



Suruhanjaya Sekuriti
Securities Commission
Malaysia



JOINT PUBLIC CONSULTATION PAPER

NO. 1/2012

**PROPOSED BEST PRACTICE GUIDE IN RELATION TO
INDEPENDENT ADVICE LETTERS**

The Securities Commission Malaysia (SC) and Bursa Malaysia Securities Berhad (Bursa Securities) invite your written comments on the issues set out in this Joint Consultation Paper by **Thursday, 31 January 2013** via:

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Respondents to this Joint Consultation Paper are requested to use the reply format in **Annexure**.

Kindly contact the following persons if you have any queries in relation to this Joint Consultation Paper:

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This document can be downloaded freely from both the SC's website (www.sc.com.my) or Bursa Malaysia Berhad's website (www.bursamalaysia.com). Copies of this document may be made without seeking permission from the SC or Bursa Securities.

Confidentiality: Your responses may be made public by the SC and Bursa Securities. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only if you request that the information remains confidential.

This Joint Public Consultation Paper is dated 20 December 2012

1. INTRODUCTION

- 1.1 Disclosure and transparency are critical elements of a robust corporate governance framework as they provide the basis for informed decision-making by shareholders, stakeholders and potential investors with respect to capital allocation, corporate transactions and financial performance monitoring.

High quality disclosure and transparency are increasingly used by both international and domestic investors as a benchmark to gauge a company's ethical conduct. Good ethical conduct promotes investor protection, creates a conducive investment environment and maintains market confidence and systemic stability¹.

- 1.2 As part of the continuous effort of both the Securities Commission Malaysia (SC) and Bursa Malaysia Securities Berhad (Bursa Securities) to improve the quality of disclosures and enhance investor protection in the market place, we propose to introduce a Best Practice Guide (IAL Guide) in relation to Independent Advice Letters (IALs) that are issued to securities holders pursuant to corporate proposals or transactions which involve the appointment of Independent Advisers.
- 1.3 This Joint Public Consultation Paper is to invite public feedback on the draft IAL Guide.

2. OVERVIEW

Appointment of an Independent Adviser

- 2.1 Currently, an Independent Adviser is required to be appointed for various corporate proposals as follows:

- (a) Major disposal²

Where a listed corporation disposes all or substantially all of its assets which may result in the listed corporation being no longer suitable for continued listing on Bursa Securities (Major Disposal).

- (b) Related-party transactions³

In respect of a related-party transaction (RPT) where the percentage ratio is 5% or more.

¹ *Corporate Governance Blueprint 2011*

² Paragraph 10.11A of the *Main Listing Requirements (Main LR)*; Rule 10.11A of the *ACE LR*

³ Paragraph 10.08(2)(c) of the *Main LR*; Rule 10.08(2)(c)(i) of the *ACE LR*

(c) Withdrawal of listing⁴

In connection with a request for voluntary withdrawal of listing by a listed issuer.

- 2.2 Apart from the above, there are also other circumstances where a listed issuer on its own accord decides to appoint an Independent Adviser or the listed issuer may be required to appoint an Independent Adviser to advise on its proposed corporate proposal, especially in instances where a listed issuer, its principal adviser or sponsor is not able to address all situations of conflict of interests satisfactorily.

Roles of an Independent Adviser

- 2.3 An Independent Adviser plays a crucial role in safeguarding the interests of securities holders given that the Independent Adviser is responsible for advising the securities holders as to how they should vote in respect of the relevant transaction based on their findings.
- 2.4 Typically, an Independent Adviser is required to comment as to whether the proposed transaction is fair and reasonable in so far as the securities holders are concerned. The Independent Adviser must substantiate its opinion with the reasons for, the key assumptions made and the factors taken into account in arriving at its opinion. In doing so, the Independent Adviser must take all the steps to satisfy itself that it has a reasonable basis for its comments and advice to securities holders. The IAL must be attached to the circular to all the listed issuer's securities holders for their consideration.

Benchmarking studies

- 2.5 The current requirements we impose on an Independent Adviser, especially in relation to a related party transaction, are comparable with the requirements in the other benchmarked jurisdictions, such as Australia, Hong Kong and Singapore.
- 2.6 However, we believe a guide will be useful to our Independent Advisers and listed issuers in providing greater clarity on how Independent Advisers can help securities holders make informed decisions about corporate proposals.

3. OBJECTIVES OF THE IAL GUIDE.

- 3.1 In respect of transactions which may involve an issue of conflict of interests, or where securities holders' interests may be compromised, securities holders must be entitled to not only independent, but also quality and meaningful advice which can aid them to make informed investment decisions.

