
**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD ACE MARKET LISTING REQUIREMENTS
(As at 26 May 2023)**

CHAPTER 10 – TRANSACTIONS

Definition of “transaction”

10.1 Is the definition of "transaction" the same for both non-related party and related party transactions?

No, there is a different definition of "transaction" in the context of non-related party transactions and related party transactions respectively.

In the context of non-related party transactions, it means acquisitions or disposals of assets by a listed corporation or its subsidiaries and includes any of the following actions undertaken by the listed corporation:

- disposing of; or
- granting, accepting, exercising or discharging an option or any other right or obligation, present or future, conditional or unconditional, to dispose of,

the listed corporation's developmental rights, all or substantially all its rights, benefits, or control in an asset. However, it excludes transactions of a revenue nature in the ordinary course of business.

In the context of related party transactions, it includes, acquisitions, disposals or leasing of assets, establishment of joint ventures, provision of financial assistance, provision or receipt of services or any business transaction or arrangement entered into by a listed corporation or its subsidiaries.

10.2 For the purpose of Part D of Chapter 10 of the ACE LR, would an acquisition or disposal of property by a property development corporation be considered as being “in the ordinary course of business”?

No, Bursa Securities does not consider such transaction as being in the ordinary course of business of a property development corporation. However, where the property development corporation disposes of property which has been developed in the ordinary course of its business as a property developer, the listed corporation concerned would be excluded from complying with the provisions under Part D of Chapter 10. An example would be the sale of completed link houses, bungalows or bungalow lots by the property development corporation.

10.3 Is the receipt of financial assistance by a listed corporation or its subsidiaries from a major shareholder or director considered a “transaction” for the purpose of Part E, Chapter 10 of the ACE LR?

No, the receipt of financial assistance by a listed corporation or its subsidiaries from a major shareholder or director is not “provision of financial assistance” as envisaged under Rule 10.02(j) and therefore, it is not a “transaction” for the purposes of Part E of Chapter 10 of the ACE LR.

- 10.4** *A Bhd*, a listed corporation entered into a transaction with *B Sdn Bhd* to purchase shares of a company. *A Bhd* paid a deposit of RM10 million for the said purchase. *A Bhd* obtained shareholder approval for the said purchase. Subsequently, the said purchase was aborted. Instead, *B Sdn Bhd* offered land of equivalent market value, in settlement of the deposit of cash to be refunded. Will the acceptance of the land in settlement of the debt owed by *B Sdn Bhd* be considered as a new transaction, which may trigger the obligations set out in Chapter 10 of the ACE LR?

Yes, the acceptance of the land in settlement of the debt owed by *B Sdn Bhd* to *A Bhd* will be considered a new transaction which may trigger the obligations set out in Chapter 10 of the ACE LR.

- 10.5** What amounts to an “interest” as referred to in the definition of related party transaction set out in Rule 10.02(i) of the ACE LR?

Interest includes directorships, shareholdings (direct or deemed), commissions or such other benefits received or derived from the transaction.

- 10.6** Are outstanding receivables of a related party deemed to be financial assistance by a listed corporation?

“Financial assistance” is regarded as a transaction for purposes of Part E of Chapter 10 and is defined to include forgiving a debt or releasing or neglecting to enforce a financial obligation of another. In this regard, outstanding receivables of a related party which are written off or neglected to be enforced would be regarded as a related party transaction.

General requirements

- 10.7** Where the listed corporation and its subsidiary are both listed on the Official List of Bursa Securities and the listed subsidiary enters into a transaction that requires an announcement to be made pursuant to Chapter 10 of the ACE LR, is the announcement to be made by both the listed corporation and its listed subsidiary?

No, only the listed subsidiary is required to make the announcement pursuant to Chapter 10 of the ACE LR. The listed corporation would not be required to make the announcement.

- 10.8** Similarly, if the listed subsidiary aforesaid enters into a transaction that requires, amongst others, shareholder approval to be obtained, pursuant to Chapter 10 of the ACE LR, will the listed corporation also be required to obtain the shareholder approval under the ACE LR?

No, only the listed subsidiary is required to obtain shareholder approval pursuant to Chapter 10 of the ACE LR.

Computation of percentage ratio**10.9 If the transaction is entered into, not by the listed corporation but by its subsidiary, how are the percentage ratios referred to in Rule 10.02(g) of the ACE LR applied?**

In applying the percentage ratios (other than the percentage ratio in Rule 10.02(g)(iii)¹ of the ACE LR), the listed corporation should take into account its interest in the subsidiary in question when computing the numerator. For example, *X Bhd* a listed corporation, has a 60% owned subsidiary, *Y Sdn Bhd*. *Y Sdn Bhd* acquires a company which has a net asset of RM100 million. The calculation of the percentage ratio in respect of Rule 10.02(g)(i) of the ACE LR should be as follows:

60% x RM100 million

Net assets of *X Bhd* on consolidated basis

In the case of the percentage ratio in Rule 10.02(g)(iii) of the ACE LR, the total consideration paid will form the numerator. For example, *A Bhd*, a listed corporation, has a 60% owned subsidiary, *B Sdn Bhd*. *B Sdn Bhd* acquires a piece of land for the consideration of RM10 million. The calculation of the percentage ratio in respect of Rule 10.02(g)(iii) should be as follows:

RM10 million

Net assets of *A Bhd* on consolidated basis

This is clarified in Rule 10.03(4A) of the ACE LR.

10.10 Does a listed corporation need to exclude treasury shares when computing the percentage ratios of a transaction?

A listed corporation must exclude treasury shares in computing the -

- (a) total number of shares previously in issue under Rule 10.02(g)(iv); and
- (b) market value of all the ordinary shares of the listed corporation under Rule 10.02(g)(v),

when determining the percentage ratio of a transaction under Chapter 10 of the ACE LR.

10.11 If the application of a prescribed percentage ratio to a transaction results in an anomalous result (for example, a negative figure), must it still be applied?

No, such percentage ratio may be disregarded in such circumstances.

¹ Rule 10.02(g)(iii) of the ACE LR defines "percentage ratios" to mean the figures, expressed as a percentage, resulting from the aggregate value of the consideration given or received in relation to the transaction, compared with the net assets of the listed corporation.

