

**BURSA MALAYSIA SECURITIES BERHAD****GUIDANCE NOTE 20****SAVING AND TRANSITIONAL PROVISIONS**

<u>Details</u>	<u>Cross References</u>
Effective date: 3 August 2009	Rules 8.03, 8.04, 13.04, 13.05 and 16.11

**1.0 Introduction**

1.1 This Guidance Note sets out the requirements that must be complied with by the relevant listed corporations arising from the amendments to Rules 8.03 and 8.04, Guidance Notes 2 and 3 of the Listing Requirements with effect from 3 August 2009.

1.2 This Guidance Note applies to the following listed corporations which are subjected to the following Listing Requirements prior to 3 August 2009:

- (a) **Original GN2 Companies** - Rule 8.14 and Guidance Note No 2/2006 from 8 May 2006 to 2 August 2009 ("**Original GN2 Framework**", as set out in Annexure GN20-A); and
- (b) **Original GN3 Companies** - Rule 8.16 and Guidance Note No 3/2006 from 8 May 2006 to 2 August 2009 ("**Original GN3 Framework**", as set out in Annexure GN20-B).

**2.0 Saving and Transitional Provisions for the Original GN2 and GN3 Companies**

2.1 The amendments to the Original GN2 and GN3 Framework with effect from 3 August 2009 shall not in any way affect the obligations of the listed corporations which -

- (a) had been considered a Cash Company pursuant to Rule 8.14; or
- (b) triggered any of the criteria set out in paragraph 2.1 of GN3.

before 3 August 2009 under the Original GN2 or GN3 Framework, as the case may be.

2.2 Subject to paragraph 2.3 below, the Original GN2 or GN3 Companies must continue to comply with their obligations under the Original GN2 or GN3 Framework, as the case may be.

2.3 Notwithstanding paragraph 2.2 above, an Original GN2 or GN3 Company may apply to the Exchange to regularise its condition under Rules 8.03 and 8.04 and Guidance Note 2 and 3 of the Listing Requirements which come into effect on 3 August 2009, provided that such Original GN2 and GN3 Company is still within the stipulated or extended timeframe granted by the Exchange to submit its proposal to regularise its condition under the Original GN2 or GN3 Framework, as the case may be.

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**ANNEXURE GN20-A****[Reproduction of Rule 8.14]****“8.14 Cash Companies**

- (1) A listed company that is considered a “Cash Company” by the Exchange must comply with such requirements as may be prescribed by the Exchange, failing which the Exchange may de-list such listed company.
- (2) A listed company whose assets on a consolidated basis, consist of 70% or more of cash or short term investments, or a combination of both, must immediately notify the Exchange of the same in writing (referred to as “the Cash Criterion” in this Part E). The Exchange will make a determination as to whether such listed company should be considered a Cash Company pursuant to sub-Rule (1) above. A listed company considered as a Cash Company by the Exchange will be notified by the Exchange (referred to as “the Notice” in this Part E).
- (3) For the purposes of sub-Rule (2) above, the following shall apply:-
  - (a) a listed company must, as a minimum requirement, make a determination as to whether it triggers the Cash Criterion when it disposes its assets or business on a group basis or prepares its financial statements or accounts; and
  - (b) “short term investments” means investments which are by their nature readily realisable and intended to be held for 12 months or less including interests (equity or otherwise) in companies.
- (4) A Cash Company must comply with the following additional requirements:-
  - (a) regularise its condition in the following manner:-
    - (i) submit a proposal to regularise its condition to the Commission and the other relevant authorities for approval (collectively referred to as the “Approving Authority” in this Part E) within such timeframe as may be stipulated by the Exchange; and
    - (ii) implement its proposal to regularise its condition within the timeframe stipulated by the relevant Approving Authority;
  - (b) provide such information as may be prescribed by the Exchange from time to time for public release; and
  - (c) do such other acts or things as may be required by the Exchange.
- (5) For the purpose of sub-Rule (4)(a) above, a “proposal to regularise its condition” refers to a proposal that is substantive and falls within the ambit of section 212 of the CMSA (referred to as “the Proposal” in this Part E).
- (6) A Cash Company which fails to comply with sub-Rule (4)(a) above or whose Proposal is rejected by the Approving Authority, may have its listed securities suspended and subsequently de-listing procedures commenced against the Cash Company.
- (7) Where a Cash Company has completed the implementation of its Proposal, it must submit an application to the Exchange together with all the necessary documentary evidence to show that it is no longer a Cash Company.”

