MALAYSIA

DEBT CAPITAL MARKETS

DUE DILIGENCE GUIDE

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Definitions

In this Due Diligence Guide, the following terms have the following meanings, unless the context otherwise requires:

adviser	means any person who provides advice within that person's area of expertise to the issuer and the DDWG in connection with a lodgement with or submission to the SC in relation to a corporate proposal;
asset-backed securities or ABS	means corporate bonds or sukuk that are issued pursuant to a securitisation transaction;
CMSA	means the Capital Markets and Services Act 2007 and includes any amendment, consolidation or re-enactment thereof from time to time;
Companies Act	means the Companies Act 2016 and includes any amendment, consolidation or re-enactment thereof from time to time;
corporate bonds	means debentures as defined in the CMSA but do not include structured products and wholesale funds;
corporate proposal	means any proposal to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase Securities;
DDWG	means the Due Diligence Working Group;
director	has the meaning assigned to it in the CMSA;
Due Diligence Guide	means this Malaysia Debt Capital Markets Due Diligence Guide;
expert	has the meaning assigned to it in the CMSA and includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him;
issuer	means any person who makes available, offers for subscription or purchase, or issues an invitation to subscribe for or purchase Securities, and includes, where the issuer is a special purpose vehicle, an obligor, an originator or the special purpose vehicle's holding company, as the case may be;
LOLA Guidelines	means the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework issued by the SC on 9 March 2015, as may be revised from time to time;
obligor	means an entity that is contractually obliged to honour the financial obligations of any person who makes available, offers for subscription or purchase, or issues an invitation to subscribe for or purchase Securities;

offering documents	means such information and documents as may be required to be lodged with or submitted to or deposited with the SC in relation to a corporate proposal, and includes, where relevant, an information memorandum or a prospectus;
originator	in relation to ABS, means any entity that is seeking to transfer or dispose of its assets to a special purpose vehicle;
principal adviser or PA	means a person licensed to carry out the regulated activity of advising on corporate finance and eligible to act as principal adviser pursuant to the Principal Adviser Guidelines issued by the SC, as may be revised from time to time;
prospectus	has the meaning assigned to it in the CMSA;
Retail Bonds and Sukuk Guidelines	means the Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors issued by the SC, as may be revised from time to time;
SC	means Securities Commission Malaysia;
Securities	means corporate bonds, sukuk and/or ABS governed by the LOLA Guidelines or the Retail Bonds and Sukuk Guidelines, as the case may be;
securitisation	in relation to ABS, means an arrangement which involves the transfer of assets or risks to a third party where such transfer is funded by the issuance of corporate bonds or sukuk to investors. Payments to investors in respect of such corporate bonds or sukuk are principally derived, directly or indirectly, from the cash flows of the assets;
securities laws	has the meaning assigned to it in the CMSA;
structured products	has the meaning assigned to it in the LOLA Guidelines;
substantial shareholder	has the meaning assigned to it in the Companies Act;
sukuk	means certificates of equal value which evidence undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the Shariah Advisory Council of the SC; and
wholesale funds	has the meaning assigned to it in the LOLA Guidelines.

Interpretation

In this Due Diligence Guide:

1. Headings and the table of contents are for ease of reference only.

2. References to the singular includes the plural and vice versa.

3. References to "which" or "who" and "its" or "their" shall be read accordingly in the context of the relevant section.

Chapter 1

INTRODUCTION

1.1 Objective

1.1.1 The Malaysian regulatory framework governing the issue or offer of Securities demands certain standards of disclosure and due diligence on the part of all persons involved in the preparation, lodgement, submission and/or deposit of offering documents. The onus of assessing the merits of offerings of Securities is placed on the investors, while issuers themselves are required to adopt expected standards of disclosure in offering documents.

1.1.2 In 2018, 2019 and 2020, various industry participants of the Malaysian debt capital markets sector collaborated to issue this Due Diligence Guide to update due diligence standards and practices relating to disclosures in offering documents to support the integrity of the Malaysian debt capital markets.

1.2 Status of this Due Diligence Guide

1.2.1 This Due Diligence Guide does not have the force of law nor is it otherwise legally binding and is recommended as guidance on due diligence procedures.

1.2.2 Each of the following chapters in this Due Diligence Guide sets out the different aspects of due diligence including the principles of due diligence, the scope and extent of due diligence and the roles of the different parties involved. However, this Due Diligence Guide is not to be regarded as prescriptive or an exhaustive list of what should be undertaken, nor should it be regarded as the minimum standard to be achieved. Parties involved should exercise their own judgement in assessing and determining the exact scope and extent of due diligence and steps required within the context of the corporate proposal in its entirety.

