



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES

ON DUE DILIGENCE CONDUCT FOR CORPORATE PROPOSALS

GUIDELINES ON DUE DILIGENCE CONDUCT FOR CORPORATE PROPOSALS

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Chapter 1

GENERAL

INTRODUCTION

- 1.01 The Malaysian regulatory framework governing the issue/offer of securities demands high standards of disclosure and due diligence on the part of all persons involved in the preparation and submission of a corporate proposal. The onus of assessing the merits of primary offerings of securities is placed on the investors, while applicants/issuers themselves are required to adopt high standards of disclosure in their interactions with the market.
- 1.02 The SC's approval of corporate proposals under Part VI of the CMSA places a high degree of reliance on the information that is disclosed in the submissions to the SC and in the offering documents to the investors. Applicants/issuers and their directors, promoters, advisers, experts and other persons involved in a corporate proposal are, therefore, held to high standards of due diligence and accountability in providing investors and their professional advisers with information. There must as such be disclosure of all material information. The information given must be not only adequate, accurate and not misleading, but must also be given in a timely manner.

What Is Due Diligence?

- 1.03 There is no legal definition of the term "due diligence". In the context of the Malaysian capital market, it simply refers to the process by which persons must conduct enquiries for the purposes of timely, sufficient and accurate disclosure of all material statements/information or documents which are required under Part VI of the CMSA.
- 1.04 Part VI of the CMSA imposes criminal and civil liabilities on persons in relation to the information submitted or disclosed in a corporate proposal. The CMSA also provides a defence from prosecution or any proceeding for a contravention of the relevant provisions of Part VI of the CMSA, if it is proved that the defendant had made such enquiries as were reasonable in the circumstances and had reasonable grounds to believe that there was no contravention of the relevant provisions of the CMSA.
- 1.05 The provision of this statutory defence effectively creates an affirmative duty of due diligence by the relevant persons to ensure compliance with disclosure obligations, and in so doing—
- (a) to undertake the necessary investigation on the information that is provided in the corporate proposal; and
 - (b) to take steps to ensure the timeliness, sufficiency and accuracy of the disclosure of all material documents, statements and information which are submitted to the SC and disclosed in offering documents.

- 1.06 These Guidelines are issued under section 377 of the CMSA and should be applied, where applicable, by the SC in considering corporate proposals under Part VI of the CMSA.

PURPOSE

- 1.07 The purpose of these Guidelines is to set out the obligations and standards expected of relevant parties in respect of the scope and quality of due diligence undertaken in the preparation and submission of corporate proposals to the SC.
- 1.08 The obligations set out in these Guidelines are in addition to those under the securities laws and all relevant regulations, rules, orders, notifications, guidelines or other subsidiary legislation pursuant to the securities laws. Nothing in these Guidelines detracts from or diminishes obligations under the securities laws or any other law.
- 1.09 Applicants/issuers, PAs, advisers and experts involved in a corporate proposal must observe the spirit as well as the wordings of these Guidelines. In circumstances not explicitly covered, the intent and purpose of these Guidelines will apply.

INTERPRETATION

- 1.10 These Guidelines should be read together with Part VI of the CMSA and the relevant corporate finance guidelines, which require that the persons involved in the provision of information in corporate proposals submitted to the SC conduct reasonable enquiries for the purposes of timely, complete and accurate disclosure of any material statements/information or documents which are submitted to the SC and to ensure that there are no material omissions in the submission.
- 1.11 All references in these Guidelines to the applicant/issuer's submission, application or corporate proposal should include—
- (a) supporting or supplementary documents and correspondence on the corporate proposal submitted to the SC (this would include post-approval correspondence with the SC);
 - (b) any application for exemption or variation from any requirement of the corporate finance guidelines or any condition of approval on the corporate proposal; and
 - (c) any notification on a corporate proposal.
- 1.12 Where special purpose vehicles (SPVs) are used in corporate proposals involving debentures, the term "applicant/issuer" includes the originator(s) or the SPV's holding company, whichever is applicable.
- 1.13 The Appendix of these Guidelines provide examples of the actions that could be included in any due diligence exercise. However, these examples may not be appropriate for all corporate proposals and in this regard, the parties involved in a due diligence exercise are expected to and must exercise their own judgment in determining the scope and extent of due diligence required in each case.

- 1.14 These Guidelines relate only to the due diligence aspects of a corporate proposal. The applicant/issuer, PA, advisers and experts involved in a corporate proposal must also comply with any other guidelines issued by the SC that are relevant to the corporate proposal concerned.