⁴ Paragraph 16.06(d) of the *Main LR*; Rule 16.06(d) of the *ACE LR*

- 3.2 Based on the above, the proposed issuance of the IAL Guide is aimed at achieving the following objectives:
- (a) To clarify the SC's and Bursa Securities' views on the roles of an Independent Adviser, and to provide guidance on the standards of disclosures in IALs, specifically in respect of major disposals, RPTs, voluntary withdrawal of listing and other corporate proposals where an appointment of an Independent Adviser is required to safeguard investors' interests; and
 - (b) To augment the SC's and Bursa Securities' continuous efforts in raising standards of corporate governance through the promotion of high quality disclosures under the current market-based regulatory framework.
- 3.3 In this connection, examples and illustrations relating to particular situations have been set out in the draft IAL Guide to provide guidance on the SC's and Bursa Securities' views on how the draft IAL Guide should be applied.
- 3.4 The draft IAL Guide was developed after having carefully considered the regulatory impact, cost of compliance and striking the appropriate balance between the compelling needs of business efficacy and investor protection.
- 3.5 It is hoped that the enhanced disclosures and improved quality in IALs will better empower securities holders with quality information to make informed investment decisions. This will also result in greater transparency and better investor protection which will in turn, boost investors' confidence in the Malaysian capital market.
- 3.6 The draft IAL Guide will not be applicable to the independent advice circular issued by an Independent Adviser pursuant to the *Malaysian Code on Takeovers and Mergers 2010* (the Code).

4. PROPOSED IAL GUIDE

- 4.1 The draft IAL Guide seeks to, amongst others, provide guidance and clarifications to an Independent Adviser in the following key areas:
- (a) Acceptance of the engagement**
 - (i) Factors for consideration before accepting the appointment as an Independent Adviser.
 - (ii) How to analyse a transaction.
 - (iii) Areas of assessment, and how an Independent Adviser should evaluate its assessment.
 - (iv) Roles and responsibilities of an Independent Adviser when relying on the work or information of other experts.

- (v) Undertaking due diligence in respect of information provided in the IAL.

(b) Valuation matters

- (i) Appropriateness of valuation methodologies adopted.
- (ii) Best valuation practices.
- (iii) Disclosures of valuation methodologies, assumptions made and the valuation results in an IAL.

(c) Contents of an IAL

- (i) Providing an executive summary for an IAL.
- (ii) IAL should contain sufficient and value-add information, and be kept concise.

(d) Others

- (i) Forward-looking statement.
- (ii) Responsibilities of an Independent Adviser after the issuance of an IAL, if there is material change in the information relied on or misstatement in the IAL.
- (iii) Maintaining proper documentation and record.

5. PUBLIC CONSULTATION

- 5.1 A copy of the draft IAL Guide is enclosed to this document as Appendix 1 for your reference.
- 5.2 We would like to invite your feedback and views on the draft IAL Guide, to ensure that the IAL Guide is comprehensive and provides useful guidance, and will achieve its intended objectives of enhancing the quality of IAL and safeguarding the interests of the listed issuer and/or securities holders accordingly. You can provide your comments to the draft IAL Guide by completing the template as enclosed in the Annexure.
- 5.3 In addition to the specific proposals highlighted, we would be grateful if you can provide your views on the following:
 - (a) What are the specific weaknesses of the current IALs issued to the securities holders, if any? Kindly provide examples, where possible.
 - (b) What are the specific areas of improvement which you would like to see in IALs?
 - (c) Do you have any other suggestions which may enhance the quality of IALs?

- (d) Please state your views or comments on the draft IAL Guide. Are there any other areas which you think the IAL Guide should cover and what are your proposed recommendations?

~~~~~The End~~~~~

**APPENDIX 1**

**PROPOSED BEST PRACTICE GUIDE IN RELATION TO  
INDEPENDENT ADVICE LETTERS**

## ANNEXURE

COMMENTS TO THE JOINT PUBLIC CONSULTATION PAPER ON PROPOSED  
BEST PRACTICE GUIDE IN RELATION TO INDEPENDENT ADVICE LETTERS

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Facsimile: +603-2732 3263

NAME OF RESPONDENT :

CONTACT PERSON AND CONTACT NUMBER :

ELECTRONIC MAIL ADDRESS :

| No. | Issues                                                                                                                                                                       | Comments |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1   | What are the specific weaknesses of the current IALs issued to the securities holders, if any? Kindly provide examples, where possible.                                      |          |
| 2   | What are the specific areas of improvement which you would like to see in IALs?                                                                                              |          |
| 3   | Do you have any other suggestions which may enhance the quality of IALs?                                                                                                     |          |
| 4   | Please state your views or comments on the draft IAL Guide. Are there any other areas which you think the IAL Guide should cover and what are your proposed recommendations? |          |

| <b>No.</b> | <b>Issues</b>                   | <b>Comments</b> |
|------------|---------------------------------|-----------------|
| 5          | Do you have any other comments? |                 |