



MALAYSIA

EQUITY 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 or information to the applicant in relation to a corporate proposal;
applicant	means any person or issuer which issues any securities and/or offering documents in connection with the CMSA and/or the Listing Requirements;
Asset Valuation Guidelines	means the Asset Valuation Guidelines issued by the SC and as may be revised from time to time;
Bursa Securities	means Bursa Malaysia Securities Berhad;
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 proposal	means any proposal submitted or to be submitted to the SC under the CMSA and/or Bursa Securities under the Listing Requirements, other than a proposal to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase debt securities or sukuk;
DDWG	means the Due Diligence Working Group;
director	has the meaning assigned to it in the CMSA;
Due Diligence Guide	means this Malaysia Equity Capital Markets Due Diligence Guide;
Equity Guidelines	means the Equity Guidelines issued by the SC and as may be revised from time to time;
expert	includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him;
Group	means the applicant, its subsidiaries, associates and/or joint ventures, as the case may be;
IPD	means an initial public offering;
key senior management	has the meaning assigned to it in the Equity Guidelines;

Listing Requirements	means Bursa Securities' Main Market Listing Requirements or ACE Market Listing Requirements, as the case may be and as may be revised from time to time;
offering documents	means such information and documents as may be required to be submitted to, registered or deposited with the SC and/or Bursa Securities in relation to a corporate proposal, and includes, where relevant, a circular and/or prospectus;
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 guidelines issued by the SC and as may be revised from time to time;
promoter	has the meaning assigned to it in the CMSA and/or as identified in the prospectus, as the case may be;
prospectus	has the meaning assigned to it in the CMSA;
reporting accountants	has the meaning assigned to it in the Equity Guidelines;
SC	means Securities Commission Malaysia;
securities	means shares or units or such other instrument issued or to be issued under a corporate proposal;
securities laws	has the meaning assigned to it in the CMSA;
subsidiary	has the meaning assigned to it in the Companies Act; and
substantial shareholder	has the meaning assigned to it in the Companies Act.

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.

PART I: FUNDAMENTALS OF DUE DILIGENCE

Chapter I

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 and submission of offering documents. The onus of assessing the merits of offerings of securities is placed on the investors, while applicants 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 equity capital markets industry 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 equity 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 standards, practices and procedures.
- 1.2.2 Each of the following chapters in this Due Diligence Guide sets out the different aspects of due diligence including the scope and extent of due diligence, roles of the different parties involved and appropriate verification procedures to be employed during the due diligence exercise. 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

- 1.3.1 The principles set out in this Due Diligence Guide are intended to apply, in whole or in part, in respect of all corporate proposals which are submitted to the SC.
- 1.3.2 This Due Diligence Guide has been prepared to provide guidance on due diligence procedures in respect of submissions or applications for IPOs that are subject to the approval of the SC. In the case of other offerings or corporate proposals, this Due Diligence Guide may not be entirely applicable. Where the disclosures referred to in any section in this Due Diligence Guide are not relevant and not required to be submitted or disclosed in relation to the corporate proposal in question, this Due Diligence Guide shall, insofar as any steps or procedures are prescribed for the sections in question, not apply.

- 1.3.3 This Due Diligence Guide may be applicable in other due diligence exercises for submissions or applications in respect of any corporate proposals to Bursa Securities, and should be read accordingly.

Chapter 2

PRINCIPLES OF DUE DILIGENCE

2.1 Applicable Laws

- 2.1.1 Pursuant to the CMSA, submissions to 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.
- 2.1.2 The CMSA provides a defence to such liability, 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 equity 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 bear in mind 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 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, directors or promoters of the applicant 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 submission of 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, to the extent relevant to the expertise or the agreed terms of reference of such person, and in so doing:

- (i) to undertake the necessary investigation on the statement or information that is provided in the offering documents; and
 - (ii) to take steps to satisfy himself or herself with reasonable grounds to believe that all statements, information and documents which are submitted to the SC 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 evidence the 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, *inter alia*, the relevant laws and regulations, the type of business and industry in which the applicant operates and the nature of the corporate proposal. In this regard:
- (i) the PA 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 corporate proposal 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.
- (c) 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 applicant, 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.
- 2.4.2 The due diligence exercise will require a comprehensive review and reasonable enquiry of matters relating to the corporate proposal. This would involve the applicant, the PA and the relevant 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 bear in mind that reasonable due diligence should take cognisance of the circumstances and facts surrounding the actual case and raise any pertinent additional enquiries to address the relevant issues or concerns accordingly. On the other hand, there may be situations where it may mean that such enquiries or steps envisaged in this Due Diligence Guide are not necessary nor relevant in which case it does not mean that the DDWG has failed to carry out the reasonable due diligence required.

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 applicant. However, the PA should concur with the terms of reference of the advisers and 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 the adviser or expert does not have the requisite competence, expertise, experience and resources 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 should ensure 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, experience and resources required to meet the agreed terms of reference. The letter of engagement of the advisers and 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 (ensuring the scope of work is appropriate to the report, opinion or statement sought from the advisers or experts) and assess 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 of the applicant and its directors, promoters 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 should, where necessary, request the applicant to engage such additional adviser or expert as it considers appropriate, to undertake tasks in relation to the due diligence exercise.
- (f) If there is a change of PA and where an adviser or expert has already been appointed by the applicant, the incoming PA should also ensure that the requirements of paragraph 2.5.1(b) are met. Where in the reasonable opinion of the incoming PA, this is not possible, the incoming PA and the applicant should ensure the appointment of a replacement 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:

- (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 a comprehensive check of every aspect of an applicant'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 further due diligence or disclosure in the offering documents. All judgements made 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 factors such as the type of corporate proposal undertaken, the parties involved in the corporate proposal and other relevant factors made known to the advisers or experts, which are likely to have a material

impact on the business, assets or operations of the Group. Specifically, this would include factors such as:

- (aa) any material impact on the reputation of the Group;
 - (bb) any breach of legislation which involves substantial monetary penalty, imprisonment or which may result in the cessation of business;
 - (cc) any material impact on the ability of the applicant to carry out the corporate proposal;
 - (dd) in relation to contracts or agreements, whether they involve or are likely to involve obligations and liabilities which by their nature and magnitude are unusual, are of an onerous or long-term nature, are otherwise material to the business or relates to another material contract, asset or subsidiary, or are contracts, agreements, licences or permits upon which any company within the Group is materially dependent, including contracts which are material to the business or profitability of the Group;
 - (ee) in relation to litigation, whether it has a material effect on the financial position of the Group or might materially and adversely affect the position or business of the Group; and
 - (ff) in relation to any related party transaction, whether existing or proposed, a transaction which is unusual in nature or condition or not carried out on an arm's length basis.
- (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 Group based on the past and current financial performance of the Group.

2.6 Know the Applicant

2.6.1 The PA's review of the applicant and the nature of its business would include, *inter alia*:

- (a) familiarising itself with the applicant's history and nature of the business, its financial circumstances, financial control, systems and procedures, investment and corporate objectives as well as the risk management strategy practised by the applicant;
- (b) familiarising itself with the background of the substantial shareholders and directors, particularly relating to corporate governance issues; and

- (c) assessing the qualifications, level of experience and expertise (relating to the industry concerned) of the existing and proposed directors and key senior management of the applicant. This would involve assessing individually and collectively the competence of the directors and key senior management to ascertain whether the directors and key senior management as a whole have the necessary experience and expertise for the effective management of the applicant's business.

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

2.7 Critical Assessment

2.7.1 The PA should make such enquiries as may be necessary until it can reasonably satisfy itself that the information in the offering documents is adequate, not false or misleading and that there is no material omission. In undertaking its role as a PA, 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. This should involve reasonable enquiries and a review of the information given and adequate substantiation of the statements and representations made.

2.7.2 The advisers or experts should also critically examine and verify as far as is reasonably possible, that the statements and representations made or other information given to them to fulfil their agreed scope of work are consistent, not false or misleading and do not contain any material omission. In this regard, this should also involve reasonable enquiries and a review of the information given and adequate substantiation of the statements and representations made to them.

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 applicant, the directors and promoters of the applicant, the PA and/or the relevant advisers or experts involved in a corporate proposal, where any one of them becomes aware of any of the following events, before the corporate proposal has been fully effected, carried out or implemented:

- (a) any material change in circumstances that would affect the consideration of the SC; and/or
- (b) any material change to the information that was previously made available or provided to the SC in relation to a corporate proposal.

