

BURSA MALAYSIA SECURITIES BERHAD

GUIDANCE NOTE NO. 8/2006~~8~~

RECURRENT RELATED-PARTY TRANSACTIONS OF A REVENUE NATURE

<u>Details</u>	<u>Cross References</u>
<u>Effective date:</u> 3 July 2006	<u>Rules 10.08 and 10.09</u>
<u>Revision date:</u> 3 August 2009	

~~Issued in relation to Rules 10.08 and 10.09 of the Listing Requirements for the MESDAQ Market~~

And

~~Pursuant to Rules 2.07, 2.09 and 2.20 of the Listing Requirements for the MESDAQ Market~~

1.0 Introduction

- 1.1 Rule 10.08 of the Listing Requirements stipulates the obligations that a ~~listed company~~ **listed corporation** must comply with in relation to a related-party transaction, ~~as defined in Rule 10.02 of the Listing Requirements (hereinafter such transaction shall be referred to as "related-party transaction")~~.
- 1.2 Rule 10.08 must be read together with Rule 10.09 of the Listing Requirements which is in relation to a ~~particular category of related-party transaction, namely recurrent transactions of a revenue or trading nature which are necessary for day-to-day operations of a listed company or its subsidiaries (hereinafter such related party transactions shall be referred to as "Recurrent Related Party Transactions")~~.
- 1.3 This Guidance Note sets out the following:-
 - (a) clarification of the disclosure obligations in relation to Recurrent Related Party Transactions;
 - (b) clarification of the application of Rules 10.08 and 10.09 of the Listing Requirements to Recurrent Related Party Transactions (hereinafter the requirements to be referred to as "**Requirements**"); and
 - (c) the additional information required for the circular and announcement referred to under Rules 10.09(42)(c) and 10.09(2)(e) of the Listing Requirements respectively.
- 1.4 This Guidance Note must be read in conjunction with the Listing Requirements.
- 1.5 For the purpose of this Guidance Note, a ~~listed company~~ **listed corporation** ~~shall include~~ the ~~listed company~~ **listed corporation's** subsidiaries.

2.0 ~~Disclosure obligations for Recurrent Transactions~~

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2.1 ~~For the purposes of Rule 10.08(1), a listed company must make an immediate announcement of a Recurrent Transaction as follows:-~~

(a) ~~in relation to a listed company with issued and paid-up capital of RM60 million and above:-~~

(i) ~~the consideration, value of the assets, capital outlay or costs of the Recurrent Transaction is equal to or exceeds RM1 million; or~~

(ii) ~~the percentage ratio of such Recurrent Transaction is equal to or exceeds 1%,
— whichever is the higher; or~~

(b) ~~In relation to a listed company with issued and paid-up capital which is less than RM60 million:-~~

(i) ~~the consideration, value of the assets, capital outlay or costs of the Recurrent Transaction is equal to or exceeds RM1 million; or~~

(ii) ~~the percentage ratio of such Recurrent Transaction is equal to or exceeds 1%,~~

~~— whichever is the lower.~~

2.2 ~~For avoidance of doubt, the rule of aggregation set out under Rule 10.11 of the Listing Requirements shall apply at all times in the determination of the consideration, value of the assets, capital outlay, costs or percentage ratios as defined in paragraph 10.02 of the Listing Requirements, of the Recurrent Transaction(s).~~

32.0 Application of Rules 10.08 and 10.09 of the Listing Requirements to Recurrent Related Party Transactions

32.1 ~~In addition to the obligation to make immediately announcement of a related party transaction, Rule 10.08(2) of the Listing Requirements states that where any one of the percentage ratios of a related party transaction is equal to or exceeds 5% or more, a listed company/corporation must issue a circular to its shareholders, obtain specific shareholders' approval of the transaction, and appoint an independent adviser and a Sponsor or Adviser. Further, Rule 10.08(4) states that where any one of the percentage ratios is equal to or exceeds 25%, in addition to the foregoing, a listed company must also appoint a main adviser.~~

32.2 ~~However, pursuant to Rule 10.09 of the Listing Requirements, a listed company/corporation is allowed to seek obtain shareholders' a mandate from its shareholders in respect of Recurrent Related Party Transactions (hereinafter referred to as "Mandate").~~

