



PUBLIC RESPONSE PAPER

NO. 1/2017

**PROPOSED POLICY FOR THE ADMISSION OF MINERAL OR OIL AND GAS
EXPLORATION OR EXTRACTION CORPORATIONS OR ASSETS TO THE MAIN
MARKET OF BURSA MALAYSIA SECURITIES BHD**

The Securities Commission Malaysia (SC) issues this Public Response Paper in response to feedback received pursuant to the Public Consultation Paper on the proposed policy for the admission of mineral or oil and gas exploration or extraction corporations or assets to the Main Market of Bursa Malaysia Securities Bhd dated 15 October 2015.

This public response paper is dated 19 January 2017.

CONTENTS

DEFINITIONS	3
1 INTRODUCTION	5
2 FEEDBACK ON PROPOSALS RELATING TO THE ADDITIONAL ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHOSE PRIMARY ACTIVITY IS MOG.....	6
3 FEEDBACK ON PROPOSALS RELATING TO THE ELIGIBILITY OF EXPLORATION STAGE AND EARLY PRODUCTION CORPORATIONS FOR LISTING.....	18
4 FEEDBACK ON PROPOSALS RELATING TO DISCLOSURE REQUIREMENTS AND TECHNICAL REPORTING STANDARDS	23

DEFINITIONS

AAPG	American Association of Petroleum Geologists
Additional Eligibility Requirements	the requirements as defined in paragraph 2.5 of the Consultation Paper
Applicant	IPO Applicants, RTO/BDL Applicants and SPAC QA Applicants
ASX	Australian Stock Exchange
Bursa Securities	Bursa Malaysia Securities Bhd
CIM	Canadian Institute of Mining, Metallurgy and Petroleum
CIMVAL	Special Committee of the CIM on Valuation of Mineral Assets
Competent Person	A person who meets the requirements in paragraphs 5.13 and 5.14 of the Consultation Paper
Competent Valuer	A person who meets the requirements in paragraphs 5.15 and 5.16 of the Consultation Paper
Consultation Paper	Consultation Paper No. 1/2015 dated 15 October 2015 issued by the SC
Disclosure Document	Prospectus, introductory document or circular to shareholders (as the case may be)
HKEx	Hong Kong Exchanges and Clearing Limited
IPO Applicant	A corporation applying to be listed on the Main Market of Bursa Securities
JORC	Joint Ore Reserves Committee
JORC Code	Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves
MOG	Mineral, or O&G exploration or extraction
MOG Applicant	Applicant whose primary activity is MOG, i.e. when its MOG activities represent 50% or more of the group total assets, revenue, operating expenses or after tax profit of the Applicant
MOG Corporation	Corporations engaged in in MOG activities
NI 43-101	Canada's National Instrument 43-101: Standards of Disclosure for Mineral Projects

NI 51-101	Canada's National Instrument 51-101: Standards of Disclosure for Oil and Gas Activities
O&G	Oil and Gas
PERC	Pan-European Reserves and Resources Reporting Committee
PERC Code	Pan-European Standard for Reporting of Exploration Results, Mineral Resources and Reserves
QA or Qualifying Acquisition	Qualifying acquisition by a SPAC as defined in the SC's <i>Equity Guidelines</i>
RTO/BDL Applicant	A corporation applying for approval of proposals which would result in a significant change in business direction of a listed corporation as defined under Chapter 7 of the SC's <i>Equity Guidelines</i>
SAMREC Code	South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves
SAMVAL Code	South African Code for the Reporting of Mineral Asset Valuation
SC	Securities Commission Malaysia
SGX	Singapore Exchange
SPAC	Special purpose acquisition company
SPAC QA Applicant	A SPAC applying for approval of its proposed QA
SPE	Society of Petroleum Engineers
SPEE	Society of Petroleum Evaluation Engineers
SPE-PRMS	Petroleum Resources Management System sponsored by SPE, AAPG, the World Petroleum Council and SPEE
TSX	Toronto Stock Exchange
UK FCA	Financial Conduct Authority, United Kingdom
US SEC	US Securities and Exchange Commission
VALMIN Code	Australasian Institute of Mining and Metallurgy's Code for the Technical Assessment and Valuation of Mineral, or Petroleum Assets and Securities for Independent Expert Reports

1 INTRODUCTION

- 1.1 On 15 October 2015, the SC published a Consultation Paper to invite public feedback on the proposed policy for the admission of mineral or oil and gas exploration or extraction corporations and assets to the Main Market of Bursa Securities. In the formulation of this proposed policy, the SC had conducted thorough reviews, jurisdictional benchmarking and active engagements with industry experts.
- 1.2 The Consultation Paper was open for public feedback from 15 October 2015 to 13 November 2015.
- 1.3 The SC received feedback from 11 respondents on the Consultation Paper, including from the Malaysian Chamber of Mines, Malaysian Investment Banking Association, Malaysian Institute of Accountants, Gaffney-Cline & Associates, LR Senergy, KPMG, RHB Investment Bank Bhd, Messrs. Ben & Partners, Messrs. Jeff Leong, Poon & Wong, SapuraKencana Petroleum Bhd, and a respondent who chose to remain anonymous. The SC would like to thank all respondents for their comments.
- 1.4 Overall, the feedback provided was supportive of the proposed policy.
- 1.5 Feedback from the respondents on the proposed policy together with SC's comments are presented in the following sections.

2 FEEDBACK ON PROPOSALS RELATING TO THE ADDITIONAL ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHOSE PRIMARY ACTIVITY IS MOG

2.1 MOG as primary activity

2.1.1 In the Consultation Paper, the SC provided the parameters for when IPO and RTO/BDL Applicants have MOG as their 'primary activity' such that the Additional Eligibility Criteria would apply.¹

2.1.2 Respondents were asked to give their comments on the following questions:

Question 1:

- (a) Do you agree with the SC's proposed definition of an IPO Applicant whose primary activity is MOG, i.e. a corporation whose MOG activities represent 50% or more of the group total assets, revenue, operating expenses or after tax profit of the IPO Applicant ("50% Threshold")? Please provide specific reasons for your views.
- (b) Do you agree that for an RTO/BDL Applicant, the criteria for determining whether its primary activity is/would be MOG should be on an "enlarged group" basis? Please provide specific reasons for your views.

