

MAIN MARKET AND ACE MARKET

ISSUERS COMMUNICATION

GUIDANCE ON DISCLOSURES RELATING TO MATERIAL CONTRACTS AND PREVENTION OF SELECTIVE DISCLOSURE OF MATERIAL INFORMATION (ICN 3/2017)

[Issuance Date: 31 October 2017]

1. INTRODUCTION

- 1.1 Bursa Malaysia Securities Berhad (“Bursa Securities”) has in place a sound and robust disclosure framework under the Main Market Listing Requirements and ACE Market Listing Requirements (collectively the “LR”) which addresses both periodic and continuing disclosures, with the aim of maintaining market integrity and safeguarding investor protection. In this regard, accurate, timely and complete disclosures of material information are key to a fair and orderly market in the trading of securities. The LR imposes various continuing disclosure requirements on a listed issuer including the obligation to make immediate announcement of any material information.

In this regard there are 2 types of material disclosure requirements under the LR. First is where a listed issuer must announce any information which has been predetermined under the LR to be material. Secondly, for material events or information which have not been predetermined under the LR, the listed issuer must undertake a materiality assessment under the LR to determine whether an announcement is required to be made immediately to Bursa Securities.

- 1.2 In making the assessment whether an event or information is material for the purposes of disclosure, paragraph/Rule 9.03(2) of the LR sets out the following general principle:

Information is considered material if it is reasonably expected to have a material effect on:

- (a) the price, value or market activity of any of the listed issuer’s securities; or
- (b) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.

Information which may have a material effect on the above may include information which:

- (a) concerns the listed issuer’s assets and liabilities, business, financial condition or prospects;
- (b) relates to dealings with employees, suppliers, customers and others;
- (c) relates to any event affecting the present or potential dilution of the rights or interests of the listed issuer’s securities; or
- (d) relates to any event materially affecting the size of the public holding of its securities.

- 1.3 Bursa Securities had, in July 2012, issued a Corporate Disclosure Guide (“**CD Guide**”) which clarifies and illustrates the application of disclosure requirements under the LR through providing best practices, guidance and illustrations. Among others, the CD Guide provides guidance on:
- (a) when and what to announce in relation to procurement of material contracts¹; and
 - (b) how to deal with journalist, analyst and fund managers to avoid selective disclosure of material information².

Based on our observations, we find that listed issuers’ disclosure practices in some of these areas could be further improved, especially on the following:

- (i) timeliness and adequacy of disclosure of award of material contracts in the ordinary course of business; and
 - (ii) prevention of selective disclosure of material information to certain stakeholders or third parties.
- 1.4 Thus, this ICN 3/2017 serves to provide further guidance and illustrations to listed issuers with the aim of improving their practices in these areas and enhance the standards of disclosure and transparency in the marketplace.

¹ *Please refer to sections 1.12(a), 1.15 and 2.6(a) of the CD Guide*

² *Please refer to sections 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.24 and 3.25 of the CD Guide*

**A. GUIDANCE ON ANNOUNCEMENT OF AWARD OF MATERIAL CONTRACTS
(INCLUDING CONTRACTS AWARDED IN THE ORDINARY COURSE OF BUSINESS)**

1. WHEN SHOULD A LISTED ISSUER ANNOUNCE AN AWARD OF MATERIAL CONTRACT?

- ❖ Immediately upon receipt of an award of the material contract (i.e. the contract that is reasonably expected to have a material impact on the listed issuer's financial performance or operations and consequently on the price, value or market activity of the listed issuer's securities or decision of an investor or securities' holder)

- 1.1 In making the assessment of whether an event or information is material for the purposes of announcement, it is important for the listed issuer to take into account relevant factors such as the following:
- (a) the anticipated impact of the information on the listed issuer's entire scope of activities;
 - (b) the anticipated impact of the information on the listed issuer's financial position or performance; or
 - (c) the relevance of the information on the factors that determine the price of the listed securities.
- 1.2 A listed issuer is required to make an immediate announcement of any contract awarded to it (including a contract awarded in the ordinary course of business) if it reasonably expects the contract to have a material impact on its financial performance or operations and consequently to have a material effect on:
- (a) the price, value or market activity of the listed issuer's securities; or
 - (b) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.
- 1.3 The announcement of a material contract must also be disclosed in a manner to ensure thorough public dissemination which allows equal and timely access of the information to the market¹.

