

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(c) 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.

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.