

Chapter 3

PROSPECTUS UNDER DIVISION 3 OF PART II

Introduction

- 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 SC will not register a prospectus unless it is in its final/complete form and is accompanied by all required materials/documents. The SC reserves the right to refuse registration and return the prospectus if in its opinion–
- the disclosure in the prospectus is incomplete and inadequate;
 - the prospectus is not in its final/complete form; and/ or
 - the prospectus is not accompanied by all relevant materials/ documents.
- 3.03 The original or certified true copies of all reports¹ and letters contained in the registrable prospectus must be included as accompanying documents in the registration file. For certified true copies, state the identity and position of the person certifying the said documents.
- 3.04 All reports and letters, e.g. reporting accountants' reports and letters, directors' report, and other experts' report, contained in the registrable prospectus must be dated and signed. Advisers should ensure that the directors' report included in the prospectus is dated within the maximum stipulated 14 days as at the intended date of registration.
- 3.05 All accompanying documents furnished, which are in the language other than Bahasa Malaysia or English, should be accompanied by a Bahasa Malaysia or English translation confirmed by the corporation or the adviser as being an accurate translation of the original documents.

Submission of registrable prospectus

- 3.06 A registrable prospectus should be submitted to the SC–
- (a) in relation to an offering and/or listing on the Main Market, concurrently with the corporate proposal seeking approval from the SC under section 212 of the CMSA;

¹ Where the prospectus contains a summary of an expert's report, the corresponding full report should be submitted.

- (b) in relation to an offering and/or listing on the ACE Market, at a practicable date that allows sufficient time for the SC to vet the registrable prospectus;
 - (c) in relation to an offering and/or listing of structured warrants, at least 14 market days prior to the intended date of registration; or
 - (d) in relation to registrable term sheets, at least one market day prior to the intended date of registration.
- 3.07 Any application for relief from complying with the required disclosure requirements of a prospectus should be submitted:
- (a) concurrently with submission of prospectuses under sub-paragraphs 3.06(a) and (b); and
 - (b) at least 14 market days prior to the intended date of submission of prospectuses under sub-paragraph 3.06(c).

The relief application must be accompanied with the relevant supporting documents and the appropriate fee.

- 3.08 The SC may publish the registrable prospectus on the SC website in order to provide an opportunity for the public to view and provide any comments on the information disclosed in the prospectus (prospectus exposure).
- 3.09 For the registration of a prospectus, the principal adviser must ensure that the registrable prospectus is accompanied by the following documents:
- (a) Cover letter signed by two authorised persons of the principal adviser specifying the following:
 - (i) Application to register the prospectus together with a completed compliance schedule;
 - (ii) A confirmation that the due diligence working group has seen and verified that the prospectus complies with the minimum disclosure requirements as laid down in the CMSA and this guidelines; and
 - (iii) A confirmation that the accompanying documents in the registration file are complete, duly signed and dated;
 - (b) Three registrable copies of the prospectus in English;
 - (c) Submission and registration fees as prescribed by the SC's fees regulations;
 - (d) Directors' responsibility statement for the prospectus and, where applicable, the offerors' and promoters' responsibility statement. In the case of promoters or

offerors which consist of corporations, a board resolution authorising the signatory, who signed on behalf of a corporation, must be submitted together with the promoters' or offerors' responsibility statements. If an agent or alternate director signs the responsibility statement on behalf of a director, there should be clear reference made to the responsibility statement of such fact;

- (e) Original written authorisations by directors appointing any agent to sign the responsibility statement on their behalf;
- (f) Original copies of all letters 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 consent letter is to be addressed to the issuer/offeror;
- (g) Memorandum and Articles of Association (M&A) and the certificate of incorporation. If the original copy is not submitted, a copy of the M&A, certified by the company secretary, is acceptable. Where the issuer is foreign-incorporated, provide a certified copy of the certificate of registration and certified copies of constituent documents of the foreign corporation that may affect shareholders' rights and protection, and directors' powers;
- (h) Certified copies of all material contracts or documents referred to in the prospectus. For contracts not in 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 lawyers;
- (i) Original or certified copies of the audited financial statements of the corporation and its subsidiaries for the last three to five financial years (or such shorter period that the corporation/group has been in operation), preceding the date of prospectus. Copies of the audited financial statements must be certified by the auditor;
- (j) Original or certified copies of the latest audited financial statements of the corporation and its subsidiaries for the current financial period (where applicable). Copies of the audited financial statements must be certified by the auditor;
- (k) Original or certified copies of any expert's reports disclosed in the prospectus. These reports should be in English and Bahasa Malaysia. Where an expert does not possess the capability to prepare a report in Bahasa Malaysia, the corporation should provide a Bahasa Malaysia translation of the expert's report, subject to the following:
 - (i) The translated report in the Bahasa Malaysia prospectus must be accompanied by a statement that – the translated report is based on the original expert's report in the English prospectus; and
 - (ii) The corporation or the adviser must provide a letter of undertaking to the SC assuming liability for the translated expert's report;

- (l) Copy of the application form in English, for prospectuses submitted under sub- paragraph 3.06(c);
- (m) Letter of confirmation from the principal adviser that the electronic copy of the prospectus is the same as the registrable prospectus submitted to the SC, save for the requirement under sub-paragraph 3.09(n); and
- (n) Soft copy (in English) of the registrable prospectus in pdf' format. For prospectuses submitted under sub-paragraphs 3.06(a) and (b), the soft copy should include the following statement in bold and a prominent colour on the cover page – This document has not been registered by the Securities Commission Malaysia (SC). The information in this document may be subject to further amendments before being registered by the SC. Under no circumstances shall this document constitute an offer for subscription or purchase of, or an invitation to subscribe for or purchase securities.