10.12 *XY Bhd*, a listed corporation has positive net assets. It enters into a transaction to acquire a piece of land from *A* (“Land Transaction”), an unrelated party for RM1 million which is payable by *XY Bhd* wholly in cash. Pursuant to Rule 10.02(g) of the ACE LR, the only applicable percentage ratio of the said transaction which exceeds 5% is Rule 10.02(g)(v) (“Market Cap Test”). Is *XY Bhd* required to comply with the relevant provisions of Part D of Chapter 10 of the ACE LR? Similarly, will *XY Bhd* be required to comply with the relevant provisions of Part D of Chapter 10 of the ACE LR if the parties agree that the consideration for the Land Transaction be in the form of *XY Bhd*’s shares?

Pursuant to Rule 10.03(8) of the ACE LR, if *XY Bhd* pays for the land in cash, the Market Cap Test will not be applicable. As such, *XY Bhd* will not be required to comply with Part D of Chapter 10 because all the other applicable percentage ratios are less than 5%.

However, if the payment for the land is settled by issuance of *XY Bhd*’s new listed shares (partly or wholly) and the percentage ratio of the same pursuant to the Market Cap Test is 5% or more, *XY Bhd* will be required to comply with the relevant provisions of Part D, Chapter 10 of the ACE LR.

10.13 The following question is based on similar facts as set out in Question 10.12 above, except that in this instance, *XY Bhd* has negative net assets. All the relevant percentage ratios are found to be inapplicable or produce anomalous results except for the Market Cap Test. In light of this, will *XY Bhd* be required to comply with Part D, Chapter 10 of the ACE LR in relation to the Land Transaction where *XY Bhd* pays for the land in cash?

Pursuant to Rule 10.03(8) of the ACE LR, the Market Cap Test will only be applicable if –

- (a) the Land Transaction involves consideration in the form of listed shares; or
- (b) all the other percentage ratios produce anomalous results or are inapplicable.

In this respect, as all the other relevant percentage ratios are inapplicable or produce anomalous results, even if *XY Bhd* pays for the land wholly in cash, *XY Bhd* will have to ensure that the relevant provisions of Part D, Chapter 10 of the ACE LR are complied with.

10.14 In relation to any acquisition or disposal of equity interest in a corporation, when will the total assets ratio provided in Rule 10.02(g)(vi) of the ACE LR (“Total Assets Ratio”) be applicable?

Pursuant to Rule 10.03(9) of the ACE LR, in relation to any acquisition or disposal of equity interest in a corporation, the Total Assets Ratio is applicable –

- (a) if the acquisition will result in such corporation’s total asset being consolidated into the group accounts after the acquisition; or
- (b) in the disposal where such corporation’s total asset has been consolidated in the group accounts before the disposal.

10.15 For the purposes of computation of indicators of materiality under Chapter 10 of the ACE LR, must a listed corporation submit a copy of the external auditors' review report to Bursa Securities?

Yes, a copy of the external auditors' review report must be furnished by the listed corporations to Bursa Securities where the figures used such as in the case of total assets, net assets, net book value of assets, net profits and cost of investment are based on the published or announced interim or unaudited financial report which must be the latest.

Valuation

10.16 What is considered as real estate for the purpose of determining whether the requirement for a valuation under Rule 10.04 of the ACE LR is applicable?

For the purpose of determining whether the requirement of Rule 10.04 of the ACE LR is applicable, real estate means land and all things that are a natural part of the land as well as all things attached to the land both below and above the ground and includes the rights, interests and benefits related to the ownership of the real estate.

Example of the rights, interests and benefits over real estate includes development rights, timber concession, mining concession etc.

10.17 Rule 10.04 of the ACE LR requires a valuation to be conducted when a transaction involves an acquisition or disposal of any real estate, and when the percentage ratio of the transaction is 5% or more for a related party transaction or 25% and more for a transaction falling under Part D of Chapter 10 of the ACE LR.

What will be considered as a transaction which "involves an acquisition or disposal of any real estate"?

These will be the acquisition or disposal of real estate or corporation(s) with real estate.

The following table further clarifies the requirement on valuation report pursuant to Rule 10.04 of the ACE LR:

	Transaction which percentage ratio is –	Valuation required to be conducted and valuation report submitted to Bursa?
	<ul style="list-style-type: none"> ▪ $\geq 25\%$ pursuant to Part D (Transaction), Chapter 10 of the ACE LR; or ▪ $\geq 5\%$ pursuant to Part E (Related Party Transaction), Chapter 10 of the ACE LR 	
(i)	Acquisition or disposal of <u>a real estate</u>	Yes

**Chapter 10 Transactions
[Questions & Answers]**

	Transaction which percentage ratio is – <ul style="list-style-type: none"> ▪ $\geq 25\%$ pursuant to Part D (Transaction), Chapter 10 of the ACE LR; or ▪ $\geq 5\%$ pursuant to Part E (Related Party Transaction), Chapter 10 of the ACE LR 	Valuation required to be conducted and valuation report submitted to Bursa?
(ii)	Acquisition or disposal of a <u>property development²/ property investment³ corporation</u>	Yes, the valuation report must be submitted for all material real estate.
(iii)	Acquisition or disposal of a corporation (other than defined in (ii)) which owns real estate	Yes, only if the real estate has been revalued and the revalued amount is used as the basis in determining the purchase or disposal consideration

10.18 In an acquisition or disposal of a manufacturing corporation by a listed corporation, a revaluation on all the manufacturing corporation's lands, plant and machinery for the purpose of determining the purchase consideration of the said corporation has been carried out. In this situation, is a submission of a valuation report to Bursa Securities required?

Pursuant to Rule 10.04 of the ACE LR, a valuation report only needs to be submitted for the real estate. The listed corporation need not submit a valuation report on the plant and machinery.

10.19 A Sdn Bhd revalued its real estate 5 years ago. PLC B plans to acquire A Sdn Bhd. Pursuant to Rule 10.04 of the ACE LR, such acquisition requires a valuation report to be submitted to Bursa Securities. Can PLC B use the revaluation report conducted 5 years ago by A Sdn Bhd, for the purpose of submission to Bursa Securities under Rule 10.04 of the ACE LR?

