

BURSA MALAYSIA SECURITIES BERHAD**PRACTICE NOTE 17****CRITERIA AND OBLIGATIONS OF PN17 ISSUERS**

Details		Cross References
Effective date:	3 January 2005	Paragraphs 8.03A, 8.04, 16.02 and 16.11
Revision date:	3 August 2009, 22 September 2011, 25 March 2013, 27 January 2015, 3 May 2016, 31 December 2016, 2 January 2018, 3 June 2019, 13 August 2020	

1.0 Introduction

1.1 This Practice Note sets out, amongst others, the following:

- (a) the criteria in relation to the financial condition of a listed issuer, which if triggered will give rise to an obligation for the listed issuer to comply with the provisions of this Practice Note; and
- (b) the requirements that must be complied with by a PN17 Issuer, including a PN17 Business Trust.

2.0 Criteria

2.1 Pursuant to paragraphs 8.04(2) of the Listing Requirements, where a listed issuer triggers any one or more of the following Prescribed Criteria it must comply with the provisions of paragraph 8.04 and this Practice Note:

- (a) the shareholders' equity of the listed issuer on a consolidated basis is 25% or less of the share capital (excluding treasury shares) of the listed issuer and such shareholders' equity is less than RM40 million;
- (b) receivers or managers, or judicial managers have been appointed over the asset of the listed issuer, its subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis;
- (c) a winding up of a listed issuer's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed issuer on a consolidated basis;
- (d) the auditors have expressed an adverse or disclaimer opinion in the listed issuer's latest audited financial statements;

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- (e) the auditors have highlighted a material uncertainty related to going concern or expressed a qualification on the listed issuer's ability to continue as a going concern in the listed issuer's latest audited financial statements and the shareholders' equity of the listed issuer on a consolidated basis is 50% or less of share capital (excluding treasury shares) of the listed issuer; or
 - (f) a default in payment by a listed issuer, its major subsidiary or major associated company, as the case may be, as announced by a listed issuer pursuant to paragraph 9.19A of the Listing Requirements and the listed issuer is unable to provide a solvency declaration to the Exchange.
 - (g) [deleted]
 - (h) [deleted]
- 2.1A In relation to a listed issuer which is a business trust, where the business trust triggers any one or more of the following Prescribed Criteria ("**PN17 Business Trust**") instead of the Prescribed Criteria in paragraph 2.1 above, it must comply with the provisions of paragraph 8.04 and this Practice Note:
- (a) the unit holders' fund (excluding non-controlling interest) on a consolidated basis is negative;
 - (b) receivers or managers have been appointed over the asset of the business trust, which asset accounts for at least 50% of the total assets employed of the business trust on a consolidated basis;
 - (c) a winding up of a business trust's subsidiary or associated company which accounts for at least 50% of the total assets employed of the business trust on a consolidated basis;
 - (d) the auditors have expressed an adverse or disclaimer opinion in the business trust's latest audited financial statements; or
 - (e) a default in payment of loans or credit facilities of a business trust or its major subsidiary or major associated company, as announced by the trustee-manager pursuant to paragraph 9.19A of the Listing Requirements and the trustee-manager is unable to provide a solvency declaration to the Exchange.
 - (f) [deleted]
 - (g) [deleted]
- 2.2 For the purposes of this Practice Note, unless the context otherwise requires -
- (a) "**shareholders' equity**" refers to the equity attributable to equity holders of the listed issuer;
 - (b) "**total assets employed**" must be based on the listed issuer's latest audited or unaudited financial statements;
 - (c) [deleted]
 - (d) [deleted]

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- (e) “**net profit**” means the net profit after non-controlling interest and excludes one off items, such as the following:
- (i) interest waiver;
 - (ii) negative goodwill credited to statement of profit and loss and other comprehensive income;
 - (iii) gain/loss arising from sale of investment in associated companies/ subsidiaries or land and building; and
 - (iv) restructuring cost;
- (f) “**unit holders’ fund**” refers to the fund attributable to unit holders of the business trust.