¹ *"paragraph/Rule 9.08(5) of the LR" states that any public disclosure of material information must be made by an announcement first to the Exchange or simultaneously to the Exchange, the press and newswire services. For the avoidance of doubt, a listed issuer must not release any material information to the media even on an embargoed basis until it has given the information to the Exchange.*

2. HOW TO DETERMINE WHETHER A CONTRACT (INCLUDING CONTRACT IN THE ORDINARY COURSE OF BUSINESS) IS MATERIAL?

- ❖ Generally, a contract is deemed material if the value of the contract is 10% or more of the listed issuer's latest annual published consolidated revenue.

2.1 In determining the materiality of a contract, a listed issuer should assess the value of the contract relative to the annual revenue of the listed issuer. As a general guide, a contract is deemed material if the value of the contract is expected to be 10% or more of the listed issuer's latest annual published consolidated revenue.

2.2 Illustration whether an immediate announcement is required for an award of contract.

ILLUSTRATION

PLC Bhd has secured a contract in the ordinary course of business for the amount of RM30 million to be delivered over a period of 3 years. PLC Bhd's latest consolidated audited revenue stands at RM250 million. Should an announcement be made given that the value of the contract compared to the published revenue is approximately 12%?

A:

Yes, an immediate announcement should be made given that the contract is more than 10% of the latest published consolidated audited revenue of PLC Bhd regardless that it is over a period of 3 years.

2.3 Where the value of a contract is expected to be less than 10% of the listed issuer's latest annual published consolidated revenue but the listed issuer is of the view that the contract would have a material impact on the price, value or market activities of its securities or the decision of its securities holders or investors in determining their choice of action, then the listed issuer must make an immediate announcement on the award of the contract.

3. WHAT SHOULD A LISTED ISSUER DO WHEN ANNOUNCING A MATERIAL CONTRACT?

- ❖ Disclose sufficient information about the contract for investors to assess the financial and operational impact on the listed issuer
- ❖ Avoid being bound by non-disclosure or confidentiality obligations that defeats the disclosure obligations under the LR
- ❖ Refrain from promotional disclosure which may mislead investors

3.1 Once a listed issuer has determined that a contract is material and an announcement should be made, such announcement should include, at least the following information:

- Date of award and acceptance of the contract;
- Details of the party that awarded the contract;
- Description/nature of the contract;
- Salient terms of the contract such as the value of the contract, tenure of the contract including commencement and expiry dates, and renewal terms (if any);
- The financial impact of the contract on the group. Where the financial impact cannot be determined with certainty/quantified, an explanation of the reasons for non-disclosure of the impact together with sufficient information for investors to assess the financial impact themselves;
- Risk in relation to the contract; and

- Whether the directors, major shareholders and/or persons connected with them have any interest, direct or indirect, in the contract, and the nature and extent of their interests.

3.2 As disclosure of material information in a timely manner is key to a transparent market, a listed issuer must avoid putting itself in a position where it is bound by non-disclosure clauses or confidentiality obligations that may defeat its obligation to disclose material information on an immediate basis. In addition, the disclosure of a material contract must also comply with Paragraph/Rule 9.12 of the LR² where the listed issuer must refrain from promotional disclosure activity which may mislead investors or cause unwarranted price movement in the listed issuer's securities.

3.3 Examples of announcements of award of material contracts

EXAMPLE 1 – AWARD OF CONTRACT WITH A VALUE

PLC Bhd (the “Company”) and its subsidiary companies (“Group”) Award of contract as Contractor for routine maintenance work

“1. Introduction

The Board of Directors of PLC Bhd is pleased to announce that its wholly owned subsidiary company ABC Sdn Bhd has on 8 June 2017 received and accepted a letter of award from XYZ Berhad to undertake routine maintenance work relating to civil, mechanical & electrical work orders along the XYZ Expressways (“Contract”).

2. Salient terms

The salient terms of the Contract are as follows:

- (i) The tenure of the Contract is 5 years from 1 July 2017 to 30 June 2022;
- (ii) The Contract can be renewed upon expiry subject to the approval of the relevant authorities; and
- (iii) The total estimated value of the Contract is approximately RM750 million for the abovementioned duration.

