

BURSA MALAYSIA SECURITIES BERHAD**GUIDANCE NOTE 18****ROLES AND RESPONSIBILITIES OF SPONSORS**

<u>Details</u>	<u>Cross References</u>
Effective date: 3 August 2009	Rules 3.02(4), 4.06, 4.07 and 6.02(4)

1.0 Introduction

1.1 Rule 3.02(4) of the Listing Requirements provides that the Sponsor appointed by an applicant is responsible to assess the suitability of the applicant seeking admission to the Official List.

1.2 Rule 4.06 of the Listing Requirements provides that before sponsoring an applicant, a Sponsor must have a sound understanding and updated knowledge of the applicant, its business, operation, the industry it operates in and any other issues that might affect the business and industry of the applicant.

1.3 Rule 4.07 of the Listing Requirements provides as follows:

“(1) A Sponsor must assess the suitability of an applicant seeking admission to the Official List.

(2) In assessing whether an applicant is suitable for listing, a Sponsor must make all reasonable due diligence enquiries and consider all relevant matters, including the following:

(a) the prospects of an applicant's business;

(b) the applicant's corporate governance record;

(c) the suitability, efficacy and past corporate conduct of the board of directors and key management;

(d) the nature and extent of conflict of interests or potential conflict of interests, if any;

(e) whether the applicant has sufficient systems, procedures, policies, controls and resources to comply with these Requirements and that its directors understand their obligations under these Requirements;

(f) whether the applicant has adequate internal control and risk management systems; and

(g) that the admission of the applicant to the Official List does not undermine public interest.

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(3) A Sponsor must conduct, actively participate and oversee the preparation and due diligence process for the Public Document and comply with the SC's Guidelines on Due Diligence Conduct for Corporate Proposals, where applicable.

(4) A Sponsor must consider and advise on the competency and suitability of other advisers involved in the listing of the applicant.

(5) The Exchange may ask a Sponsor to demonstrate its compliance with sub-Rules (2) to (4) above."

1.4 Rule 6.02(4) of the Listing Requirements provides that a listed corporation must submit a listing application relating to a new issue of securities under Chapter 6 through a Sponsor or an Adviser, as the case may be.

1.5 This Guidance Note clarifies the obligations of a Sponsor or an Adviser as follows:

(a) assessing the suitability of an applicant seeking admission to the Official List or a listed corporation undertaking a corporate proposal which will result in a significant change in the business direction or policy of a listed corporation (collectively referred to as "Applicant"), as set out in paragraphs 2.0 to 11.0 of this Guidance Note; and

(b) advising a listed corporation on any new issue of securities as set out in paragraphs 5.0, 6.0, 10.0 and 11.0 of this Guidance Note, with necessary modification and adaptation.

2.0 Sound understanding of an Applicant

2.1 A Sponsor must achieve a sound understanding and updated knowledge of the Applicant, its business, operations, the industry it operates in and any other issues that might affect the business and industry of the Applicant. A Sponsor may use its in-house specialists, appoint independent external experts or procure professional or legal advice to achieve this.

2.2 In fulfilling paragraph 2.1 above, a Sponsor should at least do the following:

(a) ensure that it has, or has access to, appropriate knowledge of the Applicant's area of business (taking into consideration its country of incorporation and operation);

(b) consider the Applicant's sector, proposition, business plan, business structure, historical financial information and other corporate information, including the due diligence performed pursuant to paragraph 10.0;

(c) consider any issues relating to the Applicant's country of incorporation, operation and any other issues which might affect its appropriateness and suitability for listing; and

(d) visit the Applicant's office or material site(s) of operation and meet the directors and key managers.

3.0 Prospects of an applicant

3.1 Generally, a Sponsor must consider, amongst others, whether -

(a) the business is likely to succeed;

- (b) the business has potential for profitable operations and wealth creation;
- (c) the Applicant has adequate resources to realise its potential; and
- (d) the Applicant has a sustainable position in the industry having regard to its competitiveness, availability of alternative products or services, government policies and incentives, and the economy.

4.0 Corporate governance record

- 4.1 A Sponsor must consider the Applicant's corporate governance record. This includes whether there has been any previous action taken against the Applicant or its promoters for any breach of relevant laws, guidelines or rules including those issued by the SC or the Exchange or both, or for failure to comply with any instruction, directive, or condition imposed by the Exchange including the Listing Requirements.
- 4.2 Where the Applicant is a foreign corporation, the Sponsor must consider the extent of compliance by the Applicant or its promoters with the relevant foreign laws, applicable guidelines or rules issued by the relevant regulatory authorities.

5.0 Suitability, efficacy and past corporate conduct of the board of directors and key management

- 5.1 A Sponsor must investigate and assess the suitability of each (proposed) director and consider the efficacy of the board of directors as a whole for the Applicant's needs, as follows:
- (a) issue and review directors' questionnaire and review directors' curriculum vitae;
 - (b) verify the information revealed in the above questionnaires and curriculum vitae, for example by conducting press searches, Companies Commission of Malaysia checks, bankruptcy checks, taking-up references and, where appropriate, obtaining third party checks. For directors who are not Malaysian-based, appropriate investigations should be undertaken;
 - (c) analyse any issue arising from these review or investigations and in particular on how they can affect the appropriateness and suitability of the Applicant's listing; and
 - (d) consider each director's suitability and experience in relation to their (proposed) role in ensuring an effective operation of the Applicant's business and consider whether each (proposed) director is suitable to be a director of a Malaysian public listed corporation.
- 5.2 In considering each (proposed) director's suitability and experience provided under paragraph 5.1(d) above, the Sponsor must be satisfied that the (proposed) directors of the Applicant individually and collectively have the experience, qualifications and competence to manage the Applicant's business and comply with the Listing Requirements and other legal or regulatory requirements relevant to their roles.
- 5.3 The character and integrity of the (proposed) directors of the Applicant will be a relevant factor for consideration. In considering whether the (proposed) directors have the character and integrity expected of a listed corporation, the Sponsor must take into account the disclosures made in the questionnaire and curriculum vitae as provided under paragraph 5.1(a) by each (proposed) director.

