RM30 million) LESS shares already issued under the ESOS (ie. RM5 million)
= 4 million new shares

CHAPTER 7 – ARTICLES OF ASSOCIATION

- (1) If a listed company undertakes amendments to its articles of association, is there a requirement for the listed company to submit a letter of compliance and checklist of compliance similar to the requirement of Rule 3.06 of the MMLR?**

Pursuant to Rules 2.10 and 2.11 of the MMLR, any amendments made to the articles of association by listed companies must be submitted to Bursa Securities no later than 5 market days after the effective date of the amendment together with a letter of compliance. In relation to a checklist of compliance for such amendment, there is no requirement for submission of the same unless Bursa Securities requests for the same.

CHAPTER 8 – CONTINUING LISTING OBLIGATIONS

- (1) **A listed company grants a corporate guarantee to a third party for services rendered by the third party to the listed company's non-wholly owned subsidiary. Is the corporate guarantee subject to disclosure requirements under Guidance Note No. 4/2006 (“GN4”)?**

A corporate guarantee granted to a subsidiary by a listed company would not be subject to GN4 as it is provided pursuant to Rule 8.31(1)(iii) of the MMLR and not Rule 8.31(1)(ii). In the circumstances, the quarterly disclosure under paragraph 3.1 of GN4 is not applicable.

- (2) **Under Rule 8.31(2)(c) of the MMLR, a listed company must procure its shareholders' prior approval for any provision of financial assistance to an associated company where the aggregate amount provided compared to the net tangible assets of the group is equal to or exceeds 5%. In such circumstances, what is the prescribed content of the circular to be issued to the shareholders?**

The minimum content of a circular for purposes of seeking shareholders' approval for provision of financial assistance which is not a related party transaction is not specifically prescribed under the MMLR. However, a listed company can seek guidance from the minimum content prescribed for circulars in relation to transactions as set out under Appendix 10B of the MMLR.

- (3) **Pursuant to Rule 8.31(2)(a) of the MMLR, where a listed company or any of its subsidiaries provides financial assistance, the board of directors must ensure, amongst others, that the provision of financial assistance is fair and reasonable to the listed company. What would be considered as “fair and reasonable”?**

What would be considered as “fair and reasonable” is subjective and varies from case to case. To ascertain the fairness and reasonableness of the financial assistance granted, the board of directors is required to make an assessment of the circumstances and terms of the provision of financial assistance including comparisons with market practices. For instance, if the proposal is for a one-off lump sum payment to be given to a sub-contractor for services rendered when the market practice is typically for advances to be given by way of instalments, the board of directors should scrutinise the proposal to see whether there are exceptional circumstances to justify that such an advance is nonetheless fair and reasonable.

- (4) **If a listed company sells a significant part of its business for cash leaving no other business (“Sale”), will the listed company fall under Guidance Note No. 2/2006 (“GN2”) or Guidance Note No. 3/2006 (“GN3”)?**

The listed company above may fall under GN2 or GN3 or both depending on which criterion it triggers under GN2 and GN3 as a result of the Sale. For example, if as a result of the Sale, the listed company now has an insignificant business or operations and its assets consist of 70% or more of cash and/or short term investments, the listed company would fall under both GN2 and GN3. Under such circumstances, the listed company would have to comply with the stricter requirements as prescribed under GN3.

CHAPTER 9 – CONTINUING DISCLOSURE

- (1) **To what extent can a listed company disclose to the investors, press or analysts profit estimates / forecasts / internal targets / proposed projects / future developments (“Forecasts & Targets”)?**

A listed company can disclose the Forecasts & Targets provided that the disclosure adheres to the Corporate Disclosure Policy prescribed under the MMLR including the requirement that there should not be selective disclosure of the Forecasts & Targets to the investors, press or analysts prior to the release or simultaneous release, of the Forecasts & Targets through Bursa Link.

(2) Are key performance indicators (“KPIs”) considered internal targets which must comply with the disclosure obligations under the MMLR?

KPIs are regarded as internal targets and as such, any listed company which makes disclosures of its KPIs would need to ensure adherence to the disclosure obligations including Rule 9.16 and the requisite updates to be provided as part of the quarterly reports under the MMLR.

(3) Does the “agreement, arrangement, joint venture or collaboration” for the purpose of bidding for or securing a project or contract (“Venture”) include a project or contract which is in the ordinary course of business?

Yes. As such the listed company must comply with the obligations stipulated under the directive issued by Bursa Securities vide a letter dated 4 August 2006 in respect of any announcement made in relation to such a Venture.

(4) Company A and Company B have entered into an arrangement to acquire shares in Company C where Company A will take up an equity interest of 60% and the balance 40% will be taken up by Company B. Both Company A and B are listed on Bursa Securities. The arrangement involved Company C being appointed the sole distributor to market products in Malaysia which are produced by Company B. The arrangement is neither to bid nor secure a project/contract. Is Company A required to comply with Bursa Securities’ directive dated 4 August 2006 in relation to the announcement of any agreement, arrangement, joint venture or collaboration for the purpose of bidding for or securing a project or contract (“Venture”)?