Compliance with and Enforcement of these Guidelines

- 1.15 The SC may take any action under Part XI of the CMSA against persons who fail to comply with or observe the requirements of Chapter 3 of these Guidelines.

Chapter 2

DEFINITIONS

In these Guidelines, the following terms have the following meanings, unless the context otherwise requires:

adviser	means any person who provides advice or information to the applicant/issuer in connection with a submission to the SC in relation to a corporate proposal.
applicant	has the same meaning as given in section 212(1) of the CMSA and includes a person referred to under section 232(1) of the CMSA.
Bursa Rules	means the <i>Listing Requirements of Bursa Malaysia Securities Berhad and the Listing Requirements of Bursa Malaysia Securities Berhad for the MESDAQ Market</i> .
CMSA	means the <i>Capital Markets and Services Act 2007</i>
controlling shareholder	means any person who is or a group of persons who are together entitled to exercise or control the exercise of at least 30% (or such other amount as may be prescribed in the <i>Malaysian Code on Take-overs and Mergers</i> as being the level for triggering a mandatory general offer) of the voting shares in a company or who is or are in a position to control the composition of a majority of the board of directors of the company.
corporate finance adviser	means a person who is permitted to carry on the regulated activity of advising on corporate finance under the CMSA.
corporate finance guidelines	means the following and such other guidelines, practice notes and regulations as may be issued by the SC: <ul style="list-style-type: none">• <i>Guidelines on the Offering of Equity and Equity-linked Securities;</i>• <i>Guidelines on the Offering of Equity and Equity-linked Securities for the MESDAQ Market;</i>• <i>Guidelines on the Offering of Structured Warrants;</i>• <i>Guidelines on the Offering of Private Debt Securities;</i>

- *Guidelines on the Offering of Asset-Backed Securities;*
- *Guidelines on the Offering of Islamic Securities;*
- *Guidelines on the Offering of Structured Products;*
- *Malaysian Code on Take-overs and Mergers;*
- *Guidelines on the Acquisition of Interests, Mergers and Take-overs by Local and Foreign Interests and Guidelines on the Acquisition of Properties By Local and Foreign Interests (issued by the Foreign Investment Committee);*
- *Guidelines on Unit Trust Funds;*
- *Guidelines on Restricted Investment Schemes;*
- *Guidelines on Real Estate Investment Trusts;*
- *Guidelines on Exchange-traded Funds;*
- *Guidelines for the Offering, Marketing and Distribution of Foreign Funds;*
- *Guidelines for Public Offering of Securities of Closed-End Funds;*
- *Prospectus Guidelines For Collective Investment Schemes;*
- *Prospectus Guidelines; and*
- *Guidelines on Asset Valuation.*

corporate proposal

means any proposal submitted to the SC under Part VI of the CMSA and includes any offering document submitted, deposited or registered with the SC under Part VI of the CMSA.

DBR

means a disclosure-based regulatory regime.

DDWG

means the Due Diligence Working Group.

director

has the same meaning as given in section 2 of the CMSA.

DLCs	means distressed listed companies and has the same meaning as given in the <i>Guidelines on the Offering of Equity and Equity-linked Securities</i> .
Guidelines	means the <i>Guidelines on Due Diligence Conduct For Corporate Proposals</i> .
expert	has the same meaning as given in sections 212(1) and 216(1) of the CMSA.
IPOs	means initial public offerings.
issuer	<p>has the same meaning as given in section 2 of the CMSA and includes references to a corporation for which a prospectus in relation to its securities is registered with the SC under Part VI of the CMSA.</p> <p>Where a corporate proposal involves a corporation whose shares are being offered for purchase, the term "Issuer" in this context means the "Offeror".</p>
offering document	means any circular related to a corporate proposal, prospectus, information memorandum or take-over documents submitted, registered or deposited with the SC under Part VI of the CMSA.
offeror	has the same meaning as given in section 216(1) of the CMSA.
originator	means any entity that is seeking to transfer or dispose of its assets to a special-purpose vehicle (SPV) under a securitisation exercise.
PA	means the principal adviser, i.e. the corporate finance adviser responsible for making submissions to the SC for corporate proposals.
promoter	has the same meaning as given in the <i>Guidelines on the Offering of Equity and Equity-linked Securities</i> .
prospectus	has the same meaning as given in section 226 of the CMSA.
SC	means the Securities Commission.
securities	has the same meaning as given in section 2 of the CMSA.
securities laws	has the same meaning as given in section 2 of the CMSA.

special purpose vehicle or SPV	means any entity which issues asset-backed securities in a securitisation transaction or any entity which issues private debt securities in a structured financing.
SPV's holding company	means any entity that seeks to use the SPV as a conduit to raise financing in the capital market.
take-over documents	means an offer document or independent advice circular relating to a take-over offer.
take-over offer	has the same meaning as given in section 216(1) of the CMSA.