2.9 Advisers' or Experts' Report or Opinion

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

2.10 Conflict of Interest

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

2.11 Staff Supervision by Principal Adviser

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

- (a) it has officers with relevant and adequate experience and the necessary competencies;
- (b) it has adequate resources and that its officers are appropriately supervised;
- (c) the required level of skill and care is exercised;
- (d) the integrity of the due diligence process and persons involved in the process; and
- (e) its officers keep abreast of all guidelines, practice notes or other notices issued by the SC or Bursa Securities 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 applicant 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 applicant's mandate.
- 2.12.2 Both the outgoing PA and the applicant should each inform the SC immediately in writing of the change of PA and the reasons for such change in the event a 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, *inter alia*, making available all relevant information provided by the applicant to the outgoing PA relating to the corporate proposal, 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) after submission but prior to approval being issued, after the corporate proposal has been approved but not completed or after completion, the outgoing PA will remain responsible for all information submitted by it to the SC in relation to the corporate proposal;
- (c) during the course of preparing a submission to the SC, the incoming PA will take on the responsibility for the submission of the offering documents including due diligence obligations; and
- (d) after the corporate proposal has been approved but has yet to be completed, the incoming PA will be responsible for the due diligence obligations up to the completion and for compliance with the terms and conditions of the approval and disclosure obligations. This would include disclosures and confirmations provided by the incoming PA on the corporate proposal after completion and any further applications on the corporate proposal in question, if applicable. In this regard, the incoming PA should:
 - (i) undertake reasonable due diligence to familiarise itself with the corporate proposal including the basis and rationale of the corporate proposal and concerns raised that may have resulted in the imposition of the conditions to the approval; and
 - (ii) familiarise itself with all communications 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 for a corporate proposal depends on the type of information required to be disclosed taking into account the type of corporate proposal undertaken. The due diligence exercise should be tailored to cater for the specific disclosure requirements of the relevant corporate proposals and offering documents, as well as the type of applicant or business. As such, the due diligence procedure would vary from case-to-case.

3.2 Due Diligence Working Group

- 3.2.1 A DDWG is constituted to assist the applicant to meet the applicable legal requirements on the disclosure of information in the offering documents and to ensure that none of the statements and information submitted, or caused to be submitted to the SC, is false or misleading or contains any material omission. An effective DDWG should carry out such reasonable enquiries as deemed necessary to avail the applicant and its directors of a due diligence defence under the CMSA.
- 3.2.2 Where the corporate proposal concerned necessitates the establishment of a DDWG, the PA should determine the composition, membership and terms of reference of a DDWG. A DDWG should, at the minimum, comprise the PA, senior representatives of the applicant (including at least one director of the applicant or such other person authorised by its board of directors) and such advisers or experts as are appropriate in the relevant corporate proposal. The PA, in playing its central and overall role in the due diligence process, should ensure that the DDWG is fully briefed on:
- (a) the corporate proposal which includes the details, basis and objective of its structure and the processes involved in its implementation;
 - (b) the scope and extent of due diligence required for 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.
- 3.2.3 There should be competent and senior level participation by the relevant members of the DDWG at all DDWG meetings.
- 3.2.4 The PA should ensure participation in the DDWG 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 applicant, reporting accountants and legal counsel, where appropriate this would include but not be limited to other advisers or experts such as valuers and independent market researchers.

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 Where this Due Diligence Guide specifies that the applicant, directors or key senior management of the applicant, 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; and/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 Applicant, Directors, Key Senior Management and Promoters

- (a) The applicant, being the primary source of information, has a primary responsibility to ensure that the information submitted to the SC and provided to the PA and the advisers or experts in relation to the corporate proposal and as disclosed in the offering documents, is not false, misleading and does not contain any material omission.
- (b) The applicant, its directors and key senior management (and where applicable, the promoter) 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 relevant SC guidelines, the Listing Requirements, the CMSA and other relevant securities 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 and submission 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 and/or the disclosures in the offering documents 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 the 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 document includes a financial estimate, forecast or projection, the directors of the applicant should ensure they have a reasonable basis for such forward looking statements.

3.3.2 Principal Adviser

- (a) The PA plays a central role in the due diligence process. In this regard, the primary responsibility for due diligence in relation to the entire corporate proposal lies with the PA. The PA should ensure that the information contained in the offering documents has no material omission, is not false or misleading and is consistent, and to this end, should undertake reasonable enquiries to achieve the same. This would include the need for the PA to substantiate, as far as is reasonably possible, the information contained in the offering documents. This may entail further and more detailed verification and investigation.
- (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 ensure that the directors, key senior management and promoters of the applicant are fully briefed on their obligations in the due diligence process and the potential liabilities pertaining to the corporate proposal, the offering documents and the information provided, under the relevant SC guidelines, the Listing Requirements, the CMSA and other relevant securities laws.
- (d) The PA should also ensure that the directors, key senior management and promoters of the applicant are made aware of the need for them to extend their full cooperation in the provision and verification of information for 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 advice from the relevant adviser or expert, 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 submitting an application to the SC has a duty to ensure that, after having made due and careful enquiry, it has reasonable grounds to believe that:
 - (i) the corporate proposal meets the relevant requirements of the SC, as set out in the relevant SC guidelines, as well as the relevant provisions of the relevant securities laws;
 - (ii) the corporate proposal will not adversely impact the applicant's ability to continue to comply with relevant laws and regulations; and
 - (iii) statements or information submitted to the SC are not false or misleading and do not contain any material omission.
- (h) In submitting the offering documents on behalf of an applicant, the PA should ensure that, after having made due and careful enquiry, it has come to a reasonable opinion that:
 - (i) the directors of the applicant have:
 - (aa) adequate procedures which enable the applicant to comply with the relevant SC guidelines and where relevant, the Listing Requirements;
 - (bb) adequate procedures which provide a reasonable basis for them to make proper judgements on an ongoing basis as to the financial position and business prospects of the applicant; and
 - (cc) adequate procedures to verify the information provided for the purposes of the corporate proposal; and
 - (ii) the information contained in the offering documents is not false or misleading, has no material omission and is consistent throughout the offering documents.
- (i) The PA should keep a clear trail of its due diligence work plan and activities and any significant deviations from its plan by having proper documentation of the work performed and reviewed. The PA should ensure such documentation is properly kept for the period as may be prescribed by the regulatory authorities and made available upon request by the SC. It should be clear from the records that the PA has considered what enquiries or information are reasonable in the context and circumstances of the case in hand. The PA should also document its conclusions on the applicant's compliance with the applicable SC guidelines. 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.

- (j) 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 and/or the disclosures in the offering documents,

the PA should highlight such information to the relevant advisers or experts and the applicant.
- (k) The PA is responsible for dealing and communicating with the SC on all matters in connection with the corporate proposal. All responses to the queries from the SC must be dealt with in a prompt, efficient and competent manner.

3.3.3 Advisers and Experts

- (a) While the PA has the primary responsibility for the due diligence 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 substantiate, 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 or not related to the scope of work under their 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 PA and the applicant.
- (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 the scope of work under their agreed terms of reference, they should highlight their concerns promptly and make recommendations for addressing the concerns to the PA and the applicant.

3.4 Verification

- 3.4.1 The DDWG should exercise its judgement in accepting the statements and representations made by the applicant, 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 are identified as such and are based on reasonable grounds;
- (c) any inferences which might reasonably be drawn from such statements are not false or 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.

PART II: APPROACH OF DUE DILIGENCE

Chapter 4

SCOPE OF WORK

4.1 Applicant

- 4.1.1 The applicant, its directors and key senior management, as part of the DDWG, should attend and participate in all key DDWG meetings and appoint at least one of its directors, the chief executive officer or nominated representatives to be the Chairman of the DDWG.
- 4.1.2 The approval of the board of directors is to be sought for matters in relation to the corporate proposal, including the due diligence planning memorandum, the due diligence process, the establishment of the DDWG, the composition of the members of the DDWG and the submission, registration and/or deposit of the offering documents.
- 4.1.3 The applicant is responsible for making available all information and documents, including confidential information and documents, that would be relevant and necessary to the due diligence exercise and the corporate proposal, and to ensure that such information and documents made available are complete, and not false or misleading.
- 4.1.4 The applicant should, where necessary, arrange for interviews with any member of the board of directors and management of the applicant for the purposes of the due diligence exercise.
- 4.1.5 The applicant is responsible for the preparation of the profit and cash flow forecast and projection, if any, for review by the reporting accountants in accordance with the applicable professional standards and by-laws as issued by the Malaysian Institute of Accountants. The applicant should also prepare or cause to be prepared the pro forma financial information for review by the reporting accountants, which should be properly compiled on the basis stated and such basis should be consistent with both the applicable accounting standards and the accounting policies adopted by the applicant in the preparation of its audited financial statements and the adjustments should be appropriate for the purpose of the pro forma financial information.
- 4.1.6 The applicant should procure its tax agents to verify and confirm that its submission of tax returns is up-to-date and that settlement of tax liabilities has been made.
- 4.1.7 The applicant, its directors and key senior management should ensure that the contents of the offering documents are not false or misleading and do not contain any material omission, questioning where relevant, and if necessary, calling for further clarification or information. In addition, they should review the due diligence planning memorandum, the minutes of DDWG meetings, the verification notes issued pursuant to the verification exercise and any other relevant documentation pertaining to the offering documents and provide the appropriate sign-offs.

- 4.1.8 The board of directors should resolve to approve and execute the necessary responsibility statement, confirmation statements, declarations, undertaking letters and all relevant letters and documents for the offering documents whether in their individual capacity or collectively as a board and authorise at least one of the directors to sign any statements, declarations, letters and documents necessary in relation to the offering documents on behalf of the applicant.
- 4.1.9 The applicant should ensure that it is satisfied with the adequacy of the due diligence processes and procedures in relation to the scope of due diligence and the due diligence system. The applicant should also keep a clear documented trail of the due diligence processes and procedures.