5.4 A Sponsor must also investigate into the past corporate conduct of the (proposed) directors of an Applicant to determine their integrity. A Sponsor must be satisfied that in compliance with paragraph 5.3 above, no person is appointed or allowed to act as a director of the Applicant or be involved whether directly or indirectly in the management of the Applicant, including acting in an advisory capacity in relation to the Applicant, if he -

- (a) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence in connection with the promotion, formation or management of a corporation;
- (b) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence, involving fraud or dishonesty or where the conviction involved a finding that he acted fraudulently or dishonestly; or
- (c) has been convicted by a court of law of an offence under the securities laws or the Companies Act 1965,

within a period of 5 years from the date of conviction or if sentenced to imprisonment, from the date of release from prison, as the case may be.

5.5 Where appropriate, a Sponsor must extend the investigations and assessment specified in paragraph 5.1 above to the following persons:

- (a) each member of the key management when considering the efficacy of the key management as a whole for the Applicant's needs; and
- (b) the promoters of the Applicant.

6.0 Conflict of interests

6.1 A Sponsor must assess all aspects of the Applicant's business to determine whether there is, or is likely to exist, any situation of conflict of interests, including conflicts in relation to the Sponsor's role as a Sponsor to the Applicant.

6.2 An Applicant must resolve, eliminate or mitigate all conflicts of interests. The Sponsor must not submit any listing application to the Exchange if there is a conflict of interests which has not been satisfactorily addressed.

6.3 An Applicant and its Sponsor must consider the following factors to determine if a conflict of interests arises:

- (a) whether any interested persons (which includes directors, major shareholders and chief executive) of the Applicant or its subsidiary company(ies) have personal financial interests which are in conflict with those of the Applicant or its subsidiary companies;
- (b) whether the relationship between a major shareholder and the Applicant or its subsidiary company(ies) could result in a conflict between the Applicant's obligations towards that major shareholder and its duties to the general body of shareholders;
- (c) whether the professional judgment of –any interested persons to act in the best interests of the Applicant or its subsidiary company(ies) is compromised;
- (d) whether any interested person is otherwise engaged in an activity which detracts time and commitment from managing the Applicant or its subsidiary company(ies); and

(e) whether the conflict is significant in relation to the nature, scale and complexity of the businesses of the Applicant or its subsidiary company(ies).

6.4 A Sponsor must ensure that all trade debts exceeding the normal credit period and all non-trade debts, owing by the interested persons to the Applicant or its subsidiary company(ies), are fully settled before the Applicant's listing on the Official List.

6.5 An Applicant and its Sponsor must declare the following in the listing application:

(a) nature and extent of the conflict of interests or potential conflict of interests (if any);

(b) the parties to the conflicts; and

(c) measures taken for resolving, eliminating, or mitigating the situations of conflict of interests.

7.0 Sufficient systems, procedures, policies, controls and resources

7.1 A Sponsor must be satisfied that the Applicant has in place sufficient systems, procedures, policies, controls (including accounting and management systems) and resources which are adequate to comply with the Listing Requirements and other relevant legal and regulatory requirement, and which are sufficient for the Applicant's directors to make a proper assessment of the financial position and prospects of the Applicant and its subsidiary companies, both before and after listing.

7.2 A Sponsor must be satisfied that the Applicant's directors understand their obligations under the Listing Requirements, including -

(a) being satisfied that the Applicant's directors have been advised of their, and the Applicant's, continuing listing obligations and responsibilities; and

(b) being satisfied that the Applicant's directors are aware when they should consult with and seek advice from their Sponsor.

8.0 Adequate internal control and risk management systems

A Sponsor must be satisfied that the Applicant has adequate internal controls and risk management systems for compliance with applicable laws and regulations.

9.0 Public interest

A Sponsor must consider whether the listing application by an Applicant would undermine public interest.

10.0 Due diligence

10.1 A Sponsor must oversee the due diligence process, satisfy itself that the due diligence done is appropriate and suitable for the Applicant and its listing application. A Sponsor must be satisfied that all material issues arising from the due diligence exercise are dealt with or otherwise do not affect the appropriateness and suitability of the Applicant for listing.

10.2 In doing so, the Sponsor must, amongst others be satisfied that appropriate financial and legal due diligence exercises are undertaken by appropriate professional firm(s) which complies with the SC's Guidelines on Due Diligence Conduct for Corporate Proposals.

11.0 Competency of other professionals and experts

When considering and advising on the suitability and competence of other professionals and experts including the Applicant's reporting accountants and ongoing auditors, a Sponsor must base its assessment at a minimum on reputation, track record, relevant experience and adequacy of resources.