

## BURSA MALAYSIA SECURITIES BERHAD

## PRACTICE NOTE NO. 17/2005

CRITERIA AND OBLIGATIONS OF PN17 COMPANIES PURSUANT TO  
PARAGRAPH 8.14C OF THE LISTING REQUIREMENTS

<u>Details</u>	<u>Cross References</u>
<u>Effective date:</u> 3 January 2005	<u>Paragraphs 8.04, 16.02 and 16.11</u>
<u>Revision date:</u> 3 August 2009	

~~Issued in relation to paragraphs 8.14C, 16.02 and 16.09 of the Listing Requirements;~~

~~And~~

~~Pursuant to paragraph 2.08 and 2.19 of the Listing Requirements.~~

## 1.0 Introduction

1.1 This Practice Note sets out, amongst others, the following:-

- (a) the criteria in relation to the financial condition and level of operations of a listed issuer, ~~which if triggered will give rise to an obligation for the listed issuer the fulfillment of one or more of which will require a listed issuer to~~ comply with the provisions of this Practice Note ~~(a listed issuer which fulfils one or more of the aforesaid criteria shall hereinafter be referred to as "an Affected Listed Issuer"); and~~
- (b) the requirements that must be complied with by ~~an Affected Listed Issuer~~ a PN17 Company.

~~1.2 Nothing in this Practice Note shall be read to restrict the generality of paragraph 8.14C of the Listing Requirements.~~

~~1.3 The provisions of this Practice Note are in amplification and not in derogation of the obligations of a listed issuer as contained in the Listing Requirements.~~

## 2.0 Criteria

2.1 ~~Pursuant to paragraph 8.14C(2) of the Listing Requirements, the Exchange prescribes the following criteria (hereinafter referred to as the "Prescribed Criteria"), the fulfillment of one or more of which Pursuant to paragraphs 8.04(2) of the Listing Requirements, where a listed issuer triggers any one or more of the following Prescribed Criteria will require a listed issuer to it must~~ comply with the provisions of paragraph 8.14C04 and this Practice Note:-

- (a) the shareholders' equity of the listed issuer on a consolidated basis is ~~equal to or less than 25% or less~~ of the issued and paid-up capital ~~(excluding treasury shares)~~ of the listed issuer and such shareholders' equity is less than RM40 million~~the minimum~~

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~~issued and paid-up capital as required under paragraph 8.16A(1) of the Listing Requirements;~~

- (b) receivers ~~and~~/or managers have been appointed over the asset of the listed issuer, its subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis;
- (c) a winding up of a listed issuer's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis;
- (d) the auditors have expressed an adverse or disclaimer opinion in the listed issuer's latest audited ~~accounts~~ financial statements;
- (e) the auditors have expressed a modified opinion with emphasis on the listed issuer's going concern in the listed issuer's latest audited ~~accounts~~ financial statements and the shareholders' equity of the listed issuer on a consolidated basis is ~~equal to or less than 50% or less of~~ the issued and paid-up capital (excluding treasury shares) of the listed issuer;
- (f) a default in payment by a listed issuer, its major subsidiary or major associated company, as the case may be, as announced by a listed issuer pursuant to Practice Note ~~No 1/2004~~ and the listed issuer is unable to provide a solvency declaration to the Exchange;
- (g) the listed issuer has suspended or ceased: -
  - (i) all of its business or its major business; or
  - (ii) its entire or major operations,
 for any reasons whatsoever including, amongst others, due to or as a result of: -
  - (aa) the cancellation, loss or non-renewal of a licence, concession or such other rights necessary to conduct its business activities;
  - (bb) the disposal of the listed issuer's business or major business; or
  - (cc) a court order or judgment obtained against the listed issuer prohibiting the listed issuer from conducting its major operations on grounds of infringement of copyright of products etc; or
- (h) the listed issuer has an insignificant business or operations.

