

**BURSA MALAYSIA SECURITIES BERHAD****GUIDANCE NOTE NO. 3/2006****CRITERIA AND OBLIGATIONS PURSUANT TO RULE 8.16 OF THE LISTING REQUIREMENTS OF GN3 COMPANIES**

<u>Details</u>	<u>Cross References</u>
<u>Effective date:</u> 8 May 2006	<u>Rules 8.04, 16.02 and 16.11</u>
<u>Revision date:</u> 3 August 2009	

~~Issued in relation to Rules 8.16, 16.02 and 16.09 of the Listing Requirements;~~

~~And~~

~~Pursuant to Rules 2.09 and 2.20 of the Listing Requirements.~~

## **1.0 Introduction**

1.1 This Guidance Note sets out, amongst others, the following:

- (a) ~~the criteria in relation to the financial condition and level of operations of a listed company~~listed corporation, the fulfillment of one or more of which will require which if triggered, will give rise to an obligation for a listed company~~corporation to comply with the provisions of this Guidance Note (a listed company which fulfils one or more of the aforesaid criteria shall hereinafter be referred to as "an Affected Listed Company"~~"GN3 Company"); and
- (b) the requirements of a regularisation plan; and
- (c) the disclosure requirements that must be complied with by ~~an Affected Listed Company~~a GN3 Company.

~~1.2 Nothing in this Guidance Note shall be read to restrict the generality of Rule 8.16 of the Listing Requirements.~~

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

## **2.0 Criteria**

2.1 Pursuant to Rule ~~8.16~~8.04(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 will require a listed company~~where a listed corporation triggers any one or more of the following Prescribed Criteria, it must comply with the provisions of Rule 8.168.04 and this Guidance Note:-

**Guidance Note 3**  
**Criteria and Obligations of GN3 Companies**

- (a) the shareholders' equity of the ~~listed company~~listed corporation is ~~equal to or less than 25% or less of~~ the issued and paid-up capital of the ~~listed corporation~~listed company and such shareholders' equity is less than the minimum issued and paid-up capital as required under Rule 8.18(1) of the Listing Requirements;
- (b) where the ~~listed company~~listed corporation has incurred loss in any 1 full financial year commencing on or after its listing, which equal to or exceed the amount of its shareholders' equity at the end of the said financial year and the shareholders' equity is equal to or less than 50% of the issued and paid-up capital of the ~~listed company~~listed corporation at the end of the said financial year;
- (c) where the ~~listed company~~listed corporation has incurred aggregated losses in any 2 consecutive full financial years commencing on or after its listing (~~hereinafter referred to as the~~ **"said financial period"**)<sub>:-</sub>
  - (i) which exceed the amount of its shareholders' equity at the end of the said financial period;
  - (ii) the loss incurred in the second full financial year of the said financial period is 50% or more of the loss incurred in the first full financial year of the said financial period; and
  - (iii) the shareholders' equity is equal to or less than 50% of the issued and paid-up capital of the ~~listed company~~listed corporation at the end of the said financial period;
- (d) receivers ~~and/or~~ managers have been appointed over the asset of the ~~listed company~~listed corporation, its subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the ~~listed company~~listed corporation;
- (e) a winding up of a ~~listed company~~listed corporation's subsidiary or associated company which accounts for at least 50% of the total assets employed of the ~~listed company~~listed corporation;
- (f) the auditors have expressed an adverse or disclaimer opinion in the ~~listed company~~listed corporation's latest audited ~~accounts~~ financial statements;
- (g) the auditors have expressed a modified opinion with emphasis on the ~~listed company~~listed corporation's going concern in the ~~listed company~~listed corporation's latest audited ~~accounts~~ financial statements and the shareholders' equity of the ~~listed company~~listed corporation is ~~equal to or less than 50% or less of~~ the issued and paid-up capital of the ~~listed company~~listed corporation;
- (h) a default in payment by a ~~listed company~~listed corporation, its major subsidiary or major associated company, as the case may be, as announced by a ~~listed company~~listed corporation pursuant to Guidance Note ~~No 5/2006~~ and the ~~listed company~~listed corporation is unable to provide a solvency declaration to the Exchange;
- (i) the ~~listed company~~listed corporation has suspended or ceased<sub>:-</sub>
  - (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<sub>:-</sub>

**Guidance Note 3**  
**Criteria and Obligations of GN3 Companies**

---

- (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 company~~listed corporation's business or major business; or
- (cc) a court order or judgment obtained against the ~~listed company~~listed corporation prohibiting the ~~listed company~~listed corporation from conducting its major operations on grounds of infringement of copyright of products etc; or
- (j) the ~~listed company~~listed corporation has an insignificant business or operations. This is not applicable to a Sponsored Corporation during the Sponsorship Period.