3. Financial effects

The Contract will not have any effect on the share capital and shareholding structure of PLC Bhd. The Contract, however, is expected to contribute positively to the earnings and net assets per share of PLC Bhd for the financial years ending 31 December 2017 onwards until the expiry of the Contract.

4. Risks

The risk factors affecting the Contract includes changes in economic, political and regulatory environment and operational risks such as completion risk and shortage of materials and skilled labour which the Group would take appropriate measures to minimise.

5. Directors’ and Major Shareholders’ Interest

None of the Directors, major shareholders and persons connected to them has any interest, direct or indirect, in the Contract.

This announcement is dated 8 June 2017.”

² “*paragraph/Rule 9.12(1) of the LR*” states that a listed issuer must refrain from promotional disclosure activity in any form whatsoever or howsoever which may mislead investors or cause unwarranted price movement and activity in a listed issuer's securities.

EXAMPLE 2 AWARD OF CONTRACT WHERE NO CONTRACT VALUE HAS BEEN STIPULATED BUT IS EXPECTED TO BE MORE THAN 10% OF THE LISTED ISSUER'S LATEST ANNUAL PUBLISHED CONSOLIDATED REVENUE

PLC Bhd

AWARD FOR THE PROVISION OF HOOK UP, COMMISSIONING AND TOPSIDE MAJOR MAINTENANCE SERVICES FOR 2016 TO 2021

“1. Introduction

PLC Bhd is pleased to announce that Subsid Sdn Bhd (“SSB”), a wholly-owned subsidiary of PLC Berhad, (“the Company or PLC”) has been awarded a contract by OG Sdn. Bhd. (“OGSB”) on 21 June 2016 for the Provision of Hook Up, Commissioning and Topside Major Maintenance Services from 2016 to 2021 (“Contract”).

2. Salient terms

The salient terms of the Contract are as follows:

- (i) The duration of the Contract is for five (5) years effective from 1 July 2016 and will expire on 30 June 2021.
- (ii) The Contract is on a ‘call-out’ basis whereby work orders will be issued at the discretion of OGSB based on the schedule of rates as set forth in the Contract. As such, there is no firm value for the Contract. The Company will make subsequent announcements once the value of each work order is received and confirmed.

3. Financial effects

The Contract is not expected to contribute to the earnings and net assets of PLC and its group of companies (“Group”) for the financial year ending 30 June 2016. However, the Contract is expected to contribute positively to the earnings and net assets of the Group for the financial years ending 30 June 2017 to 2021. The Contract will not have any effect on the share capital and shareholding structure of PLC.

4. Risks

Risk factors affecting the award include execution risks such as availability of skilled manpower and materials, changes in prices of materials, changes in political, economic and regulatory conditions. Throughout the years, PLC has established its track record and expertise to undertake these projects. Notwithstanding this, PLC shall ensure strict compliance with safety and operational procedures in the execution of the Contract requirements.

5. Directors’ and Major Shareholders’ Interest

None of the Directors and/or major shareholders and/or persons connected with the Directors and/or major shareholders of PLC have any direct or indirect interest, in the Contract.

This announcement is dated 21 June 2016.”

B. GUIDANCE ON PREVENTION OF SELECTIVE DISCLOSURE OF MATERIAL INFORMATION

1. CONSEQUENCES OF SELECTIVE DISCLOSURE...

- ❖ Selective disclosure happens when a material information that has not been made public, is released to a single person or a limited group
- ❖ Creates uneven playing field for investors
- ❖ Undermines investor confidence in the integrity of our securities market

1.1 A listed issuer must ensure that no disclosure of material information is made on an individual or selective basis to analysts, shareholders, journalists or other persons unless such information has previously been fully disclosed and disseminated to the public via Bursa LINK¹. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts, shareholders, journalists or others, it must be publicly disseminated as promptly as possible. In this respect, any public disclosure of material information must be made by an announcement first to Bursa Securities or simultaneously to Bursa Securities, the press and newswire services. For the avoidance of doubt, a listed issuer must not release any material information to the media even on an embargoed basis until it has given the information to Bursa Securities².

1.2 Generally information which is more specific is likely to be material and for that reason, listed issuers should not disclose specific data, least of all financial information such as sales and profit figures, to a limited group of investors.