No. The said directive is only for any Venture within the meaning stipulated in the directive. An arrangement to acquire securities in another company which does not come within the ambit of Venture as defined in the directive would not be subject to the said directive.

(5) Is a listed company required to make immediate disclosure of a notice issued pursuant to section 218 of the Companies Act, 1965 (“S. 218 Notice”)?

There is usually no requirement for an immediate announcement to be made by a listed company of a S. 218 Notice as this is merely a letter of demand. However, where a S. 218 Notice is considered to be material pursuant to Rule 9.03 of the MMLR based on the facts and circumstances of a particular listed company, the listed company must make an immediate announcement of the same.

(6) Does a listed company have to make an immediate announcement when its 49% associated company defaults in payment of either interest or principal sums but the associated company’s bankers do not issue any notices/demand letter?

Pursuant to Rules 9.03 and 9.04(l) of the MMLR and Guidance Note No. 5/2006, any such default of payments (as envisaged in the loan/credit facility agreement) including by an associated company of a listed company which is material (ie. vis-à-vis the group) would require immediate announcement irrespective of whether a notice or demand has been issued by the bankers.

- (7) **A winding-up petition is served on the subsidiary of a listed company. However, the winding-up petition has no financial or operational impact on the listed company and the listed company forms the view that there is no merit to the winding-up petition. Is the listed company still required to make an immediate announcement of the winding-up petition?**

Yes. Pursuant to Rule 9.19(20) of the MMLR, a listed company must make an immediate announcement of any commencement of winding-up proceedings against the listed company or any of its subsidiaries or major associated companies irrespective of whether :-

- the winding-up has financial or operational impact on the listed company;
- the listed company is contesting the winding-up petition or forms the view that there is no merit to the winding-up petition; or
- the listed company is in negotiation with the petitioner to arrive at a settlement arrangement.

- (8) **Does a listed company need to inform Bursa Securities when a listed company wants to utilise the balance of its initial public offerings (“IPO”) proceeds which have been allocated for a project as disclosed in the prospectus for another project?**

Pursuant to Rule 9.19(32) of the MMLR, a listed company is required to make an immediate announcement to Bursa Securities in respect of any change to the utilisation of proceeds raised from issuance of securities (including arising from IPO) that deviates by 5% or more from the original utilisation of proceeds.

- (9) **Rule 9.20 of the MMLR provides, amongst others, that any announcement with respect to corporate proposals which require the Securities Commission’s approval (“Corporate Proposals”) must be made by a corporate finance adviser that may act as a principal adviser under the Securities Commission’s Guidelines on Principal Advisers for Corporate Proposals (“Adviser”). Please clarify at what point of time, should an announcement be made of the Corporate Proposals i.e. prior to submission to Securities Commission, upon such submission or upon approval being obtained.**

Any announcement of the Corporate Proposals should be made by the Adviser upon the terms and conditions of the corporate proposals being finalised. Thereafter, pursuant to Rule 9.19(46) of the MMLR, any material development to the said announced Corporate Proposals including any variation to the Corporate Proposals, submission of the Corporate Proposals to the Securities Commission and receipt of the Securities Commission’s approval would require immediate announcements.

- (10) **Pursuant to item 3(h) of Appendix 9C, listed companies are required to set out in their annual report the particulars of the directors including the list of convictions for offences within the past 10 years other than traffic offences, if any. What is regarded as “convicted of an offence”?**

“Convicted of an offence” includes any finding of guilt or any order involving any finding of guilt by any court of competent authority in Malaysia or outside Malaysia in relation to any act or omission punishable under criminal law.

- (11) **In relation to the statement on internal audit function as required under item (31) of Appendix 9C, where should such statement be located in the annual report?**

There is no specific requirement for the location of the internal audit statement as long as the statement is clear and contains the information required.

- (12) **In relation to item (31) of Appendix 9C, when the internal audit is conducted in-house, should the cost be disclosed?**

Yes, the cost is to be disclosed regardless of whether the internal audit function is performed in-house or outsourced. Such cost should include all costs involved in performing the internal audit function.

CHAPTER 10 – TRANSACTIONS

- (1) **Are outstanding receivables of a related party deemed to be financial assistance by a listed company?**

“Financial assistance” is regarded as a transaction for purposes of Part E of Chapter 10 and is defined to include forgiving a debt or releasing or neglecting to enforce a financial obligation of another. In this regard, outstanding receivables of a related party which are written off or neglected to be enforced would be regarded as a related party transaction.

- (2) **Is the stepmother of a director of a listed company deemed a family member of that director and hence, a person connected with that director?**

Although a stepmother would not be regarded as a family member for purposes of the MMLR, a stepmother may still be regarded as a person connected with the director if she fulfils the other criteria of the definition of “person connected” as stipulated under Rule 1.01 of the MMLR.

CHAPTER 14 – DEALINGS IN SECURITIES

- (1) **During the closed period, a principal officer of the listed company transfers his shares in the listed company to his wife and the consideration is in-kind (as opposed to cash). Is this regarded as a dealing in securities and hence, require notification?**

“Dealing” is defined under Rule 14.02(b) of the MMLR to include any disposal of securities or any interest in securities. As such a transfer of a principal officer’s shares in the listed company to his wife without consideration or consideration in-kind would be regarded as dealing in securities under Chapter 14 of the MMLR and subject to the notification requirements set out in that chapter.

