

## BURSA MALAYSIA SECURITIES BERHAD

## GUIDANCE NOTE NO. 5/2006

## DEFAULT IN PAYMENT

<u>Details</u>	<u>Cross References</u>
<u>Effective date:</u> 8 May 2006	<u>Rules 9.03, 9.04(l) and 9.16</u>
<u>Revision date:</u> 3 August 2009	

~~Issued in relation to Rules 9.03, 9.04(l) and 9.16 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 enumerates some circumstances upon which a listed corporation must ~~announce an event of default of interest or principal payments for loans under is issued to highlight the obligation of a listed company to make immediate announcements in the event of default of interest and/or principal payments in respect of loans pursuant to Rules 9.03 and 9.04(l) of the Listing Requirements.~~
- 1.2 ~~This Guidance Note is issued to enumerate some circumstances upon which a listed company is required to make such announcements under Rules 9.03 and 9.04(l) of the Listing Requirements. It is to be noted that t~~The circumstances enumerated set out in this Guidance Note are not exhaustive of all circumstances upon which the listed company is required to make such announcements.
- 1.3 ~~Nothing in this Guidance Note shall be read to restricts~~ the generality of Rules 9.03, 9.04(l) and 9.16 of the Listing Requirements.

## 2.0 ~~Circumstances~~Events of default

- 2.1 ~~The following are some situations~~events of default ("Defaults") the occurrence of upon which a listed company listed corporation shall be is required to make an immediately announcement to the Exchange under Rules 9.03 and 9.04 of the Listing Requirements, irrespective of whether a demand has been made to the listed corporation, its subsidiaries or associated companies, as the case may be:
- (a) default in payments of interest in respect of loan stocks or bonds, whether listed or unlisted on the Exchange ~~irrespective of whether a demand has been made;~~
  - (b) default in principal payments in respect of loan stocks or bonds, whether listed or unlisted on the Exchange;

- (c) default in payments under a debenture;
- (d) default in payments of either interest, ~~or principal~~ sums or both in respect of a credit facility where the total amount outstanding of the defaulted credit facility is 5% or more of the net assets of the ~~listed company~~ listed corporation based on the latest published or announced financial statements; or

~~which is reasonably expected to have a material effect on the price, value or market activity of any of the listed company securities; or~~

~~the decision of a holder of securities of the listed company or an investor in determining his choice of action~~

- (e) default in payments of either interest or principal sums or both in respect of a credit facility, which is reasonably expected to have a material effect on the price, value or market activity of any of the ~~listed company~~ listed corporation's securities or the decision of a listed corporation's securities holder ~~of securities of the listed company~~ or an investor in determining his choice of action. For the purpose of this subparagraph, where a listed corporation has a negative net asset, any amount in default will be considered as material.

- 2.2 The ~~d~~Defaults referred to above may be that of the ~~listed company~~ listed corporation, its subsidiaries or associated companies.

### 3.0 Details of the announcement

- 3.1 ~~In the event of default in payments in circumstances stipulated under paragraph 2.1 above, the~~ A listed corporation must include the following information when announcing a Default to the Exchange ~~announcement to be made under Rule 9.16 of the Listing Requirements shall include specifically the following information:-~~

(a) the date of dDefault;

~~(a)(b)~~ the reasons for the ~~d~~Default in payments;

~~(b)(c)~~ the measures by the ~~listed company~~ listed corporation to address the ~~d~~Default in payments;

~~(e)(d)~~ the ~~financial and legal~~ implications in respect of the ~~d~~Default in payments including the extent of the ~~listed company~~ listed corporation's liability in respect of the obligations incurred under the agreements for the indebtedness;

~~(d)(e)~~ the business, financial and operational impact of the Default on the listed corporation;

(f) in the event the dDefault is in respect of secured loan stocks or bonds, the lines of action available to the guarantors or security holders against the ~~listed company~~ listed corporation;

~~(e)(g)~~ in the event the ~~d~~Default is in respect of payments under a debenture, to specify whether the ~~d~~Default will empower the debenture holder to appoint a receiver or receiver and manager;

~~(f)(h)~~ whether the ~~d~~Default in payment constitutes an event of default under a different agreement for indebtedness (cross default) and the details for such other default thereof, where applicable;

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- (g)(i) where the ~~dDefault in payment~~ is in respect of a subsidiary or associated company, a confirmation as to whether the subsidiary or associated company is a major subsidiary or major associated company, as the case may be;
- (h)(i) where the ~~dDefault in payment~~ is in respect of a ~~listed company~~ listed corporation, major subsidiary or major associated company, as the case may be;—
- (i) a statement as to whether the ~~listed company~~ listed corporation is solvent (~~hereinafter referred to as the~~ **“Solvency Declaration”**). ~~For this purpose, a listed company~~ listed corporation is regarded as being **“solvent”** if ~~the majority directors have formed the opinion that the listed company~~ the listed corporation will be able to pay all its debts ~~as and when they fall due in full~~ within a period not exceeding 12 months from the date of the announcement; and
- (ii) ~~In the event the listed company~~ if the listed corporation is solvent, a statement that the listed corporation undertakes to provide to the Exchange, the Solvency Declaration duly executed by ~~the its~~ board of directors ~~of the listed company, in respect of the listed company~~ within 3 market days from the announcement date of the announcement. For this purpose, a listed company listed corporation will be able to pay all its debts in full within a period ~~not exceeding 12 months from the date of the announcement; and~~
- (i)(k) any other information that the Exchange may require from time to time.
- 3.2 ~~After the announcement in paragraph 2.1, the listed company~~ listed corporation ~~must announce to the Exchange~~ shall thereafter be required to—
- (a) ~~make periodic announcements on a monthly basis of the current status of the dDefault and the steps taken by the listed company~~ listed corporation to address the dDefault on a monthly basis until such time when the dDefault is remedied; and
- (b) ~~immediately upon the listed corporation becoming aware of the circumstance which may render the Solvency Declaration inaccurate.~~

#### **4.0 Solvency declaration**

- 4.1 ~~In relation to paragraph 3.1(j)(ii), a listed corporation must ensure that its board of directors executes and submits to the Exchange, the Solvency Declaration within 3 market days from the date when the listed corporation announces a Default to the Exchange under paragraph 2.1.~~

#### **4.0 Effective Date**

- 4.1 ~~This Guidance Note takes effect on 8 May 2006~~