4.2 Promoter

- 4.2.1 The promoter should ensure that the contents of the offering documents are not false or misleading and do not contain any material omission, questioning where relevant and, if necessary, calling for further clarification or information. In addition, the promoter should review the due diligence planning memorandum, the minutes of DDWG meetings, the verification notes issued pursuant to the verification exercise and any other relevant documentation pertaining to the offering documents and provide the appropriate sign-offs. The promoter should also provide the necessary confirmation statements, declarations and undertaking letters pertaining to information or matters relating to it, whether individually or for parties related to it.
- 4.2.2 The promoter should ensure that it is satisfied with the adequacy of the due diligence processes and procedures in relation to the scope of due diligence and the due diligence system. The promoter should also keep a clear documented trail of the due diligence processes and procedures.

4.3 Principal Adviser

- 4.3.1 The PA should coordinate and maintain a work plan with up-to-date status in consultation with each adviser or expert who shall be particularly responsible for furnishing individual progressive work plans on a timely basis or as and when required by the PA. The PA is also responsible for maintaining a timetable, monitoring adherence to the timetable with the identified priorities and revising the timetable whenever necessary.
- 4.3.2 The PA is responsible for advising the applicant, its directors, key senior management and the promoter on the corporate proposal (including the need for any pre-implementation restructuring).
- 4.3.3 The PA should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the due diligence enquiries are put forward for deliberation by the DDWG, properly addressed and documented as appropriate. The PA is also responsible for arranging and convening DDWG meetings and determining participation by the relevant members of the DDWG.
- 4.3.4 The PA should review and assess such reports in connection with the corporate proposal and ensure that the assumptions and information on which the advisers' or experts' report or opinion are based, are reasonable and consistent with the PA's knowledge of the applicant, its business and the industry in which the applicant operates.

- 4.3.5 The PA should review and verify the information in the offering documents on such matters as may be within its responsibility, incorporating all the relevant disclosures arising from the due diligence exercise and information provided by the DDWG and ensure compliance with the requirements of the relevant authorities in consultation with all other relevant advisers or experts involved in relation to their areas of expertise. The PA is also responsible for coordinating all other matters in relation to the offering documents.
- 4.3.6 The PA should review the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide the appropriate sign-offs.
- 4.3.7 The PA should also keep a clear trail of its due diligence work plan and related activities and any significant deviations from its plan by having proper documentation of the work performed and reviewed. The PA should ensure such documentation is properly kept and available upon request by the SC.

4.4 Company Secretary

- 4.4.1 The company secretary will need to fully apprise himself or herself of his or her obligations in the due diligence exercise and his or her obligations and liabilities under the relevant SC guidelines, the CMSA, the Listing Requirements and other relevant securities laws.
- 4.4.2 The company secretary is responsible for facilitating communication to the DDWG of all relevant matters pertaining to the corporate secretarial and corporate governance matters of the applicant and in dealings with the directors of the applicant. The company secretary should ensure that he or she provides accurate and updated records of statutory information, registers, books and documents and highlight any relevant issues.
- 4.4.3 The company secretary should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the due diligence enquiry are put forward for deliberation by the DDWG, properly addressed and documented as appropriate and, where relevant, attend and participate in the DDWG meetings.
- 4.4.4 The company secretary should assist the Chairman of the DDWG in coordinating and facilitating the requirements for completion and submission of the offering documents, and to review and verify the information in the offering documents on such matters as may be within his or her responsibility.
- 4.4.5 The company secretary is responsible for the due diligence in relation to their specific areas of practice within their scope of work. Where any matter (whether or not related to the scope of work) arises in the course of the due diligence that is in his or her reasonable opinion a matter for concern and/or disclosure, the company secretary should highlight such issues to the PA and the applicant. Where the company secretary becomes aware of any information that raises concerns relating to a corporate proposal which in his or her judgement would require a variation of the scope of work, the company secretary should highlight his or her concerns promptly and make recommendations for addressing the concerns to the PA and the applicant.
- 4.4.6 The company secretary should review the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide the appropriate sign-offs.

- 4.4.7 The company secretary should keep a clear documented trail of his or her due diligence work plan, processes, procedures and activities in connection with his or her scope of work.

4.5 Reporting Accountants

- 4.5.1 The scope of work of the reporting accountants will be dictated by their terms of reference which is a matter for agreement between the reporting accountants and the applicant, with concurrence from the PA and which may be revised from time to time. This includes the provision of an independent opinion on the applicant's pro forma financial information and on the applicant's accountants' report based on applicable auditing standards and, where applicable, the relevant SC guidelines.
- 4.5.2 The reporting accountants may also be required to perform agreed-upon procedures on certain financial information disclosed in the offering documents and issue a report on the factual findings arising from the agreed-upon procedures and/or as per the terms of reference.
- 4.5.3 The reporting accountants should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the due diligence enquiries are put forward for deliberation by the DDWG, properly addressed and documented as appropriate and, where relevant, attend and participate in the DDWG meetings.
- 4.5.4 The reporting accountants should read the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide their stamp for identification or any other appropriate means of identification.
- 4.5.5 The reporting accountants should keep a clear documented trail of their due diligence work plan, processes, procedures and activities in connection with its scope of work.

4.6 Legal Counsel

- 4.6.1 The scope of work of a legal counsel in the DDWG will be dictated by their terms of reference which is a matter for agreement between the legal counsel and the applicant, with concurrence from the PA. However, notwithstanding their terms of reference, the scope of work of an applicant's legal counsel will typically include, together with the PA, advising the applicant on the scope and extent of the legal due diligence enquiries and conducting the legal due diligence on the applicant and its Malaysian subsidiaries, preparing a legal due diligence report in respect of the applicant and its Malaysian subsidiaries and informing the DDWG of any matter which may arise in the course of the legal due diligence which in their professional and reasonable opinion is a matter of concern and/or would require disclosure. Where necessary, the applicant's legal counsel will work with the PA to liaise with the applicant's foreign legal counsel appointed to conduct legal due diligence exercise on the foreign companies within the Group, and review the reports prepared by the foreign legal counsel.
- 4.6.2 The applicant's legal counsel also acts as secretary of the DDWG, preparing the minutes of each meeting of the DDWG and circulating them to the other members of the DDWG for approval or sign-off, where necessary.

- 4.6.3 The applicant's legal counsel is responsible for drafting, where relevant, and reviewing the offering documents in compliance with the relevant SC guidelines, the CMSA and other applicable local regulatory regulations as well as advising on legal matters, including providing legal opinions, if required, relating to the corporate proposal under Malaysian laws and/or regulatory requirements. In addition, the applicant's legal counsel should verify the information in the offering documents on such matters as may be within their responsibility.
- 4.6.4 The applicant's legal counsel should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the legal due diligence enquiries are put forward for deliberation by the DDWG, properly addressed and documented as appropriate and where relevant, attend and participate in the DDWG meetings.
- 4.6.5 The applicant's legal counsel should prepare and review the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide the appropriate sign-offs. The applicant's legal counsel is also responsible for compiling such documentation and issuing them to the applicant with duplicate copies to be provided to the PA.
- 4.6.6 The applicant's legal counsel should keep a clear documented trail of their due diligence work plan, processes, procedures and activities in connection with their scope of work.

4.7 Independent Market Researcher

- 4.7.1 The scope of work of the independent market researcher will be dictated by its terms of reference which is a matter for agreement between the independent market researcher and the applicant, with concurrence from the PA. However, notwithstanding its terms of reference, the scope of work of the independent market researcher will typically include preparing an independent market report on the industry in which the Group operates in connection with the corporate proposal for inclusion in the offering documents and made available for public inspection, which should at the minimum cover the requirements under the relevant SC guidelines and such other information, including any updates or amendments as may be required up to the completion of the corporate proposal.
- 4.7.2 The independent market researcher should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the due diligence enquiries are put forward for deliberation by the DDWG, properly addressed and documented as appropriate and, where relevant, attend and participate in the DDWG meetings.
- 4.7.3 The independent market researcher is responsible for reviewing and verifying such matters as may be within its responsibility, to ensure consistency and that there is no material omission between information disclosed in the independent market research report and those presented in the offering documents.
- 4.7.4 The independent market researcher should review the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide the appropriate sign-offs.

- 4.7.5 The independent market researcher should keep a clear documented trail of its due diligence work plan, processes, procedures and activities in connection with its scope of work.

4.8 Valuer

- 4.8.1 The scope of work of a valuer will be dictated by its terms of reference which is a matter for agreement between the valuer and the applicant, with concurrence from the PA. However, notwithstanding its terms of reference, the scope of work of the valuer will typically include preparing the valuation report and valuation certificate on property assets including real estate, plant, machinery and equipment, in accordance with the requirements of the relevant laws and regulations, including the Asset Valuation Guidelines, for inclusion in the offering documents.
- 4.8.2 The valuer should communicate openly with all members of the DDWG including ensuring that any issues or concerns raised from the due diligence enquiries are put forward for deliberation by the DDWG, properly addressed and documented as appropriate and, where relevant, attend and participate in the DDWG meetings.
- 4.8.3 The valuer is responsible for reviewing and verifying such matters as may be within its responsibility to ensure consistency and that there is no material omission between information disclosed in the asset valuation report and valuation certificate and those presented in the offering documents.
- 4.8.4 The valuer should review the due diligence planning memorandum, the minutes of DDWG meetings and the verification notes issued pursuant to the verification exercise and provide the appropriate sign-offs.
- 4.8.5 The valuer should keep a clear documented trail of its due diligence work plan, processes, procedures and activities in connection with its scope of work.