In determining whether the information is required to be announced under paragraph/Rule 9.03 of the LR³, it is not possible to affix a percentage or quantify the amount of change in price, value or market activity as this will likely vary from one listed issuer to another. Precisely what will constitute price-sensitive information will vary from listed issuer to listed issuer, depending on a variety of factors such as the listed issuer's size, developments in its recent past and activity in its sector. Market sentiments about a particular sector may also affect the sensitivity of an item of information with respect to the price, value or market activity of a listed issuer's securities.

1.3 Whilst maintaining good relationships with parties such as journalists, analysts and fund managers is important, listed issuers must ensure fairness and parity in access to material information and hence, that avoid putting any party in an unfair advantage by selectively disclosing to certain individual or group material information regarding the business and affairs of the listed issuer.

1.4 Selective disclosure of material information creates an uneven playing field for investors, allowing some investors to benefit from such information before others. Selective disclosure undermines investor confidence in the integrity of our securities market, as the recipients of the selectively disclosed information are given an advantage over other investors who learn of the information only if, and when, the listed issuer releases such information via Bursa LINK.

¹ Please refer to Paragraph 9.08(2) of the LR

² Please refer to Paragraph 9.08(5) of the LR

³ Information is considered material if it is reasonably expected to have a material effect on:
(a) the price, value or market activity of any of the listed issuer's securities; or
(b) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.

2. WHAT IF MATERIAL INFORMATION HAS BEEN INADVERTENTLY DISCLOSED?

- ❖ Immediately release the material information via Bursa LINK
- ❖ Simultaneously post the material information on listed issuer's corporate website

- 2.1 When a listed issuer has inadvertently disclosed non-public material information to a limited group of stakeholders, it must immediately release this information via Bursa LINK. Simultaneously with, or immediately after releasing the information via Bursa LINK, the listed issuer must post the information on its corporate website. Posting material information on the listed issuer's website without releasing the information to Bursa LINK first or simultaneously is insufficient and would be in breach of the LR.

3. Examples of Material Information which must not be selectively disclosed

Examples of material information which must not be selectively disclosed, which is not exhaustive include the following:

- ❖ New issues of securities;
- ❖ Acquisition or disposal of assets;
- ❖ Schemes of compromise, arrangement, amalgamation and reconstruction;
- ❖ Directive/policy changes by the authorities/regulators that directly or indirectly impacts the business and prospects of a listed issuer;
- ❖ Award of material contracts in the ordinary course of business;
- ❖ Revenue and profit projections;
- ❖ Proposed capital repayment and dividend distribution;
- ❖ Profit guidance;
- ❖ Listing of subsidiary on an exchange
- ❖ The commencement of or the involvement in litigation and any material development arising from such litigation.
- ❖ Major shareholders' intention to privatise or sell-out.

4. BEST PRACTICE IN CONDUCTING EXTERNAL MEETINGS?

- ❖ Release announcement and prepared information or materials via Bursa LINK before or concurrent with the commencement of External Meetings
- ❖ Hold External Meetings after trading hours or alternatively request for a trading suspension if External Meetings are held during trading hours

- 4.1 When a listed issuer holds meetings, briefings or conferences ("**External Meetings**") with journalists, analysts, fund managers, institutional investors or other external parties, the listed issuer should consider the following:
- (i) Concurrently with, or before, the commencement of the External Meetings, release its announcement and any prepared information or materials (such as slides, speeches, questions and answers) via Bursa LINK, and post them on its corporate website.

- (ii) Hold the External Meetings after trading hours, as well as release the prepared information or materials in the manner as suggested in (i) above.
- (iii) Assess the necessity of requesting for a suspension particularly where the External Meetings are held during trading hours and release/announcement of unpublished material information concurrently or prior to the said meeting.
- (iv) If a question touches on non-public material information, state that the listed issuer is unable to respond or comment at the time and that an appropriate announcement will first be made to Bursa Securities before it responds.
- (v) When commenting on draft reports/financial analysis prepared by 3rd parties:
 - (a) Comment on or correct errors in factual information which may mislead the market.
 - (b) No response is ordinarily required in the case of an opinion predicting future sales, earnings or other quantitative data unless such report is manifestly based on or contains erroneous information, or is wrongly attributed to the listed issuer⁴.
 - (c) Avoid amending draft reports/financial analysis if doing so involves providing non-public material information. If fundamental erroneous or misleading information is detected, inform the author that the draft report//financial analysis is erroneous or misleading and should not be released in the present form.
 - (d) Avoid providing forecast or projections of revenue, earnings or other profit indicators.
- (vi) Keeping to a minimum the number of persons authorised to speak on its behalf at the External Meetings.
- (vii) Prior to the External Meetings, the designated person (refers to a senior officer who takes overall responsibility for ensuring compliance with the disclosure obligations under the LR) should brief the authorised spokesperson on their role and what they may disclose at the External Meetings.
- (viii) Keeping accurate records of the External Meetings and reviewing the records to ensure the External Meetings do not contain undisclosed material information.