Chapter 3

MANDATORY OBLIGATIONS

- 3.01 The provisions of Part VI of the CMSA relating to the accuracy and sufficiency of the information submitted or disclosed in a corporate proposal apply to any person involved in the provision or submission of such information in a corporate proposal. The key parties in a due diligence exercise include the applicant/issuer, their directors and promoters, the PA, reporting accountants, legal advisers, valuers and such other advisers and experts as may be appropriate in the corporate proposal concerned.
- 3.02 The scope, extent and context of due diligence required in any given situation is necessarily a question of fact which will depend upon the circumstances surrounding each particular case. In this regard–
- (a) the PA must exercise its own judgment in determining the scope and extent of due diligence for the corporate proposal in its entirety; and
 - (b) the advisers/experts must exercise their own judgment in determining the scope and extent of due diligence required under their agreed terms of reference and capacity as advisers/experts. In doing so, they must undertake their due diligence after having regard to the corporate proposal in its entirety.
- 3.03 The due diligence exercise will require a comprehensive and probing review and enquiry of the corporate proposal. This would involve the PA, advisers and experts undertaking a critical assessment of the information being reviewed and being alert to any material inconsistencies or information that may impact on the accuracy of the statements, representations and information in question.

Roles of Parties

Applicant/Issuer, Directors and Promoters

- 3.04 The applicant/issuer, being the primary source of information, has a primary responsibility to ensure that the information that is submitted to the SC, PA, adviser or expert in relation to the corporate proposal, is not false, misleading or contain any material omission.
- 3.05 The applicant/issuer and its directors must extend their full cooperation and participation in the due diligence exercise, including (but not limited to)–
- (a) fully apprising themselves of their obligations in the due diligence exercise and their obligations and liabilities under the securities laws;
 - (b) the provision and verification of information that would be relevant to the corporate proposal to enable the PA and such other relevant advisers/experts to perform their obligations in the preparation and submission of the corporate proposal;

- (c) informing the PA and such other relevant advisers/experts of any material change to information that was previously made available or provided to the PA or such other relevant advisers/experts in relation to the corporate proposal as well as any new information that may impact on the corporate proposal in any way;
- (d) affording full access to all persons (including advisers/experts, management and other relevant personnel) and to premises and documents, as may be required by the PA or the relevant advisers/experts for the purposes of the due diligence exercise;
- (e) proactive participation by senior management in the due diligence discussions and deliberations; and
- (f) adopting, at all times, a cooperative and constructive approach in the provision of information, ensuring clear communication and engagement on all issues related to the corporate proposal and to respond in a timely and complete manner to any queries raised by the SC, PA and advisers/experts in relation to the corporate proposal.

3.06 Paragraph 3.05 would also apply to promoters, to the extent that–

- (a) the information is required by the PA and such other relevant advisers/experts relating to the corporate proposal; or
- (b) they are aware of information that may impact on the corporate proposal.

3.07 Where a corporate proposal includes a financial estimate, forecast or projection, the directors of the applicant/issuer must ensure they have a reasonable basis for such forward looking statements.

Principal Adviser

3.08 The PA plays a central role in the due diligence process. In this regard, the primary responsibility for due diligence in relation to the entire corporate proposal lies with the PA. The PA must ensure that the information contained in a corporate proposal has no material omission, is accurate and consistent, and to this end, must undertake a reasonable investigation to achieve the same. This would include the need for the PA to substantiate, as far as is reasonably possible, the information contained in the corporate proposal. This may entail a further and more detailed verification and investigation.

3.09 The PA must ensure it understands the nature of business of the applicant/issuer (or in cases where the applicant/issuer is a SPV, the nature of business of the originator or SPV's holding company, as the case may be).

3.10 The PA must satisfy itself that it is reasonable to rely on information or advice provided by the advisers/experts. In doing this, the PA must be satisfied that the requirements of paragraph 3.25 are met.

