ADDITIONAL QUESTIONS AND ANSWERS RELATING TO THE LISTING REQUIREMENTS OF BURSA MALAYSIA SECURITIES BERHAD ("LR")

CHAPTER 6 – NEW ISSUES OF SECURITIES

(1) Pursuant to paragraph 6.30B of the LR, the total number of shares to be issued under a share scheme for employees ("ESOS") shall not exceed 15% of the issued and paid-up capital at any one time. How is this percentage calculated?

Where a listed issuer has issued a percentage out of the 15% allowed under paragraph 6.30B of the LR, for the following issue, the listed issuer 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 15% of its issued and paid up capital on 8 January 2007. PLC A has an issued and paid-up capital of RM100 million but arising from a rights issue implemented on 28 February 2007, the enlarged issued and paid-up capital is now RM120 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 RM10 million. Pursuant to paragraph 6.30B of the LR, 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	RM100 million
February 2007 (Issuance of new shares arising from rights issue – RM20 million)	RM120 million
December 2008 (Total issuance of ESOS – RM10 million)	RM130 million

ESOS that can be offered by PLC A in year 2009
= (15% x RM130 million) LESS shares already issued under the ESOS (ie. RM10 million)
= 9.5 million new shares

CHAPTER 7 – ARTICLES OF ASSOCIATION

(1) Arising from the changes introduced to the provisions under Chapter 7 of the LR, there is no longer a requirement for a listed issuer to incorporate in its articles of association the provision for vacation of the office of a director arising from non-attendance of more than 50% of the total board of directors' meetings held during a financial year ("50% Requirement"). However this requirement is still prescribed under paragraph 15.05(3) of the LR. Is there inconsistency in these requirements?

There is no inconsistency. Pursuant to paragraph 15.05(3) of the LR, the office of a director shall become vacant if the 50% Requirement is triggered. However, the listed issuers are no longer required to incorporate the 50% Requirement in their articles of association.

Notwithstanding that the 50% Requirement is not mandated to be incorporated in the articles of association pursuant to Chapter 7 of the LR, a listed issuer can choose to incorporate or maintain this requirement in its articles of association. In this regard, Chapter 7 merely prescribes the minimum content of the articles of association of listed issuers and listed issuers can incorporate other requirements in their Articles provided that these requirements are not in contravention of, amongst others, the LR.

(2) If a listed issuer undertakes amendments to its articles of association, is there a requirement for the listed issuer to submit a letter of compliance and checklist of compliance similar to the requirement of paragraph 3.06 of the LR?

Pursuant to paragraphs 2.10 and 2.11 of the LR, 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) Pursuant to paragraph 8.23(3)(c) of the LR, it is stipulated that the requirements under paragraph 8.23(1),(2) and (2A) are not applicable to a company which is registered as a scheduled institution with and supervised by Bank Negara Malaysia under the Banking and Financial Institution Act, 1989 ("BAFIA"). What are instances where a scheduled institution is regarded as being "supervised by Bank Negara Malaysia"?

A scheduled institution is regarded as being supervised by Bank Negara Malaysia where it is subject to any or all the provisions of Part V, VI, VII, VIII, IX, X and XIII of BAFIA pursuant to Section 24 of BAFIA .

(2) A listed issuer grants a corporate guarantee to a third party for services rendered by the third party to the listed issuer's non-wholly owned subsidiary. Is the corporate guarantee subject to disclosure requirements under Practice Note No. 11/2001 ("PN11")?

A corporate guarantee granted to a subsidiary by a listed issuer would not be subject to PN11 as it is provided pursuant to paragraph 8.23(1)(iii) of the LR and not paragraph 8.23(1)(ii). In the circumstances, the quarterly disclosure under paragraph 3.1 of PN11 is not applicable.

(3) What is a money lending company under paragraph 8.23 of the LR? Are corporate guarantees or loans granted to non-wholly owned subsidiaries and contractors regarded as money lending under the LR?

A money lending company is defined under paragraph 8.23 (2)(a)(ii) of the LR as a listed issuer or its subsidiary that lends or advances money in the ordinary course of business as a moneylender pursuant to the Moneylenders Act 1951 or otherwise. As such, provision of corporate guarantees or advances necessary to facilitate the ordinary course of business of the listed issuer or its subsidiary (i.e. for purposes of getting a contract or to enable a sub-contractor to commence work) would not be regarded as money lending operations.

(4) Under paragraph 8.23(2) of the LR, a listed issuer 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 LR. However, a listed issuer can seek guidance from the minimum content prescribed for circulars in relation to transactions as set out under Appendix 10B of the LR.

(5) Pursuant to paragraph 8.23(2)(a) of the LR, where a listed issuer 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 issuer. 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 in the listed issuer's housing development project when the market practice is typically for advances to be given by way of instalments and subject to certification of staggered work done by the sub-contractor, 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.