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**[Reproduction of Guidance Note No 2/2006]****“GUIDANCE NOTE NO. 2/2006****CASH COMPANIES**

**Issued in relation to Rules 8.14, 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 Rule 8.14(1) of the Listing Requirements states that a listed company that is considered a Cash Company must comply with such requirements as may be prescribed by the Exchange.
- 1.2 In this connection, this Guidance Note sets out the requirements that must be complied with by a Cash Company.
- 1.3 Nothing in this Guidance Note shall be read to restrict the generality of Rule 8.14 of the Listing Requirements.
- 1.4 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 Disclosure obligations of a Cash Company**

- 2.1 A Cash Company must comply with the following disclosure requirements. A Cash Company must:-
- (a) immediately upon receipt of the Notice (as defined in Rule 8.14(2) of the Listing Requirements) announce the following to the Exchange (hereinafter referred to as the "Initial Announcement"):-
- (i) that the listed company is a Cash Company;
  - (ii) the obligations of a Cash Company pursuant to this Guidance Note;
  - (iii) the consequences of non-compliance with the aforesaid obligations; and
  - (iv) the status of the Cash Company's proposal to comply with the obligations set out in Rule 8.14(4)(a) of the Listing Requirements, or the status of its endeavours/steps to formulate such a proposal, whichever is applicable, or where neither a proposal nor any endeavour to formulate such a proposal has been undertaken, an appropriate negative statement to such effect;
- (b) announce the status of its proposal referred to in subparagraph (a)(iv) above and the number of months to the end of the relevant timeframes referred to in paragraph 3.1 or 3.2 below, as may be applicable, simultaneously with the announcement of its quarterly report pursuant to Rule 9.22 of the Listing Requirements and in any event

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not later than 2 months after the end of each quarter of a financial year 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 Proposal as referred to in Rule 8.14(5) of the Listing Requirements which announcement must fulfill the requirements set out in paragraph 2.2 below (hereinafter referred to as “the Requisite Announcement”).

2.2 The Requisite Announcement must satisfy the following conditions:-

- (a) the announcement must contain details of the Proposal and a timeline for the complete implementation of the Proposal; and
- (b) it must be announced by an Adviser.

2.3 A Cash Company must ensure that prior to the making of the Requisite Announcement, all agreements to be entered into with third parties as part of the Proposal, have been duly executed by all parties to such agreements.

### **3.0 Obligation to Regularise**

3.1 A Cash Company must submit a Proposal, as referred to in Rule 8.14(5) of the Listing Requirements, to the relevant Approving Authority as referred to in Rule 8.14(4)(a)(i) of the Listing Requirements for approval within 12 months from the date of the Initial Announcement.

3.2 A Cash Company must implement the Proposal within the timeframe stipulated by the relevant Approving Authority.

### **4.0 Effective Date**

4.1 This Guidance Note takes effect 8 May 2006.”

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**ANNEXURE GN20-B****[Reproduction of Rule 8.16]****“8.16 Financial condition and level of operations**

- (1) The financial condition and level of operations of a listed company on a consolidated basis must, in the opinion of the Exchange, warrant continued trading and/or listing on the Official List, failing which the Exchange may de-list such listed company.
- (2) The Exchange may prescribe certain criteria in relation to the financial condition and level of operations of a listed company (referred to as “the Prescribed Criteria” in this Part E), the fulfilment of one or more of which would require the listed company (referred to as “the Affected Listed Company” in this Part E) to comply with the following additional requirements:-
  - (a) regularise its condition in the following manner (referred to as “the Obligation to Regularise” in this Part E):-
    - (i) submit a plan to regularise its condition to the Commission and the other relevant authorities for approval, (collectively referred to as the “Approving Authority” in this Part E) within such timeframe as may be stipulated by the Exchange (referred to as “Submission Timeframe” in this Part E); and
    - (ii) implement its plan to regularise its condition within the timeframe stipulated by the relevant Approving Authority (referred to as “Implementation Timeframe” in this Part E),  
  
(the Submission Timeframe and Implementation Timeframe shall be referred to collectively as “the Stipulated Timeframes” in this Part E);
  - (b) provide such information as may be prescribed by the Exchange from time to time for public release; and
  - (c) do such other acts or things as may be required by the Exchange.
- (3) For the purpose of sub-Rule (2)(a) above, a “plan to regularise its condition” refers to a plan that is substantive and falls within the ambit of section 212 of the CMSA (referred to as “the Regularisation Plan” in this Part E).
- (4) An Affected Listed Company which fails to comply with the Obligation to Regularise shall have all its listed securities suspended from trading on the 5<sup>th</sup> market day after expiry of the relevant Submission Timeframe or Implementation Timeframe, as the case may be, and de-listing procedures shall be commenced against such Affected Listed Company.
- (5) Where an Affected Listed Company has submitted its Regularisation Plan to the Approving Authority for approval prior to the expiry of the Submission Timeframe but whose Regularisation Plan is rejected by the Approving Authority, the following shall apply:-
  - (a) if the rejection takes place after the expiry of the Submission Timeframe, the Affected Listed Company shall have all its listed securities suspended from trading on the 5<sup>th</sup> market day after the Affected Listed Company’s announcement of the Approving Authority’s rejection and de-listing procedures shall be commenced against such Affected Listed Company; or
  - (b) if the rejection takes place prior to the expiry of the Submission Timeframe, the Affected Listed Company shall have all its listed securities suspended from trading on