- 3.11 The PA must, together with relevant advisers/experts, ensure that directors and senior management of the applicant/issuer are fully briefed on their obligations in the due diligence process and the potential liabilities pertaining to the corporate proposal and the information provided, in relation to–
- (a) the securities laws and other relevant laws; and
 - (b) the corporate finance guidelines.
- 3.12 The PA must also ensure the directors and senior management of the applicant/issuer are made aware of the need for them to extend their full cooperation in the provision and verification of information for the purposes of the due diligence exercise.
- 3.13 Where the PA is aware of any information which raises concerns relating to a corporate proposal, the scope of the due diligence must ensure such concerns are addressed.
- 3.14 Where an adviser/expert raises any issue to the PA that in the adviser's/expert's professional and reasonable opinion is a matter for concern, the PA must, seeking where necessary the relevant expert advice, use its judgment to–
- (a) determine what action should be taken to address such concerns; and
 - (b) ensure that the necessary disclosures are made to the SC and in the offering document (if applicable) if it has a material impact on the corporate proposal.
- 3.15 The PA submitting an application to the SC has a duty to ensure that, after having made due and careful enquiry, it has reasonable grounds to believe that–
- (a) the corporate proposal meets the relevant requirements of the SC, as set out in the corporate finance guidelines, as well as relevant provisions of the securities laws and Bursa Rules;
 - (b) the corporate proposal will not adversely impact on the applicant/issuer's ability to continue to comply with relevant guidelines, rules and securities laws; and
 - (c) statements or information submitted to the SC are not false or misleading and do not contain any material omission.
- 3.16 In submitting the corporate proposal on behalf of an applicant/issuer, the PA must ensure that, after having made due and careful enquiry, it has come to a reasonable opinion that–
- (a) the directors of the applicant/issuer have–
 - (i) adequate procedures which enable the applicant/issuer to comply with the corporate finance guidelines and where relevant, the Bursa Rules;
 - (ii) adequate procedures which provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and business prospects of the applicant/issuer;

- (iii) adequate procedures to verify the information provided for the purposes of the corporate proposal; and
 - (b) the information contained in the corporate proposal has no material omission and is accurate and consistent across the document(s).
- 3.17 The PA must keep a clear audit trail of its due diligence planning and activities and any significant deviations from its plan. The PA must have proper internal controls to ensure the safekeeping of such audit trail/records. It must be clear from the records that the PA has considered what enquiries or information are reasonable in the context and circumstances of the case in hand. The PA must also document its conclusions on the applicant/issuer's compliance with the applicable corporate finance guidelines. In this regard, the PA must not use these Guidelines as a mere checklist but must ensure that the substance and spirit of these Guidelines are observed. The PA must also be able to provide an audit trail of work done upon request by the SC.
- 3.18 Where the PA becomes aware of any information that in their professional and reasonable opinion is–
- (a) an issue of concern;
 - (b) a material change to information previously made available; or
 - (c) new information which may have a material impact on the corporate proposal,
- the PA must highlight such information to the relevant advisers/experts and the applicant/ issuer.
- 3.19 The PA is responsible for dealing and communicating with the SC on all matters in connection with the corporate proposal. All responses from the PA to the SC's queries must be dealt with in a prompt, efficient and complete manner.

Advisers and Experts

- 3.20 While the PA has primary responsibility for due diligence in relation to the corporate proposal as a whole, the advisers/experts remain primarily responsible for the due diligence in relation to their specific areas of expertise within their agreed terms of reference.
- 3.21 The advisers/experts must undertake a proactive role in the verification exercise related to the area of their terms of reference. This would include the need for the advisers/experts to substantiate, as far as is reasonably possible under their terms of reference, the information contained in the corporate proposal. This may entail a further and more detailed verification and investigation.
- 3.22 Where any matter (whether related or otherwise to their scope of work under the agreed terms of reference) arises in the course of their due diligence that in their professional and reasonable opinion is a matter for concern and/or disclosure, they must highlight such issues to the PA and applicant/issuer.

- 3.23 Where the advisers/experts are aware of any information that raises concerns relating to a corporate proposal which in their judgment would require a variation of their scope of work in the due diligence exercise, they should proceed to enlarge such scope accordingly. Where however, the enlarged scope of work exceeds the terms of reference of their appointment, they must highlight their concerns promptly and make recommendations for addressing the concerns to the PA and applicant/issuer.