2.2 For the purposes of this Guidance 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 the equity holders of the listed corporation;
- ~~(b) (Deleted)~~
- ~~(c)~~(b) in relation to subparagraph 2.1(i) above, "**major**" means such proportion that contributes or generates 70% or more of the ~~listed company~~listed corporation's revenue on a consolidated basis based on its latest annual audited or unaudited ~~accounts~~ financial statements;
- ~~(d)~~(c) "**insignificant business or operations**" means business or operations which generates revenue on a consolidated basis that represents 5% or less of the issued and paid-up capital (excluding any redeemable preference shares) of the ~~listed company~~listed corporation (~~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:-

- (i) "**revenue on a consolidated basis**" ~~shall~~ comprises of the revenue of the ~~listed company~~listed corporation, its subsidiaries, as well as revenue from the ~~listed company~~listed corporation's associated companies, calculated on a proportionate basis, based on the ~~listed company~~listed corporation'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.

**Guidance Note 3**  
**Criteria and Obligations of GN3 Companies**

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

		Issued and Paid-up Capital (RM)
1 January 2xx1	Balance	10,000,000
1 June 2xx1	Issue of 5,000,000 new shares for cash	15,000,000
1 Dec 2xx1	Issue of 3,000,000 new shares for cash	18,000,000

Computation of weighted average:

$$(10,000,000 \times 151/365) + (15,000,000 \times 183/365) + (18,000,000 \times 31/365) \\ = 13,186,301$$

- (d) “issued and paid-up capital” excludes treasury shares;
- (e) the determination of whether any one or more of the Prescribed Criteria is fulfilled ~~shall~~must be based on the latest audited or unaudited consolidated ~~accounts~~financial statements of the ~~listed company~~listed corporation; and
- (f) in relation to subparagraphs 2.1(b) and (c) above, **“loss”** or **“losses”** refers to the loss or losses attributable to ordinary shareholders of the ~~listed company~~listed corporation.

2.3 The following example ~~shall~~illustrates the application of subparagraph 2.1(b) above:

Example 1

A Bhd

	Financial Year Ended (FYE) 31 December 2xx1 (FYE 1)
Losses (RM'million)	(4)
Shareholders' equity (RM'million)	3
Issued and Paid-up Capital (RM' million)	6

In Example 1 above, ~~listed company~~listed corporation A Bhd incurs losses amounting to RM4 million in FYE 1. The shareholders' equity for FYE 1 amounts to RM3 million. The issued and paid-up capital of A Bhd as at FYE 1 is RM 6 million.

Since the amount of losses has exceeded the amount of the shareholders' equity, and the shareholders' equity is equal to 50% of the issued and paid-up capital of A Bhd, A Bhd has triggered the criteria set out in subparagraph 2.1 (b) above and must therefore comply with the requirements of Rule ~~8.168.04~~8.168.04 and this Guidance Note.

2.4 The following example shall illustrate the application of subparagraph 2.1(c) above:-

Example 2

B Bhd

	FYE 31 December 2xx1 (FYE1) (2)	FYE 31 December 2xx2 (FYE2) (3)
Losses (RM'million)		
Shareholders' equity (RM'million)	7	4
Issued and paid- up capital (RM'million)	9	9

In Example 2 above, ~~listed company~~ listed corporation B Bhd incurs losses amounting to RM2 million in FYE 1. The shareholders' equity for FYE 1 amounts to RM7 million.

In the following financial year, FYE 2, B Bhd incurs losses amounting to RM3 million, whilst the shareholders' equity amounts to RM4 million.

The issued and paid-up capital for both FYE1 and FYE 2 of B Bhd is RM 9 million.

The aggregated losses incurred by B Bhd in both FYE 1 and FYE 2 amount to RM5 million, which in absolute terms exceed the amount of the shareholders' equity for FYE 2 of RM4 million. In addition, the amount of losses incurred in FYE 2 is more than 50% of the amount of losses incurred in FYE 1 and the shareholders' equity is less than 50% of the issued and paid-up capital of B Bhd as at FYE 2.

