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**APPENDIX 2****QUESTIONS AND ANSWERS****AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS  
RELATING TO DIRECTOR APPOINTMENT, INDEPENDENCE & MISCELLANEOUS CHANGES****CHAPTER 1 - DEFINITIONS AND INTERPRETATION****1.2 Definition of “independent director”**

- (i) Is there a difference between the definition of “officer” in paragraphs (b) and (d) of the said definition of “independent director” in Chapter 1 of the Main LR (“the said definition”)?

Yes. For the purpose of paragraph (b) of the said definition, “officer” has the meaning set out in section 2 of the Companies Act 2016 (e.g. director, secretary or employee of a corporation) but excludes a director who has served as an independent director of an applicant, a listed issuer or any one or more of its related corporations for a cumulative period of less than 12 years, whereas for the purpose of paragraph (d) of the said definition, “officer” has been defined in paragraph 1.01 of the Main LR to be the chief executive, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of ~~an~~the applicant, a listed issuer or its related corporation, by whatever name called.

- (ii) Mr Y is currently a non-executive director of C Bhd, a listed issuer. Can Mr Y subsequently be designated as an independent director of C Bhd?

Mr Y can only be designated as an independent director -

- after he observes a cooling-off period of 3 years as prescribed in paragraph (b)<sup>1</sup> of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

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<sup>1</sup> Paragraph (b) of the said definition stipulates that an independent director is one who is not, and has not been within the last 3 years, an officer (~~except as an independent director~~) of the applicant, listed issuer or any related corporation of such applicant or listed issuer (each corporation is referred to as the “said Corporation”). For this purpose, “officer” has the meaning given in section 2 of the Companies Act 2016 but excludes a director who has served as an independent director in any one or more of the said Corporations for a cumulative period of less than 12 years.

- (iii) Would an independent director of a subsidiary of a listed issuer, who is proposed to be appointed as an independent director of such listed issuer, be disqualified from acting as an independent director of such listed issuer pursuant to paragraph (b) of the said definition?

No, an independent director of a subsidiary will not be disqualified from acting as an independent director of such listed issuer pursuant to paragraph (b) of the said definition if he or she has served the subsidiary or any other related corporation of such listed issuer for a cumulative period of less than 12 years.

- (xiv) Paragraph (h) of the said definition stipulates that an independent director must be one who has not served as an independent director in any one or more of the said Corporations for a cumulative period of more than 12 years from the date of his or her first appointment as an independent director. How is the 12-year period computed?

Paragraph (h) of the said definition seeks to address the issues of entrenchment, familiarity and dependency with the management of any said Corporation which affects the “independence” of a director. As such, in computing the 12-year period, a person’s tenure as independent director in all the said Corporations within the listed issuer group will be aggregated during the same service period, irrespective of the number of directorships held within the said Corporations. The table below sets out examples illustrating this:

<u>No.</u>	<u>Illustrations</u>	<u>Tenure of service</u>
<u>(a)</u>	<u>Mr. A serves as an independent director in the -</u> <ul style="list-style-type: none"> <li><u>• listed issuer from 1 January 2023 - 31 December 2025 (3 years); and</u></li> <li><u>• listed subsidiary from 1 January 2027 - 31 December 2029 (3 years).</u></li> </ul>	<u>His total period of service is 6 years.</u>
<u>(b)</u>	<u>Mr. B serves as an independent director in both the listed issuer and its listed subsidiary at the same time from 1 January 2023 - 31 December 2025 (3 years).</u>	<u>The period of service is 3 years.</u>
<u>(c)</u>	<u>Mr C serves as an independent director in the -</u> <ul style="list-style-type: none"> <li><u>• listed issuer from 1 January 2023 - 31 December 2025 (3 years);</u></li> <li><u>• listed subsidiary I from 1 January 2024 - 31 December 2025 (2 years); and</u></li> <li><u>• listed subsidiary II from 1 January 2025 - 31 December 2027 (3 years).</u></li> </ul>	<u>The period of service is 5 years (from 1 January 2023 - 31 December 2027).</u>