2.2 For the purposes of this Practice Note, unless the context otherwise requires: -

- (a) ~~the components of "shareholders' equity" shall be as prescribed under the approved accounting standards of the Malaysian Accounting Standards Board~~ refers to the equity attributable to equity holders of the listed issuer;
- (b) **"total assets employed"** ~~shall must~~ be based on the listed issuer's latest audited or unaudited ~~accounts~~ financial statements;
- (c) in relation to paragraph 2.1(g), **"major"** means such proportion that contributes or generates 70% or more of the listed issuer's revenue on a consolidated basis based on its latest annual audited or unaudited ~~accounts~~ financial statements; ~~and~~
- (d) **"insignificant business or operations"** means business or operations which generates revenue on a consolidated basis that represents 5% or less of the issued

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and paid-up capital (excluding any redeemable preference shares and treasury shares) of the listed issuer (~~hereinafter referred to as~~ "**Capital**") based on its latest annual audited or unaudited ~~accounts~~ financial statements.

For the purpose of computation, the following ~~shall apply~~ applies:-

- (i) "**revenue on a consolidated basis**" ~~shall~~ comprises of the revenue of the listed issuer, its subsidiaries, as well as revenue from the listed issuer's associated companies, calculated on a proportionate basis, based on the listed issuer's equity holding in the associated companies; and
- (ii) where there is/are a change/changes to the Capital in that financial year, the weighted average Capital for that financial year ~~shall~~ must be used. The weighted average Capital means the total amount of the Capital at the beginning of the financial year, adjusted by the amount of increase or reduction in the Capital during that financial year multiplied by a time-weighting factor. The time-weighting factor is the number of days that the specific Capital is outstanding as a proportion of the total number of days in that financial year.

Example - Weighted Average of Capital for financial year ended 31 December 2xx1

		Issued and Paid up Capital (RM)
1 January 2xx1	Balance	60,000,000
1 June 2xx1	Issue of 10,000,000 new shares for cash	70,000,000
1 Dec 2xx1	Issue of 12,000,000 new shares for cash	82,000,000

Computation of weighted average:

$$(60,000,000 \times 151/365) + (70,000,000 \times 183/365) + (82,000,000 \times 31/365) = 66,882,185$$

(e) "**net profit**" means the net profit after minority interest and excludes one off items, such as the following:

- (i) interest waiver;
- (ii) negative goodwill credited to income statement;
- (iii) gain/loss arising from sale of investment in associated companies/ subsidiaries or land and building; and
- (iv) restructuring cost.

2.3 Paragraph 2.1-(h) ~~shall not be~~ is not applicable to closed-end funds, real estate investment trusts, exchange traded funds, ~~and infrastructure project companies~~ corporations which have not completed and commenced operations on their infrastructure project(s) and special purpose acquisition companies.

~~For the purpose of this paragraph, "infrastructure project" shall be as defined in the Commission's Guidelines on the Offering of Equity and Equity-Linked Securities.~~

**3.0 Regularisation Plan**

3.1 Pursuant to paragraph 8.04(3) of the Listing Requirements, a PN17 Company must regularise its condition by undertaking a regularisation plan. In this regard, a PN17 Company and its Principal Adviser must ensure that the regularisation plan -

- (a) is sufficiently comprehensive and capable of resolving all problems, financial or otherwise that had caused the PN17 Company to trigger the Prescribed Criteria;
- (b) enables the PN17 Company to regularise its financial condition and level of operations, such that the PN17 Company no longer triggers any of the Prescribed Criteria; and
- (c) is fair and reasonable to the PN17 Company and its shareholders and will increase shareholder value.

**3.04.0 Disclosure obligations of the Affected Listed Issuer PN17 Company**

3.14.1 Pursuant to paragraph 8.14C(2)8.04(3)(b) of the Listing Requirements, an Affected Listed Issuer a PN17 Company must comply with the following disclosure requirements announce to the Exchange:-