1.3 Application of this Due Diligence Guide

This Due Diligence Guide is applicable to Securities which require lodgement, approval, authorisation or recognition of the SC (as the case may be) under the relevant provisions of the CMSA.

Chapter 2

PRINCIPLES OF DUE DILIGENCE

2.1 Applicable Laws

2.1.1 Pursuant to the CMSA, submissions to or lodgement with the SC as contained in the offering documents are subject to statutory disclosure requirements and liabilities for any statement or information that is false or misleading or from which there is a material omission. No person shall authorise or cause the issue of an offering document which contains any statement or information that is false or misleading or any statement or information from which there is a material omission, and a person who acquires, subscribes for or purchases Securities and suffers loss or damage as a result of any statement or information contained in any offering document that is false or misleading, or from which there is a material omission, may recover the amount of loss or damage from all or any of the persons involved in the preparation of such offering document.

2.1.2 The CMSA provides a defence to liability under the relevant provisions, where it is proven that all enquiries as were reasonable in the circumstances had been made, and after making such enquiries, there were reasonable grounds to believe and the person seeking to rely on the defence did believe until the time of the making of the statement or provision of the information that the statement or information was not false or misleading, or that there was no material omission.

2.2 What is Due Diligence?

2.2.1 There is no legal definition of the term "due diligence". In the context of the Malaysian debt capital markets, it simply refers to the process by which persons must conduct reasonable enquiries for the purposes of appropriate, timely, sufficient and not false or misleading disclosure of all material statements, information or documents which are required to be disclosed under the relevant provisions of the CMSA.

2.2.2 Due diligence is the process of using reasonable efforts to investigate all material aspects of a corporate proposal. It is important to remember that due diligence is not all about forms, questionnaires and checklists. As each corporate proposal is unique in relation to the parties, the circumstances, the business and the facts, due diligence is as such in substantial part a matter of common sense, business and commercial practice and should not be achieved by blind reliance on forms, questionnaires and checklists. Hence, the scope and extent of due diligence appropriate for the different types of corporate proposal will also vary accordingly.

2.2.3 Due diligence is, by its nature, a fluid process and must be customised to be relevant and appropriate to the particular issuer, the industry in which it operates, the nature of the corporate proposal and the type of security being offered. Due diligence must not be a "form over substance" process and professional judgement to determine the level of due diligence appropriate under each set of circumstances should be exercised.

2.2.4 Due diligence cannot be expected to be a forensic process and as such, any due diligence procedure that is designed cannot be taken to reveal deliberate non-disclosure, fraud or misrepresentation by the management or directors of the issuer or any other such type of withholding of information.

2.3 Need for a Sound Due Diligence System

2.3.1 (a) There is a need for a sound due diligence system in view of the applicable legal requirements imposed in respect of disclosures contained in the offering documents, and the defence in respect of such obligations. As such, each potentially liable person who seeks to establish a defence must be able to prove in the course of carrying out the due diligence that he or she has made those enquiries which were reasonable to expect that person to undertake in the context of the corporate proposal and taking into account that person's expertise and role in the corporate proposal, and in so doing:

(i) to undertake the necessary reasonable enquiries on the statement or information that is provided in the offering documents; and

(ii) to take steps to ensure that all documents, statements and information which are lodged with or submitted to or deposited with the SC and contained in the offering documents are not false or misleading and do not contain any material omission.

(b) However, each person should bear in mind that following all the steps in this Due Diligence Guide does not guarantee that the person will be accorded the relevant defence but will instead constitute evidence of reasonable enquiries made when seeking to rely on such defence.

2.4 Reasonable Due Diligence

2.4.1 (a) The scope, extent and context of the due diligence exercise required in any given situation is necessarily a question of fact which will depend upon the circumstances surrounding each particular case having regard to the applicable laws and regulations, the industries in which the issuer operates and the nature of the corporate proposal. In this regard:

(i) the PA, in consultation with the other relevant advisers or experts involved in the corporate proposal, should exercise its own judgement in determining the scope and extent of due diligence for the corporate proposal in its entirety; and

(ii) the advisers or experts should exercise their own judgement in determining the scope and extent of due diligence under their respective agreed terms of reference and capacity as advisers or experts. In doing so, they should undertake their due diligence after having due regard to the corporate proposal in its entirety.