⁴ "paragraph 9.10(3) of the LR" states that in the case of a rumour or report predicting future sales, earnings or other quantitative data, no response from the listed issuer is ordinarily required. However, if such a report is manifestly based on or contains erroneous information, or is wrongly attributed to the listed issuer, the listed issuer must respond promptly to the supposedly factual elements of the rumour or report as required under paragraphs 9.09 and 9.10 of the LR. In addition, the listed issuer must include in the announcement a statement to the effect that the listed issuer itself has made no such prediction and currently knows of no facts that would justify making such a prediction.

5. Case studies on selective disclosures of material information

ILLUSTRATION 1 – SELECTIVE DISCLOSURE OF FINANCIAL RESULTS

ABC Bhd gave a briefing to an analyst from a stock-broking firm in respect of its financial results for the 6 months' period which ended about a month ago ("Half-Yearly Results"). At the time of the briefing, the financial results have not been released to the public yet. Three days later, the stock-broking firm published a report ("Analyst Report") on the firm's "expectations" for ABC Bhd's Half-Yearly Results. The day after the publication of the Analyst Report, ABC Bhd released its Half-Yearly Results, which corresponds closely to the figures published in the Analyst Report.

What ABC Bhd should have done:

- Submit its Half-Yearly Results via Bursa LINK before or simultaneously with analyst briefing; and
- Post the prepared material/information/slides (which must not incorporate material information which has yet to be released via Bursa LINK) on its corporate website before or concurrently with the analyst briefing.

ILLUSTRATION 2 – SELECTIVE DISCLOSURE OF INFORMATION AFFECTING LISTED ISSUERS' BUSINESS

ABC Bhd had disclosed to an analyst that in 2 weeks' time, it shall be compulsory under the law for the renewal of all motor-vehicle licenses to be performed online, via a portal which is operated and owned by ABC Bhd. This was subsequently disclosed in a report published the next day by the analyst, causing a substantial increase in the price of ABC Bhd shares. The day after the publication of the report, ABC Bhd announced its appointment by the relevant authority as the exclusive provider of the service relating to the online renewal of motor-vehicle license ("Appointment").

What ABC Bhd should have done:

- Submit its announcement on the Appointment via Bursa LINK before or simultaneously with the meeting with the analyst; and
- Post the prepared material/information/slides (which must not incorporate material information which has yet to be released via Bursa LINK) on its corporate website before or concurrently with the analyst briefing.

ILLUSTRATION 3 – SELECTIVE DISCLOSURE ON NEW BUSINESS VENTURE

ABC Bhd held a press conference during trading hours, on its partnership with another unlisted corporation in relation to a new business venture that is expected to have a material effect on its future earnings (“Partnership”). The Partnership was reported in various newspapers. However, ABC Bhd only announced details of the Partnership via Bursa LINK, at 6.00 p.m. on the same day, after the press conference.

What ABC Bhd should have done:

- Request for suspension of trading of its securities before the commencement of the press conference; and
- Submit the announcement on the Partnership via Bursa LINK before or simultaneously with the commencement of the press conference; and
- Post the prepared material/information/slides on its corporate website before or concurrently with the press conference.

A summary of what ABC Bhd should have done (for all the above illustrations)

	Submit announcement via Bursa LINK before or simultaneously with the commencement of the relevant External Meeting	Post prepared material/ information on corporate web-site before or concurrently with the External Meeting	Request for suspension of trading before the External Meeting (if held during trading hours)
Illustration 1	√	√	-
Illustration 2	√	√	-
Illustration 3	√	√	√

[End]