

BURSA MALAYSIA SECURITIES BERHAD**GUIDANCE NOTE 23****REQUIREMENTS RELATING TO PROSPECTUS AND ADVERTISING
RESTRICTIONS**

Details	Cross References
Effective date:	1 January 2022
	Rules 3.12A, 3.12C, 3.12D, 3.12H, 6.18B

1.0 Introduction

1.1 This Guidance Note sets out the following:

- (a) the circumstances where the Exchange may refuse to register a prospectus;
- (b) clarifications on the duty of disclosure in prospectus; and
- (c) advertising restrictions of a prospectus.

1.2 The requirements set out in this Guidance Note also apply to a listed corporation that prepares an abridged prospectus for a rights issue.

1.3 This Guidance Note must be read in conjunction with the Listing Requirements.

2.0 Circumstances where registration of prospectus may be refused

2.1 Rules 3.12A(1), 3.12D(2)(b) and 6.18B(1) of the Listing Requirements stipulate the requirement to register a prospectus, supplementary or replacement prospectus and abridged prospectus respectively, with the Exchange.

2.2 In this regard, the Exchange may refuse to register a prospectus if –

- (a) the prospectus does not comply with the Listing Requirements or the CMSA;
- (b) the prospectus contains any statement or information that is false or misleading, or from which there is a material omission;
- (c) the issue or offer of securities to which the prospectus relates does not comply with the Listing Requirements or the CMSA;
- (d) the application for listing and admission to the Official List, including the issue or offer of securities to which the prospectus relates -
 - (i) has not been approved by the Exchange; or

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- (ii) does not comply with any term or condition imposed by the Exchange; or
- (e) the applicant has contravened any provision of the securities laws or the Companies Act and such contravention would cast a doubt as to whether the applicant is suitable to make an issue or offer of securities or for admission to the Official List.

3.0 Clarifications on obligation to observe the duty of disclosure for prospectus

3.1 Under Rule 3.12C(1) of the Listing Requirements, an applicant, its promoters, directors, chief executive, Sponsor and adviser (collectively the “**said Person**”) must ensure that the prospectus prepared, submitted or issued pursuant to the Listing Requirements, among others –

- (a) is factual, clear, accurate, concise and contains sufficient information to enable investors to make informed investment decisions;
- (b) does not contain any material omission; and
- (c) is not false or misleading.

3.2 In determining whether a prospectus contains any statement or information that is false or misleading, or from which there is a material omission, the said Person must consider whether the prospectus contains information that investors and their professional advisers would reasonably require and expect to find in the prospectus, for the purpose of making an informed assessment of-

- (a) the assets and liabilities, financial position, profits and losses and prospects of the applicant;
- (b) the rights attaching to the securities; and
- (c) the merits of investing in the securities and the extent of the risk involved in doing so.

3.3 The information that investors and their professional advisers would reasonably require and expect to find in the prospectus under paragraph 3.2 above is information -

- (a) which is known to all or any of the said Person and the following persons:
 - (i) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (ii) a person who consented to be named in the prospectus as having made a statement –
 - (aa) that is included in the prospectus; or
 - (bb) on which a statement in the prospectus is based;
 - (iii) the following persons who consented to be named as such in the prospectus in relation to an issue or offer of securities:
 - (aa) a stockbroker;
 - (bb) an underwriter;

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- (cc) an auditor;
 - (dd) a banker; or
 - (ee) a lawyer;
 - (iv) a person who consented to be named in the prospectus as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraphs 3.3 (a)(ii) and (iii) above and is not a Sponsor, in relation to an issue or offer of securities; or
 - (b) which any of the persons referred to paragraph 3.3(a) above would have been able to obtain by making such enquiries as were reasonable in the circumstances.
- 3.4 Without prejudice to the generality of paragraphs 3.2 and 3.3 above, in determining the information that is required to be included in a prospectus, a said Person must have regard to -
- (a) the nature of -
 - (i) the securities; and
 - (ii) the business of the applicant;
 - (b) the persons likely to consider acquiring such securities;
 - (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors may reasonably be expected to consult; and
 - (d) whether the persons to whom an issue or offer of securities is to be made, are the holders of securities in the applicant, and if they are, to what extent (if any) relevant information has previously been given to them by the applicant under these Requirements or any law, if applicable, or otherwise.

4.0 Requirements relating to advertising restrictions

- 4.1 Rule 3.12H of the Listing Requirements stipulates that an applicant must not issue or publish any advertising notice unless the requirements as may be prescribed by the Exchange are complied.