No, pursuant to Rule 10.04(2)(b) of the ACE LR, PLC B must ensure that the date of valuation which forms the basis of the valuation certificate included in the circular is not more than 6 months before the date of circular issued to shareholders.

² "property development corporation" means a corporation whose core business is in –

- (a) development or redevelopment of real estate; or
- (b) real estate with development potential,

and includes those rights to develop pursuant to a joint venture agreement, privatisation agreement or some other forms of joint arrangement.

³ "property investment corporation" means a corporation whose core business is in –

- (a) the holding of investment properties for letting and retention as investments; or
- (b) the purchase of investment properties for subsequent sale.

10.20 When a valuation report is required, must the listed corporation submit the valuation report to the SC or Bursa Securities?

A valuation report required under Rule 10.04 of the ACE LR must be submitted to Bursa Securities. A listed corporation need not submit the report to the SC.

10.21 Must a valuer who is required to submit an undertaking to Bursa Securities under Rule 10.04 of the ACE LR, file an undertaking each time it acts for a listed corporation?

No, a valuer is required to provide Bursa Securities its letter of undertaking to comply with the ACE LR once. The same undertaking will be applicable for all listed corporations which the valuer acts for.

Related party transactions**10.22 Must a listed corporation immediately announce all related party transactions?**

A listed corporation must immediately announce all the following related party transactions:

- (a) related party transactions which do not fall within the category of recurrent related party transaction of a revenue or trading nature and necessary for its day to day operations (“RRPT”) and -
 - (i) the value of the consideration of the transaction is RM200,000 or more; and
 - (ii) the percentage ratio of such related party transaction is 0.25% or more; and
- (b) RRPTs which are not comprised in a valid mandate from its shareholders (“Mandate”) and-
 - (i) in relation to a listed corporation with a share capital of RM60 million and above, the consideration, value of the assets, capital outlay or costs of the RRPT is RM1 million or more, or the percentage ratio of such RRPT is 1% or more, whichever is the higher; or
 - (ii) in relation to a listed corporation with a share capital of less than RM60 million, the consideration, value of the assets, capital outlay or costs of the RRPT is RM1 million or more, or the percentage ratio of such RRPT is 1% or more, whichever is the lower,

(“Prescribed Limit”).

10.23 *P Bhd*, a listed corporation enters into a sale and purchase agreement with an unrelated party, *Q Bhd* to acquire a piece of property from *Q Bhd* for RM1 million (“Land Acquisition”). In consideration of the Land Acquisition, *P Bhd* issues to *Q Bhd* 500,000 new *P Bhd*’s shares of RM1 each (“Consideration Shares”) and RM500,000 cash. The Land Acquisition is subject to conditions, including the requirement that *Company X*, a major shareholder of *P Bhd* must underwrite the sale of the Consideration Shares by *Q Bhd* subsequently (“Underwriting Arrangement”). Is the Land Acquisition a related party transaction?

Yes, as the Land Acquisition is conditional upon the Underwriting Arrangement and involves the indirect interest of a major shareholder of *P Bhd* (i.e. *Company X*), the Land Acquisition is a related party transaction.

- 10.24** *S Bhd*, a listed corporation enters into a subscription agreement with an unrelated party, *Mr A* to issue *Mr A* 50,000 new *S Bhd*'s shares of RM1 each ("New Shares"). The completion date of the subscription agreement is 6 months from 1 January 2010. On 1 April 2010, *Mr A* enters into a share sale agreement with *Mr B*, a director and a major shareholder of *S Bhd* for the sale of the New Shares ("Shares Sale Agreement"). Prior to this, *Mr B* has never had any dealings with *Mr A*. In addition, the Shares Sale Agreement was never envisaged on or before the execution of the subscription agreement between *S Bhd* and *Mr A*. On 30 April 2010, *S Bhd* and *Mr A* enter into a supplemental agreement in relation to the New Shares varying amongst others, the purchase price ("Supplemental Agreement"). Will *S Bhd* be required to comply with Part E of Chapter 10 of the ACE LR in relation to the Supplemental Agreement?

Yes, the Supplemental Agreement will be regarded as a related party transaction as it involves the indirect interest of a director and major shareholder of *S Bhd* i.e. *Mr B* and hence, *S Bhd* would be required to comply with Part E of Chapter 10.

- 10.25** *X Bhd*, a listed corporation has obtained a general mandate pursuant to Rule 10.09 of the ACE LR ("Mandate") for provision of financial assistance to its subsidiaries, which constitute related party transactions. If the actual provision of financial assistance exceeds the corresponding value or amount prescribed in the Mandate, does *X Bhd* have to make an announcement in relation to the excess amount?

Yes, pursuant to paragraph 3.4(a)(ii) of Guidance Note 8, if the actual amount of financial assistance provided exceeds the corresponding amount in the Mandate, *X Bhd* must immediately announce the same notwithstanding that the excess amount does not trigger the Prescribed Limit as referred to in Question 10.22. In addition, if the percentage ratio of the amount of financial assistance provided or rendered in excess of the value or amount prescribed in the Mandate is 5% or more, *X Bhd* must also comply with the relevant requirements of Rule 10.08 of the ACE LR.

- 10.26** In respect of a related party transaction where the percentage ratio is 5% or more but less than 25%, an independent adviser must be appointed by the listed corporation in respect of such transaction. Does the independent adviser have to provide a confirmation to Bursa Securities of its eligibility to act as an independent adviser?

No, such a confirmation by an independent adviser is not required under the ACE LR and only a general undertaking letter under Rule 2.21(1) of the ACE LR is required. However, an independent adviser must ensure its independence within the definition of independence under Rule 1.01 of the ACE LR. Under Rule 10.08(5) of the ACE LR, Bursa Securities has the discretion not to allow an independent adviser to continue to act or be appointed as an independent adviser if in its opinion, the adviser is deemed not to be independent. Bursa Securities may also take enforcement action against independent advisers who misrepresented their independence.

- 10.27** What are the duties of an interested director in relation to the related party transaction under this Chapter?

Pursuant to Rules 10.08(6) to (8) of the ACE LR, an interested director is imposed with an obligation to ensure that the board of directors is notified of the nature and extent of his interests. He must also abstain from board deliberation and voting on the relevant resolution in respect of the transaction. In addition, he must also ensure that persons connected with him also abstain from voting on the relevant resolution in respect of the transaction.

