

## **Chapter 3**

### **PROSPECTUS UNDER DIVISION 3 OF PART II**

#### **Part A: General**

- 3.01 An application to register a prospectus under Division 3 of Part II must be in accordance with the submission requirements and procedures set out in this chapter.
- 3.02 The prospectus and all accompanying documents submitted to the SC must include an electronic copy of such documents in a text-searchable Portable Document Format (PDF). The electronic copy submitted to the SC must be easily identifiable and complete.
- 3.03 Certified true copies of all reports and letters contained in the prospectus must be included as accompanying documents for the purpose of the application. Where the prospectus contains a summary of an expert's report, the corresponding full report must be submitted.
- 3.04 All reports and letters contained in the prospectus must be dated and signed and the date must not be earlier than the latest practicable date.
- 3.05 In the case of the offering of collateralised structured warrants, the issuer must submit documents evidencing the legally binding effect and enforceability of the proposed security arrangements.
- 3.06 All accompanying documents which are in a language other than Bahasa Malaysia or English must be accompanied by a Bahasa Malaysia or English translation confirmed by the issuer or the principal adviser as being an accurate translation of the original documents.
- 3.07 Any application for relief from complying with the required disclosure requirements of a prospectus must be submitted at least 14 market days prior to the intended date of submission of the prospectus. The relief application must be accompanied with the relevant supporting documents and the prescribed fee.
- 3.08 The following must be clearly resolved prior to submission of prospectus for registration:
  - (a) Any outstanding issue regarding application for relief from or clarification under Part II, Division 3 of these Guidelines; and

- (b) Any pending matters, including among others, application for variation to the terms or conditions of approval or extension of time etc.
- 3.09 An issuer must not, prior to the registration or before the launch of an offer of structured warrants, release publicity material in relation to such structured warrants.

**Part B (Stage 1): Submission of prospectus for registration**

- 3.10 The issuer or principal adviser must submit the prospectus to the SC at least 14 market days prior to the intended date of registration of the prospectus.
- 3.11 The issuer or principal adviser must submit at least three copies of the prospectus in English in two separate files for registration with the SC and one for lodgement with the Registrar of Companies, accompanied by the following documents:
- (a) Cover letter signed by two authorised persons of the issuer or principal adviser specifying the following:
    - (i) Application to register the prospectus together with a checklist of compliance with these Guidelines;
    - (ii) A confirmation that all relevant conditions of approval, to be complied with before issuance of the prospectus, have been met;
    - (iii) A confirmation that all requisite approvals from other relevant authorities have been obtained;
    - (iv) A confirmation that the due diligence working group has seen and verified that the prospectus complies with the minimum disclosure requirements as set out in the CMSA and these Guidelines;
    - (v) A confirmation that the accompanying documents in the application are complete, duly signed and dated;
    - (vi) A confirmation that the electronic copy of documents is the same as the physical copy of documents submitted to the SC; and
    - (vii) A confirmation that the printer's proof is an accurate reproduction of the prospectus and any required amendments.

*Part III - Procedures for Registration (Chapter 3: Structured Warrants)*

- (b) Registration fee as prescribed by the SC;
- (c) Directors' responsibility statement for the prospectus;
- (d) Certified true copy of the letter of consent from any person who has made a statement included in the prospectus or on which a statement made in the prospectus is based. The letter of consent is to be addressed to the issuer and must confirm that consent given has not been withdrawn;
- (e) Certified true copy each of the issuer's constitution and the certificate of incorporation. Where the issuer is foreign incorporated, a certified true copy each of the certificate of registration and constituent documents of the foreign issuer;
- (f) Certified true copy of all material contracts or documents referred to in the prospectus. For contracts not reduced into writing, a memorandum which gives full particulars of the contracts. Copies of all material contracts submitted during registration must be certified by the due diligence legal adviser;
- (g) Certified true copy of the audited financial statements of the issuer and its subsidiaries for each financial year and period where the audited financial statements have been included in the prospectus. Copies of the audited financial statements must be certified by the auditor;
- (h) Where there is a performance guarantee for the structured warrants offer, a certified true copy of the audited financial statements of the guarantor for each financial year and period which have been included in the prospectus. Copies of the audited financial statements must be certified by the auditor;
- (i) Certified true copy of any expert's report referred to in the prospectus;
- (j) Certified true copy of the guarantee agreement or underwriting agreement (if applicable);
- (k) Certified true copy of the approvals referred to in paragraph 3.11(a)(iii);
- (l) Certified true copy of the trust deed (if applicable); and

- (m) Where the issuer is an eligible broker who does not possess the required credit rating pursuant to the *Guidelines on Issuer Eligibility – Structured Warrants*, the issuer and the guarantor must submit to the SC a guarantee deed poll, which must be acceptable to the SC. The guarantee deed poll must be in draft form at the time of submission to the SC of the prospectus for registration. Prior to the registration of the prospectus, a certified true copy of the executed guarantee deed poll must be submitted to the SC.