<u>No.</u>	<u>Illustrations</u>	<u>Tenure of service</u>
<u>(d)</u>	<ul style="list-style-type: none"> <li data-bbox="488 338 1065 426">• <u>Mr. D serves as an independent director in X Berhad (a listed issuer) from 1 January 2023 - 31 December 2025 (3 years).</u></li> <li data-bbox="488 457 1065 546">• <u>Mr. D is also an independent director in Y Bhd from 1 January 2024 - 31 December 2027 (4 years).</u></li> <li data-bbox="488 577 1065 611">• <u>Y Bhd is a listed subsidiary of X Berhad.</u></li> <li data-bbox="488 642 1065 709">• <u>On 1 January 2027, X Berhad disposes all of its equity interests in Y Bhd.</u></li> </ul>	<p data-bbox="1089 338 1442 575"><u>The period of service is 4 years (1 January 2023 - 31 December 2026 i.e. up until Y Bhd ceases to be a subsidiary of X Berhad, irrespective of whether Mr. D continues to be a director in Y Bhd).</u></p>

(xv) Mr. E served as an independent director in K Berhad (a listed issuer) from 1 June 2012 to 30 May 2015 (3 years). After leaving K Berhad for 2 years, Mr. E was appointed as an independent director in L Bhd (a subsidiary of K Berhad) from 1 June 2017 to 30 May 2021 (4 years).

(a) If Mr. E is appointed as an independent director of K Berhad on 1 June 2023 after an absence of 2 years from the listed issuer group, how many years has Mr. E served as an independent director? Is his tenure as independent director refreshed from 1 June 2023?

Computation of the 12-year period in paragraph (h) of the said definition starts from the first day a person is appointed as an independent director and is calculated based on such person's total years of service on a cumulative basis. The 12-year period will only be refreshed after such person has left the board and observed the cooling off period of at least 3 years as prescribed in paragraph (b) of the said definition.

Based on the facts above, computation of Mr. E's tenure continues from his previous years of service as independent director in the listed issuer group. Prior to his latest appointment as an independent director in K Berhad on 1 June 2023, Mr. E had served as an independent director in the listed issuer group for 7 years. Hence, he would be serving his 8<sup>th</sup> year as an independent director of K Berhad if he is appointed on 1 June 2023.

(b) If Mr. E is appointed as an independent director of K Berhad on 1 June 2024 after an absence of 3 years from the listed issuer group, is his tenure as independent director refreshed?

Yes, Mr. E's 12-year tenure as an independent director is refreshed from 1 June 2024.

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(xvi) Mr. F serves as an independent director in P Bhd (a listed issuer) from 1 January 2020 - 31 December 2022 (3 years). On 1 January 2023, he is re-designated as a non-independent director in M Sdn Bhd, an unlisted subsidiary of P Bhd, and serves for another 3 years. When can Mr. F be appointed as an independent director in P Bhd or any related corporation of P Bhd? Does his tenure start afresh or continue from his previous years of service as an independent director?

Mr. F can only be considered for appointment as an independent director in P Bhd or any related corporations of P Bhd after serving a cooling-off period of 3 years as prescribed in paragraph (b) of the said definition and if he meets the other independence criteria stipulated in the said definition. In such instance, Mr. F's 12-year tenure as an independent director would start afresh from the date of his appointment in 2029.

(xvii) Mr. G is currently an executive director of Q Bhd, a listed issuer. Can Mr. G subsequently be designated as an independent director of Q Bhd?

Mr. G can only be designated as an independent director -

- after he observes a cooling-off period of 3 years as prescribed in paragraph (b) of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

(xviii) Can an independent director who has served on the board for more than 12 years be allowed to remain on the board?

Yes, such person may remain on the board only if he or she is re-designated as a non-independent director.

(xix) An independent director retires after serving for 12 years on the board of a listed issuer. Can the listed issuer subsequently appoint such person again as its independent director and if so, does the person's tenure as independent director start afresh?

The listed issuer may appoint such person as an independent director of the listed issuer provided that the following are complied with:

- (a) such person has served a cooling-off period of at least 3 years as prescribed in paragraph (b) of the said definition;
- (b) such person satisfies all the independence criteria in the said definition; and
- (c) the listed issuer must justify the appointment of such person as an independent director, and explain why there is no other eligible candidate, in the statement accompanying the notice of general meeting and immediate announcement on the appointment of such director.

In such instance, the person's 12-year tenure as an independent director in the listed issuer will start afresh from the date of his latest appointment.

Notwithstanding the above, the listed issuer is strongly encouraged to seek other suitable candidates for the independent director position.

*[End of Chapter 1]*

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**CHAPTER 15 - CORPORATE GOVERNANCE*****Directors***

- 15.1 To calculate the number of independent directors required under paragraph 15.02(1)(a) of the Main LR, should the listed issuer take into account alternate directors?