- (a) ~~announce the following, on an immediate basis (hereinafter referred to as "the First Announcement") upon the Affected Listed Issuer, fulfilling PN17 Company triggering one or more of the Prescribed Criteria:-~~
  - (i) that the listed issuer is an ~~Affected Listed Issuer~~ a PN17 Company pursuant to this Practice Note;
  - (ii) the ~~obligations of the listed issuer's~~ obligations pursuant to this Practice Note;
  - (iii) the consequences of non-compliance with such obligations; and
  - (iv) the status of the listed issuer's ~~regularisation plan, to comply with the Obligation to Regularise (as defined in paragraph 8.14C(2)(a) of the Listing Requirements)~~ or the status of its endeavours to formulate such a plan, whichever is applicable, or where neither a plan nor any endeavour to formulate such a plan has been undertaken, an appropriate negative statement to such effect;
- (b) within 3 months from the First Announcement, on whether the regularisation plan will result in a significant change in the business direction or policy of the PN17 Company;
- (c) ~~announce~~ the status of its regularisation plan as referred to in paragraph (a)(iv) above and the number of months to the end of the relevant timeframes referred to in paragraph 4.1 5.1 or 4.2 5.2 below, as may be applicable, on a monthly basis ~~(hereinafter referred to as the "Monthly Announcement")~~ until further notice from the Exchange;
- (d) ~~announce~~ its compliance or non-compliance with a particular obligation imposed pursuant to this Practice Note, on an immediate basis; ~~and~~
- (e) ~~announce~~ details of the Regularisation Plan as referred to in paragraph 8.14C(3) of the Listing Requirements which announcement must fulfill the requirements set out in

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paragraph ~~3.1A~~ 4.2 below (hereinafter referred to as “the **Requisite Announcement**”); and

- (f) where the PN 17 Company fails to regularise its condition, the dates of suspension and de-listing of its listed securities, immediately upon notification of suspension and de-listing by the Exchange.

~~3.1A~~ 4.2 The Requisite Announcement must satisfy the following conditions:-

- (a) the announcement must contain details of the Regularisation Plan and sufficient information to demonstrate that the PN17 Company is able to comply with all the requirements set out under paragraph 3.1 above after implementation of the regularisation plan;
- (b) and include a timeline for the complete implementation of the Regularisation Plan;  
and
- ~~(b)~~ (c) it must be announced by a corporate finance adviser that may act as a principal adviser under the Commission's Guidelines on Principal Advisers for Corporate Proposals  
be announced by the PN17 Company's Principal Adviser.

~~3.1B~~ 4.3 Before a PN17 Company makes the Requisite Announcement An Affected Listed Issuer it must ensure that prior to the making of the Requisite Announcement:-

- (a) all agreements to be entered into with third parties as part of the Regularisation Plan, have been duly executed by all parties to such agreements; and
- (b) where the Regularisation Plan involves a compromise or arrangement with the Affected Listed Issuer  
PN17 Company's creditors, the Affected Listed Issuer  
PN17 Company has taken reasonable steps to procure the agreement-in-principle of such creditors.

~~3.24~~ 4 The Monthly Announcements must be made on the first market day of each month beginning with the month following the date of the First Announcement.

#### **4.05.0 Obligation to Regularise**

~~4.1~~ An Affected Listed Issuer must submit a Regularisation Plan as referred to in paragraph 8.14C(3) of the Listing Requirements to the Approving Authority as referred to in paragraph 8.14C(2)(a)(i) of the Listing Requirement for approval within 8 months from the date of the First Announcement (i.e. the Submission Timeframe).

5.1 If a PN17 Company undertakes a regularisation plan which will result in a significant change in the business direction or policy of the PN17 Company, it must –

- (a) submit the plan to the SC for approval, within 12 months from the date of the First Announcement; and
- (b) complete the implementation of the plan within such timeframe as may be prescribed by the SC.

5.2 If a PN17 Company undertakes a regularisation plan which will not result in a significant change in the business direction or policy of the PN17 Company, it must –

- (a) submit to the Exchange the plan and obtain the Exchange's approval to implement the plan within 12 months from the date of the First Announcement;

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(b) complete the implementation of the plan within 6 months from the date the plan is approved by the Exchange. However, for cases which involve court proceedings, a PN17 Company has up to 12 months from the date the plan is approved by the Exchange, to complete the implementation of the plan; and

(c) record a net profit in 2 consecutive quarterly results immediately after the completion of the implementation of the plan. In this regard, the PN17 Company must ensure that the relevant quarterly results are subjected to a limited review by an external auditor before they are announced to the Exchange.

~~4.2 An Affected Listed Issuer must implement Regularisation Plan, within the timeframe stipulated by the relevant Approving Authority.~~

## **~~5.0 Effective Date~~**

~~5.1 This Practice Note takes effect on 3 January 2005.~~