2.3 [Deleted]

3.0 [Deleted]

4.0 Disclosure obligations of the PN17 Issuer

- 4.1 Pursuant to paragraph 8.04(3)(b) of the Listing Requirements, a PN17 Issuer must announce to the Exchange -
- (a) on an immediate basis (“**First Announcement**”) upon the PN17 Issuer triggering one or more of the Prescribed Criteria -
 - (i) that the listed issuer is a PN17 Issuer pursuant to this Practice Note;
 - (ii) the listed issuer’s obligations pursuant to this Practice Note;
 - (iii) the consequences of non-compliance with such obligations; and
 - (iv) the status of the listed issuer’s regularisation plan 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) within 3 months from the First Announcement, on whether the regularisation plan will result in a significant change in the business direction or policy of the PN17 Issuer;
 - (c) the status of its regularisation plan and the number of months to the end of the relevant timeframes referred to in paragraph 5.1, 5.2 or 5.3 below, as may be applicable, on a monthly basis (“**Monthly Announcement**”) until further notice from the Exchange;
 - (d) its compliance or non-compliance with a particular obligation imposed pursuant to this Practice Note, on an immediate basis;
 - (e) details of the regularisation plan which announcement must fulfill the requirements set out in paragraph 4.2 below (“**Requisite Announcement**”); and

- (f) where the PN17 Issuer fails to regularise its condition, the dates of suspension and de-listing of its listed securities, immediately upon notification of suspension and de-listing by the Exchange.

4.2 The Requisite Announcement must -

- (a) contain details of the regularisation plan and sufficient information to demonstrate that the PN17 Issuer is able to comply with all the requirements set out under paragraph 5.4 below after implementation of the regularisation plan;
- (b) include a timeline for the complete implementation of the regularisation plan; and
- (c) be announced by the PN17 Issuer's Principal Adviser.

4.3 Before a PN17 Issuer makes the Requisite Announcement, it must ensure that -

- (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 PN17 Issuer's creditors, the PN17 Issuer has taken reasonable steps to procure the agreement-in-principle of such creditors.

4.4 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.

5.0 Obligation to Regularise

5.1 If a PN17 Issuer undertakes a regularisation plan which will result in a significant change in the business direction or policy of the PN17 Issuer, it must –

- (a) submit the plan to the SC for approval, within 12 months from the date of the First Announcement; and
- (b) complete the implementation of the plan within such timeframe as may be prescribed by the SC.

5.2 If a PN17 Issuer undertakes a regularisation plan which will not result in a significant change in the business direction or policy of the PN17 Issuer, it must –

- (a) submit to the Exchange the plan and obtain the Exchange's approval to implement the plan within 12 months from the date of the First Announcement;
- (b) complete the implementation of the plan within 6 months from the date the plan is approved by the Exchange. However, for cases which involve court proceedings, a PN17 Issuer has up to 12 months from the date the plan is approved by the Exchange, to complete the implementation of the plan; and
- (c) record a net profit in 2 consecutive quarterly results immediately after the completion of the implementation of the plan. In this regard, the PN17 Issuer must ensure that the relevant quarterly results are subjected to a limited review by an external auditor before they are announced to the Exchange.

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- 5.3 In relation to a PN17 Business Trust, if the PN17 Business Trust undertakes a regularisation plan which will not result in a significant change in the business direction or policy of the PN17 Business Trust, it must –
- (a) comply with the requirements in paragraph 5.2(a) and (b) above; and
 - (b) record either a net profit or positive operating cash flow in 2 consecutive quarterly results immediately after the completion of the implementation of the plan. In this regard, the PN17 Business Trust must ensure that the relevant quarterly results are subjected to a limited review by an external auditor before they are announced to the Exchange.
- 5.4 Pursuant to paragraph 5.2 above, a PN17 Issuer and its Principal Adviser must ensure that a regularisation plan which will not result in a significant change in the business direction or policy of the PN17 Issuer -
- (a) is sufficiently comprehensive and capable of resolving all problems, financial or otherwise that had caused the PN17 Issuer to trigger the Prescribed Criteria;
 - (b) enables the PN17 Issuer to regularise its financial condition such that the PN17 Issuer no longer triggers any of the Prescribed Criteria; and
 - (c) is fair and reasonable to the PN17 Issuer and its securities holders and will increase value for its securities holders.
- 5.5 In complying with the requirements under paragraph 5.4 above, the PN17 Issuer and its Principal Adviser must demonstrate to the satisfaction of the Exchange, the following:
- (a) the regularisation plan is able to strengthen the financial position of the PN17 Issuer including its securities holders' equity, gearing, net asset position, cash flow position, and address its accumulated losses position;
 - (b) the steps taken or proposed to be taken are comprehensive and capable of addressing the issues that had caused the PN17 Issuer to trigger the Prescribed Criteria, such that the PN17 Issuer will –
 - (i) no longer trigger any of the Prescribed Criteria upon implementation of the regularisation plan; and
 - (ii) not trigger any of the Prescribed Criteria in the near future;
 - (c) the core business activities of the PN17 Issuer post-implementation of the regularisation plan is viable, sustainable and has growth prospects to warrant continued trading or listing on the Official List. In this respect, the PN17 Issuer must provide sufficient information in support of its regularisation plan, including -
 - (i) a detailed business plan of its core business activities;
 - (ii) profitability of the core business. Generally, low profit margin or loss making business will raise concerns on the viability of the core business. In the case of a PN17 Business Trust, the ability to generate profits or positive operating cash flow from the core business;
 - (iii) sufficiency of resources and strength and expertise of the key management, to achieve its business plan and expected level of operations;
 - (iv) industry prospects;