Obligations prior to registration of prospectus

- 4.2 In this regard, an applicant may, before the registration of a prospectus, issue or publish an advertising notice if the following are complied with:
- (a) the consent of the Exchange has been obtained;
 - (b) all terms or conditions as may be imposed by the Exchange for its consent have been met; and
 - (c) the advertising notice only contains the prescribed information as set out in Part A of Annexure GN23-A.

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- 4.3 If the prospectus has been submitted to the Exchange for registration, the consent of the Exchange in paragraph 4.2(a) above is deemed given in the following circumstances, during the period after the prospectus has been submitted until registration of the prospectus:

No.	Activities	Conditions that must be met for the deemed consent
(a)	Presentations	<p>(i) The presentations, both oral and written, must be made by the applicant or persons authorised by the applicant to conduct the presentation (other than licensed dealers, exempt dealers, licensed investment advisers, licensed fund managers, exempt fund managers and their representatives acting on their own behalf).</p> <p>(ii) The presentations may only be attended by the categories of persons set out in Schedules 6 and 7 of the CMSA, members of the press and financial analysts.</p> <p>(iii) Any written materials circulated at the presentations may contain the prescribed information as set out in Part A of Annexure GN23-A and information on the profiles of the promoters, directors and applicant.</p> <p>(iv) Information provided in oral form may, in addition to the prescribed information as set out in subparagraph (iii) above, include –</p> <p>(aa) the proposed utilisation of funds;</p> <p>(bb) statistics about the offering including pro forma net tangible assets or net assets, earnings per share, price-earnings ratio;</p> <p>(cc) the historical performance of the applicant; and</p> <p>(dd) forward looking statements backed by proper assumptions.</p>
(b)	Announcements made upon obtaining underwriting mandate	<p>(i) The announcements must be made by the parties to the underwriting agreement.</p> <p>(ii) The announcements must pertain to agreements which will be, or have been, signed.</p> <p>(iii) Any written information on the issue or offer of securities may contain the prescribed information as set out in Part A of Annexure GN23-A and information on the profiles of the promoters, directors and applicant.</p>

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No.	Activities	Conditions that must be met for the deemed consent
(c)	Announcements made upon the joint signing of underwriting agreements	(i) The announcements must be made by the parties to the agreement. (ii) The announcements must be confined to agreements which will be, or have been, signed. (iii) Any written information relating to the issue or offer securities may contain the prescribed information as set out in Part A of Annexure GN23-A and information on the profiles of the promoters, directors and applicant.
(d)	Concise statements	Any notice which refers to a proposed issue or offer of securities may contain the prescribed information as set out in Part A of Annexure GN23-A and information on the profiles of the promoters, directors and applicant.

4.4 The deemed consent of the Exchange in paragraph 4.3 above is granted on the basis that the activities are not conducted in a way that encourage retail investors to make investment decisions without the benefit of a prospectus.

4.5 For the avoidance of doubt, the consent of the Exchange is not required for announcements made by a Sponsor or an applicant as to whether the issue was undersubscribed or oversubscribed, and the extent of the undersubscription or oversubscription.

Obligations after registration of prospectus

4.6 An applicant may, after the registration and lodgement of a prospectus with the Exchange and the Registrar respectively, issue or publish an advertising notice that contains information disclosed in the prospectus including the prescribed information as set out in Part B of Annexure GN23-A.

ANNEXURE GN23-A**Part A****Contents of advertising notice issued or published prior to registration of prospectus**
(paragraph 4.2(c); 4.3(a)(iii); 4.3(b)(iii), 4.3(c)(iii) and 4.3(d))

- (1) The name of the applicant.
- (2) A concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the applicant.
- (3) The names, addresses and, where appropriate, occupations of the directors or proposed directors.
- (4) The names and addresses of stockbrokers, underwriters and Sponsor in relation to the proposed issue or offer of securities.
- (5) In the case of debentures, the name and address of the trustee for debenture holders.
- (6) If applicable, a brief description of the listing status of the applicant on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the applicant on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the applicant will be listed.
- (7) A statement that a prospectus is in the course of preparation and that an issue or offer of securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus.
- (8) Such other information or matters which the Exchange may specify.

Part B**Contents of advertising notice issued or published after registration and lodgement of prospectus**
(paragraph 4.6)

- (1) A statement that a prospectus in relation to the applicant's securities has been registered.
- (2) The date of the prospectus.
- (3) A statement specifying where a copy of the prospectus can be obtained.
- (4) A statement that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in, and accompanying, a copy of the prospectus.
- (5) Such other information or matters which the Exchange may specify.

[End of Annexure]