Feedback from respondents

2.1.3 Nine out of 11 respondents were supportive of the proposed definition. One dissenting respondent suggested that the definition should extend to all corporations with mineral or O&G assets, irrespective of whether MOG was their primary activity. Another dissenting respondent preferred the 50% Threshold to be lowered to 25%.

2.1.4 10 out of 11 respondents also agreed that the criteria for determining whether an RTO/BDL Applicant's primary activity is MOG should be on an "enlarged group" basis.

2.1.5 One respondent suggested extending the definition of primary activity to include situations where MOG activities is the 'single largest contributor' to the group's total, assets, revenue, operating expenses or after tax profit.

¹ See paragraphs 3.1 and 3.2 of the Consultation Paper

The SC's position

- 2.1.6 The primary activity of an IPO Applicant or RTO/BDL Applicant will be considered to be MOG when MOG activities represent 50% or more of any one of the four measures outlined. For avoidance of doubt, this excludes IPO Applicants or RTO/BDL Applicants which purely provide services to other companies engaged in the exploration or extraction of mineral, or O&G resources.
- 2.1.7 The SC takes note the 'single largest contributor' test suggested may be relevant in certain (but not all) situations, considering the definition of "core business" within the SC's *Equity Guidelines*. Where MOG activities represent the 'single largest contributor' to the group's total assets, revenue, operating expenses or after tax profit, the SC would retain the discretion to require an applicant to comply with the Additional Eligibility Requirements. In such circumstances, the applicant should consult with the SC. In making such determination, the SC will consider, among others, the contribution from each activity of the applicant and the stage of development of the mineral, or O&G assets owned by the applicant.
- 2.1.8 The SC is of the opinion that it would not be suitable either to extend the definition to all corporations with mineral, or O&G assets (irrespective of whether MOG is their primary activity), or to lower the 50% Threshold to 25%. The SC is of the view that it is not appropriate to apply the Additional Eligibility Requirements to corporations where MOG is not their primary activity. This is in line with one of the SC's pillars of regulation - proportionality², where regulation should commensurate with the risks posed.
- 2.1.9 The SC would also like to clarify that the 50% Threshold on an "enlarged basis" for RTO/BDL Applicants means that the MOG activities would be 100% or more of the pre-RTO/BDL businesses and ensures there is parity in treatment with those seeking to list MOG businesses directly through an IPO.
- 2.1.10 Therefore, the SC will be adopting the definitions as proposed.

2.2 Adequate portfolio of resources substantiated by a Competent Person's report

- 2.2.1 In the Consultation Paper, the SC proposed for MOG Applicants to demonstrate that they have an adequate portfolio of at least Contingent Resources (for O&G) or Indicated Resources (for minerals) to justify suitability for listing. Such portfolio had to be substantiated by an independent Competent Person's report.³

² *Securities Commission Malaysia Regulatory Philosophy*, published in 2015

³ See paragraph 3.5 of the Consultation Paper

2.2.2 Respondents were asked to give their comments on the following questions:

Question 2:

- (a) Do you agree that an MOG Applicant must have adequate portfolio of resources to justify suitability for listing? Please provide specific reasons for your views.**
- (b) Do you agree with the SC's proposed approach where adequacy would be benchmarked against the corporation's ability to continue to meet the Profit Test and Market Capitalisation Test? What would you consider to be "adequate"? Please provide specific reasons for your views.**
- (c) Do you agree that the resource portfolio must comprise at least Contingent Resources (for O&G) or Indicated Resources (for minerals)? Please provide specific reasons for your views.**
- (d) Do you agree that an MOG Applicant's portfolio of resources must be substantiated by a Competent Person's report? Please provide specific reasons for your views.**

Feedback from respondents

- 2.2.2 10 out of 11 of the respondents agreed that an MOG Applicant should have an adequate portfolio of resources to ensure commercial viability and sustainability.
- 2.2.3 Six out of 11 of the respondents also agreed that adequacy should be benchmarked against the corporation's ability to continue to meet the Profit Test and Market Capitalisation Test. Of the four respondents who disagreed with the proposed approach in question 2(b), one was of the view that MOG businesses are generally evaluated on their cash flow generating ability as well as portfolio of resources, instead of profitability. One also suggested that the benchmark should be the physical level of resources, while another recommended that adequacy be determined by control and influence over the exploration/ extraction activities.
- 2.2.4 One respondent, who neither agreed nor disagreed to the proposed approach in question 2(b), was of the view that prospective financial information would be required in order to determine the corporation's ability to continue to meet the Profit Test and Market Capitalisation Test, and given the uncertainties and subjectivity associated with such information, directors should be made responsible for such information.

- 2.2.5 Nine out of 11 respondents supported SC's proposal that the MOG Applicant's resource portfolio must comprise at least Contingent Resources (for O&G) or Indicated Resources (for minerals). One respondent was of the opinion that the requirement was too lenient. Conversely, another respondent was of the opinion that the requirement was too strict, and will exclude MOG Corporations in the development/exploration and early production stages.
- 2.2.6 The proposal for an MOG Applicant's portfolio of resources to be substantiated by an independent Competent Person's report received unanimous support.

The SC's position

- 2.2.7 The requirement for adequacy of portfolio of resources will be adopted, as proposed.
- 2.2.8 We take note that the concept of adequacy being measured against the Applicant's continued ability to meet the Profit Test and Market Capitalisation Test may be difficult to demonstrate under certain circumstances. The main principle we seek to uphold is that the portfolio of resources must be adequate for sustainable business operations. Given the varied types, qualities and other factors of minerals and hydrocarbons, benchmarking adequacy to physical levels of resources is not possible. As such, we propose to consider adequacy based on the specific circumstances of each proposal, bearing in mind always that the objective of the requirement is for sustainable business operations. As a guide, the following are some of the factors the SC may take into consideration in its assessment:
- (i) For O&G resources, the availability of proved and probable reserves to sustain commercial production of at least 5 years (supported by a Competent Person's report) OR Contingent Resources of at least RM500 million (supported by a Competent Valuer's report).
 - (ii) For mineral resources, the availability of proved and probable reserves to provide a mine life of at least 5 years (supported by a Competent Person's report) OR Indicated Resources of at least RM500 million (supported by a Competent Valuer's report).

The use of value of at least RM500 million, in the event the portfolio of resources comprises mainly Contingent Resources or Indicated Resources, allows for a size test to be applied. This would be in line with the current minimum market capitalisation requirement of RM500 million under the Market Capitalisation Test, if the portfolio of resources is fully equity-funded.