10.28 What is meant by “investee corporation” as used in Rule 10.08(11)(q) of the ACE LR?

“Investee corporation” as used in Rule 10.08(11)(q) refers to any corporation in which the listed corporation has direct or indirect shareholdings.

10.29 Does the term “another person” as used in Rules 10.08(11)(c), (g), (k), (l), (m), (n) and (o) of the ACE LR include investee corporations of the listed corporation?

Yes, “another person” includes investee corporations of the listed corporation.

10.30 What is meant by “no other interested relationship” as used in Rules 10.08(11)(c), (l), (m), (n) and (o) of the ACE LR?

For the purposes of Rules 10.08(11)(c), (l), (m), (n) and (o) of the ACE LR, there would be “no other interested relationship” if the transaction does not involve any other interest of related party(ies).

10.31 Other than prices or charges, what are the “material terms” as envisaged under Rule 10.08(11)(g)(ii) of the ACE LR?

The phrase “material terms” would include terms such as the mode of payment or settlement or the period of settlement.

10.32 If the listed corporation gives discounts on the provision of its goods on the basis of volume or bulk purchases to all its customers, can such provision still fall within the exemption set out in Rule 10.08(11)(g) of the ACE LR?

Yes, provided that the provision of goods meets the conditions set out in Rule 10.08(11)(g). However, discounts given or granted purely on the basis that the customer is a related party will not meet the condition that “all material terms are applied consistently to all customers or classes of customers.”

10.33 *ZZ Bhd*, a listed corporation, is an investment holding company and it has one main subsidiary, *YY Sdn Bhd* which conducts stockbroking business. *YY Sdn Bhd* provides a wide range of products or services to its clients which may involve related parties. As *ZZ Bhd*'s main business involves or relates to dealings in securities, can *ZZ Bhd* rely on Rule 10.08(11)(g) of the ACE LR in respect of dealings in securities involving related parties to state that such transactions are not related party transactions, particularly since securities do not fall within the ambit of Rule 10.08(11)(g) of the ACE LR?

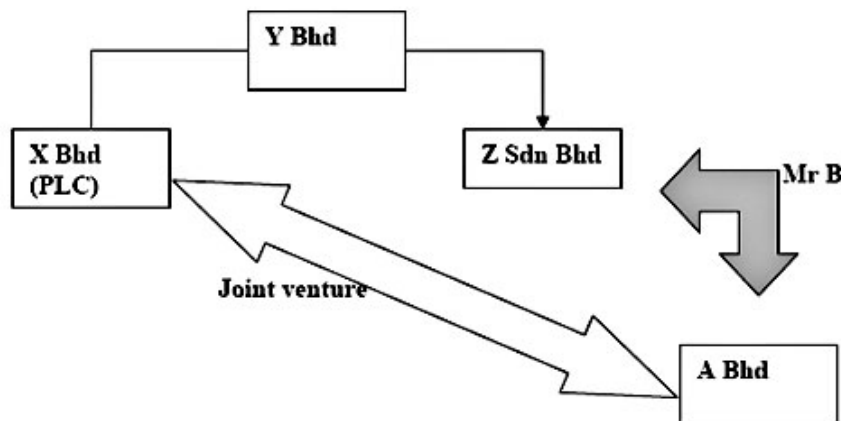
The products or services provided by *ZZ Bhd* to its related parties such as taking orders to acquire or dispose securities, nominees and custody services which although are in relation to securities, would come within the ambit of “stockbroking services” under Rule 10.08(11)(g) of the ACE LR. Therefore, offering of such products or services to *ZZ Bhd*'s related parties would not be considered as related party transactions provided that all conditions in Rule 10.08(11)(g) of the ACE LR are fulfilled. However, *ZZ Bhd*'s dealings in securities as a principal would not be exempted under Rule 10.08(11)(g) of the ACE LR (as the definition of “goods” excludes securities) and therefore, would be regarded as related party transactions if they involve interests of related parties.

- 10.34** In order to come within the ambit of “published or publicly quoted” as provided under Rule 10.08(11)(g) of the ACE LR, must the prices be advertised to the public?

In order to satisfy the criterion of “published or publicly quoted” under Rule 10.08(11)(g), the prices need not be advertised. So long as the pre-determined prices are or can be made readily available to the public or customers, this criterion is deemed satisfied.

- 10.35** *X Bhd*, a listed corporation, has a holding company, i.e. *Y Bhd*. *Y Bhd* has a subsidiary, *Z Sdn Bhd*. *X Bhd* is proposing to enter into a joint venture arrangement with *A Bhd*. *Mr B* who is a director and substantial shareholder of *Z Sdn Bhd* is also a substantial shareholder of *A Bhd*. Assuming that *Mr B* has no interest in *X Bhd* or *Y Bhd*, is this a related party transaction?

Illustration 1



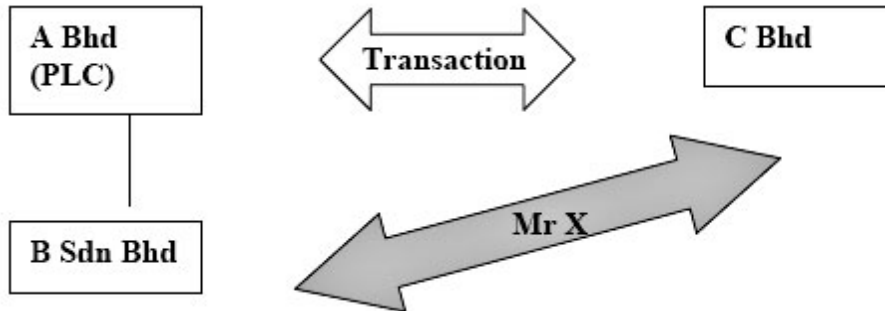
No, based on the above facts, in view of the definition of “related party” under the ACE LR, the joint venture with *A Bhd* is not a related party transaction as it does not involve the interest of any related party (i.e. directors, major shareholders or persons connected with them) of *X Bhd* and *Y Bhd*.

