

GUIDANCE NOTE NO. 8/2006

RECURRENT RELATED-PARTY TRANSACTIONS OF A REVENUE NATURE

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 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 Transactions").
- 1.3 This Guidance Note sets out the following:-
 - (a) clarification of the disclosure obligations in relation to Recurrent Transactions;
 - (b) clarification of the application of Rules 10.08 and 10.09 to Recurrent Transactions (hereinafter the requirements to be referred to as "Requirements"); and
 - (c) the additional information required for the circular referred to under Rule 10.09(1)(c).
- 1.4 This Guidance Note must be read in conjunction with the Requirements.
- 1.5 For the purpose of this Guidance Note, a "listed company" shall include the listed company's subsidiaries.

2.0 Disclosure obligations for Recurrent Transactions

- 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).

3.0 Application of Rules 10.08 and 10.09 to Recurrent Transactions

- 3.1 In addition to the obligation to make immediate announcement of a related party transaction, Rule 10.08(2) states that where any one of the percentage ratios of a related party transaction is equal to or exceeds 5%, a listed company must issue a circular to its shareholders, obtain specific shareholders' approval of the transaction and appoint an independent 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.
- 3.2 However, pursuant to Rule 10.09, a listed company is allowed to seek shareholders' mandate in respect of Recurrent Transactions (hereinafter referred to as "Mandate").
- 3.3 Where a listed company has obtained a Mandate in respect of any Recurrent Transactions, the requirements of Rule 10.08 shall not apply to the Recurrent Transactions which are comprised in the Mandate. This means, during the period of validity of the Mandate, the obligation to make immediate disclosure as set out in paragraph 2.1 above, as well as the obligation to procure shareholders' approval as set out under Rule 10.08 shall not apply to the Recurrent Transactions which are comprised in the Mandate.

4.0 Clarification on the Requirements

- 4.1 A listed company that wishes to procure 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(1):-

4.1.1 Recurrent related-party 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 at least once in 3 years in the course of its business will be considered recurrent.

4.1.2 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. 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.

4.1.3 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 given the type of business the listed company is involved in. The fact that the transaction is envisaged in the memorandum of association of the listed company shall not be a conclusive factor of determination. As an example, in respect of a listed company 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:-

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

4.1.4 Annual renewal

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

- (a) the conclusion of the first annual general meeting of the listed company 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 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.

4.1.5 Annual report

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

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

4.2 Notwithstanding the clarifications above, the following are not regarded as Recurrent Transactions and as such the Mandate shall not apply:-

- (a) the acquisition or disposal of land or land-based property;
- (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 8.31 of the Listing Requirements;
- (e) the acquisition or disposal of securities;
- (f) the entry into joint ventures;
- (g) the grant or exercise of an option in relation to matters set out in paragraphs 4.2(a), (b), (c) and (e) herein; and
- (h) such other transactions as may be determined by the Exchange from time to time.

4.3 Notwithstanding paragraph 4.2(d) above and subject to Rule 10.09 of the Listing Requirements and the other provisions of this Guidance Note, a listed company may seek a general mandate in respect of the following Recurrent Transactions:-

- (a) the pooling of funds within the listed company'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 and/or its unlisted subsidiaries on a short or medium term basis provided that:-

- (i) the listed company in seeking such a mandate in accordance with Rules 8.31 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 must make an immediate announcement of the same. 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 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 and the listed company's immediate holding company which is listed.
- (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 or its subsidiaries.

5.0 Additional information in circular

- 5.1 In preparing and issuing a circular pursuant to Rule 10.09(1)(c) of the Listing Requirements, the listed company is required to include such information as set out in Appendix GN8/2006-A hereof in 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.

APPENDIX GN8/2006-A

Additional contents of circular to shareholders for shareholders' mandate

- (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;
- (3) The principal business activity of the listed company and its subsidiaries, the details of the nature of the Recurrent Transactions contemplated under the Mandate including the activities, products, and the aggregate value of the respective Recurrent Transactions contemplated under the Mandate, where possible and the details of the class of related parties with whom the Recurrent Transactions will be carried out including the relationship with the listed company and the names of these parties, where possible;
- (4) The listed company's procedures to ensure that the Recurrent Transactions contemplated under the Mandate are undertaken on 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;
- (5) The audit committee's view on whether the procedures above are sufficient to ensure that Recurrent 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;
- (6) 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;
- (7) A statement that the interested directors have abstained and/or will abstain from board deliberation and voting on the relevant resolution;
- (8) A statement that the director, major shareholder and/or person connected with a director or major shareholder, which have any interest, direct or indirect, in the proposal will abstain from voting in respect of 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 ensure that the persons connected with him/them will abstain from voting on the resolution approving the proposal at the general meeting;
- (9) A statement by the board of directors whether the proposal is in the best interest of the listed company 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;
- (10) A recommendation from the board of directors (other than the interested directors) as to the voting action that shareholders should take;
- (11) 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 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 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) 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 and/or its subsidiaries within 2 years immediately preceding the date of the circular. The following particulars shall be disclosed in respect of each such contract:-
 - (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 and/or any of its subsidiaries, including those pending or threatened against such companies. The following particulars shall 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'/solicitors' opinion of the outcome; and
 - (vi) the status;
- (f) 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) may be inspected at the registered office of the listed company:-
 - (i) the memorandum and articles of association;
 - (ii) the audited accounts of the listed company/group for the past 2 financial years and the latest unaudited results since the last audited accounts;
 - (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) 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.