Appointment of PA, Advisers/Experts

- 3.24 The right of appointment of a PA or advisers/experts lies with the directors of the applicant/issuer. However, with regard to the appointment of the advisers/experts, the PA must concur with the terms of reference of the appointment of such advisers/experts. The PA shall have a right of refusal over the appointment of any adviser/expert, if the terms of reference of their appointment are not agreed upon or the adviser/expert does not have the requisite experience to meet their deliverables. However, the PA shall not exercise such right of refusal unreasonably and without good cause. In this regard, the letter of appointment must include the requirement for–
- (a) the PA's concurrence to the terms of reference of appointment of the advisers/experts; and
 - (b) the reasonable exercise of its refusal of the appointment of such advisers/experts.
- 3.25 The PA must ensure that the terms of reference of the advisers/experts concerned meet the needs of the due diligence exercise for the purposes of the corporate proposal. It must also satisfy itself that the advisers/experts have the necessary competence, expertise and resources required to meet the agreed terms of reference.
- 3.26 If there is a change of PA or where an adviser/expert has already been appointed by the applicant/issuer, the incoming PA must also ensure that the requirements of paragraph 3.25 are met. Where in the reasonable opinion of the PA, this is not possible, the PA and the applicant/issuer must ensure the appointment of an adviser/expert who is able to meet the requirements.
- 3.27 The SC however, reserves the right to–
- (a) require the appointment of an independent adviser or an independent expert; or
 - (b) not allow/accept submissions made by a PA or an adviser/expert, in cases where–
 - (i) it considers the PA or adviser/expert to be incapable of giving impartial advice; or
 - (ii) the PA or adviser/expert has an interest in the outcome of the corporate proposal which interferes with the independence and objectivity of the PA or adviser/expert.

- 3.28 Where an independent adviser/expert is appointed for the purposes of paragraph 3.27 or paragraph 3.32:
- (a) Such adviser/expert must be independent of the applicant/issuer, its directors or management (or principal adviser or other advisers/experts, as the case may be) and free from any business or other relationship which could interfere with the exercise of independent judgment by the independent adviser/expert; and
 - (b) Any report of such independent adviser/expert must be included as part of the submission to the SC.

Change of PA

- 3.29 Where there is a change of PA prior to or after the approval of a corporate proposal, the incoming PA must ascertain the reason for the applicant/issuer changing PA midstream. Where the reason for the change raises any concern, the incoming PA must assess whether the concern is such that it would not be appropriate for it to accept the applicant/issuer's mandate.
- 3.30 Both the outgoing PA and the applicant/issuer must each inform the SC in writing of the reasons for the change of PA.
- 3.31 Where there is a change of PA–
- (a) the outgoing PA must be co-operative in the handover to the incoming PA including inter alia, making available all relevant information and/or information belonging to the applicant/issuer relating to the corporate proposal that it possesses, up to the point of change. This would include, where applicable, relevant correspondence between the outgoing PA and the SC relating to the corporate proposal;
 - (b) whether during the course of a submission prior to approval, after the corporate proposal has been approved but not implemented or after implementation, the outgoing PA shall remain liable for all information submitted by it to the SC in relation to the corporate proposal;
 - (c) during the course of a submission prior to approval, the incoming PA shall take on the responsibility for the submission of the corporate proposal including due diligence obligations;
 - (d) after the corporate proposal has been approved but has yet to be implemented, the incoming PA should be responsible for the due diligence obligations up to implementation and for compliance with the terms and conditions of the approval and disclosure obligations. This would include disclosures and confirmations provided by the PA on the corporate proposal after implementation and any further applications on the corporate proposal in question, if applicable. In this regard, the incoming PA must–

- (i) undertake reasonable due diligence to familiarise themselves with the corporate proposal including the basis and rationale of the corporate proposal and concerns raised that may have resulted in the imposition of the conditions to the approval; and
- (ii) familiarise itself with all communication between the previous PA and the SC relating to the corporate proposal.

Conflict of Interest

- 3.32 The PA and advisers/experts must take all reasonable measures to avoid situations that are likely to involve a conflict of interest with the applicant/issuer. Where such a conflict exists, the PA/adviser/expert must take all possible steps to resolve or adequately mitigate the conflict or where it is not possible to do so, withdraw from or decline the role of PA/adviser/expert for the corporate proposal concerned. In this regard, the PA/adviser/expert must make full disclosure to the applicant/issuer, the SC and in the offering document, of the nature of the conflict of interest (including any equity or financial relationship with the company being advised) and the steps taken to address these conflicts.
- 3.33 Where any of the corporate finance guidelines have stricter requirements on conflict of interest, such guidelines shall take precedence over these Guidelines.