- 2.2.9 The SC is of the view that setting a requirement that the resources comprise at least Contingent Resources (for O&G) and Indicated Resources (for mineral) strikes a fair

balance in terms of market access for potential issuers and risk exposure for prospective investors in MOG businesses and will adopt the proposal. This approach is also adopted by the HKEx and SGX for the listing of MOG Corporations on the respective main markets. To be clear, this does not limit singular assets from listing if the resources are considered adequate. The SC may exclude certain resources classified as contingent resources after taking into consideration the nature of the contingency, i.e. the certainty in resolving the contingent issues to progress the asset to development stage within 2 years. For indicated mineral resources, the SC may exclude indicated resources where sufficient work has not been done on the Modifying Factors.

2.3 Legal rights and control

2.3.1 In the Consultation Paper, the SC proposed to require that an MOG Applicant demonstrate that, for the majority of its assets (in value), it has–

- (i) obtained the legal rights for exploration/extraction activities in respect of the mineral, or O&G assets; and
- (ii) control over its mineral, or O&G assets.⁴

2.3.2 Respondents were asked to give their comments on the following questions:

Question 3:

- (a) Do you agree that an MOG Applicant must demonstrate that, for the majority of its assets (in value), it has obtained legal rights for exploration/extraction activities in respect of the mineral, or O&G assets? Please provide specific reasons for your views.
- (b) Do you agree that an MOG Applicant must demonstrate that, for the majority of its assets (in value), it has control over such assets, which must be based on an interest of more than 50%? Please provide specific reasons for your views.
- (c) Do you agree that an interest of between 33% and 50% can be considered, IF the MOG Applicant is able to demonstrate that it has sufficient influence over activities that significantly affect the returns on investment in the mineral, or O&G assets? Please provide specific reasons for your views.
- (d) Do you agree that a specific requirement be imposed for a SPAC QA

⁴ See paragraph 3.9 of the Consultation Paper

Applicant acquiring Mineral, or O&G assets/businesses to obtain a controlling interest in the operator of the majority of the acquired assets (in value)? Please provide specific reasons for your views.

(e) Do you think that the SC should extend the operatorship requirement to IPO Applicants and RTO/BDL Applicants whose primary activity is MOG? Please provide specific reasons for your views.

Feedback from respondents

- 2.3.3 All respondents agreed that an MOG Applicant should be required to demonstrate that it has obtained legal rights for exploration/extraction activities in respect of the mineral, or O&G assets.
- 2.3.4 Nine out of 11 respondents were in agreement that an MOG Applicant should be required to demonstrate that it has control over the majority of its assets (in value). One respondent viewed the control requirement as unnecessary if there are adequate corporate governance measures in place. One respondent did not provide feedback on question 3(b).
- 2.3.5 While nine out of 11 respondents agreed with the control requirement, there were divergent views on how control should be demonstrated. Six of the 11 respondents thought that the 50% interest requirement may be too restrictive. Reasons cited included that (i) there may be perfectly valid commercial reasons why an MOG Applicant would choose not to hold a 50% interest, (ii) such as assets may be too expensive (given its size), and (iii) this may be for risk mitigation purposes. Of the six respondents, three were more receptive towards the 33% to 50% level.
- 2.3.6 Five out of the 11 respondents were opposed to the idea that control should be demonstrated through having particular levels of interests in the assets, noting that a majority shareholding may not necessarily be the sole determinant of control. Respondents suggested that control could also be demonstrated through contractual rights, such as having a 'blocking vote'.
- 2.3.7 Four out of nine respondents who gave feedback on the proposed requirement that SPAC QA Applicants should acquire a controlling interest in the operator of the majority of the acquired assets (**Operatorship Requirement**) agreed with the proposal based on the rationale provided by the SC in the Consultation Paper. The three who disagreed suggested that such a requirement could limit the assets available to O&G SPACs and place them at a negotiating disadvantage. Instead, they suggested that at a minimum, the SPAC QA Applicant should demonstrate the

ability to exert influence over the operator. Two respondents repeated their opinions that the control requirements were not necessary.

- 2.3.8 On the question of whether the Operatorship Requirement should apply to IPO Applicants and RTO/BDL Applicants, six out of eight respondents were of the opinion that imposing such a requirement would be unnecessarily restrictive. Respondents highlighted that IPO Applicants and RTO/BDL Applicants are not exposed to the unique set of risks present in SPACs.⁵ As such, the costs of imposing the Operatorship Requirement for IPO Applicants and RTO/BDL Applicants will outweigh its benefits as the requirement will limit potential listings. The other three respondents did not comment/ provided unclear responses.

The SC's position

- 2.3.9 The SC takes note of the unanimous support for the requirement on legal rights for exploration/extraction activities and will adopt the proposed policy.
- 2.3.10 The SC reiterates its view that having control over mineral, or O&G assets is important. The SC also acknowledges that having particular levels of interest in the mineral, or O&G assets may not be the sole determinant of control. This is why we have, in the Consultation Paper, highlighted that whilst generally control is determined through a majority interest, it is important that MOG Applicants and their advisers consider the particular arrangement(s) between the interested parties to ensure that the rights of the MOG Applicant reflect the majority interest held/to be acquired.
- 2.3.11 In addition, the two-tier test proposed would accommodate MOG Applicants holding interests of less than 50% in its assets but through contractual rights are able to demonstrate 'sufficient influence', hence meeting the control test. It should be noted that HKEx and the Toronto Stock Exchange (TSX) also adopt a similar approach.
- 2.3.12 Whilst contractual rights may be used to demonstrate that an MOG Applicant has sufficient influence over activities that significantly affect the returns on investment in the MOG asset, the SC is of the opinion that having a blocking vote in itself, will not be sufficient for the purposes of establishing "sufficient influence" over the mineral, or O&G assets. As stated in the Consultation Paper, the SC will consider that an MOG Applicant has "sufficient influence" when a decision cannot be made without the MOG Applicant's support.
- 2.3.13 The SC reiterates that it will not consider MOG Applicants with an interest lower than 33%. In addition, the SC will also not consider the listing of natural resource investment funds through these requirements.