For prospectuses submitted under sub-paragraph 3.06(c), only the English version is required for the documents referred to in sub-paragraphs (b) and (k) above. In addition, the following documents under sub -paragraphs 3.12(e) and (h) (English newspaper only) are required to be submitted at this stage.

Confirmation of registration for prospectuses submitted under sub-paragraphs 3.06(a) and (b)

- 3.10 The principal adviser should provide a confirmation of registration together with any relevant updated pages and the documents required under paragraph 3.12 to the SC before 12.30 p.m. at least seven market days prior to the intended date of registration.
- 3.11 Prior to providing the confirmation of registration, the following must be clearly resolved:
 - (a) Any outstanding issue regarding applications for relief from and/or clarification under Division 3; and
 - (b) Any pending matters arising from the section 212 approval, including among others, application for variation to the terms/ conditions of approval, extension of time, etc.
- 3.12 The following documents are to be submitted to the SC upon confirmation of registration:
 - (a) A confirmation that all relevant conditions of approval, to be complied with before issuance of the prospectus, have been met;
 - (b) Registrable copies of the prospectus (printer's proof) (two copies each in Bahasa Malaysia and English and in two separate registration files) for registration with the SC and lodgement with the Registrar of Companies respectively, together with a confirmation from the principal adviser that the

printer's proof is an accurate reproduction of the registrable prospectus and any required amendments;

- (c) Letter of confirmation from the principal adviser that the printed copy of the prospectus is the same as the registrable prospectus registered with the SC;
- (d) Letter of confirmation from the principal adviser that the consents provided under paragraph 3.09(f) have not been withdrawn;
- (e) Copy of letter of approval from any other relevant authority (e.g. Ministry of International Trade and Industry, Bursa Malaysia Securities and Bank Negara Malaysia);
- (f) Certified copy of the underwriting agreement;
- (g) Copy of the application form in English and Bahasa Malaysia;
- (h) For any revision to the registrable prospectus including the incorporation of comments received from prospectus exposure, the following are to be provided to the SC:
 - (i) Soft copy of the revised and final and complete form of the registrable prospectus in pdf format;
 - (ii) Letter of compliance from the principal adviser stating that the due diligence working group is aware of all comments raised and that the group has seen and confirmed the revisions made to the registrable prospectus; and
 - (iii) Letter of confirmation (updated) from the principal adviser that the electronic copy of the prospectus is the same as the registrable prospectus registered with the SC.

Term sheets

- 3.13 Any application for relief from complying with the required disclosure requirements should be resolved prior to the intended date of submission of the registrable term sheets.
- 3.14 For the registration of term sheets, the principal adviser/issuer must ensure that the registrable term sheets is accompanied by the following documents:
 - (a) Cover letter signed by two authorised persons of the principal adviser specifying the following:
 - (i) Application to register the term sheets together with a completed compliance schedule;
 - (ii) A confirmation that the due diligence working group has seen and

verified that the term sheets complies with the minimum disclosure requirements as laid down in the CMSA and the *Prospectus Guidelines*;

- (iii) A confirmation that the accompanying documents in the registration file are complete, duly signed and dated; and
 - (iv) A confirmation that all relevant conditions of approval, to be complied with before issuance of the term sheets, have been met.
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- (b) Registrable copies of the term sheets (two copies in English and in two separate registration files) for registration with the SC and lodgment with the Registrar of Companies respectively;
 - (c) Directors' responsibility statement for the term sheets;
 - (d) Original written authorisations by directors appointing any agent to sign the responsibility statement on their behalf;
 - (e) Original copies of all letters 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 consent letter is to be addressed to the issuer;
 - (f) Copy of letter of approval from any other relevant authority (e.g. Ministry of International Trade and Industry, Bursa Malaysia Securities and Bank Negara Malaysia);
 - (g) Certified copies of all material contracts or documents referred to in the term sheets. For contracts not in 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 lawyers;
 - (h) Original or certified copies of any expert's reports disclosed in the term sheets;
 - (i) Letter of confirmation from the principal adviser that the electronic copy of the term sheets is the same as the registrable term sheets submitted to the SC;
 - (j) Soft copy (in English) of the registrable term sheets in pdf' format; and
 - (k) Copy of the application form in English, if applicable.

Supplementary prospectus and replacement prospectus

- 3.15 For registration of a supplementary prospectus, the registrable prospectus should be submitted to the SC as soon as practicable and at least three market days prior to the intended registration date.
- 3.16 For registration of a replacement prospectus, paragraph 3.10 should apply.
- 3.17 For registration of a supplementary or replacement prospectus, the principal adviser should include the documents required under paragraph 3.09 and 3.14 above and a list highlighting the original statements from the previously registered prospectus and the amended statements.

Post registration

- 3.18 The principal adviser should provide the SC with three printed copies each of the English and Bahasa Malaysia prospectuses upon issuance.