

BURSA MALAYSIA SECURITIES BERHAD

GUIDANCE NOTE 3

CRITERIA AND OBLIGATIONS OF GN3 COMPANIES

Details		Cross References
Effective date:	8 May 2006	Rules 8.04, 16.02 and 16.11
Revision date:	3 August 2009	

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 corporation, which if triggered, will give rise to an obligation for a listed corporation to comply with the provisions of this Guidance Note ("**GN3 Company**");
- (b) the requirements of a regularisation plan; and
- (c) the disclosure requirements that must be complied with by a GN3 Company.

2.0 Criteria

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

- (a) the shareholders' equity of the listed corporation is 25% or less of the issued and paid-up capital of the listed corporation;
- (b) where the listed corporation 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 corporation at the end of the said financial year;
- (c) where the listed corporation has incurred aggregated losses in any 2 consecutive full financial years commencing on or after its listing ("**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

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- (iii) the shareholders' equity is equal to or less than 50% of the issued and paid-up capital of the listed corporation at the end of the said financial period;
- (d) receivers or managers have been appointed over the asset of the listed corporation, its subsidiary or associated company which asset accounts for at least 50% of the total assets employed of the listed corporation;
- (e) a winding up of a listed corporation's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed corporation;
- (f) the auditors have expressed an adverse or disclaimer opinion in the listed corporation's latest audited financial statements;
- (g) the auditors have expressed a modified opinion with emphasis on the listed corporation's going concern in the listed corporation's latest audited financial statements and the shareholders' equity of the listed corporation is 50% or less of the issued and paid-up capital of the listed corporation;
- (h) a default in payment by a listed corporation, its major subsidiary or major associated company, as the case may be, as announced by a listed corporation pursuant to Guidance Note 5 and the listed corporation is unable to provide a solvency declaration to the Exchange;
- (i) the listed corporation 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 corporation's business or major business; or
 - (cc) a court order or judgment obtained against the listed corporation prohibiting the listed corporation from conducting its major operations on grounds of infringement of copyright of products etc; or
- (j) the listed corporation has an insignificant business or operations. This is not applicable to a Sponsored Corporation during the Sponsorship Period.

2.2 For the purposes of this Guidance Note unless the context otherwise requires -

- (a) **"shareholders' equity"** refers to the equity attributable to the equity holders of the listed corporation;
- (b) in relation to subparagraph 2.1(i) above, **"major"** means such proportion that contributes or generates 70% or more of the listed corporation's revenue on a consolidated basis based on its latest annual audited or unaudited financial statements;

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- (c) **"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 corporation ("**Capital**") based on its latest annual audited or unaudited financial statements.

For the purpose of computation, the following apply:-

- (i) **"revenue on a consolidated basis"** comprises of the revenue of the listed corporation, its subsidiaries, as well as revenue from the listed corporation's associated companies, calculated on a proportionate basis, based on the listed corporation'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 must 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:

$$(10,000,000 \times 151/365) + (15,000,000 \times 183/365) + (18,000,000 \times 31/365) \\ = 13,186,301$$

- (d) **"issued and paid-up capital"** excludes treasury shares;
- (e) the determination of whether any one or more of the Prescribed Criteria is fulfilled must be based on the latest audited or unaudited consolidated financial statements of the listed corporation; 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 corporation.

2.3 The following example illustrates 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 corporation 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 8.04 and this Guidance Note.

2.4 The following example illustrates the application of subparagraph 2.1(c) above:

Example 2

B Bhd

	FYE 31 December 2xx1 (FYE 1)	FYE 31 December 2xx2 (FYE 2)
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 corporation 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.

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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 8.04 and this Guidance Note.

3.0 Regularisation Plan

3.1 The GN3 Company and its Sponsor must ensure that a regularisation plan enables the GN3 Company to regularise its condition, such that -

- (a) the regularisation plan is sufficiently comprehensive and capable of resolving all problems, financial or otherwise that had caused the GN3 Company to trigger the Prescribed Criteria;
- (b) the regularisation plan enables the GN3 Company to regularise its financial condition and level of operations, such that the GN3 Company no longer triggers any of the Prescribed Criteria; and
- (c) the regularisation plan is fair and reasonable to the GN3 Company and its shareholders and will increase shareholder value.

4.0 Disclosure obligations of the GN3 Company

4.1 Pursuant to Rule 8.04(3)(b) of the Listing Requirements, a GN3 Company must announce to the Exchange -

- (a) the following, on an immediate basis ("**First Announcement**") upon the GN3 Company triggering one or more of the Prescribed Criteria:
 - (i) that the listed corporation is GN3 Company pursuant to this Guidance Note;
 - (ii) the obligations of the listed corporation pursuant to this Guidance Note;
 - (iii) the consequences of non-compliance with such obligations; and
 - (iv) the status of the listed corporation's plan to comply with its obligations under Rule 8.04(3)(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 subparagraph (a)(iv) above and the number of months to the end of the relevant timeframes referred to in Rule 8.04(3) of the Listing Requirements on a monthly basis ("**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;
- (d) announce details of the regularisation plan, which announcement must fulfill the requirements set out in paragraph 4.2 below ("**Requisite Announcement**"); and
- (e) where the GN3 Company 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 GN3 Company is able to comply with all the requirements set out in paragraph 3.1 above after the implementation of the regularisation plan;
 - (b) contain a timeline for the complete implementation of the regularisation plan; and
 - (c) be announced by the GN3 Company's Sponsor.
- 4.3 Before a GN3 Company 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 GN3 Company's creditors, the GN3 Company 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.