⁵ See paragraph 3.15 of the Consultation Paper

2.3.14 Given the expectation for the management team of a SPAC to continue to be involved in the operations of the business post-SPAC QA due to their carried interest, the SC will implement the Operatorship Requirements for SPAC QA Applicants, as proposed.

2.3.15 However, as the unique risks associated with SPACs based on the reasons outlined in the Consultation Paper⁶ are not present in IPO Applicants and RTO/BDL Applicants whose primary activity is MOG, similar Operatorship Requirements will not be applied.

2.4 Working capital requirements

2.4.1 In the Consultation Paper, the SC proposed to require an MOG Applicant to demonstrate that it has sufficient level of working capital for at least 18 months from the date of the Disclosure Document.⁷

2.4.2 Respondents were asked to give their comments on the following questions:

Question 4:

- (a) **Do you agree that an MOG Applicant should demonstrate that it has sufficient levels of working capital for at least 18 months from the date of the Disclosure Document? Please provide specific reasons for your views.**
- (b) **Do you believe the SC should define working capital and if so, are there specific items you believe must be included in the “working capital” definition? Please provide specific reasons for your views.**

Feedback from respondents

2.4.3 Nine out of 11 respondents agreed with the SC’s proposal on the working capital requirements, and suggested for the following items to be included:

- Operating, general and administrative and financing costs
- Regulatory commitments
- Property holding costs
- Costs of the proposed exploration and development

⁶ See paragraph 3.15 of the Consultation Paper

⁷ See paragraph 3.18 of the Consultation Paper

One respondent suggested that the definition of working capital take into account net operating cash flows, available credit facilities, IPO proceeds allocated for working capital purposes, as well as the MOG Applicant's net current position.

- 2.4.4 One respondent highlighted that a strict definition of working capital should not be adopted because working capital requirements would differ based on the MOG Applicant's nature of business. However, broad principles-based guidance should be provided by the SC.

The SC's position

- 2.4.5 Having considered the positive feedback received, the SC will implement the working capital proposals and also provide broad guidance on the items which should be included in the working capital definition.

- 2.4.6 The SC wishes to highlight that in formulating these proposals, we have considered the working capital requirements in several benchmarked jurisdictions which include the following:

- (i) SGX requires an MOG company to have working capital that is sufficient for its present requirements and for at least 18 months after listing;
- (ii) HKEx requires a MOG company to demonstrate that it has available working capital for 125% of the group's present requirements for at least the next 12 months which must be disclosed in the listing prospectus;
- (iii) Canada's TSX generally requires exploration stage and development stage mineral, O&G companies to have sufficient funds to complete the planned exploration and/or development programme, and to meet capital and operating costs for at least 18 months; and
- (iv) ASX requires all companies to have AUD1.5 million (approximately RM4.5 million) for working capital upon listing. For MOG companies, this working capital requirement should be after allowing for the 1st full financial year's budgeted administration cost and the cost of acquiring plant, equipment and mining tenements.

2.5 Appointment of audit firm with expertise auditing MOG firms

2.5.1 In the Consultation Paper, the SC proposed to require MOG Corporations to appoint an audit firm which has the relevant MOG industry expertise.⁸

2.5.2 Respondents were asked to give their comments on the following question:

Question 5: Do you agree that an MOG Corporation should appoint an audit firm with relevant MOG industry expertise? Please provide specific reasons for your views.

Feedback from respondents

2.5.3 Eight out of the 11 respondents agreed with SC's proposal to require MOG Corporations to appoint audit firms which have MOG industry expertise.

2.5.4 Two respondents disagreed, with one respondent having the view that such a requirement may give undue preference to incumbents and that firms should be given the opportunity to explain how they have the competence to perform the audit of an MOG Corporation, which includes efforts to leverage on the experience of its network firms or recruiting individuals with relevant MOG experience where they deem appropriate or necessary. Another respondent expressed concern that it may be difficult to identify whether an audit firm has the capability or knowledge to perform audit.

The SC's position

2.5.5 Having considered the positive feedback received, the SC will implement this requirement as proposed.

2.5.6 As highlighted in the Consultation Paper, the audit firm may rely on the experience of its network firms in demonstrating its MOG industry expertise, provided the relevant audit partner-in-charge from such network firms is involved in the engagement.

2.5.7 The SC reiterates that while this requirement may favour larger audit firms which have the benefit of a network of professionals with subject-matter knowledge, expertise and experience, such a requirement is necessary due to the highly technical and specialised nature of the MOG industry.

⁸ See paragraph 3.21 of the Consultation Paper

2.6 Appointment of independent director with appropriate MOG industry experience and expertise

2.6.1 In the Consultation Paper, the SC proposed to require MOG Corporations to appoint at least one (1) independent director (out of the requisite number of independent directors) with appropriate MOG industry experience and expertise.⁹

2.6.2 Respondents were asked to give their comments on the following question:

Question 6: Do you agree that an MOG Corporation should appoint at least one independent director (out of the requisite number of independent directors) with appropriate MOG industry experience and expertise? Please provide specific reasons for your views.

Feedback from respondents

2.6.2 Nine out of the 11 respondents agreed with the proposal.

2.6.3 One respondent argued that it should be sufficient that the executive directors and senior management possess the necessary expertise.

2.6.4 Another respondent pointed out that such a requirement may not be necessary as it is already incumbent on the MOG Corporation to strengthen the composition of the Board in accordance with the *Malaysian Code of Corporate Governance 2012 (MCCG 2012)*. Also, there may not be sufficient candidates in the market to support such a requirement, and this may be a disincentive to capital market access. The respondent noted that establishing criteria for the suitability of experts and industry valuations and reports would provide the independent directors with sufficient industry assurance.

The SC's position

2.6.5 The SC takes note of the strong support and will adopt the policy as proposed.

2.6.6 The SC would like to highlight that it is important for independent directors, and not just executive directors and senior management, to possess the necessary MOG industry experience and expertise to be effective, particularly in protecting the interests of minority shareholders.

2.6.7 The inclusion of this requirement is necessary as the observance of the MCCG 2012 by companies is voluntary. The SC wishes to reiterate its view that this requirement

⁹ See Paragraph 3.25 of the Consultation Paper

will improve the effectiveness of the board as such experience would allow the independent director to recognise issues and constructively challenge the executive for more robust deliberations. The availability of sufficient candidates is not a strong justification as to why this requirement should not be imposed.