(b) The requirements will vary depending on the proposal or matter under consideration. In the event of any doubt, the matter should be referred to the DDWG for discussion and determination as to what constitutes "reasonable" in the circumstances.

2.4.2 The due diligence exercise will require a comprehensive review and reasonable enquiry of matters relating to 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 the accuracy of the statements, representations and information in question.

2.4.3 The DDWG should always be mindful that reasonable due diligence might dictate that additional enquiries should be undertaken with respect to any aspect of due diligence, depending on the circumstances of any given case (including for the purposes of addressing any issue or concern raised or discovered during the due diligence process). The circumstances of a particular case may mean that it is unnecessary to undertake particular enquiries envisaged in this Due Diligence Guide, in which case this will not of itself mean that the DDWG has failed to conduct reasonable due diligence.

2.4.4 In determining the scope and extent of the due diligence to be undertaken, including the processes and scope of work and responsibility of all parties involved in the exercise, the PA should use its own judgement based on the recommendations of the relevant advisers or experts involved in the corporate proposal. This would include a consideration of the corporate proposal concerned and the time required for the PA and the relevant advisers or experts to undertake the required due diligence taking into account, *inter alia*, the geographical location, size of the issuer, nature and complexity of the corporate proposal and the prevailing relevant applicable industry practices including any materiality test or threshold as agreed by the PA and the relevant advisers or experts.

2.5 Due Diligence Plan

2.5.1 Appointment of PA, Advisers or Experts

(a) The right of appointment of the PA or advisers or experts lies with the directors of the issuer. However, with regard to the appointment of the advisers or experts, the PA should concur with the terms of reference of the appointment of such advisers or experts. The PA should have a right of refusal over the appointment of any adviser or expert, if the terms of reference for their appointment are not agreed upon or in the PA's opinion, the adviser or expert does not have the requisite competence, expertise and experience to meet their deliverables. However, the PA should not exercise such right of refusal unreasonably and without good cause. In this regard, the letter of appointment of the PA should include the requirement for:

(i) the PA's concurrence with the terms of reference of appointment of the advisers or experts; and

(ii) the reasonable exercise of its refusal of the appointment of such advisers or experts.

(b) The PA must be satisfied that the terms of reference of the advisers or experts concerned meet the needs of the due diligence exercise required for the corporate proposal. The PA should also satisfy itself that the advisers or experts have the necessary competence, expertise and experience required to meet the agreed terms of reference. The letter of engagement of the advisers or experts should clearly provide for the PA to have access to any reports and information including correspondence and other supporting documents relied upon or provided by or to the advisers or experts concerned. In relation thereto, as the reporting accountants cannot provide the correspondence and/or other supporting documents relied upon, their letters of engagement should clearly provide for them to address the queries of the PA to its satisfaction.

(c) In fulfilling its obligations under paragraph 2.5.1(b), the steps taken by the PA should include the following:

(i) reviewing the terms of reference (being satisfied that the scope of work is appropriate to the report, opinion or statement sought from the advisers or experts) and whether any limitations imposed on the scope of work by the advisers or experts might adversely impact the degree of assurance given by the advisers' or experts' report, opinion or statement; and

(ii) making the necessary enquiries and satisfying itself that the advisers or experts are independent from the issuer and its directors and substantial shareholders, and where relevant obtaining written confirmation from the advisers or experts concerned, of their independence.

(d) The PA and the advisers or experts concerned should ensure that they agree at the outset to the terms of reference and context of engagement of such advisers or experts, in relation to the due diligence required for the corporate proposal. This should be clearly reflected in the letter of engagement of that adviser or expert. Any subsequent revision of the terms of reference of the advisers or experts, in this regard, should also be recorded.

(e) The PA may, where necessary, require the issuer to engage such additional adviser or expert as it considers appropriate, to undertake tasks in relation to the due diligence exercise. The PA should exercise its judgement in determining the instances where it would be appropriate to engage such additional adviser or expert.

(f) If there is a change of PA and where an adviser or expert has already been appointed by the issuer, the incoming PA should also be satisfied that the requirements of paragraph 2.5.1(b) are met. Where in the reasonable opinion of the PA, this is not possible, the PA and the issuer should ensure the appointment of an adviser or expert who is able to meet the requirements.