32.3 ~~Where a listed company/corporation has obtained a Mandate in respect of any Recurrent Related Party Transactions, the requirements of Rule 10.08 of the Listing Requirements shall will not apply to the Recurrent Related Party Transactions which are comprised in the Mandate. This means, during the period of validity of the Mandate, the disclosure obligation to make immediate disclosure as set out in paragraph 2.1 above Rule 10.09(1) of the Listing Requirements, as well as the obligation to procure shareholders' approval as set out under Rule 10.08 of the Listing Requirements shall will not apply to the Recurrent Related Party Transactions which are comprised in the Mandate.~~

2.4 ~~However, pursuant to Rule 10.09(2)(e) of the Listing Requirements, a listed corporation is required to immediately announce to the Exchange when the actual value of a Recurrent Related Party Transaction entered into by the listed corporation exceeds the estimated value of the Recurrent Related Party Transaction disclosed in the circular by 10% or more.~~

43.0 Clarification on the Requirements

43.1 A ~~listed company~~listed corporation that wishes to ~~procure~~obtain a Mandate must comply with all the requirements as set out under Rule 10.09 of the Listing Requirements. This paragraph sets out the clarification in relation to the following requirements stipulated under Rule 10.09(42):

43.1.1 Recurrent ~~r~~Related-~~p~~Party ~~t~~Transactions

In this respect, the frequency or regularity of the transaction has to be considered. A transaction which has been made or will be made by the ~~listed company~~listed corporation at least once in 3 years in the course of its business will be considered recurrent.

43.1.2 Revenue nature necessary for day-to-day operations

In this respect, a ~~related-~~party transaction of a revenue nature which is necessary for day-to-day operations must either contribute directly or indirectly to the generation of revenue for the ~~listed company~~listed corporation. As an example, in the case of an information technology company, the following transactions, which are by no means exhaustive, are considered to be of a revenue nature:-

- (a) the purchase and sale of computer peripherals, accessories and components such as data storage products (e.g. micro floppy discs, audio and videotape) and optical data storage media (e.g. compact discs);
- (b) the appointment of third parties to sell its products;
- (c) the purchase of insurance policies for its properties, assets and employees;
- (d) the purchase of office supplies; and
- (e) the provision of storage and other infrastructure facilities.

43.1.3 In the ordinary course of business

A ~~related-~~party transaction is in the ordinary course of business, if it is a transaction which would reasonably be expected to be carried out by the ~~listed company~~listed corporation given the type of business the ~~listed company~~listed corporation is involved in.

The fact that the transaction is envisaged in the memorandum of association of the ~~listed company~~listed corporation ~~shall~~will not be a conclusive factor of determination. ~~(c)~~As an example, in respect of a ~~listed company~~listed corporation involved in activities relating to information technology, the following transactions, which are by no means exhaustive, are considered to be in the ordinary course of business of the ~~listed company~~listed corporation:-

- (a) the purchase of raw materials and supplies for its business;
- (b) rental of office space for its operations;
- (c) payment of insurance premium for coverage of company assets, staff and projects;
- (d) the purchase and maintenance of computers for company or project use; and

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- (e) the requisition of management, secretarial, internal audit and other support services for its business.

43.1.4 Annual renewal

The Mandate is subject to annual renewal. In this respect, any authority conferred by a Mandate ~~shall will~~ only continue to be in force until:-

- (a) the conclusion of the first annual general meeting of the ~~listed company~~listed corporation following the general meeting at which such Mandate was passed, at which time it will lapse, unless by a resolution passed at the meeting, the authority is renewed;
- (b) the expiration of the period within which the next annual general meeting after the date it is required to be held pursuant to section 143(1) of the Companies Act, 1965 ("**CA**") (but ~~shall will~~ not extend to such extension as may be allowed pursuant to section 143(2) of CA); or
- (c) revoked or varied by resolution passed by the shareholders in general meeting,

whichever is the earlier.