3 FEEDBACK ON PROPOSALS RELATING TO THE ELIGIBILITY OF EXPLORATION STAGE AND EARLY PRODUCTION CORPORATIONS FOR LISTING

3.1 Minimum size, ability to raise sufficient funds to advance to commercial production in two years, management experience, no offer for sale and moratorium

3.1.1 In the Consultation Paper, the SC proposed to allow an IPO Applicant whose primary activity is MOG to apply for a waiver from the requirement under the Market Capitalisation Test for at least one full financial year of operating revenue and positive cash flow from operating activities, provided certain requirements are met.

3.1.2 In the case of an RTO/BDL involving a listed corporation, the enlarged group or the assets being acquired must comply with the Profit Test. The SC may consider allowing RTO/BDL Applicants whose post-completion primary activity is MOG to apply for a waiver from the requirement that the assets or enlarged group have after-tax profit, operating cash flow and without accumulated losses, provided certain requirements are met.

3.1.3 If a waiver is granted, the SC proposed to impose a prohibition on offer for sale and a moratorium on sale of securities by the promoters.¹⁰

3.1.4 Respondents were asked to give their comments on the following questions:

Question 7:

(a) Do you agree that late stage exploration and early stage production MOG Corporations should be allowed to list on the Main Market of Bursa Securities? Please provide specific reasons for your views.

(b) Do you agree that the SC should consider waiving the requirement (under the Market Capitalisation Test) for at least one full financial year of operating revenue and positive cash flow from operating activities if the IPO Applicant can demonstrate it has the following:

(i) Clear plans to and is able to raise sufficient funds to advance the mineral, or O&G assets to commercial production within two years?

(ii) Its directors and management collectively have sufficient MOG industry experience to effectively implement the planned

¹⁰ See paragraphs 4.7 to 4.9 of the Consultation Paper

exploration and/or development programme?

Please provide specific reasons for your views.

- (c) Do you agree that MOG IPO Applicants seeking a waiver from the financial requirements under the Market Capitalisation Test must still meet the minimum market capitalisation requirement of RM500 million? Please provide specific reasons for your views.**
- (d) Do you agree that the SC should consider waiving the requirement (under the Profit Test) for the assets or enlarged group to have after-tax profit, operating cash flow and no accumulated losses, if the RTO/BDL Applicant can demonstrate it has the following:**
 - (i) The purchase consideration for the assets to be acquired is at least RM500 million which is supported by an independent Competent Valuer's report.**
 - (ii) Clear plans and is able to raise sufficient funds to advance the mineral, or O&G assets to commercial production within two years?**
 - (iii) Its directors and management collectively have sufficient MOG industry experience to effectively implement the planned exploration and/or development programme?**

Please provide specific reasons for your views.

- (e) Do you agree that the plans to advance the mineral, or O&G assets to commercial production must be reviewed by an independent Competent Person and stated in the Disclosure Document? Please provide specific reasons for your views.**
- (f) Do you agree that an MOG Applicant who does not meet the Profit Test or Market Capitalisation Test should not be allowed to undertake an offer for sale of securities by the promoters? Please provide specific reasons for your views.**
- (g) Do you agree that in the case of an IPO, the promoters of an MOG Corporation should not be allowed to sell, transfer or assign any of their securities held as at the date of the listing until such time that the MOG Corporation has generated one full financial year of operating revenue and positive cash flow from operating activities? Please provide specific reasons for your views.**
- (h) Do you agree that in the case of an RTO/BDL, the vendors of the assets should not be allowed to sell, transfer or assign any of their**

considerations securities from the date of the listing (or date of issue if the securities are not listed) until such time that the MOG Corporation has generated one full financial year of operating revenue and positive cash flow from operating activities? Please provide specific reasons for your views.

Feedback from respondents

- 3.1.5 There was unanimous agreement that late stage exploration and early stage production MOG Corporations should be allowed to list on the Main Market of Bursa Securities.
- 3.1.6 Eight out of the 11 respondents agreed with the proposals for MOG IPO Applicants seeking a waiver from the financial requirements under the Market Capitalisation Test to still meet the minimum market capitalisation requirement of RM500 million, noting that the MOG industry is capital intensive and subject to various risks. However, three respondents thought that a RM500 million requirement was too high.
- 3.1.7 Eight out of the 11 respondents agreed with the proposal in question 7(e). One respondent stressed that the disclosure of plans to advance mineral, or O&G assets to commercial production may be impeded by confidentiality concerns i.e. host governments or regulatory authorities' approval may be required. Two respondents provided responses which did not answer the question posed.
- 3.1.8 Three respondents thought that the moratorium proposals [questions 7(g) and (h)] should follow the current requirement for Applicants which fully meet the Profit Test and Market Capitalisation Test where the moratorium is for 6 months only. Two respondents thought that the promoters should be allowed to undertake an offer for sale citing the need to meet public spread requirements and parity of treatment with other Main Market IPOs.

The SC's position

- 3.1.9 Having considered the feedback given by respondents, the SC will implement the policies as proposed based on the rationale provided in the Consultation Paper.
- 3.1.10 The SC would like to point out that MOG IPO Applicants who are not able to meet the market capitalisation requirement of RM500 million would not be precluded from considering a listing on the ACE Market of Bursa Securities.
- 3.1.11 The SC takes cognisance that there may be confidentiality issues surrounding the disclosure of plans to advance mineral, or O&G assets. However, this requirement is

necessary to ensure that investors are provided with sufficient information to make an informed decision on whether or not to invest in an MOG Applicant. In this regard, the MOG Applicant must consult the SC if confidentiality issues arise and the SC will consider the issue based on the individual facts.

3.1.12 The SC would like to reiterate that the prohibition on promoters undertaking an offer for sale where waivers have been granted for certain financial requirements is necessary as a mechanism to align the interest of promoters to that of investors. This prohibition does not preclude the MOG Applicant from meeting the public spread requirements through a public issue.