2.5.2 Due Diligence Planning Memorandum

The DDWG may wish to have a due diligence planning memorandum in order to, *inter alia* :

(a) set out the scope and extent of the due diligence exercise and the due diligence process;

(b) assign and allocate responsibilities of the members of the DDWG in relation to the due diligence exercise; and

(c) determine the materiality thresholds for the due diligence process.

2.5.3 Materiality

(a) Due diligence procedures are not comprehensive checks of every aspect of an issuer's affairs. The DDWG should exercise its judgement in respect of each matter and issue as to whether or not it is sufficiently material as to require disclosure in the offering documents. All judgements made by the

DDWG regarding whether a particular matter or issue should or should not be disclosed on grounds of materiality should be documented.

(b) In particular, two aspects of materiality should be considered:

(i) Qualitative Materiality - where the question is whether a matter is material for the purposes of inclusion in the offering documents. Regard is to be had to a number of factors, including the nature of the corporate proposal and the Securities, the types of investors, the source of repayment, the risks associated with the purpose for which the corporate proposal is undertaken and the information already known to the market and investors in general.

(ii) Quantitative Materiality - where the question is whether a matter is material in relation to the impact on the current and future financial position of the issuer or any other relevant party, including an obligor, a guarantor or a subsidiary of the issuer.

2.6 Know the Issuer

2.6.1 The PA's and the adviser's or expert's review of the issuer and the nature of its business would include, review of the issuer's history and corporate records, and, where applicable, its financial circumstances, investment and corporate objectives as well as risk management strategies practiced by the issuer.

2.6.2 Where the PA, adviser or expert finds any material inadequacies or concerns, each of them should raise these concerns with the directors of the issuer and/or the key senior management of the issuer who is a member of the DDWG.

2.7 Critical Assessment

The DDWG should make such reasonable enquiries as may be necessary until it can reasonably satisfy itself that the information in the offering documents are adequate, not false or misleading and do not contain any material omission. In undertaking its role as a DDWG, it should critically examine and verify, as far as is reasonably possible, that the statements and representations made, or other information given to it, are consistent, not false or misleading and do not contain any material omission.

2.8 Continuing Obligations and Disclosure

2.8.1 The responsibility for due diligence continues up to the completion of the corporate proposal.

2.8.2 The SC must be immediately informed by the issuer, the directors of the issuer, the PA and/or the relevant advisers or experts involved in a corporate proposal, where any one of them becomes aware of:

(a) any material change to the information that was previously made available or provided to the SC in relation to a corporate proposal;

(b) any new information that may have a material impact on the corporate proposal; and

(c) any material change to the information or material change or development in circumstances relating to a corporate proposal occurring subsequent to lodgement, submission, and/or deposit of offering documents, or the SC giving its approval, authorisation or recognition. Where such material change or development occurs prior to lodgement, submission, and/or deposit of an offering document, it should be disclosed in such offering document.

2.9 Advisers' or Experts' Report or Opinion

While the DDWG may rely on the relevant advisers or experts for the specific areas requiring their expertise, the DDWG should review the advisers' or experts' reports and input in the corporate proposal to be satisfied that the assumptions and information on which the opinion is based are reasonable and consistent with the DDWG's knowledge of the issuer and its business.

2.10 Conflict of Interest

The PA and the advisers or experts should take all reasonable measures to avoid situations that are likely to involve a conflict of interest with the issuer. Where such a conflict exists, the PA, adviser or expert should 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 or expert for the corporate proposal concerned. In this regard, the PA, adviser or expert should make full disclosure vide the offering documents where applicable, of the nature of the conflict of interest (including any equity or financial relationship with the issuer being advised) and the steps taken to address these conflicts.

2.11 Staff Supervision by Principal Adviser

The PA should, in the preparation, lodgement, submission and deposit of the offering documents, at all times ensure, *inter alia* :

(a) it has officers with relevant and adequate experience as well as 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; and

(d) its officers keep abreast of all guidelines, practice notes or other notices issued by the SC from time to time that would have an impact on the corporate proposal.

2.12 Change of Principal Adviser

2.12.1 Where there is a change of PA, the incoming PA should ascertain the reason for the issuer changing PA midstream. Where the reason for the change raises any concern, the incoming PA should assess whether the concern is such that it would not be appropriate for it to accept the issuer's mandate.

2.12.2 Both the outgoing PA and the issuer should each inform the SC immediately in writing of the change of PA and the reasons for such change in the event a lodgement with or submission to the SC has been made.