4.9 Competent Person's Report and Competent Valuer's Report

Where a competent person's report or a competent valuer's report is required to be disclosed in the offering documents, the PA should ensure that the scope of work as dictated by the terms of reference of such competent person or competent valuer is sufficient to meet the required disclosures as per the relevant SC guidelines.

4.10 Other Advisers and Experts

- 4.10.1 The applicant's directors, with the concurrence of the PA, may engage such other additional experts or advisers that they consider appropriate to undertake tasks in relation to the due diligence enquiry.
- 4.10.2 Depending on the scope of work and nature of engagement of the advisers or experts, the PA should determine whether any such adviser or expert should participate in the DDWG. Even if they do not form part of the DDWG, such advisers or experts may be invited to attend some or all of the DDWG meetings and deliberations and

where necessary, such advisers or experts shall offer their expert views to the DDWG for the purpose of verifying such matters referred to in the offering documents as may be within their scope of work.

4.11 Verification Process

4.11.1 The DDWG should have adequate procedures put in place to ensure that any information submitted to the SC under any corporate proposal is properly and sufficiently verified by the appropriate parties and that the offering documents are prepared in compliance with all relevant laws and regulations.

4.11.2 This would include the need for the advisers and experts to substantiate as far as reasonably possible, the relevant information contained in the offering documents. Each member of the DDWG should ensure that the records and the trail of the due diligence documents used for the verification process are properly compiled and recorded.

4.11.3 Verifying Parties

(a) The verifying parties in the DDWG should include the following:

- (i) the promoter and/or the applicant, as the case may be (comprising, *inter alia*, the directors, key management and senior personnel), which are responsible for verifying all statements or information disclosed in the offering documents. The directors may delegate to third parties certain matters for verification. However, such delegation will not relieve the directors of their responsibilities under the relevant laws and regulations;
- (ii) the company secretary, who is responsible for verifying corporate information, in particular, statutory records and filings made in relation to the Group;
- (iii) the PA, which is responsible for verifying statements or information in the offering documents as may be within its areas of expertise, and is responsible for overseeing the verification process and taking a proactive role in escalating any verification issues to the directors and key senior management of the applicant;
- (iv) the legal counsels, who are responsible for verifying statements or information in the offering documents as may be within their scope of work in connection with the legal due diligence and verification exercise undertaken;
- (v) the reporting accountants, who are responsible for verifying statements or information in the offering documents as may be within their scope of work including financial statements; and
- (vi) the valuers or industry experts or independent market researchers, which are responsible for verifying statements or information in the offering documents as may be within their scope of work including matters arising from the valuation or industry review or independent market research report respectively.

- (b) The verifying parties may include other advisers or experts appointed by the applicant, who are responsible for verifying such matters referred to in the offering documents as may be within their scope of work. Where the confirmation by the applicant is based on verification by a third party which is not a member of the DDWG, such third party should be a person who is competent and knowledgeable on the subject. The PA should be satisfied that it is reasonable to rely upon the confirmation made by such third party.

4.11.4 The verification process can be by way of a third party verification and/or a direct confirmation from the applicant in the following manner:

- (a) verification by third party – the statement or information is obtained from independently sourced materials and verified by a third party (other than the applicant); and/or
- (b) confirmation by the applicant – the statement or information (including any statement or information which cannot be verified by a third party) is confirmed directly by the applicant.

4.11.5 The relevant verifying party should consider whether the source on which the verification is based is reasonable to be relied upon and is appropriate in the circumstances. Reliance should not be placed on any unverified or unconfirmed statement or information where there is no supporting document and/or verifying or confirming party.

4.11.6 Verification by Third Parties

Verification by third parties is based on:

- (a) Public information - The verifying parties may rely on public information from credible sources such as government agency websites, publications of well-known research houses or reliable academic journals. The verifying parties may also rely on public searches and filings such as company searches and bankruptcy searches;
- (b) Materials and documents provided by the applicant - The verifying parties may also rely on materials and documents from the applicant, for example, agreements, letters, certificates, permits, licences and such other supporting documents, for verification of statements or information in the offering documents; and
- (c) Reports/materials and documents provided by third parties - The DDWG may rely on any reports prepared by third parties as may be reasonable. The DDWG is not expected to verify reports prepared by third parties. The DDWG may also rely on documents, information or confirmations from third parties where such documents, information or confirmations are reasonably within their field of knowledge, or make further enquiries as are reasonable with regards to such documents, information or confirmations.

4.11.7 Confirmation by Applicant

Confirmation by the applicant is as follows:

- (a) Where independent corroboration is not available, statements or representations made in the offering documents should be confirmed by the directors, key management or senior personnel who have been identified as the most appropriate person to confirm such statements or information based on their relevant competency and knowledge of the subject.
- (b) The confirmation so provided should demonstrate that the directors, key management or senior personnel have addressed their minds to such statement or information, and where relevant, the basis and discussion for any opinion formed or view taken by them can be noted in the verification exercise.

4.11.8 The verification and confirmation process may also be conducted by way of interviews and questionnaires which are signed off by the directors, key management or senior personnel of the applicant and may be relied upon as supporting documents. Where the information or materials are derived from published materials, the PA should be satisfied with the reliability of the relevant published materials to be included in the offering documents and having regard to the source and the quality of content of the materials, it would be reasonable to rely on such previous verification of that information or materials.

4.11.9 Verification Meetings

- (a) The objective of the verification meeting is to identify the independent supporting documents or verification sources as well as the relevant verifying parties, to discuss and establish the basis or grounds for the inclusion or exclusion of information in the offering documents and to review the presentation of the information so that such information is not false or misleading and does not contain any material omission.
- (b) In view of the above, the verification exercise should be undertaken from the start of the drafting meetings as the verification will affect the drafting, and this process should continue until the submission, issuance and/or registration of the offering documents. Verification of the offering documents interacts with the overall due diligence process and should not be seen as a separate independent exercise conducted solely by the legal counsel.
- (c) During the verification process, all statements and information should be scrutinised to ensure that they are verifiable, and that there are reasonable grounds for the opinions, conclusions and forward-looking statements included in the offering documents.
- (d) The Chairman of the DDWG or his or her authorised persons should be present at the verification meetings to participate in the verification exercise and report on any issues arising from the disclosures and information set out in the offering documents to the directors of the applicant, if required. A verification meeting should take place with all members of the DDWG to verify the relevant statements in the offering documents. The applicant should cooperate in addressing the comments

arising from the verification exercise. Any statement or information in the offering documents which is not capable of being verified or confirmed, or any statement or information for which reasonable grounds cannot be established to support their inclusion or presentation, should be deleted or amended.

- (e) The verification notes have to be signed off by the members of the DDWG and the authorised representatives of the applicant after the verification exercise, or in the case of the reporting accountants, they are to provide their stamp for identification or any other appropriate means of identification.
- (f) At the board meeting, the directors of the applicant should confirm that they are satisfied that all statements and information in the offering documents are not false or misleading and do not contain any material omission. The compilation of the verification notes is to provide the board of directors the comfort that the due diligence and verification process have been put in place and undertaken to ensure that the statements and information referred to in the offering documents are not false or misleading and do not contain any material omission and to accord the board of directors a due diligence defence under the CMSA.

4.11.10 Additional Due Diligence

The DDWG should undertake a critical review of the underlying records and supporting documents used and determine the sufficiency and quality of the verification process. The PA should exercise its judgement, in consultation with the relevant advisers or experts involved in the corporate proposal and if necessary make additional enquiries to ascertain whether there are reasonable grounds on which that statement or information can be based and that such statement or information is not false or misleading or contains any material omission.

Chapter 5

INFORMATION ON PROMOTERS, SUBSTANTIAL SHAREHOLDERS, DIRECTORS, KEY SENIOR MANAGEMENT AND KEY TECHNICAL PERSONNEL

5.1 Promoters and Substantial Shareholders

- 5.1.1 Where the profile of the promoters and other substantial shareholders are required to be disclosed in the offering documents, the PA, with the assistance of the relevant advisers or experts, will need to review the past, current and proposed shareholding of the promoters and other substantial shareholders in the applicant based on the disclosure requirements applicable for the offering documents.
- 5.1.2 The PA, with the assistance of the appropriate legal counsel, should review the constitution and any joint venture or shareholders' agreement to which the applicant is a party for any provisions relevant to the promoters and substantial shareholders relating to pre-emption rights and restrictions on shareholdings and transfers.
- 5.1.3 The PA should conduct a review of the transactions with promoters and substantial shareholders for the period as may be prescribed in the relevant SC guidelines, including financial support, and transactions in or out of the ordinary course of business to ascertain whether such transactions are conducted on arm's length basis and the reasons and justifications for such transactions. The PA should also consider whether the applicant is over-reliant on the promoters and substantial shareholders for business or financial support as this may give rise to concern on the sustainability of the applicant's business independent of its promoters or substantial shareholders.
- 5.1.4 The PA, with the assistance of the appropriate legal counsel, should conduct public searches on the promoters and substantial shareholders including but not limited to company searches, winding-up searches and bankruptcy searches. Where a significant amount of time has passed since the last search, if appropriate, the searches should be conducted again or written confirmations on the changes or absence of changes since then should be obtained.
- 5.1.5 For foreign promoters and substantial shareholders, the PA may exercise its own judgement in determining the investigations or steps appropriate or applicable to the context and circumstances, including conducting the relevant public searches or appointing an independent investigator to provide a report on the promoters and substantial shareholders.