43.1.5 Annual report

In making the disclosure of the aggregate value of Recurrent Related Party Transactions conducted pursuant to the Mandate in a ~~listed company~~listed corporation's annual report, a ~~listed company~~listed corporation must provide a breakdown of the aggregate value of the Recurrent Related Party Transactions made during the financial year, amongst others, based on the following information:-

- (a) the type of the Recurrent Related Party Transactions made; and
- (b) the names of the related parties involved in each type of the Recurrent Related Party Transactions made and their relationship with the ~~listed company~~listed corporation.

43.2 Notwithstanding the clarifications above, the following are not regarded as Recurrent Related Party Transactions and as such the Mandate ~~shall does~~ not apply:

- (a) the acquisition or disposal of land or land-based property except in circumstances set out in paragraph 3.3(a) below;
- (b) the acquisition or disposal of vessels, air crafts and plants;
- (c) the entry into a lease of:-
 - (i) a property for a period exceeding ~~three (3)~~ years; or
 - (ii) such other assets,

which involve payments of rental or such consideration on a lump sum basis (i.e. other than on an equal pro-rated monthly or annual instalments);
- (d) the provision of financial assistance pursuant to Rule 8.25 of the Listing Requirements;

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- (e) the acquisition or disposal of securities except in the circumstances set out in paragraph 3.3(b) below;
- (f) the entry into joint ventures;
- (g) the grant or exercise of an option in relation to matters set out in subparagraphs 4.2(a), (b), (c) and (e) above; and
- (h) such other transactions as may be determined by the Exchange from time to time.

43.3 Notwithstanding paragraph 3.2 of this Guidance Note -

- (a) a listed corporation classified under the Exchange's property sector may procure a Mandate for acquisition or disposal of land or land-based property provided that the transaction is a Recurrent Related Party Transaction and any one of the percentage ratios is not more than 10%; and
- (b) a listed corporation under Rule 9.20(2)(a) and (c) of the Listing Requirements may procure a Mandate for acquisition or disposal of securities which is a Recurrent Related Party Transaction.

4.3.4 Notwithstanding paragraph 4.3.2(d) above and subject to Rule 10.09 of the Listing Requirements and the other provisions of this Guidance Note, a ~~listed company~~listed corporation may ~~seek to obtain a general shareholder~~ mandate in respect of the following Recurrent Related Party Transactions:-

- (a) the pooling of funds within the ~~listed company~~listed corporation's group of companies via a centralised treasury management function or such similar arrangements which entails the provision of financial assistance by the ~~listed company~~listed corporation, ~~and/or its unlisted subsidiaries or both,~~ on a short or medium term basis provided that:-
 - (i) the ~~listed company~~listed corporation in seeking such a mandate in accordance with Rules 8.34~~25~~ and 10.09 of the Listing Requirements, must include in its circular, in addition to such other information as prescribed under the Listing Requirements, the estimated amounts or value of financial assistance (~~hereinafter referred to as "the Estimate"~~); and
 - (ii) if the actual amount of financial assistance provided or rendered exceeds the Estimate, the ~~listed company~~listed corporation must ~~make an immediately announcement of the same to the Exchange.~~ If the percentage ratio of the amount of financial assistance provided or rendered in excess of the Estimate is 5% or more, the ~~listed company~~listed corporation must comply with Rule 10.08 of the Listing Requirements.

For purposes of this paragraph:-

- (aa) **"short or medium term basis"** ~~shall mean~~ for a duration not exceeding 3 years; and
- (bb) **"group of companies"** ~~shall mean~~ the subsidiaries, associated companies of the ~~listed company~~listed corporation and the ~~listed company~~listed corporation's immediate holding company which is listed.

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- (b) provision of guarantee, indemnity or such other collateral to or in favour of another person which is necessary in order to procure a contract or secure work from the other person or to enable the other person to commence and/or complete a contract or work for the ~~listed company~~listed corporation or its subsidiaries.
- (c) provision of financial assistance in respect of the business of:-
 - (i) leasing, factoring or hire purchase carried out by a listed corporation or its unlisted subsidiaries; or
 - (ii) share financing or share margin financing carried out by a listed corporation or its unlisted subsidiaries which is a Participating Organisation; or
 - (iii) such other similar business that may be determined by the Exchange.