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- (v) competitive advantage; and
 - (vi) market position; and
 - (d) the ability of the PN17 Issuer to immediately generate net profits or positive operating cash flow (in the case of a PN17 Business Trust) in 2 consecutive quarterly results immediately after the completion of the implementation of the regularisation plan.
- 5.6 A PN17 Issuer and its Principal Adviser must review the PN17 Issuer's risk management and internal control system, and submit to the Exchange the results of such review together with its action plans to address the weaknesses identified.
- 5.7 A PN17 Issuer must ensure that the submission to the Exchange under paragraphs 5.2(a) and 5.3(a) above is accompanied by the following:
- (a) a cover letter signed by 2 authorised signatories of the Principal Adviser, containing details of the proposals, any approval, clearance or waiver sought, and such other information as may be prescribed by the Exchange from time to time;
 - (b) a draft circular to securities holders containing the relevant information prescribed in the Listing Requirements, such as Appendix 6B or Appendix 10B, where applicable, and the additional information set out in Annexure PN17-A;
 - (c) the listing application(s) together with the relevant submission documents as required under Chapter 6 of the Listing Requirements; and
 - (d) any other supporting documents, including experts' reports, where relevant.

Annexure PN17-A

Additional contents of circular for regularisation plan undertaken by a PN17 Issuer

ANNEXURE PN17-A

Additional contents of circular for regularisation plan undertaken by a PN17 Issuer
(paragraph 5.7(b))

- (1) The historical financial information of the PN17 Issuer for the last 5 years or since listing, whichever is later, based on the audited or unaudited financial statements. This includes:
 - (a) the turnover;
 - (b) the gross profit/loss;
 - (c) the net profit/loss;
 - (d) the shareholders' funds or unit holders funds, as the case may be;
 - (e) the borrowings; and
 - (f) the key ratios such as gross profit margin and gearing.
- (2) A commentary on the performance of the PN17 Issuer for the past 5 years or since listing, whichever is later. The commentary should include an analysis and discussion of significant and specific factors contributing to exceptional performance in any of the financial years under review and significant changes in the financial performance on a year-to-year basis, whether favourable or adverse.
- (3) A description of the business plan including information on the viability and profitability of the business and sufficiency of resources to achieve the plan and expected level of operations.
- (4) An analysis of the business post implementation of the regularisation plan including -
 - (a) the nature and operational environment of the PN17 Issuer's business such as the introduction of new asset or business, new products, new markets or new contracts, to address the operational issues faced by the PN17 Issuer;
 - (b) industry overview and description of the growth prospects of the PN17 Issuer's business in light of the industry outlook; and
 - (c) the risk factors affecting the PN17 Issuer and its business, together with the mitigating factors.
- (5) The reasons or issues which caused the PN17 Issuer to trigger any of the Prescribed Criteria, the steps taken or to be taken (whether short term or long term) to address such reasons or issues.
- (6) Where the proposal includes an injection of new asset or business, the following information where applicable:
 - (a) in relation to the new asset or business -
 - (i) name, qualification and experience of the directors, chief executive and key management; and
 - (ii) details of the substantial securities holders; and

Additional contents of circular for regularisation plan undertaken by a PN17 Issuer

- (b) in relation to the PN17 Issuer -
 - (i) name, qualification and experience of the proposed new directors to the board; and
 - (ii) details of the proposed new substantial securities holders.
- (7) A commentary by the PN17 Issuer's board of directors on whether the PN17 Issuer is able to record a net profit or positive operating cash flow (in the case of a PN17 Business Trust) in 2 consecutive quarterly results immediately after the completion of the implementation of the plan.
- (8) A statement by the directors as to whether, in their opinion, the working capital available to the PN17 Issuer will be sufficient for a period of 12 months from date of the circular. If not, how the additional working capital which is deemed to be necessary will be obtained.
- (9) The financial estimate, forecast or projection, and the underlying accounting policies and assumptions together with a copy of the reporting accountants' letter, if such information is provided to the Exchange in the submission.
- (10) The results of the risk management and internal control review together with the action plans to address the weaknesses identified.

[End of Annexure]