5.2 Directors

- 5.2.1 The PA, with the assistance of the relevant advisers or experts, will need to review the current and proposed shareholding of the directors in the applicant based on the disclosure requirements applicable for the offering documents.
- 5.2.2 The PA, with the assistance of the appropriate legal counsel, should conduct public searches on the current and proposed directors including but not limited to bankruptcy searches. Where a significant amount of time has

passed since the last search, if appropriate, the searches should be conducted again or written confirmations on the changes or absence of changes since then should be obtained.

5.2.3 The PA will need to assess the suitability of each current and proposed director and consider the efficacy of the board of directors as a whole for the applicant's needs. This would involve:

- (a) reviewing the directors' written questionnaire responses, conducting interviews and reviewing the directors' curriculum vitae;
- (b) verifying the information disclosed in the questionnaires, interviews and curriculum vitae, for example by reviewing press searches, Companies Commission of Malaysia checks, bankruptcy checks, taking-up references and, where appropriate, obtaining third party checks;
- (c) analysing any issue arising from the review and, in particular, on how they can affect the appropriateness and suitability of the applicant's listing; and
- (d) considering each director's suitability and experience in relation to their role in ensuring an effective operation of the applicant's business and consider whether each director is suitable to be a director of a Malaysian public listed company.

5.2.4 The character and integrity of the current and proposed directors of the applicant will be a relevant factor for consideration. In considering whether the directors have the character and integrity expected for a listed corporation, the PA should take into account the disclosures made in the questionnaire, the interview responses and/or the curriculum vitae provided by each director.

5.2.5 The PA will need to look into the past corporate conduct of the current and proposed directors of the applicant to determine their integrity. The PA will need to be satisfied that no person is appointed or allowed to act as a director of the applicant or be involved whether directly or indirectly in the management of the applicant, including acting in an advisory capacity in relation to the applicant, if he or she:

- (a) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence in connection with the promotion, formation or management of a corporation within the period as prescribed by the relevant SC guidelines and/or the Listing Requirements;
- (b) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence involving bribery, fraud or dishonesty or where the conviction involved a finding that he acted fraudulently or dishonestly within the period as prescribed by the relevant SC guidelines and/or the Listing Requirements; or
- (c) has been convicted by a court of law of an offence under the securities laws or the Companies Act within the period as prescribed by the relevant SC guidelines and/or the Listing Requirements.

- 5.2.6 In respect of certain key matters, where relevant, appropriate and to the extent feasible, enquiries may be made by the PA with the directors in the following manner:
- (a) face-to-face in a physical meeting;
 - (b) via telephone or video-conference; or
 - (c) by written response to a questionnaire.
- 5.2.7 The PA, with the assistance of the appropriate legal counsel, should review all service agreements with the directors for details of any terms that are onerous for the applicant, including whether there is any arrangement for the director to receive any payment or benefit as compensation for loss of office or as consideration for retirement from office.
- 5.2.8 For foreign directors, the PA may exercise its own judgement in determining the investigations or steps appropriate or applicable to the context and circumstances, including conducting the relevant public searches or appointing an independent investigator to provide a report on the particular director.

5.3 Key Senior Management and Key Technical Personnel

- 5.3.1 The PA, with the assistance of the relevant advisers or experts, will need to review the current and proposed shareholding of the key senior management and the key technical personnel in the applicant based on the disclosure requirements applicable for the offering documents.
- 5.3.2 The PA, with the assistance of the appropriate legal counsel, should conduct public searches on the key senior management and key technical personnel of the applicant including but not limited to bankruptcy searches. Where a significant amount of time has passed since the last search, if appropriate, the searches should be conducted again or written confirmations on the changes or absence of changes since then should be obtained.
- 5.3.3 The PA will need to assess each of the key senior management and key technical personnel of the applicant and consider their suitability and experience in relation to their role in ensuring effective operation of the applicant's business. This would involve:
- (a) reviewing written questionnaire responses, conducting interviews and reviewing the curriculum vitae of each of the key senior management and key technical personnel;
 - (b) verifying the information disclosed in the questionnaires, interviews and curriculum vitae, for example by reviewing press searches, Companies Commission of Malaysia checks, bankruptcy checks, taking-up references and, where appropriate, obtaining third party checks; and
 - (c) analysing any issue arising from the review and, in particular, on how they can affect the appropriateness and suitability of the applicant's listing.

- 5.3.4 The PA, with the assistance of the appropriate legal counsel, should review all service agreements with the key senior management and the key technical personnel, whether with the applicant or another company within the Group, for details of any terms that are onerous for the applicant, including whether there is any arrangement for the key senior management or the key technical personnel to receive any payment or benefit as compensation for loss of office or as consideration for retirement from office.

Chapter 6

BUSINESS OVERVIEW

6.1 General

- 6.1.1 The PA should carry out due diligence on the applicant's business and operations to understand the nature of the applicant's business, its viability and if there are any material risks. The due diligence on the applicant's business and operations comprises the examination and verification of a wide range of factors including:
- (a) the background of the applicant including its history, key milestones and material developments;
 - (b) aspects of the applicant's business such as its products and services, major customers and suppliers, sales, marketing and distribution channels as well as its strengths, strategies and future plans;
 - (c) the assets and operations of the applicant, including its property, plant and equipment, intellectual property, technology and proprietary rights, human capital, health, safety and environmental policies and insurance policies; and
 - (d) the industry of the applicant including an overview of the applicant's market, competition, trends and seasonality.
- 6.1.2 Such examination would involve conducting searches in publicly accessible databases, online checks and media searches. If applicable, the PA should make further enquiries or request further investigations, where there are any inconsistent findings and ascertain the steps taken or being taken to address issues raised in such findings.

6.2 Background of the Applicant

- 6.2.1 The PA, with the assistance of the relevant advisers or experts, should obtain details on the background of the applicant based on the disclosure requirements under the relevant SC guidelines and should also obtain an understanding of the corporate structure of the applicant and its subsidiaries, associates and joint ventures. If the applicant does not have access to the corporate documents of an associate or a joint venture company, the PA, with the assistance of the relevant advisers or experts, should still review all relevant searches and publicly available documents as may be necessary.
- 6.2.2 If the applicant or its related company has been previously listed on Bursa Securities or any other stock exchange, the PA should verify the information against generally available information previously disclosed and announced through the relevant stock exchange.
- 6.2.3 The PA should make enquiries on whether the applicant (or any of its subsidiaries or proposed subsidiaries) was involved in any major corporate proposal submitted to any relevant authority, such as IPOs, chain listings, acquisitions resulting in significant change in the business direction or policy of a listed corporation, transfer

of listing status and issuances of corporate bonds or sukuk, which was not approved or otherwise withdrawn. If so, relevant supporting documents should be obtained, and further enquiries should be carried out to:

- (a) understand the reasons for non-approval of the proposal or withdrawal of the application to the authorities;
- (b) assess the nature of the reasons for the non-approval or withdrawal, and its impact on the applicant's suitability for listing; and
- (c) satisfy itself that the steps taken to ensure that any concerns in the previous proposal leading to its non-approval or withdrawal have been adequately addressed, to the extent applicable, prior to the submission of the current application.

6.2.4 Where the applicant has a subsidiary, associate or joint venture which operates in a foreign jurisdiction, the extent of the PA's due diligence on the foreign entity will depend on whether the foreign entity is dormant and whether the foreign entity has significant business operations or assets, or if there are any business or operational risks particular to that foreign entity, in jurisdictions outside Malaysia.

6.3 Business of the Applicant

6.3.1 Products, Services and Operations

- (a) The PA should gain an understanding of the types of products manufactured or services provided by the Group and gain an understanding of the Group's facilities and operations, including its operating or trading mechanisms and production or business processes. This includes ascertaining the respective market share of the Group's major products and/or services. In addition, the PA should, to the extent that information is generally available, review and compare the products, services and operations of the Group against companies which may reasonably be considered the Group's competitors.
- (b) The PA should check on whether there is any non-compliance with existing legislation, regulations and governmental policies that may have an impact on the products, services and operations of the Group.
- (c) The PA should review the key accreditations, certifications and awards in respect of the Group's products, services and operations.

