

APPENDIX 2

QUESTIONS AND ANSWERS

AMENDMENTS TO BURSA MALAYSIA SECURITIES BERHAD ACE 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 sub-Rules (b) and (d) of the said definition of “independent director” in Chapter 1 of the ACE LR (“the said definition”)?

Yes. For the purpose of sub-Rule (b) of the said definition, “officer” shall have 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 corporation or any one or more of its related corporations for a cumulative period of less than 12 years, whereas for the purpose of sub-Rule (d) of the said definition, “officer” has been defined in Rule 1.01 of the ACE 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 corporation or its related corporation, by whatever name called.

- (ii) *Mr Y is currently a non-executive director of C Bhd, a listed corporation. 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 sub-Rule (b)¹ of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

¹ Sub-Rule (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 corporation or any related corporation of such applicant or listed corporation (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 corporation, who is proposed to be appointed as an independent director of such listed corporation, be disqualified from acting as an independent director of such listed corporation pursuant to sub-Rule (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 corporation pursuant to sub-Rule (b) of the said definition if he or she has served the subsidiary or any other related corporation of such listed corporation for a cumulative period of less than 12 years.

- (xiv) Sub-Rule (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?

Sub-Rule (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 corporation 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"> <u>• listed corporation from 1 January 2023 - 31 December 2025 (3 years); and</u> <u>• listed subsidiary from 1 January 2027 - 31 December 2029 (3 years).</u> 	<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 corporation 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"> <u>• listed corporation from 1 January 2023 - 31 December 2025 (3 years);</u> <u>• listed subsidiary I from 1 January 2024 - 31 December 2025 (2 years); and</u> <u>• listed subsidiary II from 1 January 2025 - 31 December 2027 (3 years).</u> 	<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"> • <u>Mr. D serves as an independent director in X Berhad (a listed corporation) from 1 January 2023 - 31 December 2025 (3 years).</u> • <u>Mr. D is also an independent director in Y Bhd from 1 January 2024 - 31 December 2027 (4 years).</u> • <u>Y Bhd is a listed subsidiary of X Berhad.</u> • <u>On 1 January 2027, X Berhad disposes all of its equity interests in Y Bhd.</u> 	<p><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 corporation) 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 again on 1 June 2023 after an absence of 2 years from the listed corporation 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 sub-Rule (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 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 sub-Rule (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 corporation 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 corporation group for 7 years. Hence, he would be serving his 8th 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 corporation 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.

(xvi) Mr. F serves as an independent director in P Bhd (a listed corporation) 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 corporation of P Bhd after serving a cooling-off period of 3 years as prescribed in sub-Rule (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 corporation. 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 sub-Rule (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 corporation. Can the listed corporation subsequently appoint such person again as its independent director and if so, does the person's tenure as independent director start afresh?

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

- (a) such person has served a cooling-off period of at least 3 years as prescribed in sub-Rule (b) of the said definition;
- (b) such person satisfies all the independence criteria in the said definition; and
- (c) the listed corporation 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 corporation will start afresh from the date of his latest appointment.

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

[End of Chapter 1]

CHAPTER 15 - CORPORATE GOVERNANCE**Directors**

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

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

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

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

Fit and proper policy

- 15.19A Is there any guidance to assist a listed corporation in formulating a fit and proper policy for the appointment and re-election of directors of the listed corporation and its subsidiaries?**

A listed corporation may refer to the Corporate Governance Guide (4th 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

- 15.20 Rule 15.08A(3) of the ACE LR states that a listed corporation 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 corporation's fit and proper policy in the nomination and election of its directors, how the requirements set out in Rule 2.20A of the ACE 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 corporation;
- (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 corporation expected to disclose in the “application of the listed corporation’s fit and proper policy in the nomination and election of its directors”?

In disclosing the “application of the listed corporation’s fit and proper policy in the nomination and election of its directors”, the listed corporation 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 corporation 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 corporation 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 corporation’s fit and proper policy” or “in nominating a candidate, the nominating committee has taken into account the listed corporation’s fit and proper policy and is satisfied that the candidate is suitable for the company”.

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

A listed corporation must publish the ~~above information~~ statement about the activities of its nominating committee containing the prescribed information under Rule 15.08A(3) of the ACE LR, in its first annual report ~~issued after the effective date of Rule 15.08A(3)~~. In respect of the subsequent financial years, while the listed corporation may publish ~~such the~~ information under sub-Rules (a) and (b) on its website provided that the requirements under Rule 9.25(1)² of the ACE 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 the annual report.

² Rule 9.25(1) of the ACE LR stipulates that a listed corporation 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 ACE LR, or remains substantially unchanged from year to year provided that the listed corporation discloses in the annual report, the address of its website and the place on its website where the information can be accessed.

Audit committee

15.28B Pursuant to Rule 15.15(3)(d) of the ACE LR, a listed corporation 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 corporation 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 corporation 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 corporation 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 corporation 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 corporation'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 corporation or group, the listed corporation 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 corporation 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 corporation's website.

The listed corporation and its audit committee may be further guided in disclosing the summary of the audit committee's work as required under Rule 15.15(3)(d) of the ACE LR by referring to the ~~Corporate Governance Guide: Towards Boardroom Excellence (2nd-4th Edition)³ and the 2015 Analysis of Corporate Governance Disclosures in Annual Reports⁴.~~

15.28C What is a listed corporation expected to disclose in the summary of the work of the internal audit function under Rule 15.15(3)(e) of the ACE LR?

Similar to the above, a listed corporation 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 corporation 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 corporation 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 corporation and its audit committee may be further guided in disclosing the summary of the internal audit function's work as required under Rule 15.15(3)(e) of the ACE LR by referring to the ~~Corporate Governance Guide: Towards Boardroom Excellence (2nd-4th Edition)⁵ and the 2015 Analysis of Corporate Governance Disclosures in Annual Reports.~~

Corporate Governance Disclosures

15.31C If a listed corporation has adopted and disclosed Step Up practice 4.35.4 or 7.38.3 of the MCCG in its CG Report, is the listed corporation still required to disclose the application of Practice 4.25.3 or 7.28.2?

No. The listed corporation 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]

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

⁴ 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>

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