- 10.36** Referring to the facts as set out in Question 10.35 above, will a transaction between *X Bhd* and *Z Sdn Bhd* be deemed a related party transaction?

Yes, a transaction between *X Bhd* and *Z Sdn Bhd*, its sister company, will be deemed to be a related party transaction as it involves the interests of a common major shareholder, *Y Bhd*.

- 10.37** *A Bhd*, a listed corporation, is entering into a transaction with *C Bhd*. *Mr X* who is a director of a subsidiary of *A Bhd*, i.e. *B Sdn Bhd*, is also a director and a substantial shareholder of *C Bhd*. *A Bhd* has no holding company. Assuming that *Mr X* has no interest in *A Bhd*, is this a related party transaction?

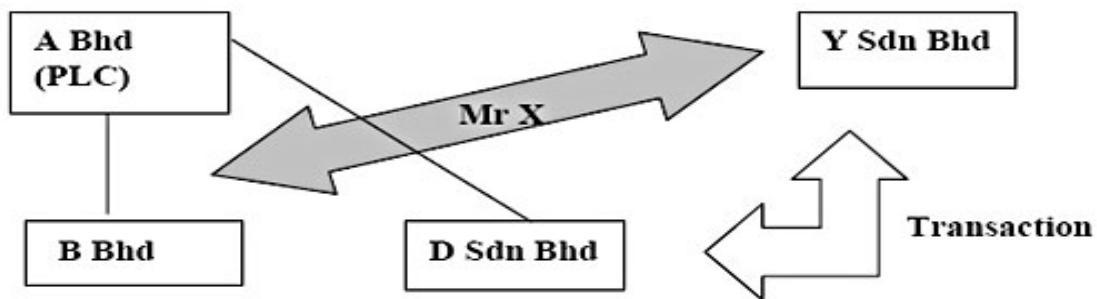
Illustration 2



No, based on the facts above, this transaction is exempted under Rule 10.08(11)(n) of the ACE LR.

- 10.38 *D Sdn Bhd*, a subsidiary company of *A Bhd*, the listed corporation, is entering into a transaction with *Y Sdn Bhd*. *Mr X* who is a director of *B Bhd*, a subsidiary of the listed corporation is also a director and a substantial shareholder of *Y Sdn Bhd*. *A Bhd* has no holding company. Assuming that *Mr X* has no interest in *A Bhd*, is this a related party transaction?

Illustration 3



No, based on the facts above, this transaction is exempted under Rule 10.08(11)(o) of the ACE LR.

- 10.39 Referring to the facts as set out in Question 10.38 above, *D Sdn Bhd*, is entering into a transaction with *Y Sdn Bhd* ("Transaction"). *Mr Z* who is a director and a substantial shareholder of *D Sdn Bhd* is also a director and a substantial shareholder of *Y Sdn Bhd*. However, *Mr Z* has no interest in *A Bhd*, the listed corporation, and *A Bhd* has no holding company.

- (a) Is the Transaction a related party transaction?

Yes, this situation is considered a related party transaction under Rule 10.08(9) of the ACE LR.

(b) What are the obligations of *A Bhd* with regards to the Transaction?

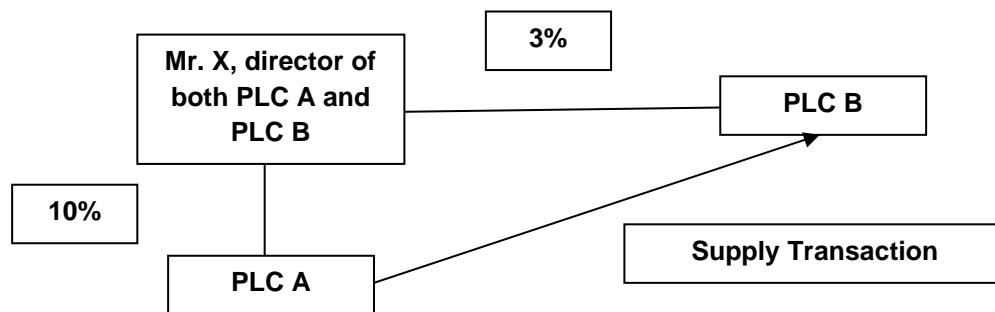
Pursuant to Rule 10.08(9) of the ACE LR, *A Bhd* does not need to obtain shareholder approval, issue a circular or appoint an independent adviser. *A Bhd* must however make an announcement which contains the prescribed information under Rule 10.08(1) of the ACE LR. In addition, the board of directors of *A Bhd* must approve the Transaction before the terms of the Transaction are agreed upon and ensure that the Transaction is fair and reasonable to *A Bhd* and is in the best interests of *A Bhd*.

Additionally, if the percentage ratio of the Transaction is 25% or more, *A Bhd* must comply with the requirements in Rule 10.07, Part F or Part F(A) in Chapter 10 of the ACE LR, as the case may be.

- 10.40** *X Bhd* is a listed corporation. *X Bhd* holds 20% of the total shares in *Y Sdn Bhd*. *Mr. A* is a major shareholder of *X Bhd* and *Y Sdn Bhd*. *X Bhd* intends to dispose of its 20% shareholding in *Y Bhd* to the shareholders in *X Bhd*, including *Mr. A*, on a pro-rata basis via a restricted offer for sale. Will this be considered as a related party transaction?

No, pursuant to Rule 10.08(11)(q) of the ACE LR, this disposal will not be considered as a related party transaction.

- 10.41** *PLC A* and *PLC B* are listed corporations. *Mr. X* is the common director of *PLC A* and *PLC B*. *Mr. X* has shareholdings of 10% in *PLC A* and 3% in *PLC B* respectively. *PLC A* enters into a supply transaction with *PLC B*. What is the nature of the supply transaction vis-à-vis *PLC A* and *PLC B*?



In so far as *PLC A* is concerned, the supply transaction would not be regarded as a related party transaction pursuant to Rule 10.08(11)(c) of the ACE LR provided that *Mr. X* does not receive or derive any benefits from *PLC A* and *PLC B* in relation to the said transaction. The transaction would however be regarded as a related party transaction vis-à-vis *PLC B*.