As such, B Bhd has triggered the criteria set out in subparagraph 2.1 (c) above and must therefore comply with the requirements of Rule ~~8.168.04~~ and this Guidance Note.

### 3.0 Regularisation Plan

3.1 The GN3 Company and its Sponsor must ensure that a regularisation plan enables the GN3 Company to regularise its condition, such that -

- (a) the regularisation plan is sufficiently comprehensive and capable of resolving all problems, financial or otherwise that had caused the GN3 Company to trigger the Prescribed Criteria;
- (b) the regularisation plan enables the GN3 Company to regularise its financial condition and level of operations, such that the GN3 Company no longer triggers any of the Prescribed Criteria; and
- (c) the regularisation plan is fair and reasonable to the GN3 Company and its shareholders and will increase shareholder value.

**Guidance Note 3**  
**Criteria and Obligations of GN3 Companies**

### **3.04.0 Disclosure obligations of the ~~Affected Listed Company~~GN3 Company**

**3.14.1** Pursuant to Rule ~~8.16~~8.04(23)(b) of the Listing Requirements, ~~an Affected Listed Company must comply with the following disclosure requirements~~a GN3 Company must announce to the Exchange :-

- (a) ~~announce the following, on an immediate basis (hereinafter referred to as “the First Announcement”) upon the Affected Listed Company~~GN3 Company fulfilling triggering one or more of the Prescribed Criteria:-
  - (i) ~~that the listed company~~listed corporation is an Affected Listed Company GN3 Company pursuant to this Guidance Note;
  - (ii) ~~the obligations of the listed company~~listed corporation pursuant to this Guidance Note;
  - (iii) ~~the consequences of non-compliance with such obligations; and~~
  - (iv) ~~the status of the listed company~~listed corporation's plan to comply with the Obligation to Regularise (as defined in Rule 8.16(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) ~~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 or 4.2 below~~Rule 8.04(3) of the Listing Requirements, as may be applicable, on a monthly basis (hereinafter referred to as the “Monthly Announcement”) until further notice from the Exchange;
- (c) ~~announce its compliance or non-compliance with a particular obligation imposed pursuant to this Guidance Note on an immediate basis; and~~
- (d) ~~announce details of the Rregularisation Pplan as referred to in Rule 8.16(3) of the Listing Requirements, which announcement must fulfill the requirements set out in paragraph 3.1 above (hereinafter referred to as “the Requisite Announcement”); and~~
- (e) ~~where the GN3 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.-~~

**3.24.2** The Requisite Announcement must ~~satisfy the following conditions:-~~

- (a) ~~the announcement must contain details of the Rregularisation Pplan and sufficient information to demonstrate that the GN3 Company is able to comply with all the requirements set out in paragraph 3.1 above after the implementation of the regularisation plan;~~
- (b) ~~and contain~~ a timeline for the complete implementation of the Rregularisation Pplan; ~~and~~
- (b)(c) ~~it must be announced by an Adviser~~ the GN3 Company's Sponsor; and

**Guidance Note 3**  
**Criteria and Obligations of GN3 Companies**

---

~~3.34.3~~ An Affected Listed Company must ensure that prior to the making of ~~Before a GN3 Company makes~~ the Requisite Announcement, it must ensure that :-

- (a) all agreements to be entered into with third parties as part of the ~~R~~regularisation ~~P~~plan, have been duly executed by all parties to such agreements; and
- (b) where the ~~R~~regularisation ~~P~~plan involves a compromise or arrangement with the ~~Affected Listed Company~~GN3 Company's creditors, the ~~Affected Listed Company~~GN3 Company has taken reasonable steps to procure the agreement-in-principle of such creditors.

~~3.44.4~~ 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.

#### **~~4.0~~ — Obligation to Regularise**

~~4.1~~ ~~Affected Listed Company~~must submit a Regularisation Plan as referred to in Rule 8.16(3) of the Listing Requirements to the Approving Authority as referred to in Rule 8.16(2)(a)(i) of the Listing Requirements for approval within 8 months from the date of the First Announcement (i.e. the Submission Timeframe).

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

#### **~~5.0~~ — Effective Date**

~~5.1~~ This Guidance Note takes effect 8 May 2006.