

## Malaysia

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### New equity guidelines: RTO

The new Equity Guidelines of the Malaysian Securities Commission (SC) came into effect on August 3 2009. As a result, the SC's prior approval under section 212 of the Capital Markets and Services Act 2007 will no longer be required for many corporate proposals, save for certain substantive corporate proposals in the main market of Bursa Malaysia Securities Berhad (the Malaysian stock exchange). One area that still requires prior approval is acquisitions resulting in a significant change in business direction or policy of a listed corporation (reverse take-overs (RTO) and back-door listings).

Five scenarios that mirror substantially the earlier guidelines are set out in the definition of the new Guidelines as triggering the RTO requirements. Before the Guidelines, any acquisition of assets by a listed corporation such that any one of the percentage ratios is equal to or exceeds 100% was deemed as an acquisition that results in a significant change in the business direction or policy.

Such a rigid test resulted in many acquisition proposals being submitted to the SC even though the core business of the listed corporation had not changed. This has now been addressed by the new Guidelines and an acquisition "where the assets to be acquired are the same as those of the existing core business of the listed corporation" will no longer trigger the RTO requirements, despite the percentage ratio exceeding 100%. "Core business" is defined as "the business which provides the principal source of operating revenue or after-tax profit to a corporation and which comprises the principal activities of the corporation and its subsidiary companies". However, the determination of what an "existing core business" of a listed corporation is may not be easy in practice and prior consultations with the SC will usually be required.

Where there is a change in core business, the determination of whether the percentage ratios exceed 100% is still important. The percentage ratios are defined as the figures, expressed as a percentage, resulting from each of the

following computations:

(a) The net asset value of the assets that are the subject of the acquisition divided by the net asset value of the listed corporation;

(b) The revenue attributable to the assets that are the subject of the acquisition divided by the revenue of the listed corporation (a new ratio under the Guidelines);

(c) The after-tax profits attributable to the assets that are the subject of the acquisition divided by the after-tax profits of the listed corporation;

(d) The aggregate value of the consideration for the subject acquisition (including amounts to be assumed by the purchaser, such as the vendor's liabilities) divided by the aggregate market value of all the ordinary shares of the listed corporation; or

(e) The number of new shares issued by the listed corporation as consideration for the acquisition divided by the number of shares in the listed corporation in issue prior to the acquisition.

For parties that are attempting to structure a substantial transaction into different tranches or sub-transactions with different closing dates, it should be noted that under Practice Note 3 (Computation of Percentage Ratios) acquisition transactions from the 12 months prior to the latest transaction must be aggregated with the latest transaction if they: (a) are entered into by a listed corporation with the same person or with persons connected with one another; (b) involve the acquisition of securities or interest in one particular corporation; or (c) together lead to substantial involvement in a business activity that did not previously form a part of the listed corporation's core business.

The SC will treat a listed corporation that is proposing an RTO as if it were a new listing applicant, and such a proposal must therefore comply with the profit test requirement. With the new Guidelines, the listed corporation and the new assets (other than infrastructure project assets) must now have profit of three to five full financial years based on audited financial statements prior to submission to the SC, with an aggregate of at least RM20 million (\$5.9 million) – previously RM30 million on an uninterrupted basis – and an after-tax profit for the most recent financial year of at least RM6 million (previously RM8 million). The fulfilment of the profit requirements over the three-

to-five financial years no longer needs to be on an "uninterrupted" basis. Further, the minimum profit track record can be met via the enlarged group.

The new assets to be injected must also have a healthy financial position, with: (a) sufficient working capital for at least 12 months from the date of the circular to shareholders and listing prospectus (where offering of securities is made) and (b) positive cash flow from operating activities without accumulated losses based on its latest audited balance sheet at the time of submission to the SC.

For the SC submission and circular to shareholders, the listed corporation must provide a thorough discussion and analysis of its business, financial conditions and prospect and where applicable, those of its group based on the minimum requirements set out in Chapter 12 of the SC's Prospectus Guidelines-Equity and Debt. The pro forma financial information must deal with: (a) the consolidated income statements of the pro forma group for the last three-to-five financial years and the latest financial period (where applicable); (b) the consolidated balance sheet of the pro forma group at the last date of the financial statements; and (c) the consolidated cash flow statement of the pro forma group for the last financial year or latest financial period (where applicable) of the financial statements.

Given that an RTO is treated as a new listing, potential listing candidates may not see any incentive to enter the Malaysian capital market via this route. However, a proposed listing via an RTO may still be considered an easier route as the risk of entering the Malaysian market could be minimised and there is usually ready public spread. The greater flexibilities will hopefully encourage more acquisitions and perhaps provide a more convenient route for listing of foreign assets in Malaysia.

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