10.42 *ABC Berhad* and/or its subsidiaries propose(s) to enter into the following transactions:

No.	Details of transactions	Party(ies)	Highest percentage ratio triggered	Value of consideration given or received
1.	Transaction 1 in September 2009	<i>ABC Berhad</i> and <i>Mr. X</i> , a major shareholder of <i>ABC Berhad</i>	5%	RM90,000
2.	Transaction 2 in October 2009	<i>ABC Berhad</i> and <i>Syarikat 123 Sdn Bhd</i> , a joint venture company of <i>ABC Berhad</i> and <i>Mr. Z</i> , a major shareholder of <i>ABC Berhad</i> .	0.22%	RM500,000

What are the obligations of *ABC Berhad* in relation to the above transactions?

The obligations of *ABC Berhad* are as follows:

Transaction 1

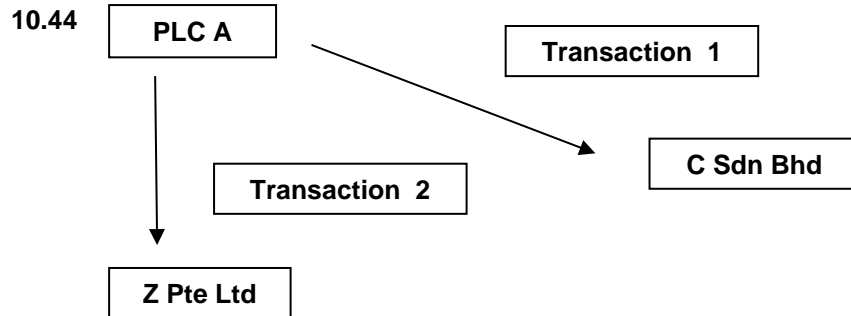
Pursuant to Rule 10.08(1)(a) of the ACE LR, no obligation is triggered by *ABC Berhad* in relation to the related party transaction as even though the highest percentage ratio triggered is 5% (i.e. threshold for shareholder approval for related party transactions), the value of consideration given is less than RM200,000.

Transaction 2

Pursuant to Rule 10.08(1) of the ACE LR, as the highest percentage ratio is less than 0.25%, no requirement is imposed on *ABC Berhad* to immediately announce the related party transaction.

10.43 *Mr. X* holds 8% of the total number of voting shares in *ABC Berhad*, a listed corporation and he is not the largest shareholder of *ABC Berhad*. Is he a major shareholder in *ABC Berhad* under Chapter 10 of the ACE LR?

No, even though he holds more than 5% of the total number of voting shares in *ABC Berhad* (“shareholdings”), he is not regarded as a major shareholder of *ABC Berhad* under Chapter 10 of the ACE LR as he holds less than 10% of the shareholdings and is not the largest shareholder of *ABC Berhad*.



PLC A proposes to enter into Transactions 1 and 2 with C Sdn Bhd and Z Pte Ltd respectively. The terms and conditions of the transactions were agreed upon on 30 January 2010. Mr. C, a director and major shareholder of C Sdn Bhd, was also a director and major shareholder in PLC A but has resigned as a director of and disposed of his shares in PLC A on 1 September 2009 and 29 September 2009 respectively. Mr. Z, a director and major shareholder of Z Pte Ltd, was also a major shareholder of PLC A before 1 March 2009. Are Transactions 1 and 2 related party transactions?

As Transaction 1 involves the interest of Mr. C who was a director and major shareholder of PLC A within the preceding 6 months from 30 January 2010, Transaction 1 is regarded as a related party transaction pursuant to the ACE LR.

However, as Transaction 2 merely involves the interest of Mr. Z who is no longer a major shareholder within the preceding 6 months from 30 January 2010, Mr. Z is not regarded as a major shareholder under the new definition of “major shareholder” and Transaction 2 would not be regarded as a related party transaction pursuant to the ACE LR.

Recurrent related party transaction of a revenue or trading nature and necessary for its day to day operations (“RRPT”)

10.45 If the relevant percentage ratio of a RRPT exceeds 0.25%, must a listed corporation announce the RRPT?

The threshold set out in Rule 10.08(1) i.e. if the relevant percentage ratio is 0.25% or more is not applicable to RRPTs. The obligation to immediately announce RRPTs (where no mandate has been obtained) is set out in Rule 10.09(1) of the ACE LR.

10.46 Must a listed corporation obtain shareholder approval for RRPTs, where such transactions reach the threshold that requires shareholder approval?

Yes, however, the shareholder approval may be in the form of a general mandate from shareholders procured on a yearly basis pursuant to Rule 10.09 of the ACE LR. Where no general mandate is obtained from its shareholders, specific shareholder approval must be obtained for such transactions that reach the threshold which requires shareholder approval before the said transaction is completed.

10.47 *A Berhad* obtains a general mandate from its shareholders on 3 September 2009 for among others, RRPT with its major shareholder, *Mr. X*, as follows:

- (i) supply of cement for an estimated value of RM2 million; and
- (ii) rental of cranes for an estimated value of RM5 million.

After obtaining the general mandate, assuming -

- (a) the actual value of the RRPT entered into by *A Berhad* with *Mr. X* up to 3 June 2010 is RM8 million, what is the obligation of *A Berhad* under the ACE LR in regard to under the Main LR in regard to the deviation between the estimated and actual value of the RRPT?

Since the actual value of the RRPT entered into by *A Berhad* with *Mr. X* exceeds the estimated value of the RRPT by 10% or more, *A Berhad* must immediately announce the deviation to Bursa Securities pursuant to Rule 10.09(2)(e) of the ACE LR (“**Announcement 1**”). *A Berhad* must include in Announcement 1 the information set out in Annexure GN8-B of Guidance Note 8.

- (b) up to 15 July 2010, the actual value of the RRPT entered by *A Berhad* with *Mr. X* has increased to RM8.6 million, must *A Berhad* announce the RRPT again?

No, *A Berhad* is only required to announce the RRPT again when there is an increment of at least RM0.7 million (i.e. 10% of the general mandate estimated value of RM7 million) to the actual amount disclosed in Announcement 1.