3.2 Minimum standards for qualifying acquisition involving mineral, or O&G assets by a SPAC

3.2.1 In the Consultation Paper, the SC proposed to impose the following requirements for a SPAC intending to make a Qualifying Acquisition involving mineral, or O&G assets:

- (i) The aggregate fair market value of the Qualifying Acquisition must be at least RM500 million;
- (ii) The Qualifying Acquisition must meet Additional Eligibility Requirements; and
- (iii) Where the qualifying acquisition does not meet the Profit Test or Market Capitalisation Test, there must be a clear plan to advance the mineral, or O&G asset to commercial production within two years and there must be sufficient funds (taking into consideration IPO proceeds) to do so. The plans (with milestones and related expenditures) must be stated in the Disclosure Document and reviewed by an independent Competent Person.¹¹

3.2.2 Respondents were asked to give their comments on the following questions:

Question 8:

(a) Do you agree that a SPAC proposing to make a Qualifying Acquisition involving mineral, or O&G assets are required to comply with the following:

- (i) The aggregate fair market value of the qualifying acquisition must be at least RM500 million;**
- (ii) The qualifying acquisition must meet Additional Eligibility Requirements; and**

¹¹ See paragraph 4.16 of the Consultation Paper

(iii) Where the qualifying acquisition does not meet the Profit Test or Market Capitalisation Test, there must be a clear plan to advance the mineral, or O&G assets to commercial production within two years and there must be sufficient funds (taking into consideration IPO proceeds) to do so. The plans (with milestones and related expenditures) must be stated in the Disclosure Document and reviewed by an independent Competent Person.

Please provide specific reasons for your views.

Feedback from respondents

- 3.2.3 Seven respondents provided a response to this question. Four of the respondents agreed with the proposals, with most giving prominence to the importance of consistency in standards regardless of how MOG Corporations and mineral, or O&G assets are listed. Two respondents thought that it would be difficult for SPACs to successfully acquire a target for an aggregate fair market value of at least RM500 million, with one respondent observing that SPACs were only required to raise RM150 million during their IPO.
- 3.2.4 Out of the seven respondents who provided a response, five agreed on a two year timeframe for mineral, or O&G assets to be advanced to commercial production. One respondent suggested extending the timeframe to three years considering the time needed for the approval of development plans of the assets, while another noted that five years was considered a reasonable timeframe under SPE-PRMS and suggested that it was enough for the timeframe to be stated in the Competent Person's report.

The SC's position

- 3.2.5 The SC takes cognisance of the suggestions on the market value of the qualifying acquisition and timeframe to commercial production above. The SC also agrees that the same standards should be applied to MOG Corporations seeking a listing on the Main Market of Bursa Malaysia, regardless of whether the listing is sought directly or indirectly through an RTO/BDL or qualifying acquisition by a SPAC.
- 3.2.6 Having considered the feedback given by respondents, the SC will implement the requirements, as proposed.

4 FEEDBACK ON PROPOSALS RELATING TO DISCLOSURE REQUIREMENTS AND TECHNICAL REPORTING STANDARDS

4.1 Technical reporting and valuation standards

4.1.1 In the Consultation Paper, the SC proposed to require all technical reports and valuation reports on mineral, O&G resources and reserves to be prepared in accordance with certain reporting standards.¹²

4.1.2 Respondents were asked to give their comments on the following questions:

Question 9:

- (a) Do you agree with the proposal to accept the SPE-PRMS and NI 51-101 as the reporting standards for O&G resources? Please provide specific reasons for your views.
- (b) Do you agree with the proposal to accept the JORC Code, PERC Code, SAMREC Code and NI 43-101 as the reporting standards for mineral resources? Please provide specific reasons for your views.
- (c) Do you agree with the proposal to accept CIMVAL, SAMVAL Code and VALMIN Code as the valuation standards for mineral, or O&G resources? Please provide specific reasons for your views.

Feedback from respondents

4.1.3 Eight out of the nine respondents who commented on this proposal were supportive of the proposals on technical reporting and valuation standards, given that these standards are widely recognised and accepted in their respective industries.

4.1.4 One respondent suggested adding further details to the principles outlined in the reporting standards proposed for O&G resources in the SC's guidelines and to also consider adding US SEC standards to the list.

The SC's position

4.1.5 The SC takes note of the strong support and will adopt the policy as proposed.

4.1.6 We wish to highlight that the requirements in the SC's *Prospectus Guidelines* are the minimum requirements for disclosure and issuers are required to furnish/disclose any

¹² See paragraph 5.1 of the Consultation Paper

other information the SC may request. Notwithstanding this, the SC may also consider adding specific disclosure requirements in the future if we believe that this is necessary.

- 4.1.7 For O&G resources, we do not believe it is appropriate to adopt US SEC standards as these requirements are very specific for offerings which come under the US SEC's purview. SPE-PRMS is more comprehensive and is accepted globally as the approach to estimating petroleum quantities, evaluating development projects, and presenting results within a comprehensive classification framework.

4.2 Requirement for Competent Person's report and Competent Valuer's report

- 4.2.1 In the Consultation Paper, the SC proposed to require technical reports and valuation reports to be prepared in certain circumstances where an Applicant has significant operations in MOG businesses (i.e. when its MOG activities represent 25% or more of the group total assets, revenue or operating expenses of the Applicant or assets to be acquired).¹³

- 4.2.2 Respondents were asked to give their comments on the following questions:

Question 10:

- (a) Do you agree with the proposed definition of significant operations in MOG businesses, i.e. its MOG activities represent 25% or more of the group total assets, revenue or operating expenses of the Applicant or assets to be acquired? Please provide specific reasons for your views.
- (b) Do you agree that an Applicant with significant operations in MOG businesses must prepare a technical report on the Applicant's mineral, or O&G resources to be included in its Disclosure Document? Please provide specific reasons for your views.
- (c) Do you agree that a valuation report on the MOG Corporation's resources must be prepared for inclusion in the Disclosure Document for RTOs/BDLs and Qualifying Acquisitions by a SPAC? Please provide specific reasons for your views.
- (d) Do you agree that the determination of whether or not a valuation is included in the prospectus for the purposes of an IPO should be left to the MOG Corporation and the relevant independent expert? Please

¹³ See paragraph 5.7 of the Consultation Paper

provide specific reasons for your views.

Feedback from respondents

- 4.2.3 Eight out of the 10 respondents who commented agreed on the proposals on the definition of “significant operations” in MOG business and the requirements to prepare a technical report and valuation report. One respondent was of the view that the requirements to prepare a technical report and valuation report should apply to all Applicants owning mineral, or O&G assets, while another believed 50% to be a more appropriate threshold.
- 4.2.4 Five out of the 10 respondents who commented agreed that it should not be a requirement for a valuation to be included for the purposes of an IPO. One respondent suggested that the decision should be left to the MOG Corporation only. Four respondents disagreed, highlighting that valuation of resources should be mandatory to give investors/analysts relevant information to make an informed decision on their investments in resource-based companies.