**Part B (Stage 2): Revision or update subsequent to submission of prospectus for registration**

3.12 For any revision or update to the prospectus that was cleared by the SC under Part B (Stage 1), the issuer or principal adviser must submit the following :

- (a) A cover letter for application to register the prospectus signed by two authorised persons of the issuer or principal adviser specifying the following:
  - (i) A confirmation from the issuer or principal adviser that -
    - A. the issuer or principal adviser has seen and confirmed the revisions or updates made to the prospectus; and
    - B. the prospectus complies with the disclosure requirements of the CMSA and these Guidelines.
  - (ii) A confirmation that the electronic copy of the revised or updated prospectus is the same as the physical copy of the revised or updated prospectus submitted to the SC; and
  - (iii) A confirmation that the consent from any person who has made a statement included in the prospectus or on which a statement made in the prospectus is based have not been withdrawn.
- (b) Certified true copy of any report or document referred to in the prospectus, which was entered into or revised or updated after submission was made to the SC under Part B (Stage 1);
- (c) Where the financial information has been revised, updated or finalised after submission was made to the SC under Part B (Stage 1), certified true copy of the revised, updated or finalised audited financial statements; and

- (d) Marked-up copy of the revised or updated prospectus.

**Part C: Submission of term sheets for registration**

3.13 The term sheet must be submitted at least one market day prior to the intended date of registration of the term sheet.

3.14 The issuer or principal adviser must submit at least two copies of the term sheet in English in two separate files for registration with the SC and one for lodgement with the Registrar of Companies accompanied by the following documents:

- (a) Cover letter signed by two authorised persons of the issuer or principal adviser specifying the following:
  - (i) Application to register the term sheets together with a checklist of compliance with these Guidelines;
  - (ii) A confirmation that the due diligence working group has seen and verified that the term sheets complies with the minimum disclosure requirements as set out in the CMSA and these Guidelines;
  - (iii) A confirmation that the accompanying documents in the registration file are complete, duly signed and dated;
  - (iv) A confirmation that all relevant conditions of approval, to be complied with before offering of the term sheets, have been met;
  - (v) A confirmation that all requisite approvals from other relevant authorities have been obtained; and
  - (vi) A confirmation that the electronic copy of documents submitted is the same as the physical copy of documents submitted to the SC.
- (b) Registration fee as prescribed by the SC;
- (c) Directors' responsibility statement for the term sheets; and
- (d) Certified true copy of the letter of consent from any person who has made a statement included in the term sheets or on which a statement made in the term sheets is based. The letter of consent is to be addressed to the issuer.

**Part D: Supplementary Prospectus and Replacement Prospectus**

- 3.15 For registration of a supplementary prospectus, the supplementary prospectus must be submitted to the SC before 12:30 p.m. at least three market days prior to the intended date of registration.
- 3.16 For registration of a replacement prospectus, the replacement prospectus must be submitted to the SC at least seven market days prior to the intended date of registration.
- 3.17 For registration of a supplementary or replacement prospectus, the issuer or principal adviser must include:
- (a) the documents required under paragraphs 3.11, 3.12 and 3.14, where applicable; and
  - (b) a list highlighting the original statements from the previously registered prospectus and the amended statements.

**Part E: Post registration**

- 3.18 The issuer or principal adviser must provide the SC with the following:
- (a) two printed copies of the prospectus in English; and
  - (b) one printed copy of the term sheets or supplementary prospectus or replacement prospectus in English, where applicable.

There must be an accompanying letter from the issuer or principal adviser confirming that the printed copy of the prospectus or term sheets or supplementary prospectus or replacement prospectus is the same as the prospectus or term sheets or supplementary prospectus or replacement prospectus registered with the SC.

**Guidance to Part A – General**

1. The SC reserves the right to return the prospectus if in its opinion:
  - (a) the disclosure in the prospectus is incomplete or inadequate;
  - (b) the prospectus is not in its final or complete form; or
  - (c) the prospectus is not accompanied by all relevant materials or documents.
2. Where a written consent, a letter or a report submitted to the SC, is issued by a business or professional firm, the signature appearing on such documents should be in the name of the firm and in the personal name of the signatory.
3. With reference to paragraphs 3.03 and 3.04, the name and designation of the person who has signed the document should be stated below his signature.

**Guidance to paragraph 3.07– Relief application**

4. The issuer and principal adviser is encouraged to consult the SC prior to making a relief application.
5. For relief from disclosing certain clauses of a material contract to be made available for public inspection, specific justification must be provided for each clause of the material contract proposed to be redacted.

**Guidance to Part B (Stage 1) – Submission of prospectus for registration**

6. The information in the prospectus should be substantially complete except in relation to information that by its nature can only be finalised and incorporated after the relevant authorities' approvals for the offer. Where the offering of structured warrants is made by way of a prospectus supported by term sheets, this applies to both the prospectus and the term sheets.
7. For purpose of paragraphs 3.11(d) and 3.14(d), a letter of consent is not required for a statement made in a prospectus or term sheets that has been extracted from an official statement by:
  - (a) Malaysian and foreign governments including federal government, state government, province, county or municipality, a statutory or regulatory authority, or any agency or body carrying out a regulatory function; and
  - (b) United Nations and its organisations.