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ACCOUNTANTS: MANAGERS OF VALUE

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## FINANCIAL REPORTING STANDARDS IMPLEMENTATION COMMITTEE

### **FRSIC Consensus 13**

#### ***Expenses Permitted to be Written Off Against the Share Premium Account under Section 60 of the Companies Act, 1965***

#### **Introduction**

FRSIC Consensus 13 “Expenses Permitted to be Written Off Against the Share Premium Account under Section 60 of the Companies Act, 1965” was developed by the Financial Reporting Standards Implementation Committee (“FRSIC”) and issued by the Malaysian Institute of Accountants (“MIA” or “Institute”) on 1 September 2009.

The Consensus contained herein is issued as part of the Institute’s initiatives to promote best practices in compliance with the highest standards in financial accounting.

**FRSIC CONSENSUS 13****EXPENSES PERMITTED TO BE WRITTEN OFF AGAINST THE SHARE PREMIUM ACCOUNT UNDER SECTION 60 OF THE COMPANIES ACT, 1965.**

FRSIC Consensus is guidance issued by MIA and shall be regarded as best practice. It should be read in conjunction with the respective applicable accounting standards.

Members of MIA are expected to observe compliance to the consensus issued. In exceptional circumstances where departure is necessary, members shall be prepared to justify the departure.

FRSIC Consensus need not be applied to immaterial items. Nothing in the FRSIC Consensus is to be construed as amending or overriding the accounting standards or other statements adopted or issued by the MASB and other relevant laws.

**Background**

- 1 Section 60 sub-section (2) of the Companies Act, 1965 states that:-  
"Where a company issues shares for which a premium is received by the company whether in cash or in the form of other valuable consideration a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account call the `share premium account' and the provisions of this Act relating to the reduction of the share capital of a company shall subject to this section apply as if the share premium account were paid up share capital of the company".
- 2 Although the share premium account is treated as though it is part of the paid-up share capital of a company, it is permitted to apply the balance in the share premium account in the manner specified under Section 60 sub-section (3) of the Act, including writing off the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, any issue of shares of the company.

- 3 Equity instruments may be issued as an integral part of a corporate exercise undertaken by a company, such as an Initial Public Offering (“IPO”) in conjunction with the listing and quotation of the company on a stock exchange (“listing exercise”). On the other hand, a company may embark on a listing exercise without the issue of any new equity instruments, as in the case of an offer for sale to the public by the existing shareholders, or a combination of both. The following is a non-exhaustive list of expenses that would generally be incurred in a listing exercise:

**Professional Fees:**

- Main Adviser
- Reporting Accountants
- Solicitors
- Researcher (if applicable)
- Independent Valuer (if applicable)
- Public Relation

**Fees Paid to Regulatory Authorities:**

- Securities Commission’s perusal fee
- Bursa Malaysia Securities Berhad
  - Perusal fee
  - Initial listing fee
  - Annual listing fee
- Prospectus registration fee
- Prospectus lodgement fee
- Prospectus translation fee

**Other Expenses Incurred:**

- Incorporation of new company
- Issuing house fee
- Printing and advertising fees
- Brokerage fee
- Underwriting commission
- Placement commission
- Mailing expenses
- Stamp duty for share sale
- Stamping fee of the agreement(s)
- Analyst briefing expenses
- Prospectus launch expenses

- 4 In Malaysia, companies which had issued new shares in conjunction with a listing exercise had written off some or all of the above expenses against the share premium account.

### **The Issue**

- 5 The practice of writing off some or all of the expenses incurred in a listing exercise against the share premium account described in Paragraph 4 of this Consensus may contravene Section 60 sub-section (3) of the Act, as well as FRS 132 "Financial Instruments: Disclosure and Presentation", since some of the expenses may be deemed to be incurred for purposes other than for the issue of shares, i.e. some of the expenses are not incurred in connection with the issue of shares. Guidance is therefore needed to clarify expenses which are permitted to be written-off against the share premium account.