6.3.2 Major Customers and Suppliers

- (a) The PA should request the applicant to identify the major customers and suppliers of the Group as per the requirements of the relevant SC guidelines and gain an understanding on their relationship in order to:
 - (i) ascertain the existence of such major customers and suppliers;

- (ii) determine whether the Group is materially dependent on any of their major customers or suppliers;
 - (iii) familiarise itself with the Group's procurement strategy, sources of supply and suppliers to ensure continuity of supply as well as details of any interruptions of supply within the track record period;
 - (iv) identify any disruption, disputes or difficulties between the Group and their major customers and suppliers; and
 - (v) enquire if there is or will be any material change in the relationship with the major customers and suppliers which may have a material adverse effect on the Group.
- (b) The PA, with the assistance of the reporting accountants, should review the financial statements and related information of the Group, and in particular, analyse the proportion of the revenue contributed by each major customer of the Group in terms of amount and percentage and the purchases related to each major supplier of the Group in terms of amount and percentage, during the relevant track record period.
- (c) Where relevant and appropriate, the PA should conduct interviews with the major customers and suppliers of the Group by whatever suitably practical means. The applicant should assist the PA to identify the appropriate interviewees but should not interfere with the interview in any way.

6.3.3 Sales, Marketing and Distribution

- (a) The PA should gain an understanding on the sales, marketing and distribution model, channels of the Group.
- (b) The PA should also obtain from the applicant details of any special relationship of any key distributor with the Group, such as whether any director, substantial shareholder, key management personnel or current or former employee of the Group or any persons connected to them has any ownership interest in or is able to exercise any control over the distributor.

6.3.4 Strengths, Strategies and Future Plans

The PA should identify and gain an understanding of the applicant's competitive strengths, strategies and future plans to ensure growth and consider the applicant's prospects in light of industry prospects, outlook or conditions.

6.4 Assets and Operations of the Applicant

6.4.1 Property, Plant and Equipment

- (a) The PA, with the assistance of the relevant advisers or experts, should obtain details on the material properties of the applicant based on the disclosure requirements under the relevant SC guidelines.

- (b) The PA, with the assistance of the relevant advisers or experts, should conduct an inspection of key business premises and where feasible, material assets in relation to the corporate proposal, in order to confirm the existence thereof. The PA, with the assistance of the relevant advisers or experts, should also assess whether all key approvals have been obtained from the relevant authorities for the key business premises and material assets concerned.
- (c) The PA may consider that the due diligence on the assets is to be carried out on sampling basis in a scenario where the assets are numerous in number but similar in terms of materiality. The appropriate sample size should be determined on a case-by-case basis, taking into consideration factors such as the practicality of such exercise, costs involved, benefit to the due diligence exercise, and whether the asset is a key income generating asset or an expense item based on the ownership of the asset.
- (d) Regard should also be had as to the feasibility of conducting inspections at different location within the same day, where the material assets are movable or fungible in nature, to avoid potential manipulation of the quantity of such assets.
- (e) Where a valuation is required, the PA should ensure that the independent valuer appointed conducts a valuation of the assets in accordance with the Asset Valuation Guidelines. The PA should review the valuation report prepared by the independent valuer and assess whether the methodology, bases and assumptions on which the market value is arrived at are reasonable.

6.4.2 Intellectual Property, Technology and Proprietary Rights

The PA, in the course of its review of the proprietary rights used or developed or proposed to be used or developed by the applicant, should request for:

- (a) particulars of any trademarks, patents or other intellectual property rights or technology which are material in relation to the applicant's business;
- (b) particulars of any arrangements where any intellectual property right is assigned or licensed from or to a third party and the salient terms of the licence agreements, if any, and all approvals and conditions attached as well as the status of compliance;
- (c) particulars of use or reliance by the Group of any intellectual property rights owned by any person related to or currently or previously involved with the Group;
- (d) particulars of any claims, violations or infringements pertaining to, or any proceedings pending or threatened over any intellectual property right;
- (e) a description of the research and development of new products and processes carried out by the Group over the relevant track record period; and
- (f) details on the Group's policies and procedures for protecting its proprietary rights.

6.4.3 Human Capital

The PA should obtain details on the employees of the applicant based on the disclosure requirements under the relevant SC guidelines. Enquiries should also be made:

- (a) on the terms of any collective bargaining agreement or arrangement where the employees of the applicant are part of any union;
- (b) on the proportion of employees who are non-Malaysian, their respective nationalities and their immigration status; and
- (c) to seek clarification if there has been a frequent change of personnel who are key to the business of the applicant.

6.4.4 Health, Safety and Environment

- (a) Health and safety

The PA should obtain from the applicant information on the policies and status of compliance with relevant industry standards, rules and regulations on providing a safe working environment and protecting employees from occupational hazards, including any incidents of material non-compliance.

- (b) Environment

The PA should obtain from the applicant the following documents in order to identify whether there are any environmental issues which may materially affect the applicant's business:

- (i) permits and authorisations;
- (ii) environmental impact assessment reports;
- (iii) correspondence with regulatory authorities regarding compliance, non-compliance, required improvements, fines and penalties imposed on the applicant, if any; and
- (iv) minutes of directors' meetings where environmental issues were discussed.

Where relevant, appropriate and feasible, the PA may appoint an environmental consultant to independently assess any environmental related issues affecting the applicant's business.

6.4.5 Insurance

- (a) The PA should obtain from the applicant information on the insurance policies taken out by the Group and whether any claims were made during the relevant track record period. The PA should also obtain information relating to the key commercial risks faced by the Group's business and the insurance coverage in relation thereto. Where feasible, the PA should obtain confirmation from the Group's

insurance broker that the Group has adequate insurance coverage.

- (b) Where relevant, appropriate and feasible, the PA may appoint an insurance consultant to independently assess any insurance related issues affecting the applicant's business.

6.4.6 Exchange Controls

Where applicable, the PA should consider obtaining an opinion on any governmental law, decree, regulation or other requirements which may affect the repatriation of capital and remittance of profit by or to the applicant in respect of its foreign businesses.

6.5 Industry of the Applicant

6.5.1 Market, Competition and Trends

- (a) The PA, with the assistance of the independent market researcher, should gain an understanding of the industry and target markets in which the applicant's business principally operates, including the economic, political and legal environment, the geographic and product markets, and their respective key characteristics. In particular, the PA, with the assistance of the independent market researcher, should obtain from the applicant a breakdown of total revenues by category of its activities and geographical market for each of the last three financial years or during the track record period, whichever is applicable.
- (b) The PA, with the assistance of the independent market researcher, should aim to understand the nature of competition, entry barriers and potential new entrants, key risks, future trends and opportunities, threats and challenges that may have an impact on the business and operations of the Group. The PA, with the assistance of the independent market researcher, should request the applicant to identify and provide information of main competitors.
- (c) The PA, with the assistance of the independent market researcher, should compare the applicant's performance with industry averages, if such information is available or other companies which can reasonably be considered to be its peers or competitors. In identifying peers or competitors of the applicant, the PA, the independent market researcher and the applicant should understand and come to an agreement on the basis of selection.

Chapter 7

MATERIAL CONTRACTS, MATERIAL LITIGATION AND REGULATORY COMPLIANCE

7.1 Material Contracts

7.1.1 The PA and, where relevant, the DDWG, will need to determine:

- (a) firstly, the materially dependent contracts of the Group, being contracts which the Group's business or profitability is materially dependent upon; and
- (b) secondly, the material contracts entered into by the Group, not being contracts in the ordinary course of business, as prescribed in the relevant SC guidelines.

7.1.2 In particular, the degree of reliance and the contract's significance to the Group's business would be a factor to be taken into account in determining whether a contract is a materially dependent contract. This would include contracts or agreements such as franchise agreements, licence agreements, concession agreements or major customer and supplier contracts. In respect of major customers and suppliers, consideration should be given as to:

- (a) whether such a major customer comprises a significant portion of the total revenue of the applicant;
- (b) whether such a major supplier comprises a significant portion of the total purchases of the applicant;
- (c) the profile of the major customers and suppliers compared to the other customers and suppliers of the applicant; and
- (d) whether a major customer or supplier could be replaced easily, if at all, and whether the need to replace such major customer or supplier, or the absence of such major customer or supplier, would have a material adverse effect on the business of the applicant.

7.2 Material Litigation

7.2.1 The PA, with the assistance of the appropriate legal counsel, should enquire whether the Group is subject to any litigation, dispute, claim, and/or arbitration (whether actual, pending or threatened) and whether there is any fact likely to give rise to any proceeding which may materially affect the business or financial position of the Group.

7.2.2 Where the applicant has a list of panel lawyers, the appropriate legal counsel should request for a confirmation by the panel lawyers on the material legal proceedings and other material disputes that are actual, pending or threatened by or against the Group and, where possible, a legal opinion on the potential exposure or likely outcome of such proceedings and disputes.

- 7.2.3 Public searches on civil and criminal actions taken against foreign companies within the Group should be conducted, if available in the relevant jurisdiction.