10.48 Pursuant to Rule 10.09(2)(e) of the ACE LR, a listed corporation must immediately announce to the Exchange when the actual value of a RRPT (“Actual Value”) entered into by the listed corporation, exceeds the estimated value of the RRPT (“Estimated Value”) disclosed in the circular by 10% or more. Can the listed corporation wait until its next AGM (which is the date on which the current mandate expires) to make this announcement?

No, the listed corporation must make the announcement immediately when it becomes aware that the Actual Value has exceeded the Estimated Value by 10% or more. This applies even though the current mandate has yet to expire. For this purpose, the listed corporation is expected to closely monitor and track the value of the RRPTs transacted, as and when a transaction is entered into.

10.49 *A Bhd* has obtained mandate from shareholders for entering into the following RRPTs with corporations involving the interests of its director, *Mr. X*:

Transaction No.	Description	Estimated Value (RM)
1	Acquisition of stationery	500,000
2	Provision of secretarial, accounting and registration services	2,500,000

Transaction No.	Description	Estimated Value (RM)
3	Receipt of insurance services/products	4,000,000
	Total	7,000,000

- (a) For the purpose of determining whether the Actual Value of the RRPTs entered into by *A Bhd* with *Mr. X* exceeds the Estimated Value, can *A Bhd* use the aggregated Estimated Value for Transactions 1, 2 and 3 and compare it to the aggregated Actual Value for the 3 transactions?

Yes, as Transaction 1, 2 and 3 involve the interests of the same related party, pursuant to Rule 10.12 of the ACE LR, *A Bhd* may aggregate, the Estimated Value and Actual Value of those transactions respectively and determine whether the aggregated Actual Value exceeds the aggregated Estimated Value by 10% or more, in which case an announcement would be required.

- (b) Assuming only the actual value of Transaction 2 exceeds 10% of its estimated value, but the aggregated actual value of Transactions 1, 2 and 3 is below the aggregated estimated value of the RRPT or does not exceed the aggregated estimated value of the RRPT by 10% or more, must *A Bhd* make an announcement under Rule 10.09(2)(e) of the ACE LR relating to Transaction 2 only?

No, *A Bhd* need not make such announcement for Transaction 2 only. It only needs to announce under Rule 10.09(2)(e) of the ACE LR if the aggregated actual value of Transactions 1, 2 and 3 exceeds the aggregated estimated value of the RRPT by 10% or more.

- 10.50 Pursuant to paragraph 3 of Annexure GN8-A, a listed corporation has to disclose, among others, the “*estimated aggregate value of the respective Recurrent Related Party Transactions contemplated under the Mandate*” (“Estimated Value”). What are the RRPTs covered under the Estimated Value?

For the purpose of paragraph 3 of Annexure GN8-A, the listed corporation must disclose the Estimated Value in respect of RRPTs expected to be entered into from the date of the current AGM until the date of the next AGM.

- 10.51 Pursuant to paragraph 11 of Annexure GN8-A, a listed corporation must disclose the thresholds for the approval of RRPTs within its group of corporations.

- (a) What is the approval referred to in paragraph 11?

It refers to the listed corporation’s internal approval.

- (b) Does Bursa Securities prescribe these thresholds?

No, the listed corporation may determine the appropriate thresholds for the approval of RRPTs within its group of corporations.

- (c) *A Bhd* currently has its own internal authority matrix for approvals of transactions/procurement. However, this authority matrix makes no distinction between a transaction/procurement which involves the interest of a related party and a transaction/procurement which does not involve the interest of a related party. Can *A Bhd* use this authority matrix for the purpose of disclosure pursuant to paragraph 11 of Annexure GN8-A?

Yes, so long as the said authority matrix is wide enough to cover the RRPTs for which shareholders approval is being sought, *A Bhd* may use its internal authority matrix for the purpose of disclosure under paragraph 11 of Annexure GN8-A.

- 10.52** Pursuant to paragraph 12 of Annexure GN8-A, a listed corporation must include a statement that at least 2 other contemporaneous transactions with unrelated third parties for similar products/services and/or quantities will be used as comparison, wherever possible, to determine whether the price and terms offered to/by the related parties are fair and reasonable, and comparable to those offered to/by other unrelated third parties for the same or substantially similar type of produces/services and/or quantities. If a listed corporation can find only one other contemporaneous transaction with an unrelated third party, would it be deemed in compliance with paragraph 12 of Annexure GN8-A?

Yes, but the listed corporation must disclose in its circular that it has used its best endeavours to locate at least 2 contemporaneous transactions with unrelated third parties, but could only locate one.

- 10.53** *A Bhd's* AGM for its financial year ended 31 December 2008 was on 8 May 2009 ("2009 AGM"), while the AGM for its financial year ending 31 December 2009 falls on 20 May 2010 ("2010 AGM"). During its 2009 AGM, *A Bhd* has obtained its shareholder mandate for some RRPTs. *A Bhd* intends to obtain its shareholder approval to renew the RRPTs at the 2010 AGM. Pursuant to paragraph 14 of Annexure GN8-A, in its circular to renew the RRPTs, *A Bhd* must disclose the actual value transacted of each RRPT from the date on which the mandate was obtained (8 May 2009) up to the latest practicable date before the printing of the circular (assuming it falls on 15 April 2010) ("Actual Value"). Must this Actual Value be audited?

No, the Actual Value need not be audited. *A Bhd* may extract the Actual Value from its management accounts.

Major Disposal

- 10.54** What is meant by "substantially all of a listed corporation's assets" under the definition of "Major Disposal" in Rule 10.02(eA) of the ACE LR?

Disposal of "substantially all of the listed corporation's assets" refers to a disposal by a listed corporation of almost all of its assets, which is so material that upon the completion of the transaction, it will result in the listed corporation triggering the criteria for a cash company under Rule 8.03 and Guidance Note 2, the criteria for inadequate level of operations under Rule 8.03A, or any of the criteria prescribed under Rule 8.04 and Guidance Note 3 of the ACE LR.

10.55 Under Rule 10.11A(1)(bA) of the ACE LR, a listed corporation undertaking a Major Disposal is required to conduct a valuation on all its material real estate if the total net book value of all the listed corporation's real estate contributes 50% or more to the total assets of the listed corporation on a consolidated basis. What constitutes material real estate for the purpose of Rule 10.11A(1)(bA) of the ACE LR?