The SC’s position

- 4.2.5 Taking into account the strong support by respondents, the requirements for the Competent Person and Competent Valuer’s report will be adopted. These requirements are also consistent with the approach taken by SGX, TSX and HKEx. The SC does not intend to apply these requirements to corporations which do not have “significant operations” in MOG businesses in line with the SC’s regulatory principle of “proportionality”. This does not preclude issuers from providing such reports if they believe that such reports are relevant.
- 4.2.6 The SC will maintain the proposed policy that the decision whether or not to include valuations in an IPO prospectus should be left to MOG Corporations and relevant industry experts. Based on the SC’s discussions with market practitioners, valuation reports are generally prepared for the purposes of marketing/promoting the IPO and should be treated with caution. As such, the SC will not make it mandatory for the preparation of a valuation report in IPO prospectuses. However, if one is included, there must be strong justifications for doing so and it must comply with the relevant requirements.¹⁴
- 4.2.7 The SC reiterates that given the highly technical nature of the industry, an external consultant will be appointed to advise the SC in the review of the Disclosure Documents to establish that reports by independent Competent Persons and Competent Valuers have been properly prepared under the relevant guidelines and

¹⁴ See chapter 5 of the Consultation Paper

codes. In view of this, the SC intends to prescribe a fee for the review of these reports.

4.3 Competent Person, Competent Valuer and firm qualifications

4.3.1 In the Consultation Paper, the SC proposed certain qualifications for Competent Persons, Competent Valuers and their firms.¹⁵

4.3.2 Respondents were asked to give their comments on the following questions:

Question 11:

- (a) Do you agree with the proposed requirements for a Competent Person? Please provide specific reasons for your views.
- (b) Do you agree with the proposed requirements for a Competent Person's Firm? Please provide specific reasons for your views.
- (c) Do you agree with the proposed requirements for a Competent Valuer? Please provide specific reasons for your views.
- (d) Do you agree with the proposed requirements for a Competent Valuer's Firm? Please provide specific reasons for your views.
- (e) Do you agree with the proposed definition of Recognised Professional Organisations? Please provide specific reasons for your views.

Feedback from respondents

4.3.3 Strong support was received from nine out of the 11 respondents for all of the proposed requirements above.

4.3.4 One respondent suggested aligning the number of years' experience required for both Competent Persons and Competent Valuers, i.e. to 10 years. Another respondent highlighted that there needed to be a regional context for the appointment and application of the Competent Person. For example, it may not be suitable for a geologist that is only part of a society in Ontario, Canada, to be signing off on a Competent Person's report for assets in the Malay Basin. Regional context and expertise are integral to the competency of their opinion. ("**Regional Context Issue**")

¹⁵ See paragraphs 5.13 to 5.19 of the Consultation Paper

- 4.3.5 Two respondents highlighted that the requirement for a Competent Person's and Competent Valuer's firms to have "sufficient internal controls and procedures to ensure that the requirements of the standards are complied with and the technical assessment conducted has gone through the necessary peer review and a robust assessment process" may be subjective and a challenge to assess. One of those respondents suggested that the SC pre-approve a competent firm before it is appointed to act for the proposal.
- 4.3.6 One respondent suggested that the determination of a Recognised Professional Organisation be left to industry experts (instead of by the SC as proposed), whilst two other respondents requested for additional clarification on the "necessary licenses" for the valuers.

The SC's position

- 4.3.7 The SC takes note of the strong support and will adopt the proposals. This approach is also consistent with that of HKEx, SGX, Johannesburg Stock Exchange, ASX, TSX and the UK FCA.
- 4.3.8 The SC is of the view that the Regional Context Issue would be addressed through the requirement for a Competent Person to have "appropriate experience in the type of mineral, or O&G activity undertaken" and "relevant professional experience in the estimation, assessment and evaluation of the mineral, or O&G which is under consideration".
- 4.3.9 In terms of the "necessary licenses", the SC wishes to clarify that that this refers to the licenses normally required from a regulatory perspective, for the Competent Valuer to undertake the scope of work. The SC does not intend to pre-approve a competent firm. The Applicant and its adviser must determine that the competent firm is qualified to act.
- 4.3.10 In terms of the Recognised Professional Organisations, the SC intends to adopt the following:
- (i) For O&G, the three main organisations were included – SPE, SPEE and AAPG; and
 - (ii) For minerals, the SC would accept professional organisations recognised by JORC, the Canadian Securities Administrators, PERC, and the SAMREC/SAMVAL Committee, as amended from time to time. Based on these criteria, there are currently 28 Recognised Professional Organisations, all of which were listed out in the Consultation Paper.

4.3.11 Applicants must make a formal request for the SC to consider a professional organisation which is not in the list.

4.4 Independence of Competent Person and Competent Valuer

4.4.1 In the Consultation Paper, the SC proposed to require that a Competent Person and a Competent Valuer be independent of the Applicant, its directors, senior management and advisers. The Consultation Paper also set out a few criteria for determining independence of a Competent Person and Competent Valuer.¹⁶

4.4.2 Respondents were asked to give their comments on the following questions:

Question 12:

- (a) Do you agree that the Competent Person and Competent Valuer must be independent? Please provide specific reasons for your views.**
- (b) Do you agree with the criteria set out for determining the independence of the Competent Person and Competent Valuer? Please provide specific reasons for your views.**

Feedback from respondents

4.4.3 Unanimous support was received from respondents for these requirements.

The SC's position

4.4.4 Having considered the responses received, the proposed requirements on the independence of Competent Persons and Competent Valuers will be adopted.

4.5 Content of Competent Person's report and Competent Valuer's report

4.5.1 In the Consultation Paper, the SC proposed to prescribe the minimum content of the Competent Person's report and Competent Valuer's report in SC's guidelines.¹⁷

4.5.2 Respondents were asked to give their comments on the following questions:

Question 13:

¹⁶ See paragraph 5.22 of the Consultation Paper

¹⁷ See paragraphs 5.25 and 5.26 of the Consultation Paper

- (a) Do you agree with the minimum content to be prescribed for the Competent Person's report? Please provide specific reasons for your views.
- (b) Do you agree with the minimum content to be prescribed for the Competent Valuer's report? Please provide specific reasons for your views.