(6) Pursuant to paragraph 8.23(2)(e) of the LR, a money lending company must make quarterly disclosures of certain information as prescribed no later than 7 market days after the end of each quarter of a financial year ("Quarterly Disclosure"). A money lending company does not lend or advance any money in a particular quarter. Does it still have to make the Quarterly Disclosure?

In a situation where there is no new money lending activities in that particular quarter and no outstanding advances and/or loans from the previous quarters, then for subsequent Quarterly Disclosure thereafter, the listed issuer would only need to make a negative statement to that effect in its Quarterly Disclosure. If there are still outstanding advances and/or loans, the listed issuer is required to comply with paragraph 8.23(2)(e) of the LR.

(7) If a listed issuer sells a significant part of its business for cash leaving no other business ("Sale"), will the listed issuer fall under Practice Note No. 16/2005 ("PN16") or Practice Note No. 17/2005("PN17")?

The listed issuer above may fall under PN16 or PN17 or both depending on which criterion it triggers under PN16 and PN17 as a result of the Sale. For example, if as a result of the Sale, the listed issuer now has an insignificant business or operations and its assets consist of 70% or more of cash and/or short term investments, the listed issuer would fall under both PN16 and PN17. Under such circumstances, the listed issuer would have to comply with the stricter requirements as prescribed under PN17.

<u>CHAPTER 9 – CONTINUING DISCLOSURE</u>

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

A listed issuer can disclose the Forecasts & Targets provided that the disclosure adheres to the Corporate Disclosure Policy prescribed under the LR 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) The government linked companies are required to announce their key performance indicators ("KPIs"). Are the KPIs considered internal targets which must comply with the disclosure obligations under the LR?

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

(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 issuer 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 issuer 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 issuer 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 paragraph 9.03 of the LR based on the facts and circumstances of a particular listed issuer, the listed issuer must make an immediate announcement of the same.

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

Yes. Pursuant to paragraph 9.19(19) of the LR, a listed issuer must make an immediate announcement of any commencement of winding-up proceedings against the listed issuer or any of its subsidiaries or major associated companies irrespective of whether :-

- the winding-up has financial or operational impact on the listed issuer;

- the listed issuer is contesting the winding-up petition or forms the view that there is no merit to the winding-up petition; or
- the listed issuer is in negotiation with the petitioner to arrive at a settlement arrangement.

(7) Does a listed issuer need to inform Bursa Securities when a listed issuer 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 paragraph 9.19(31) of the LR, a listed issuer 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.

(8) Paragraph 9.20 of the LR 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 paragraph 9.19(45) of the LR, 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.

(9) Pursuant to item 3(h) of Part A, Appendix 9C, listed issuers 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.

(10) In relation to the statement on internal audit function as required under item (30) of Part A, 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.

(11) In relation to item (30) of Part A, 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 issuer?

"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 issuer 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 LR, 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 paragraph 1.01 of the LR.

CHAPTER 14 – DEALINGS IN SECURITIES

(1) During the closed period, a principal officer of the listed issuer transfers his shares in the listed issuer 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 paragraph 14.02(b) of the LR to include any disposal of securities or any interest in securities. As such a transfer of a principal officer's shares in the listed issuer to his wife without consideration or consideration in-kind would be regarded as dealing in securities under Chapter 14 of the LR 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 LR. Should the director still proceed to make the announcement even if it is no longer within the timeframes prescribed under the LR?

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

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

It is to be noted that the categories of dealings under paragraph 14.06 of the LR are only exempted from the restrictions in paragraph 14.04 of the LR on dealings during closed period and paragraph 14.05 of the LR 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 paragraph 14.09 of the LR in respect of the categories of dealings under paragraph 14.06 of the LR.

CHAPTER 15 – CORPORATE GOVERNANCE

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

Yes, the listed issuer would be in compliance with paragraph 15.02 as the number nearest to 1/3rd shall apply, which in this scenario would be 3 independent directors.

(2) It is noted that a director of a listed issuer must attend at least 50% of the total board meetings held during a financial year pursuant to paragraph 15.05(3) of the LR ("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 LR, 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 issuer must make an immediate announcement of the vacation of office pursuant to paragraph 15.05(3) of the LR.

(3) In relation to the requisite qualifications for the signatory under paragraph 9.27 of the LR and a member of the audit committee under paragraph 15.10 of the LR, if the person concerned fulfils the requirements set out in the said provisions or paragraph 7.1 of Practice Note No. 13/2002 ("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 issuer 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 paragraph 9.27 of the LR 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 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 paragraphs 9.27 and 15.10 of the LR 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 issuer, 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 <u>external</u> 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 issuer be suspended?

Generally, if any announcement in relation to material corporate proposals including those stipulated under paragraph 2.0 of Practice Note No. 20/2007 is released during trading hours, before 9 am, between 1.00pm, to 2.30pm and after 6.30pm, the securities of the listed issuer 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).