54.0 Additional Information in circular and announcement

- 54.1 ~~In preparing and issuing a circular pursuant to Rule 10.09(1)(c) of the Listing Requirements, the listed company~~A listed corporation must ~~is required to~~ include such information as set out in ~~Appendix GN8/2006-A hereof~~Annexure GN8-A and Annexure GN8-B respectively in the circular and announcement required under Rule 10.09(2)(c) and (e) of the Listing Requirements. ~~addition to the information set out in Part B of Appendix 10D of the Listing Requirements. For avoidance of doubt, the checklist showing compliance of a circular issued to procure a Mandate should also include these additional information.~~

6.0 Effective Date

- 6.1 ~~This Guidance Note take effect on 3 July 2006.~~

Annexure GN8-A
Contents of circular for shareholder mandate

APPENDIX GN8/2006-A ANNEXURE GN8-A

Contents of circular to shareholders for shareholders' mandate
(Paragraph 4.1)

- (1) A heading drawing attention to the importance of the circular and advising holders of shares who are in any doubt as to what action to take to consult appropriate independent ~~professional~~ advisers;
- (2) A statement that Bursa Malaysia Securities Berhad takes no responsibility for the contents of the circular, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the ~~document~~ circular. In relation to a circular which has not been perused by Bursa Malaysia Securities Berhad before its issuance, a statement to that effect;
- (3) The principal business activity of the ~~listed company~~ listed corporation and its subsidiaries, the details of the nature of the Recurrent Related Party Transactions contemplated under the Mandate including the activities, products, and the estimated aggregate value of the respective Recurrent Related Party Transactions contemplated under the Mandate, ~~where possible~~ and the details of the class of related parties with whom the Recurrent Related Party Transactions will be carried out including the relationship with the ~~listed company~~ listed corporation and the names of these parties. ~~Where it is not possible to determine the estimated value of the Recurrent Related Party Transaction, to state the reason;~~
- (4) The rationale for, and the benefit to, the listed corporation or its subsidiary transacting with the related party;
- (45) The ~~listed company~~ listed corporation's methods or procedures to ensure that the Recurrent Related Party Transactions contemplated under the Mandate are undertaken on transaction prices and terms not more favourable to the related party than those generally available to the public and are not to the detriment of the minority shareholders;
- (56) The audit committee's view on whether the procedures above are sufficient to ensure that Recurrent Related Party Transactions are not more favourable to the related party than those generally available to the public and are not to the detriment of the minority shareholders;
- (67) The interest, direct or indirect, of the directors and/or major shareholders and/or persons connected with a director or major shareholder in the proposal and the related party's direct and indirect shareholdings in the ~~listed company~~ listed corporation;
- (78) A statement that the interested directors have abstained and/or will abstain from board deliberation and voting on the relevant resolution;
- (89) A statement that the director, major shareholder and/or person connected with a director or major shareholder, which has/have any interest, direct or indirect, in the proposal will abstain from voting in respect of his/their direct and/or indirect shareholdings. Where the person connected with a director or major shareholder has any interest, direct or indirect, in the proposal, a statement that the director or major shareholder concerned will also abstain from voting in respect of his direct and/or indirect shareholdings. Further, a statement that such interested director and/or major shareholder has/have undertaken that he/they ~~shall~~ will ensure that the persons connected with him/them will abstain from voting on the resolution deliberating or approving the proposal at the general meeting;

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Contents of circular for shareholder mandate