2.12.3 Where there is a change of PA:

(a) the outgoing PA should be cooperative in the handover to the incoming PA including, making available all relevant information and/or information belonging to the 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) the outgoing PA will remain liable for all information lodged or submitted by it to the SC in relation to the corporate proposal;

(c) prior to a lodgement with or submission to the SC, the incoming PA will assume the responsibility for the corporate proposal including due diligence obligations; and

(d) after a lodgement with or submission to the SC but prior to issuance of the Securities, the incoming PA should be responsible for the due diligence obligations up to issuance and compliance with any post-issuance obligation. This would include disclosures and confirmations provided by the PA on the corporate proposal after implementation and any further lodgement or submission relating to the corporate proposal in question, if applicable. In this regard, the incoming PA should familiarise itself with all communication between the outgoing PA and the SC relating to the corporate proposal.

Chapter 3

SCOPE OF DUE DILIGENCE

3.1 Scope and Extent of Due Diligence

The scope and extent of the due diligence exercise for a corporate proposal depends on the type of information disclosed taking into account the nature of the corporate proposal and the Securities issued. The differences in priority, security and structure would necessitate different levels of disclosure to investors whose primary consideration is the payment and repayment terms of the Securities issued. The due diligence exercise should be tailored to cater to the specific disclosure requirements of the relevant corporate proposals and offering documents, as well as the type of issuer or business. As such, the due diligence procedures would vary from case to case.

3.2 Due Diligence Working Group

3.2.1 A DDWG is constituted for the objective of meeting the applicable regulatory requirements relating to the disclosure of information in the offering documents and to ensure that none of the statements and information lodged with, submitted to or deposited with, or caused to be lodged with, submitted to or deposited with the SC, is false or misleading or contains any material omission. An effective DDWG should carry out such reasonable enquiries deemed necessary to avail the members of the DDWG to the due diligence defence available under the CMSA.

3.2.2 A DDWG should, at the minimum, comprise the PA, senior representatives of the issuer (including at least one director of the issuer or such other person authorised by its board of directors who is a member of the key senior management of the issuer) and such advisers or experts as are appropriate in the relevant corporate proposal. The PA, with the assistance of the relevant advisers or experts (based on their area of expertise), 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 and extent of due diligence required for the purposes of the corporate proposal; and

(c) the role and scope of the responsibilities of the DDWG as a whole as well as 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.

3.2.3 There should be competent and senior level participation by the members of the DDWG at all DDWG meetings.

3.2.4 The DDWG should ensure participation of all advisers or experts that are relevant to the corporate proposal. In addition to the key parties of the due diligence exercise such as the issuer, the PA and legal counsel, where

appropriate this could include but not be limited to advisers or experts such as valuers and where applicable, reporting accountants.

3.2.5 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 offering documents. In this regard, the advisers or experts concerned should be proactive in providing their views in areas relating to their expertise and provide constructive feedback on the overall issues under discussion at the DDWG meetings.

3.2.6 Each member of the DDWG should ensure that it understands the nature of business of the issuer (or in cases where the issuer is a special purpose vehicle, the nature of business of the obligor, the originator or the special purpose vehicle's holding company, as the case may be).

3.2.7 Where this Due Diligence Guide specifies that the issuer, directors or key senior management of the issuer, the PA or the advisers or experts, are 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.

3.3 Roles of Parties in the Due Diligence Working Group

3.3.1 Issuer, its Directors and Key Senior Management

(a) The issuer, being the primary source of information, has a primary responsibility to ensure that all information provided to the DDWG for the due diligence exercise and the offering document that is lodged with or submitted to or deposited with the SC in relation to the corporate proposal, is not false, misleading and does not contain any material omission.

(b) The issuer, its directors and key senior management should extend their full cooperation and participation in the due diligence exercise, including (but not limited to):

(i) fully apprising themselves of their obligations in the due diligence exercise and their obligations and liabilities under the securities laws and other relevant laws;

(ii) providing and verifying the information that would be relevant to the corporate proposal to enable the PA and such other relevant advisers or experts to perform their obligations in the preparation, lodgement, submission and/or deposit of the offering documents;

(iii) informing the PA and such other relevant advisers or experts of any material change to information that was previously made available or provided to the PA or such other relevant advisers or experts in relation to the corporate proposal as well as any new information that may impact the corporate proposal in any way;

(iv) affording full access to all persons (including advisers or experts, management and other relevant personnel) to the premises and documents, as may be required by the PA or the relevant advisers or experts for the purposes of the due diligence exercise;

(v) procuring proactive participation by key senior management in the due diligence discussions and deliberations; and

(vi) 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, the PA and the advisers or experts in relation to the corporate proposal.