No. The listed issuer must not take into account alternate directors for the purpose of calculating the requisite number of independent directors in order to comply with paragraph 15.02(1)(a) of the Main LR.

- 15.3 A listed issuer has 10 directors on board. However, there are only 3 independent directors. Does the listed issuer comply with paragraph 15.02(1)(a) of the Main LR or does the listed issuer have to appoint another independent director?

Yes, the listed issuer would be in compliance with paragraph 15.02(1)(a) of the Main LR as the number nearest to 1/3rd shall apply, which in this scenario would be 3 independent directors.

**Fit and proper policy**

- 15.18A Is there any guidance to assist a listed issuer in formulating a fit and proper policy for the appointment and re-election of directors of the listed issuer and its subsidiaries?**

A listed issuer may refer to the Corporate Governance Guide (4<sup>th</sup> Edition) for guidance on the criteria and considerations that underpin a fit and proper policy for directors. A copy of the said Corporate Governance Guide is available at <https://bursasustain.bursamalaysia.com/droplet-details/resources/corporate-governance-guide-4th-edition>.

***Nominating committee***

- 15.19 Paragraph 15.08A(3) of the Main LR states that a listed issuer must provide in its annual report, a statement about the activities of its nominating committee in the discharge of its duties for the financial year. Such statement must include **the application of the listed issuer's fit and proper policy in the nomination and election of its directors**, how the requirements set out in paragraph 2.20A of the Main LR are met and contain the following information:

- (a) the policy on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer;
- (b) the board nomination and election process of directors ~~and criteria used by the nominating committee in the selection process~~; and
- (c) the assessment undertaken by the nominating committee in respect of **the performance of** its board, committees and individual directors together with the criteria used for such assessment.

**(i) What is a listed issuer expected to disclose in the “application of the listed issuer’s fit and proper policy in the nomination and election of its directors”?**

In disclosing the “application of the listed issuer’s fit and proper policy in the nomination and election of its directors”, the listed issuer must ensure that the disclosure is sufficiently detailed and informative so that shareholders and investors have clarity and insights as to why the directors are selected and appointed to the board. In this regard, the listed issuer is expected to discuss -

- the overall desired board composition covering, among others, the combination of skill sets, diversity, tenure etc as reflected in its fit and proper policy;
- the specific justifications for appointing or re-electing each individual director during the financial year by taking into account the desired board composition above, as well as factors justifying the nomination or re-election of a director, including the qualification and relevant work experience (in the case of a nomination) or the past contribution or performance of the director (in the case of re-election).

The listed issuer must avoid providing generic, boilerplate or process-centric statements that do not add much value to shareholders. For example, “each director appointed or re-elected are in line with the listed issuer’s fit and proper policy” or “in nominating a candidate, the nominating committee has taken into account the listed issuer’s fit and proper policy and is satisfied that the candidate is suitable for the company”.

**(ii) Can a listed issuer publish the information required under sub-paragraph (a), (b) and (c) above on its website instead of the annual report?**

A listed issuer must publish the ~~above information, statement about the activities of its nominating committee containing the prescribed information under paragraph 15.08A(3) of the Main LR,~~ in its first annual report ~~issued after the effective date of paragraph 15.08A(3).~~ In respect of the subsequent financial years, while the listed issuer may publish ~~such the~~ information under sub-paragraphs (a) and (b) on its website provided that the requirements under paragraph 9.25(1)<sup>2</sup> of the Main LR are complied with, information on the application of the fit and proper policy as well as the assessment of performance of the board, committee and individual directors undertaken by the nominating committee during the financial year, must be disclosed in annual report.

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<sup>2</sup> Paragraph 9.25(1) of the Main LR stipulates that a listed issuer may publish information set out in Part A of Appendix 9C on its website if such information has been previously announced or disclosed to shareholders pursuant to the Main LR, or remains substantially unchanged from year to year provided that the listed issuer discloses in the annual report, the address of its website and the place on its website where the information can be accessed.

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**Audit committee**

15.27B Pursuant to paragraph 15.15(3)(d) of the Main LR, a listed issuer must disclose in the audit committee report, a *summary of work* of the audit committee in the discharge of its functions and duties for the financial year, and *how the audit committee has met its responsibilities*. What is the information that a listed issuer is expected to disclose under this requirement?