Feedback from respondents

4.5.3 Respondents were unanimous in support of the requirements and also suggested including the following additional information:

- A statement by Competent Persons and Competent Valuers confirming their respective details and independence;
- Information on site visits (where applicable);
- Health, safety, security and environment (HSSE) statement; and
- Risk assessment.

4.5.4 Two respondents commented that legal opinion on exploration rights, ownership and titles were not usually within the work scope of Competent Persons and Competent Valuers.

The SC's position

4.5.5 The SC takes note of the unanimous support and will adopt the requirements on the minimum content for Competent Person's report and Competent Valuer's report. The additional information proposed by respondents will also be incorporated as requirements. Please also see section 4.7.4 below.

4.5.6 The SC wishes to clarify that we do not expect the legal opinion on exploration rights, ownership and titles to be within the work scope of Competent Persons and Competent Valuers. The intention was for Competent Persons and Competent Valuers to include in their report, information on any factors which may have a material impact on ownership or operating rights (for example, title restrictions, encumbrances, native rights, production quotas, drilling restrictions and selling restrictions), including any legal opinions obtained.

4.6 Date of Competent Person's report and Competent Valuer's report

4.6.1 In the Consultation Paper, the SC proposed to require the Competent Person's report and Competent Valuer's report to be dated not more than six months from date of

the Disclosure Document and to be signed by the expert responsible in the preparation. There must also be a statement in the Disclosure Document that no material changes have occurred since the effective date of the Competent Person's report and the Competent Valuer's report. Where there are material changes, the relevant reports must be updated.¹⁸

4.6.2 Respondents were asked to give their comments on the following questions:

Question 14:

- (a) Do you agree that the effective date of the Competent Person's report and Competent Valuer's report should not be more than six months from date of the Disclosure Document? Please provide specific reasons for your views.**
- (b) Do you agree that there must be a statement in the Disclosure Document that no material changes have occurred since the effective date of the Competent Person's report and the Competent Valuer's report? Please provide specific reasons for your views.**
- (c) Do you agree that where there are material changes, the Competent Person's report and the Competent Valuer's report must be updated? Please provide specific reasons for your views.**

Feedback from respondents

4.6.3 Nine out of the 10 respondents who commented agreed in full to the proposed requirements on the date of Competent Person's report and Competent Valuer's report.

4.6.4 One respondent suggested that the Competent Person's report and Competent Valuer's report should be allowed to be dated to up to 12 months from the date of the Disclosure Document, based on the industry-standard of annual reserves/resource reporting. The same respondent also suggested that the issuer be held responsible for an announcement on any material change, with the inclusion of a statement that it fairly represents information and supporting documentation available at the time. An independent Competent Person's report will be issued out at the end of the year, as part of the annual reserves/resource summary.

¹⁸ See paragraph 5.28 of the Consultation Paper

The SC's position

- 4.6.5 The policy will be implemented as proposed, having considered the positive feedback received by the respondents.
- 4.6.6 The policy for the effective date of the Competent Person's report and Competent Valuer's report to be less than 6 months from the date of the Disclosure Document will be maintained in line with the current practice for asset valuation reports. This is also consistent with the approach taken by HKeX, SGX and UK FCA. To be clear, this requirement is intended to apply to Competent Person's reports and Competent Valuer's reports included in Disclosure Documents by IPO Applicants, RTO/BDL Applicants and SPAC QA Applicants.

4.7 Reserves and resources disclosure

- 4.7.1 In the Consultation Paper, the SC proposed to require that any data presented on resources and/or reserves by an MOG Corporation in a Disclosure Document, Competent Person's report, or Competent Valuer's report, be presented in tables in a manner readily understandable to a non-technical person and include estimates of volumes, tonnage and grades.¹⁹
- 4.7.2 Respondents were asked to give their comments on the following question:

Question 15: In your view, are there other matters which should be prescribed in addition to estimates of volumes, tonnage and grades? Please provide specific reasons for your views.

Feedback from respondents

- 4.7.3 Respondents suggested the inclusion of the following:
- Operational, financial and pricing assumptions;
 - Mining recovery and dilution factors;
 - Associated risks (chance of discovery and chance of development); and
 - HSSE statement.

¹⁹ See paragraph 5.30 of the Consultation Paper

The SC's position

4.7.4 The items suggested by the respondents are matters to be covered under the Competent Person's report or Competent Valuer's report as discussed in section 4.5 above.

4.8 Valuation of Resources

4.8.1 In the Consultation Paper, the SC proposed certain limitations in the valuation of production targets based on the levels of reserves and/or resources.²⁰

4.8.2 Respondents were asked to give their comments on the following questions:

Question 16:

- (a) Do you agree that for O&G resources, production targets may only be based on Proved Reserves and Probable Reserves? Please provide specific reasons for your views.**
- (b) Do you agree that for mineral resources, production targets cannot be based on Inferred Resources? Please provide specific reasons for your views.**
- (c) Do you agree that for mineral resources, production targets based on Indicated Resources and Measured Resources may only be included in economic analyses if sufficient work has been done on the Modifying Factors, the basis on which they are considered to be economically extractable is explained, they are appropriately discounted for the probabilities of their conversion to Mineral Reserves, and appropriate, prominently disclosed cautionary statements are included? Please provide specific reasons for your views.**

Feedback from respondents

4.8.3 Each of the proposals above received the support of between seven to eight of the nine respondents who commented on this question.

4.8.4 For O&G resources, two respondents suggested that production targets should also be allowed to be based on Possible Reserves (3P) and Contingent Resources, especially where they are pending commercial milestones or migration.

²⁰ See paragraph 5.33 of the Consultation Paper

- 4.8.5 For mineral resources, one respondent suggested that the “sufficient work done on the Modifying Factors” has to be carried out by a Competent Person for it to be relied upon.

The SC's position

- 4.8.6 The SC will adopt the policy as proposed, having considered the feedback received from respondents.
- 4.8.7 For O&G resources, the SC is of the view that production targets should not be provided for any resources below the Proved Reserves (1P) and Probable Reserves (2P) level given the uncertainty associated with the resources. This approach is also consistent with the requirements and practice of HKeX and ASX.
- 4.8.8 For mineral resources, determination of whether “sufficient work has been done on the Modifying Factors” is to be made by a Competent Person.