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- (910) A statement by the board of directors whether the proposal is in the best interest of the ~~listed company~~listed corporation and where a director disagrees with such statement, a statement by the director setting out the reasons and the factors taken into consideration in forming that opinion;
- (11) The thresholds for the approval of Recurrent Related Party Transactions within the listed corporation's group of companies;
- (12) A statement that at least 2 other contemporaneous transactions with unrelated third parties for similar products/services and/or quantities will be used as comparison, wherever possible, to determine whether the price and terms offered to/by the related parties are fair and reasonable and comparable to those offered to/by other unrelated third parties for the same or substantially similar type of produces/services and/or quantities. In the event that quotation or comparative pricing from unrelated third parties cannot be obtained (for instance, if there are no unrelated third party vendors/customers of similar products or services, or if the product/service is a proprietary item), to state how the transaction price will be determined and ensure that the Recurrent Related Party Transaction is not detrimental to the listed corporation or its group of companies;
- (13) A statement by the audit committee that the group of companies has in place adequate procedures and processes to monitor, track and identify Recurrent Related Party Transactions in a timely and orderly manner, and the frequency of review of these procedures and processes.
- (14) The actual value transacted of each Recurrent Related Party Transaction, from the date on which the existing mandate was obtained up to the latest practicable date before the printing of the circular ("**Actual Value**"):
- (15) The estimated value of each Recurrent Related Party Transaction as disclosed in the preceding year's circular to shareholders ("**Estimated Value**"):
- (16) The reasons for the deviation, where the Actual Value exceeds the Estimated Value by 10% or more;
- (4017) A recommendation from the board of directors (other than the interested directors) as to the voting action that shareholders should take;
- (4418) An appendix containing the following information:-
- (a) a responsibility statement by the directors that the circular has been seen and approved by the directors of the ~~listed company~~listed corporation and that they collectively and individually accept full responsibility for the accuracy of the information given and confirm that after making all reasonable enquiries to the best of their knowledge and belief, there are no other facts the omission of which would make any statement in the circular misleading;
 - (b) where a person is named in the circular as having advised the ~~listed company~~listed corporation or its directors, a statement that such adviser ~~or expert~~ has given and has not withdrawn its written consent to the inclusion of the adviser's ~~or expert's~~ name and/or letter (where applicable), or both, in the form and context in which it is included;
 - (c) a statement of all material contracts (not being contracts entered into in the ordinary course of business) entered into by the ~~listed company~~listed corporation and/or its subsidiaries within 2 years immediately preceding the date of the circular. The following particulars ~~shall~~ must be disclosed in respect of each such contract:-

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Contents of circular for shareholder mandate

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- (i) the date of the contract;
- (ii) the parties of the contract;
- (iii) the general nature; and
- (iv) the consideration and mode of satisfaction ~~thereof~~;
- (d) a statement of all material litigation, claims or arbitration involving the ~~listed company~~listed corporation and/or any of its subsidiaries, including those pending or threatened against such companies. —The following particulars ~~shall~~must be disclosed:-
- (i) the background;
- (ii) the date of the suit;
- (iii) the names of the plaintiff(s) and defendant(s);
- (iv) the estimate of the maximum exposure to liabilities;
- (v) directors' ~~/or~~solicitors' opinion of the outcome; and
- (vi) the status;
- (e) a statement that for a period from the date of the circular to the date of the general meeting the following documents (or copies ~~thereof~~of the said documents) may be inspected at the registered office of the ~~listed company~~listed corporation:-
- (i) the memorandum and articles of association;
- (ii) the audited ~~accounts~~financial statements of the ~~listed company~~listed corporation/group for the past 2 financial years and the latest unaudited results since the last audited ~~accounts~~financial statements;
- (iii) all reports, letters or other documents, balance sheets, valuations and statements by any expert, any part of which is extracted or referred to in the circular;
- (iv) the letters of consent referred to in subparagraph ~~(11)~~(b) above;
- (v) the material contracts referred to in subparagraph ~~(11)~~(c) above; and
- (vi) the relevant cause papers in respect of material litigation referred to in subparagraph ~~(11)~~(d) above; and
- ~~(12)~~19 any other information concerning the proposal as shareholders and their ~~professional~~-advisers would reasonably require and would reasonably expect to find in the circular for the purposes of making an informed assessment as to the merits of approving the proposal and the extent of the risks involved in doing so.

[End of Annexure]

Annexure GN8-B

Contents of announcement for a Recurrent Related Party Transaction

ANNEXURE GN8-B

Contents of announcement for a Recurrent Related Party Transaction
(paragraph 4.1)

- (1) The estimated value of the Recurrent Related Party Transaction as disclosed in the circular to the shareholders ("**Estimated Value**");
- (2) The actual value of the Recurrent Related Party Transaction transacted, from the date on which the existing Mandate was obtained up to the date of the announcement ("**Actual Value**"; and
- (3) The difference (in value and percentage) for the variation between the Actual Value and the Estimated Value by 10% or more, and the reason for the difference.

[End of Annexure]