Continuing Obligations and Disclosure

- 3.34 The responsibility for due diligence continues up to the implementation of the corporate proposal.
- 3.35 The SC must be immediately informed by the applicant/issuer, directors and promoters of the applicant/issuer, the PA and/or the relevant advisers/experts involved in a corporate proposal, where any one of them becomes aware of–
- (a) any material change in circumstances that would affect the consideration of the SC;
 - (b) any material change to information that was previously made available or provided to the SC in relation to a corporate proposal;
 - (c) any new information that may have a material impact on the corporate proposal; and
 - (d) any material change to information or material change or development in circumstances relating to a corporate proposal occurring subsequent to the SC giving its approval. Where such material change/development occurs prior to the issuance of an offering document, it must be disclosed in such offering document.

Chapter 4

BEST PRACTICES

4.01 This chapter seeks to provide guidance on what the SC regards as best practices in a due diligence exercise relating to a corporate proposal. However, this chapter is not to be regarded as an exhaustive list of what should be undertaken nor be regarded as the minimum standard to be achieved. Parties involved should exercise their own judgment in assessing and determining the exact scope and extent of the steps required within the context of the corporate proposal in its entirety.

Scope and Extent of Due Diligence

4.02 The PA should use its judgment, in consultation with the relevant advisers/experts involved in the corporate proposal, in determining the scope and extent of the due diligence to be undertaken, including the processes and scope of roles played by all parties involved in the exercise. This would include a consideration of the corporate proposal concerned and the time required for the PA and the relevant advisers/experts to undertake the required due diligence, taking into account, *inter alia*, the geographical location and size of the applicant/issuer and complexity of the corporate proposal and the prevailing relevant applicable industry practices including any materiality test/threshold as agreed by the PA and the relevant advisers/experts.

Know the Applicant/Issuer

- 4.03 The PA's review of the applicant/issuer and the nature of its business would include, *inter alia*–
- (a) familiarising itself with the applicant/issuer's history and nature of business, its financial circumstances, financial control, systems and procedures, investment and corporate objectives as well as the risk management strategy practiced by the applicant/issuer;
 - (b) familiarising itself with the background of the substantial shareholders and directors, particularly relating to corporate governance issues; and
 - (c) assessing the qualifications, level of experience and expertise (relating to the industry concerned) of the existing and proposed directors and senior management of the applicant/issuer. This would involve assessing individually and collectively the competence of the directors and senior management for the purposes of ascertaining whether the directors as a whole have the necessary experience and expertise for the effective management of the applicant/issuer's business.

It is acknowledged that as the scope of the review above would vary dependent on the type and nature of the corporate proposal, the steps set out in this paragraph may not be required for certain types of corporate proposals.

- 4.04 Where the PA finds any material inadequacies or concerns, the PA should raise these concerns with the directors of the applicant/issuer with recommendations on the appropriate steps to take and the time frame within which such concerns are addressed. The assessment involved in providing this feedback to the applicant/issuer should include a review of the applicant/issuer's financial and governance controls, systems and procedures.

Staff Supervision by PA

- 4.05 The PA should, in the preparation and submission of a corporate proposal, at all times ensure, *inter alia*,–
- (a) it has officers with relevant and adequate experience and the necessary competencies;
 - (b) it has adequate resources and that its officers are appropriately supervised;
 - (c) the required level of skill and care is exercised;
 - (d) the integrity of due diligence process and persons involved in the process; and
 - (e) its officers keep abreast of all guidelines, practice notes or other notices issued by the SC from time to time that would impact on the corporate proposal.

Critical Assessment

- 4.06 The PA should make such enquiries as may be necessary until it can reasonably satisfy itself on the adequacy and accuracy of information in the corporate proposal. In undertaking its role as a PA, it should critically examine and verify as far as is reasonably possible, the accuracy, consistency and completeness of statements and representations made, or other information given to it. This should involve a probing enquiry and review of the information and adequate substantiation of the representations.
- 4.07 The advisers/experts should also critically examine and verify as far as is reasonably possible, the accuracy, consistency and completeness of statements and representations made or other information given to them for the purposes fulfilling their agreed scope of work. In this regard, this should also involve a probing enquiry and review of the information and adequate substantiation of the representations made to them.