When describing the summary of work of the audit committee in the discharge of its functions and duties, and how the audit committee has met its responsibilities, a listed issuer must be mindful that the purpose is to provide shareholders with an insight on how the audit committee performed its functions during the financial year, to, among others, safeguard the integrity of financial reporting.

Hence, the listed issuer is expected to discuss the areas over which the audit committee exercised its oversight, and explain with sufficient details what it did to execute its oversight responsibilities.

For example, the listed issuer should, in relation to the audit committee's role to oversee financial reporting, include details such as -

- the dates when the audit committee met with the external (and internal) auditors without the presence of management and the topics discussed;
- identified new financial reporting standards and other standards that were discussed and which may have had a significant impact on the listed issuer's financial statements;
- the review undertaken on matters relating to management judgments and estimates;
- the processes and controls that were in place for effective and efficient financial reporting and disclosures under the financial reporting standards.

With regards to the audit committee's role to review any related party transactions ("RPTs") and conflict of interest ("COI") situations that may arise within the listed issuer or group, the listed issuer should include -

- information on the framework in place for the purposes of identifying, evaluating, approving, reporting and monitoring such COI situations and transactions; and
- the key considerations taken by the audit committee when it reviews the RPTs or COI situations.

The listed issuer must avoid providing a generic or boilerplate statement that fails to reflect the breadth and depth of the important activities undertaken by the audit committee. It should also avoid merely re-stating its terms of reference or charter, which is typically static information that should be made available on the listed issuer's website.



The listed issuer and its audit committee may be further guided in disclosing the summary of the audit committee's work as required under paragraph 15.15(3)(d) of the Main LR by referring to the ~~Corporate Governance Guide: Towards Boardroom Excellence (2<sup>nd</sup>-4<sup>th</sup> Edition)<sup>3</sup> and the 2015 Analysis of Corporate Governance Disclosures in Annual Reports<sup>4</sup>.~~

**15.27C What is a listed issuer expected to disclose in the summary of the work of the internal audit function under paragraph 15.15(3)(e) of the Main LR?**

Similar to the above, a listed issuer should provide information which enables shareholders to have an insight into how the internal audit function discharged its roles and responsibilities during the financial year. With such information, shareholders are able to understand better the effectiveness and efficiency of the governance, risk management and internal control processes in place. The disclosure would also assist shareholders in assessing whether the audit committee has carried out its oversight duties over the internal audit, effectively.

In this regard, the listed issuer should provide information on the key specific areas that were audited and other information such as the resources made available to the internal audit function as well as the internal audit reporting and communication flow i.e. what was done with the internal audit report and whether concerns, if any, identified by internal audit in its report were addressed, during the financial year. The listed issuer should avoid providing generic statements about the general responsibilities of the internal audit function or its terms of reference which do not inform shareholders of the actual work performed by the internal audit function.

The listed issuer and its audit committee may be further guided in disclosing the summary of the internal audit function's work as required under 15.15(3)(e) of the Main LR by referring to the ~~Corporate Governance Guide: Towards Boardroom Excellence (2<sup>nd</sup>-4<sup>th</sup> Edition)<sup>3</sup> and the 2015 Analysis of Corporate Governance Disclosures in Annual Reports.~~

*Corporate Governance Disclosures*

**15.30C If a listed issuer has adopted and disclosed Step Up practice ~~4.35.4~~ or ~~7.38.3~~ of the MCCG in its CG Report, is the listed issuer still required to disclose the application of Practice ~~4.25.3~~ or ~~7.28.2~~?**

No. The listed issuer is only required to select the dropdown option "Not applicable - Step Up ~~4.35.4~~ adopted" for Practice ~~4.25.3~~ or "Not applicable - adopted Step Up ~~7.38.3-adopted~~" for Practice ~~7.28.2~~, as the case may be, in the CG Report.

**[End of Appendix 2]**

<sup>3</sup> This is available at:  
<https://bursasustain.bursamalaysia.com/droplet-details/resources/corporate-governance-guide-4th-edition>

<sup>4</sup> This is available on Bursa Malaysia's website at:  
<http://www.bursamalaysia.com/misc/system/assets/16493/2015%20Analysis%20of%20Corporate%20Governance%20Disclosures%20in%20Annual%20Reports%20-%20Report.pdf>

<sup>5</sup> This is available at:  
<https://bursasustain.bursamalaysia.com/droplet-details/resources/corporate-governance-guide-4th-edition>