7.3 Regulatory Compliance

- 7.3.1 The PA, with the assistance of the relevant advisers or experts, should seek to ascertain whether there is any non-compliance of relevant laws and regulations material to the Group's business activities and to assess the impact of such non-compliance on the Group's business activities.
- 7.3.2 If any legal or regulatory non-compliance is discovered during the course of the due diligence, the PA should consider the impact of such non-compliance on the applicant's listing with regard to the following factors:
- (a) the nature, extent and seriousness of the non-compliance and the impact of the non-compliance on the applicant's business, operations and financial performance;
 - (b) the reasons for the non-compliance, including whether intentional, fraudulent, or due to negligence or recklessness;
 - (c) whether any rectification measures have been or will be adopted; and
 - (d) what precautionary measures have been or will be put in place to avoid future non-compliance.
- 7.3.3 If the applicant's business and/or operation covers a jurisdiction outside Malaysia, the above factors should be considered with the assistance of foreign advisers or experts in the relevant jurisdiction. The PA should consider, where relevant, obtaining legal opinions from the foreign legal counsel in the relevant jurisdiction with regard to any actual or potential non-compliance and any necessary approvals of regulatory authorities of the jurisdiction.

Chapter 8

RELATED PARTY TRANSACTIONS AND CONFLICT OF INTEREST

8.1 Related Party Transactions

- 8.1.1 A related party transaction is a transaction which a listed company, business trust, collective investment scheme, closed-end fund or its subsidiaries enters into and which involves the interest, direct or indirect, of a related party.
- 8.1.2 Disclosure requirements in the offering documents on related party transactions depend on the nature of the corporate proposal and the entity.
- 8.1.3 Enquiries are to be made to identify persons considered to be related parties and persons connected to them based on the Listing Requirements.
- 8.1.4 The PA should enquire as to the type, nature and value of the related party transaction and whether:
- (a) any related party has an interest in the sense of having a financial or other advantage such as receiving a commission or other benefits even though the related party is not a party to the transaction; or
 - (b) the related party transaction was entered into on an arm's length basis and not on preferential terms especially if this disadvantages the applicant.
- 8.1.5 The PA, with the assistance of the relevant adviser and/or expert, should discuss with the relevant personnel responsible for finance in order to assist the applicant to identify transactions which may be related party transactions.
- 8.1.6
- (a) The PA, with the assistance of the appropriate legal counsel, should review the minutes of directors' meetings in order to determine whether any transaction has been entered into by the applicant or its subsidiaries with any related parties. The PA should also note where a director has abstained from voting and the reasons for abstaining as this may indicate a related party transaction.
 - (b) The PA should cross-check the audited financial statements of the applicant and its subsidiaries with the relevant personnel responsible for finance and whether there are transactions disclosed which are recognised in the financial statements of the applicant as related party transactions.
- 8.1.7 The PA should examine transactions which are potentially related party transactions to see if they would not normally be regarded as related party transactions under the Listing Requirements.

8.2 Conflict of Interest

8.2.1 The PA should enquire as to whether the directors, promoters, key senior management and key technical personnel of the applicant:

- (a) have businesses outside the Group which are similar or may otherwise compete with the Group;
- (b) have businesses or investments which may influence the market of the Group;
- (c) have similar businesses in a geographical location which is not a current market of the business of the Group but which may be a future market of the business of the Group;
- (d) own assets which the Group depends on for its business;
- (e) own assets which may be used to compete with the business of the Group; or
- (f) have other priorities and are not able to spend enough time to manage the business of the Group.

8.2.2 A potential conflict of interest, once identified, may be a matter of disclosure in the offering documents or it may substantially affect the business of the applicant or potentially result in the applicant not being suitable for listing. The PA should then discuss with the applicant and its directors and management on the relevant arrangements to mitigate any conflict of interest which may arise.

Chapter 9

CORPORATE GOVERNANCE AND INTERNAL CONTROLS

9.1 Corporate Governance

- 9.1.1 The PA should assess the corporate governance track record of the applicant's current and proposed directors and, where relevant, appropriate and to the extent possible, key senior management, internal auditor, in-house legal counsel or company secretary, having regard to the Malaysian Code on Corporate Governance, the Listing Requirements and the relevant SC guidelines.
- 9.1.2 The PA should discuss with the directors and key senior management including the company secretary of the applicant on the steps to be taken to adopt the guidance and best practices in structuring its board, determining its composition and establishing its board committees as set out in the Malaysian Code on Corporate Governance and the Listing Requirements.
- 9.1.3 An independent director of the applicant is required to provide Bursa Securities with a confirmation that he or she is an independent director as defined in the Listing Requirements. In this regard, the PA should:
- (a) check the independence of these directors against the criteria in the Listing Requirements;
 - (b) seek a written confirmation from each independent director in respect of his or her compliance with the Listing Requirements; and
 - (c) review the relationships between the directors and the applicant that may be material and preclude a finding of independence, including employment, advisory, business, financial, charitable, family and personal relationships. When examining these relationships, it is important to consider the director's ties to the applicant's key senior management, its other directors, substantial shareholders and promoters, which may affect the actual or perceived independence of the director.

9.2 Internal Controls

- 9.2.1 The PA should ensure that it is satisfied that the board of directors of the applicant has in place:
- (a) sufficient risk management and internal control systems (including management and operation systems) and procedures that are adequate to enable the applicant to comply with the Listing Requirements and the relevant securities laws; and
 - (b) sufficient internal controls over financial reporting (including accounting and management systems) and policies that are adequate for the board of directors to make a suitable assessment of the financial position, profitability and prospects of the applicant and its subsidiaries, both prior to and after listing and ensuring a sustainable business.

- 9.2.2 The PA may adopt the following steps in order to assess the internal control systems and procedures of the applicant:
- (a) obtain and review the internal audit report;
 - (b) interview the internal auditor;
 - (c) obtain and review the external auditor's management letters on internal controls, if any; and
 - (d) where necessary, appoint an internal control consultant to conduct an independent assessment of the state of internal control and risk management systems of the applicant.
- 9.2.3 Where the PA determines that an internal control consultant is necessary to be appointed, the scope of work of the internal control consultant should address past incidences of non-compliance, including deficiencies identified in management letters issued by the applicant's external auditors.
- 9.2.4 The PA, with the assistance of the internal control consultant, should also discuss with and advise the applicant on the recommended steps to be taken and the timeline for the rectification of any deficiencies identified by the internal control consultant in its report. In addition, the PA should consider the regulators' expectations on specific disclosure in the offering documents where there have been incidents of material non-compliance.

Chapter 10

FINANCIAL DUE DILIGENCE

10.1 Objective

- 10.1.1 The PA should gain an understanding of the overall financial condition and performance of the Group in order to assist in the preparation of the financial information in the offering documents. This would encompass:
- (a) a standalone review of the financial information and business of the Group, and where feasible, a review of the financial information of the Group relative to other companies which can reasonably be considered to be its peers or competitors;
 - (b) gaining an understanding of significant industry trends, which have a bearing on the business and financial condition of the Group as a whole, and on the individual business segments, such as by products or services, customers or geographical locations; and
 - (c) gaining an understanding of common accounting policies or practices which forms a basis for evaluating the Group's performance.
- 10.1.2 Where the PA identifies any matter which raises concern on the financial condition and performance of the Group, it should prompt further investigation on the audited financial statements.

10.2 Review Process

- 10.2.1 The due diligence on the applicant's financial information and profile comprises:
- (a) a review of the financial statements, including contingencies and off-balance sheet items, of the Group;
 - (b) a discussion with the applicant's management, internal and external auditors, reporting accountants and tax agents;
 - (c) agreed-upon procedures performed by the reporting accountants for the issuance of its report on factual findings and the review of its deliverables; and
 - (d) a review of other relevant items such as tax records.
- 10.2.2 The PA should request from the applicant the relevant financial statements of the Group (including statement of financial position and statement of profit or loss line items) and a detailed group structure chart showing any entity in which the applicant or any of its subsidiaries has any ownership or other economic interest, including the identities of the shareholders of each non wholly-owned subsidiary, joint venture and associated company.

10.3 Presentation of Financial Information

10.3.1 Historical Financial Information

- (a) The PA should discuss with the applicant's management and the reporting accountants on the overall financial presentation. The presentation of historical financial information, where applicable, should cover, *inter alia*, recent acquisitions, disposals, carve-outs or reorganisations and/or pre-IPO financing structures which would materially impact the audited financial statements of the Group.
- (b) If there is any change in the financial year end of the applicant during the reported track record period, it will be crucial to understand the underlying reasons, and the impact of such change.
- (c) Where there are any adjustments to the applicant's historical financial information, for example, a change in the accounting period or accounting policy or any other material adjustment, the PA should understand and discuss with the reporting accountants and the applicant whether such adjustments should be disclosed accordingly.