PA Involved in Appointing Advisers/Experts

- 4.08 In fulfilling its obligations under paragraph 3.24 the steps taken by the PA should include the following:
- (a) Interviewing the advisers/experts, reviewing the terms of reference (ensuring the scope of work is appropriate to the opinion sought from the expert) and whether any limitations imposed on the scope of work by the advisers/experts,

applicant/issuer or the PA, might adversely impact on the degree of assurance given by the advisers/experts' report, opinion or statement; and

- (b) Making the necessary enquiries and satisfying itself that the advisers/experts are independent from the applicant/issuer and its directors and substantial shareholders, and to this end obtaining written confirmation from the advisers/experts concerned, of their independence.

Seeking Further Expertise

- 4.09 The PA should, where necessary, engage such additional adviser/expert as it considers appropriate, to undertake tasks in relation to the due diligence exercise, requiring such expertise. The PA should exercise its judgment in determining the instances where it would be appropriate to engage such expertise.

Advisers'/Experts' Report/Opinion

- 4.10 While the PA may rely on the relevant advisers/experts for the specific areas requiring their expertise, the PA should critically assess the advisers'/expert's reports and input in the corporate proposal to ensure that the assumptions and information on which the opinion is based are reasonable and consistent with the PA's knowledge of the applicant/issuer and its business.

Due Diligence Working Group

- 4.11 Where the corporate proposal concerned necessitates the establishment of a DDWG, the PA should determine the composition, membership and terms of reference of a DDWG. Nevertheless, the DDWG should, at the minimum, comprise the PA, senior representatives of the applicant/issuer (including at least one director of the applicant/issuer) and such advisers/experts as are appropriate in the relevant corporate proposal. The PA, in playing its central and primary role in the due diligence process, should ensure that the DDWG is fully briefed on–
 - (a) the corporate proposal which includes the details, basis and objective of its structure and the processes involved in its implementation;
 - (b) the scope of due diligence required for the purposes of the corporate proposal; and
 - (c) the role and scope of the responsibilities of both the DDWG as a whole as well as of the respective members, so that each member of the DDWG is clear on their expected deliverables and the process by which they will be met.
- 4.12 There should be competent and senior level participation at all DDWG meetings.
- 4.13 The PA should ensure participation in the DDWG of all advisers/experts that are relevant to the corporate proposal. In addition to the key parties of the due diligence exercise

such as the applicant/issuer, reporting accountants and legal advisers, where appropriate this would include but not be limited to advisers/experts such as trustees, syariah advisers and valuers.

- 4.14 There should be a reasonable level of challenge and discussion amongst those involved in the DDWG, so that where possible, a collective agreement can be reached to support the information that is being disclosed in the submission to the SC. In this regard, the advisers/experts concerned, particularly the reporting accountants and legal advisers, should be proactive in providing their expert views in areas requiring their expertise and provide constructive feedback on the overall issues under discussion at the DDWG meetings.
- 4.15 Where these Guidelines impose an obligation on the applicant/issuer, directors or promoters of the applicant/issuer, the PA or the advisers/experts, to inform any one or more of these persons of any–
- (a) issue of concern and/or disclosure;
 - (b) material change to information previously made available; or
 - (c) new information which may have a material impact on the corporate proposal,
- the party concerned should also inform the DDWG.

Review Terms of Reference of Advisers/Experts

- 4.16 The PA and advisers/experts concerned should ensure that they agree at the outset, to the terms of reference and context of engagement of the advisers/experts, in relation to due diligence required for the corporate proposal. This should be clearly reflected in the letter of engagement. Any subsequent revision of the terms of reference of the advisers/experts, in this regard, should also be recorded. Where the advisers/experts are being or have been appointed by the applicant/issuer to perform any services related to the due diligence component of the corporate proposal, the PA should concur to the terms of reference of the appointment of such advisers/experts and in this regard the requirements of paragraph 3.24 would apply. The letter of engagement should clearly provide for the PA to have access to such advisers/experts as well as any reports and information (including correspondence) relied upon or provided by or to the advisers/experts concerned.

Professional Ethics

- 4.17 The PA and relevant advisers/experts should at all times ensure that its due diligence practices are in compliance and consistent with such guidelines as may be issued from time to time by the industry.