(c) Where the offering documents include financial estimates, forecasts or projections, the directors of the issuer should ensure they have a reasonable basis for such forward looking statements.

3.3.2 Principal Adviser

(a) The PA, to the extent reasonable, together with the other members of the DDWG (based on their area of expertise) should be satisfied that the information contained in the offering documents has no material omission, is not false or misleading, and to this end, should undertake reasonable enquiries to achieve the same. This would include the need for the PA and the other members of the DDWG (based on their area of expertise) to satisfy themselves that, as far as is reasonably possible, the information contained in the offering documents is not false or misleading and does not contain any material omission.

(b) The PA should satisfy itself that it is reasonable to rely on information or advice provided by the advisers or experts. In doing this, the PA should be satisfied that the requirements of paragraph 2.5.1(b) are met.

(c) The PA should, together with the relevant advisers or experts, ensure that the directors, representatives and key senior management of the 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:

(i) the securities laws and other relevant laws; and

(ii) the relevant guidelines issued by the SC from time to time.

(d) The PA should remind the issuer's representatives on the DDWG that he or she has to ensure that the directors and key senior management of the issuer or obligor 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.

(e) Where the PA is aware of any information which raises concerns relating to a corporate proposal, the scope of the due diligence should ensure that such concerns are addressed.

(f) Where an adviser or expert raises any issue to the PA that in the adviser's or expert's professional and reasonable opinion is a matter for concern, the PA should, where necessary after seeking such advice, use its judgement to:

(i) determine what action should be taken to address such concerns; and

(ii) 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.

(g) The PA making the lodgement with or submission to the SC has a duty to ensure that, after having made due and careful enquiry, it has reasonable grounds to believe that:

(i) the corporate proposal meets the relevant requirements of the SC, as set out in the relevant guidelines issued by the SC from time to time, as well as the relevant provisions of the securities laws; and

(ii) statements or information lodged with or submitted to the SC are not false or misleading and do not contain any material omission.

(h) The PA should have proper internal controls to ensure the safekeeping of relevant records. In this regard, the PA should not use this Due Diligence Guide as a mere checklist but should ensure that the substance and spirit of this Due Diligence Guide are observed. The PA must also be able to provide such records upon request by the SC.

(i) Where the PA becomes aware of any information that in its professional and reasonable opinion is:

(i) an issue of concern and/or disclosure;

(ii) a material change to information previously made available; and/or

(iii) new information which may have a material impact on the corporate proposal,

the PA should highlight such information to the relevant advisers or experts and the issuer.

(j) 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 queries by the SC must be dealt with in a prompt, efficient and competent manner.

3.3.3 Advisers and Experts

(a) While the DDWG has the primary responsibility for the due diligence exercise in relation to the corporate proposal as a whole, the advisers or experts are primarily responsible for the due diligence in relation to their specific areas of expertise within their agreed terms of reference.

(b) The advisers or experts should undertake a proactive role in the verification exercise relating to their area of expertise and within their agreed terms of reference. This would include the need for the advisers or experts to verify, as far as is reasonably possible under their agreed terms of reference, the information contained in the offering documents. This may entail further and more detailed investigation.

(c) 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 should highlight such issues to the DDWG.

(d) Where the advisers or experts become aware of any information that raises concerns relating to a corporate proposal which in their judgement 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 agreed terms of reference of their appointment, they should highlight their concerns promptly and make recommendations for addressing the concerns to the DDWG.

3.4 Verification

3.4.1 The DDWG should exercise its judgement in accepting the statements and representations made by the issuer, its directors or key senior management at face value and take steps as are reasonable in the circumstances to verify such statements and representations. In carrying out the verification process as part of the due diligence exercise, steps will need to be taken in making enquiries as the DDWG deems fit and reasonable based on the prevailing circumstances.

3.4.2 A verification exercise would involve checking the statements in the offering documents to ensure, where reasonable in the circumstances, the following:

(a) that there are reasonable grounds for believing that each statement made is not false or misleading;

(b) statements of opinion, estimates and forecasts, where applicable, are identified as such and are based on reasonable grounds;

(c) any inferences which might reasonably be drawn from such statements are correct and not misleading;

(d) there is no material omission from the offering documents; and

(e) the information or facts supporting or evidencing such statements are noted, and appropriate source documents are identified and recorded for future reference.