10.3.2 Management's Discussion & Analysis on Financial Condition and Results of Operations

- (a) The management's discussion and analysis of financial condition and results of operations is meant to provide investors with a detailed analysis of the applicant's financial condition, changes in financial condition and results of operations for each year and interim period, if required, for which historical financial information is provided in the offering documents. The management's discussion and analysis of financial condition and results of operations should include, *inter alia*,
 - (i) analysis and explanation of material changes or fluctuations from year to year in relation to the selected financial information with specific reasons;
 - (ii) nature and conditions of the business, operations and risk factors, and the prevailing economic situation;
 - (iii) significant factors or events including unusual or infrequent events or new developments which materially affected the profits and the extent the profits were affected as well as those significant factors or events that are likely to impact future financial performance or condition; and
 - (iv) identification and discussion of any exceptional items or unusual accounting treatments that require further enquiry or disclosure.
- (b) The reporting accountants should attend and participate in relevant management's discussion and analysis of financial condition and results of operations meetings and contribute to such meetings based on their understanding of the financial statements of the applicant. The PA should also discuss whether the financial information is from a source on which the reporting accountants will be able to provide comfort based on agreed-upon procedures.

- (c) In its review of the management's discussion and analysis of financial condition and results of operations section of the offering document, the PA may refer to publicly available information on the applicant's peers and competitors as a reference point and comparison.

10.3.3 Working Capital Statement

- (a) A working capital statement by the directors of the applicant should be included in the offering documents as may be required by the relevant SC guidelines. Such working capital statement must be supported by a profit and cash flow forecast memorandum. The profit and cash flow forecast memorandum would normally be based on forecast for at least twelve months from the date of the offering documents setting out the relevant assumptions made.
- (b) The applicant shall appoint the reporting accountants to provide a private report on the working capital statement based on the guidance issued by the Malaysian Institute of Accountants. In providing the aforesaid private report, the reporting accountants should consider and satisfy itself that the directors of the applicant have exercised due care in the compilation of the forecast and the assumptions made.
- (c) The reporting accountants should review that the working capital statement has been properly compiled on the basis of the assumptions made by the applicant.
- (d) The PA should discuss the working capital statement with the applicant on the bases used and the assumptions made. The PA may also discuss with the RA on the working capital statement and work undertaken by the RA on the working capital statement subject to the PA agreeing to be bound to terms similar to the scope of work undertaken for a private report to the applicant. This is to ensure that the rights accorded to and obligations imposed on the PA by the reporting accountants for the scope of work undertaken for the working capital statement are no different from that accorded to the applicant by the reporting accountants.

10.3.4 Statement of Capitalisation and Indebtedness

- (a) The offering documents should contain particulars on the level of borrowings as at the end of the financial period under review, the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use.
- (b) The information relevant to the statement of capitalisation and indebtedness is compiled based on such period as prescribed by the relevant SC guidelines. The reporting accountants should be engaged to conduct agreed-upon procedures on such information.
- (c) This exercise with respect to the statement of capitalisation and indebtedness should be documented in a private report addressed to the applicant. The private report should be based on the guidance issued by the Malaysian Institute of Accountants.

10.3.5 Pro forma Financial Information

A pro forma statement of financial position, comprehensive income and cash flow should be prepared based on the requirements of the relevant SC guidelines. The reporting accountants should review on the compilation of these pro forma financial information in accordance with the guidance issued by the Malaysian Institute of Accountants.

10.3.6 Accountants' Report

- (a) Pursuant to the relevant SC guidelines, offering documents issued by an applicant must contain an accountants' report in respect of the audited financial statements for each of the financial years and where applicable, the audited interim financial report for the interim financial period under review. The accountants' report must report on the audited financial statements of the applicant for at least the three most recent financial years or such shorter period that the applicant has been in operation and, where applicable, the interim financial period. The date of the interim financial period reported on in the accountants' report must not be more than six months from the issuance of the offering documents.
- (b) The basic content requirements for an accountants' report include historical financial statements including statement of comprehensive income, statement of financial position, cash flow statement, statement of changes in equity and notes to the financial statements comprising accounting policies which are relevant under the applicable accounting standards in Malaysia.
- (c) The reporting accountants should also disclose any significant subsequent event since the date of the most recent audited financial statements and where applicable, since the date of the audited interim financial statements up to the date of the accountants' report. If there is no such event, an appropriate negative statement should be disclosed in accordance with the relevant SC guidelines.
- (d) The reporting accountants are responsible for providing an independent opinion on the applicant's accountants' report based on applicable auditing standards and guidance as issued by the Malaysian Institute of Accountants and, where applicable, the relevant SC guidelines.

10.4 Review of Audit Matters

10.4.1 The PA should obtain from the applicant copies of the following documents issued during and/or subsequent to the track record period:

- (a) management letters issued by the external auditors to the applicant;
- (b) audit committee reports; and
- (c) representation letters issued by the applicant to the external auditors,

and consider if any of the information contained is materially inconsistent with information known to the PA.

- 10.4.2 Discussion with external auditors and reporting accountants should normally encompass questions on the applicant and on audit matters.
- 10.4.3 In cases where the offering documents will include unaudited interim financial statements, the reporting accountants should conduct a limited review on the interim financial information and issue a private report thereon based on the applicable auditing standards and guidance as issued by the Malaysian Institute of Accountants.
- 10.4.4 The PA should ascertain if any external auditors have resigned during the track record period or at any time preceding it. In such case, the PA should enquire further as to whether:
- (a) any discussions or investigations were conducted by the reporting accountants consequently; and
 - (b) the reporting accountants are aware of any material disagreements between the applicant and the previous external auditors and how such disagreements, if any, have been addressed.

10.5 Changes Subsequent to the Latest Reporting Period

- 10.5.1 The offering documents should disclose whether or not there is any significant change that has occurred, which may have a material effect on the financial position and results of the applicant since the date of the most recent audited financial statements, and where applicable, since the date of the audited interim financial statements.
- 10.5.2 The PA should assess whether there is any adverse change which has taken place or is expected to take place in the near future, in the technological, market, economic, legal or operating environment in which the applicant operates. Accordingly, there should be sufficient information in the offering documents on (a) any material changes after the date of the most recent audited financial statements, and where applicable, since the date of the audited interim financial statements and (b) the applicant's prospects in view of such changes.
- 10.5.3 In determining whether any material change has occurred, the PA may consider the following steps:
- (a) discuss the working capital statement with the applicant;
 - (b) obtain copies of, review and discuss any unaudited interim financial statements and all monthly management accounts subsequent to the date of the most recent audited financial statements, and where applicable, subsequent to the date of the audited interim financial statements included in the offering documents;
 - (c) engage the reporting accountants to perform agreed-upon procedures to provide a report on factual findings on the applicant's financial condition and performance in the period subsequent to the date of the most recent audited financial statements, and where applicable, subsequent to the accountants' report; and
 - (d) discuss with the applicant on areas of material significance to the particular applicant.

10.6 Unaudited Financial Information

- 10.6.1 The PA should make suitable enquiries on financial information included in the offering documents which are not derived from audited financial statements, including:
- (a) whether the financial information has been incorporated and the basis upon which the incorporation is conducted; and
 - (b) whether the financial information is reconcilable to the applicant's books and records from which the audited financial statements have been prepared. Where relevant, the reporting accountants should be engaged to perform agreed-upon procedures on the financial information for inclusion in its report on factual findings.
- 10.6.2 In cases where the unaudited financial information is highly material and/or the basis for the preparation of the unaudited financial information is unusual and uncertain, the disclosure of the methodology used in the preparation of the unaudited financial information in the offering documents should be considered.

10.7 Tax

- 10.7.1 The applicant is required to submit to the SC a confirmation that the submission of tax returns and settlement of tax liabilities with the tax authorities are up-to-date for the applicant, its subsidiary companies and proposed subsidiary companies. In view of the confirmation, the PA's due diligence enquiries are primarily aimed at ascertaining whether:
- (a) all material tax liabilities have been identified and addressed by the applicant;
 - (b) taxes due for payment have been paid; and
 - (c) future and deferred tax payments have been provided for.
- 10.7.2 The PA should conduct such due diligence enquiries on tax matters to the extent a reasonable non-expert could carry out such enquiries.
- 10.7.3 In conducting the due diligence enquiries, the PA may submit an information request list for the following information in respect of the Group:
- (a) information on any tax incentives which the Group enjoys or is seeking and without which the financial performance of the Group would be materially and adversely affected;
 - (b) the latest tax returns or other tax filing documents;
 - (c) a list of tax open years and a description of any claim made, pending or known in relation to each open year;

- (d) any tax audit or investigation reports; and
- (e) a list of any material disputes with taxation authorities together with details of any fines or penalties imposed.

10.7.4 The PA should enquire with the applicant's senior financial officers, external auditor and/or tax agent to identify any material issues requiring further investigation. It is not normal for the PA to conduct a detailed review of the applicant's tax returns or correspondence files, except if this is appropriate as part of any additional follow-up due diligence resulting from material issues arising. Where any material issues have been identified, the PA may consider:

- (a) reviewing all tax filings for consistency with the applicant's audited financial statements;
- (b) discussing the applicant's tax position and tax accounting with the reporting accountants and the external auditors; or
- (c) appointing a tax consultant where specific issues merit such appointment.

10.7.5 Where applicable, the PA should enquire with the applicant's management on any measures taken by the applicant, such as obtaining advice from the tax agent, to determine the tax implications of:

- (a) remittances between entities of the Group, including up-stream dividends and other remittances from subsidiaries; and
- (b) any re-organisation undertaken in preparation for the IPO.