### **Consensus and Basis of Consensus**

- 6 The issue of new shares may form an integral part of the listing of and quotation of a company's shares on the stock exchange. Although it is commonly viewed as a single corporate exercise, in substance, however, a listing exercise may or may not involve the issue of new shares. Such corporate exercise may comprise a number of activities and transactions. The issue of new shares in conjunction with a listing exercise is an equity transaction, separate from other transactions and activities, including the listing and quotation of a company in the stock exchange, and in some cases, an offer for sale to the public by the existing shareholders (commonly known as a secondary offering).
- 7 The Committee noted the requirements of FRS 132 "Financial Instruments: Disclosure and Presentation" in relation to the recognition of transaction costs relating to equity instruments. The term "transaction costs" is used in FRS 132 with the meaning specified in FRS 139 "Financial Instruments: Recognition and Measurement", and is defined in Paragraph 9 of FRS 139 as "incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability". "Incremental costs" is defined as costs "that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument".

- 8 The Committee observed a consistency between the meaning of “transaction costs of an equity transaction” specified in FRS 132 and “the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, any issue of shares” detailed in Section 60 sub-section (3) of the Act, as they both refer to costs attributable to the issue of shares (being an equity transaction) that would not have been incurred if the company had not issued the share.
- 9 Paragraph 37 of FRS 132 requires the transaction costs of an equity transaction to be accounted for as a deduction from equity, net of any related income tax benefit, to the extent they are incremental costs directly attributable to the equity transaction that otherwise would have been avoided.
- 10 The Committee viewed that the requirements of FRS 132 Paragraph 37 complements that provided in Section 60 sub-section (3) on the application of share premium in writing off the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, any issue of shares of the company. The share premium account described in Section 60 sub-section (2) of the Act is a component of equity.
- 11 Based on the above, the Committee concluded that costs attributable to the issue of shares shall be written off against the share premium account in accordance with Section 60 sub-section (3) of the Act and FRS 132 Paragraph 37 if, and only if, it can be demonstrated that such costs are incremental costs that are directly attributable to the issue of shares that otherwise could be avoided. Where there is insufficient share premium, such transaction costs may be taken directly to retained earnings or other components of equity, where appropriate.
- 12 All other expenses which do not satisfy the criteria of transaction costs of an equity transaction shall be expensed off in the period they are incurred.
- 13 The Committee is of the view that some of the costs incurred in a listing exercise may not satisfy the criteria of transaction costs of an equity transaction, as a listing exercise may include expenses other than those which would not have been incurred if the company had not issued any new shares.
- 14 For instance, a company that is seeking to have its shares listed and quoted on a stock exchange may fulfill the listing requirements on public shareholding spread without any new issue of shares. The listing exercise in this case does not involve any equity transaction from the company’s perspective and hence, the costs incurred in its entirety do not qualify to be treated as transaction costs of an equity transaction in accordance with FRS 132, and shall accordingly be recognised in profit or loss.

- 15 Whereas, if a company issues new shares in conjunction with a listing exercise, transaction costs to be accounted for as a deduction from share premium account are those the company incurs in issuing new shares. Other activities undertaken at the same time including acquiring a stock exchange listing are not part of the equity transaction.
- 16 In regards to the observation detailed in Paragraph 3 of this Consensus, the Committee believes that listing and IPO exercise differs from one company to another, depending on the respective company's needs and circumstances. Each respective company shall use its judgment, which requires a detailed analysis to be performed on the nature of each cost item; to identify those incremental costs that are directly attributable to the issue of shares that otherwise could be avoided. Incremental costs that are directly attributable to the issue of new shares should be treated as costs of equity transactions. On the other hand, costs incurred in listing the shares on a stock exchange are not costs of equity transactions since there are no capital increase results.
- 17 The Committee also observed that certain costs are jointly related to more than one transaction. For instance, the law may require certain documents and information to be submitted to the authorities and/or to be made available for public scrutiny, and requirements could be applicable in either of the activities or transactions constituting the corporate exercise scheme. Hence, such costs are jointly related to more than one transaction (e.g. concurrent offering of new shares and a stock exchange listing of the entire issued share capital) and should be allocated to those transactions using a basis of allocation that is rational and consistent with similar transactions. The allocated costs shall be taken to the share premium account or expensed-off in the period they are incurred, as appropriate.

**Issuance Date of this Consensus**

- 18 This Consensus is issued on 1 September 2009.

**References**

Companies Act, 1965

FRS 132 "Financial Instruments: Disclosure and Presentation"

FRS 139 "Financial Instruments: Recognition and Measurement"