APPENDIX

EXAMPLES OF DUE DILIGENCE ENQUIRIES

- 1.0 The examples provided in this Appendix serve merely as illustrations of the actions that should be included in any due diligence exercise. However, these examples are by no means exhaustive and are not aimed at setting out the actions that may be appropriate in any particular corporate proposal. In addition, these examples are not intended to deal with all issues or requirements which would arise in any given situation. Each corporate proposal is unique and as such the scope, extent and context of due diligence required will differ from case to case. The parties concerned are expected to and must exercise their own judgment in determining the scope and extent of due diligence required in each case.
- 2.0 Examples of due diligence enquiries on directors and senior management of the applicant/issuer include:
- (a) Where a company has an audit committee in place, assessing whether the members of the audit committee concerned have the necessary experience or competence to fulfil the responsibilities of being a member of the audit committee. Where an audit committee has yet to be appointed by the company, advising the company of the importance of appointing persons who are financially literate and with sufficient experience to fulfil the specific role of being a member of the audit committee;
 - (b) Assessing individually and collectively the competence of the directors for the purposes of ascertaining whether the directors as a whole have the necessary experience and expertise for the effective management of the applicant/issuer's business;
 - (c) Assessing the corporate governance track record of the current and proposed directors (where applicable) and where appropriate key senior personnel (e.g. the financial controller, chief operating officer, internal auditor, in-house legal counsel/company secretary), having regard to the code on corporate governance, the listing requirements and the corporate finance guidelines. This would include a thorough review of the background of the directors, conducting legal searches and interviewing the individual directors;
 - (d) Where the business, assets or directors are located in different jurisdictions, to undertake the necessary investigation for the purposes of the due diligence exercise. This may involve the engagement of the relevant advisers/experts or other independent advisers/experts to undertake specific aspects of the investigation; and
 - (e) Where the current or proposed directors of the applicant/issuer also sit on the board of directors of other listed companies (whether listed in Malaysia or on an exchange of another jurisdiction), to review the track record of the companies concerned in terms of regulatory compliance.

- 3.0 Examples of due diligence enquiries on the applicant/issuer and preparation of the corporate proposal and supporting information include, *inter alia*:
- (a) A review and assessment of the applicant/issuer's historical financial performance. This would involve, *inter alia*, an assessment of the operating results and the reasonableness of the explanations for any material fluctuations;
 - (b) A review and assessment of the applicant/issuer's business plan and financials (including where applicable, any profit estimate, forecast or projection), and the applicant/issuer's performance in this regard. This would involve *inter alia*, an assessment of the reasonableness of the basis and assumptions in the financials compared with the applicant/issuer's past performance, its financial exposure and cash flow management. This may include a verification exercise involving the applicant/issuer's major suppliers/customers, creditors and bankers as well as internal/external auditors;
 - (c) A review and assessment of the applicant/issuer's proposed utilisation of proceeds from the corporate proposal (where such proposal involves fund-raising exercise) and whether such purposes meet the objectives of the proposed corporate exercise, having taken into account the applicant/issuer's funding requirements;
 - (d) Where a corporate proposal involves an acquisition of an asset, the disclosures made with respect to the value of the asset that is disclosed does reflect the fair value of the asset concerned. In this regard, where there is any information that may impact on the valuation of the asset, such information should be taken into consideration in the final valuation (i.e. the valuation should be substantiated in real terms and reflect the rationale and justification for the acquisition);
 - (e) Where a corporate proposal involves debentures, the critical enquiry made by the PA should be sufficiently robust to ensure the proposed structure and the transactions involved in the proposed structure are realistically implementable;
 - (f) Ensuring that the review of the applicant/issuer includes a physical inspection of the business and all key business premises and where appropriate, material assets, in relation to the corporate proposal with the view to assessing the quality, value, fitness for purpose and approval of relevant authorities of the premises and assets concerned;
 - (g) Reviewing all aspects of the business including but not limited to material contracts, contingent liabilities and on-going material litigations, material legal, business and economic/geo-political risks which may have a material impact on the corporate proposal. In this regard the PA should undertake a detailed risk analysis of the applicant/issuer and ensure the adequacy of the risk disclosures in the offering document (if any); and
 - (h) Verifying and assessing the scope, extent and feasibility of any proprietary rights (e.g. intellectual property, licenses, etc.) or product or technology being used, developed or proposed to be developed or used by the applicant/issuer in its business. This should include assessing whether such rights run the risk of infringing proprietary rights of others in domestic and other relevant jurisdictions that are important to the applicant/issuer's business.



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SECURITIES COMMISSION

3 Persiaran Bukit Kiara, Bukit Kiara
50490 Kuala Lumpur, Malaysia

Tel +603. 6204 8000

Fax +603. 6201 5078

E-mail cau@seccom.com.my