- (2) **A director must announce his dealings in securities within the timeframes stipulated under the MMLR. Should the director still proceed to make the announcement even if it is no longer within the timeframes prescribed under the MMLR?**

Yes. The director should still proceed to make the announcement even if it is no longer within the timeframes prescribed under the MMLR to mitigate the failure to comply with the MMLR.

- (3) **Where the dealings fall within the categories prescribed in Rule 14.06 of the MMLR, do the affected persons have to comply with the requirements in Chapter 14?**

It is to be noted that the categories of dealings under Rule 14.06 of the MMLR are only exempted from the restrictions in Rule 14.04 of the MMLR on dealings during closed period and Rule 14.05 of the MMLR which prohibits dealings in securities as long as the affected persons are in possession of price sensitive information.

Hence, the affected persons must still comply with the procedure for dealings outside closed period as prescribed under Rule 14.09 of the MMLR in respect of the categories of dealings under Rule 14.06 of the MMLR.

CHAPTER 15 – CORPORATE GOVERNANCE

- (1) **A listed company has 10 directors on board. However, there are only 3 independent directors. Does the listed company comply with Rule 15.02 of the MMLR or does the listed company have to appoint another independent director?**

Yes, the listed company would be in compliance with Rule 15.02 as the number nearest to $1/3^{\text{rd}}$ shall apply, which in this scenario would be 3 independent directors.

- (2) **It is noted that a director of a listed company must attend at least 50% of the total board meetings held during a financial year pursuant to Rule 15.05(3) of the MMLR (“50% Requirement”). What happens if a director fails to comply with the 50% Requirement? Will that particular director be deemed to have automatically vacated his office?**

Pursuant to the MMLR, the office of the director shall become vacant if the director fails to comply with the 50% Requirement. In this regard, the vacation of the office would be automatic and the listed company must make an immediate announcement of the vacation of office pursuant to Rule 15.05(3) of the MMLR.

- (3) **In relation to the requisite qualifications for the signatory under Rule 9.29 of the MMLR and a member of the audit committee under Rule 15.09 of the MMLR, if the person concerned fulfils the requirements set out in the said provisions or paragraph 7.1 of Guidance Note No. 9/2006 (“Said Qualifications”), does he still have to submit an application to Bursa Securities for approval?**

No. He does not have to submit any application to Bursa Securities for approval. The requirement to seek Bursa Securities’ approval is only necessary if the person concerned does not fulfil the Said Qualifications but is nonetheless considered by the listed company to have the requisite knowledge and experience that will enable him to discharge his obligations as a signatory or audit committee as if he had the Said Qualifications.

- (4) **In relation to Rule 9.29 of the MMLR where it is stated that the “signatory” must satisfy such other requirements as approved by Bursa Securities, what are the specific requirements that may be approved by Bursa Securities?**

The “signatory” must provide justification to Bursa Securities that the knowledge and experience that he has are adequate to enable him to discharge his role effectively as a signatory to the statutory declaration even though he does not have the Said Qualifications. This justification will be considered by Bursa Securities on a case-by-case basis.

- (5) **To whom should the application for approval under Rules 9.29 and 15.09 of the MMLR as referred to in Question (4) above be made?**

Any application should be made in writing to the Listing Division of Bursa Securities, addressed to the Head, Listing together with the necessary documents to support the application.

- (6) **In relation to the requirement to establish an internal audit function, can the function be outsourced to a group internal auditor who may be the internal auditor of the holding company, the subsidiary or subsidiary of the holding company?**

Yes, all these can be considered as outsourcing. The listed company, however, must always adhere to the requirements of “independence and objectivity”.

- (7) **With reference to Questions 3, 5 and 6 of the Questions and Answers issued on 28 January 2008, what are the requirements that must be complied with by the external party to whom the internal audit function is outsourced?**

This depends on who the external party is. Such party must always comply with whatever legal requirements imposed on it by the relevant bodies or which it is subject to, in offering its services as an internal auditor. For example, in the case of a member of the Malaysian Institute of Accountants, it would have to comply with the Institute's requirements. This would include the By-Laws (on Professional Ethics, Conduct and Practice).

CHAPTER 16 – TRADING HALT, SUSPENSION, WITHDRAWAL, DE-LISTING AND ENFORCEMENT

- (1) **If material information is announced during trading hours, for example a resolution in relation to a material corporate proposal rejected at an extraordinary general meeting which ended in the morning, will trading of securities of the listed company be suspended?**

Generally, if any announcement in relation to material corporate proposals including those stipulated under paragraph 2.0 of Guidance Note No. 14/2007 is released during trading hours, before 9 am, between 1.00pm, to 2.30pm and after 6.30pm, the securities of the listed company would be subject to imposition of trading halt by Bursa Securities (i.e. for the remaining period of the morning or trading session, as the case may be).