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the 5<sup>th</sup> market day after expiry of the Submission Timeframe and de-listing procedures shall be commenced against such Affected Listed Company unless either:-

- (i) the Affected Listed Company submits a new or revised Regularisation Plan to the Approving Authority for approval within the Submission Timeframe; or
  - (ii) the Affected Listed Company appeals against the rejection of the Approving Authority and the appeal is pending upon expiry of the Submission Timeframe.
- (6) In the case of an Affected Listed Company falling within the circumstances described under sub-Rule (5)(b)(ii) above and the appeal lodged by the Affected Listed Company with the Approving Authority is unsuccessful, the Affected Listed Company shall have all its listed securities suspended from trading on the 5<sup>th</sup> market day after the Affected Listed Company's announcement of the Approving Authority's rejection of the appeal and de-listing procedures shall be commenced against such Affected Listed Company.
- (7) Where an Affected Listed Company has completed the implementation of its Regularisation Plan, it must submit an application to the Exchange together with all the necessary documentary evidence to show that it no longer triggers any of the Prescribed Criteria."

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**[Reproduction of Guidance Note No 3/2006]****“GUIDANCE NOTE NO. 3/2006****CRITERIA AND OBLIGATIONS PURSUANT TO RULE 8.16 OF THE LISTING REQUIREMENTS**

**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, the fulfillment of one or more of which will require a listed company 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”); and
- (b) the requirements that must be complied with by an Affected Listed 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(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 to comply with the provisions of Rule 8.16 and this Guidance Note:-

- (a) the shareholders’ equity of the listed company is equal to or less than 25% of the issued and paid-up capital of the 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 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 at the end of the said financial year;
- (c) where the listed company 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”):-
  - (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 at the end of the said financial period;
- (d) receivers and/or managers have been appointed over the asset of the listed company, its subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the listed company;
- (e) a winding up of a listed company's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed company;
- (f) the auditors have expressed an adverse or disclaimer opinion in the listed company's latest audited accounts;
- (g) the auditors have expressed a modified opinion with emphasis on the listed company's going concern in the listed company's latest audited accounts and the shareholders' equity of the listed company is equal to or less than 50% of the issued and paid-up capital of the listed company;
- (h) a default in payment by a listed company, its major subsidiary or major associated company, as the case may be, as announced by a listed company pursuant to Guidance Note No 5/2006 and the listed company is unable to provide a solvency declaration to the Exchange;
- (i) the listed company 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 company's business or major business; or
- (cc) a court order or judgment obtained against the listed company prohibiting the listed company from conducting its major operations on grounds of infringement of copyright of products etc; or
- (j) the listed company has an insignificant business or operations.

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;
- (b) (Deleted)
- (c) in relation to subparagraph 2.1(i) above, "major" means such proportion that contributes or generates 70% or more of the listed company's revenue on a consolidated basis based on its latest annual audited or unaudited accounts;

- (d) “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 (hereinafter referred to as “Capital”) based on its latest annual audited or unaudited accounts.

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

- (i) “revenue on a consolidated basis” shall comprise of the revenue of the listed company, its subsidiaries, as well as revenue from the listed company’s associated companies, calculated on a proportionate basis, based on the listed company’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 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	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:

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

- (e) the determination of whether any one or more of the Prescribed Criteria is fulfilled shall be based on the latest audited or unaudited consolidated accounts of the listed company; 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.

2.3 The following example shall illustrate 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 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 8.16 and this Guidance Note.

2.4 The following example shall illustrate the application of subparagraph 2.1© above:-

#### Example 2

B Bhd

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

In Example 2 above, listed company 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 8.16 and this Guidance Note.

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**3.0 Disclosure obligations of the Affected Listed Company**

3.1 Pursuant to Rule 8.16(2)(b) of the Listing Requirements, an Affected Listed Company must comply with the following disclosure requirements:-

- (a) announce the following, on an immediate basis (hereinafter referred to as “the First Announcement”) upon the Affected Listed Company fulfilling one or more of the Prescribed Criteria:-
  - (i) that the listed company is an Affected Listed Company pursuant to this Guidance Note;
  - (ii) the obligations of the listed company pursuant to this Guidance Note;
  - (iii) the consequences of non-compliance with such obligations; and
  - (iv) the status of the listed company’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 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, 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 Regularisation Plan as referred to in Rule 8.16(3) of the Listing Requirements, which announcement must fulfill the requirements set out in paragraph 3.2 below (hereinafter referred to as “the Requisite Announcement”).

3.2 The Requisite Announcement must satisfy the following conditions:-

- (a) the announcement must contain details of the Regularisation Plan and a timeline for the complete implementation of the Regularisation Plan; and
- (b) it must be announced by an Adviser.

3.3 An Affected Listed Company 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 Company’s creditors, the Affected Listed Company has taken reasonable steps to procure the agreement-in-principle of such creditors.

3.4 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 An 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.”