Bursa Securities does not prescribe a definition or threshold for material real estate under Rule 10.11A(1)(bA) of the ACE LR. Generally, material real estate is real estate owned by the listed corporation that will reflect a close estimate of the total real estate value of the listed corporation.

10.55A A listed corporation undertaking a Major Disposal must appoint an independent adviser and such independent adviser must be a person appropriate to give competent independent advice under the Take-Overs and Mergers Code as prescribed under Rules 10.11A(3)(a) of the ACE LR. How does a listed corporation comply with this requirement?

In assessing whether or not the adviser is a person appropriate to give competent independent advice, the listed corporation and its board should be guided by paragraphs 3.09 and 3.10 of the Rules on Take-Overs, Mergers and Compulsory Acquisitions⁴.

⁴ Paragraphs 3.09 and 3.10 of the Rules on Take-Overs, Mergers and Compulsory Acquisitions stipulate that -

- (a) a person would not be regarded as appropriate to give competent advice if the person –
- is in the same group as the financial or professional adviser (including a stockbroker) to the offeror or the offeree; or
 - has a substantial interest in or financial connection with, either the offeror or the offeree company of such a kind as to create a conflict of interests for that person; and
- (b) circumstances that can be taken into account in considering whether a person is appropriate to give competent independent advice include whether the person –
- holds 10 per cent or more of the voting shares or voting rights in the offeror or the offeree at any time during the last 12 months from the beginning of the offer period;
 - has a business relationship with the offeror or the offeree, at any time during the last 12 months from the beginning of the offer period that contributes to more than 10 per cent in revenue or profit of the adviser, based on the latest audited financial statements or the latest management accounts, if the latest audited financial statements is more than six months;
 - has a representative on the board of directors of the offeror or the offeree;
 - has a representative from either the offeror or the offeree on the board of directors of the independent adviser;
 - is or will be involved in the financing of the take-over offer;
 - is a substantial creditor of either the offeror or the offeree, based on the latest audited financial statements or the latest management accounts, if the latest audited financial statements is more than six months;
 - has a financial interest in the outcome of the take-over offer other than outlined above;
 - was an adviser in any planning, restructuring, acquisition or disposal proposals of the offeror or the offeree at any time during the period of 12 months prior to the beginning of the offer period.

Bursa Securities will not usually interfere with the selection and appointment of an independent adviser by a listed corporation, unless it is aware or becomes aware of issues which may compromise the independence of such adviser. In this regard, pursuant to Rule 10.11A(4) of the ACE LR, Bursa Securities may not allow an adviser to continue to act or be appointed as an independent adviser in a Major Disposal if, in its opinion, the adviser is deemed not to be independent.

10.56 If a Major Disposal also involves a take-over offer pursuant to the Take-Overs and Mergers Code, can the independent adviser required to be appointed under the Take-Overs and Mergers Code and under the ACE LR for the Major Disposal be the same party?

Yes, the independent adviser appointed can be the same party. The said independent adviser must be a person who is appropriate to give competent independent advice under the Take-Overs and Mergers Code and comply with the relevant requirements under both the Take-Overs and Mergers Code as well as the ACE LR.

10.57 Where the Major Disposal involves a related party, can the independent adviser required to be appointed for the related party transaction and the Major Disposal be the same party?

Yes, the independent adviser appointed can be the same party. However, the said independent adviser must be a person who is appropriate to give competent independent advice under the Take-Overs and Mergers Code and comply with the relevant requirements under Rules 10.08 (Related Party Transaction) and 10.11A (Major Disposal) of the ACE LR.

10.58 Where the consideration for the Major Disposal is by way of cash or partly in cash, who should make the statement whether the acquirer has sufficient financial resources to undertake the acquisition, as required under paragraph 4 in Part I of Appendix 10A of the ACE LR?

The announcement in relation to the Major Disposal as required under paragraph 4 in Part I of Appendix 10A of the ACE LR is to be made by the listed corporation that is disposing its assets. In making the statement, the board of directors of the listed corporation must take all reasonable steps to satisfy itself that the acquirer has sufficient financial resources to undertake the acquisition.

Aggregation of transactions

10.59 What is the definition of “parties connected with one another” as used in Rule 10.12(2)(a) of the ACE LR?

“Parties connected with one another” has the same meaning as assigned to “person connected” with a director or a major shareholder, as contained in Chapter 1 of the ACE LR.

10.60 *Z Bhd*, a listed corporation enters into transactions involving the acquisitions and disposal of securities in *A Sdn Bhd* with various parties who are not connected with each other. The transactions are as follows:

Transactions	Type of Transactions	Date of Transactions	Relevant % ratio
Transaction 1	Acquisition from a related party	October 2009	1%
Transaction 2	Acquisition from a non-related party	November 2009	4%
Transaction 3	Acquisition from a non-related party	February 2010	21%

Must the above transactions be aggregated to determine whether *Z Bhd* needs to comply with Chapter 10 of the ACE LR in respect of the aggregated transactions?

Yes, pursuant to Rule 10.12(2)(b) of the ACE LR and paragraph 2.0 of Guidance Note 7, the transactions must be aggregated as follows:

- Transaction 2 will be aggregated with Transaction 1 where *Z Bhd* will be required to announce Transactions 1 and 2 in accordance with Rule 10.06 of the ACE LR.
- Transaction 3 will be aggregated with Transactions 1 and 2 where *Z Bhd* will be required to, amongst others, seek its shareholder approval for Transaction 3 in accordance with Rule 10.07 of the ACE LR. However, *Z Bhd* must ensure that the circular issued to its shareholders includes information on Transactions 1, 2 and 3.

Contents of announcements and circulars

10.61 Can a listed corporation appoint a foreign valuer to prepare the requisite valuation report on the foreign assets proposed to be acquired under item 3 of Part F Appendix 10B of the ACE LR?

Yes, a listed corporation may appoint an independent valuer registered with the relevant professional body in the country where the foreign asset is located independently or jointly with an independent registered valuer in Malaysia to prepare the requisite valuation report. Further, the listed corporation must also ensure that the appointment of the valuer including the independent registered valuer in Malaysia fulfils the requirements under the SC's Asset Valuation Guidelines in relation to the appointment of valuer for valuation of foreign property assets.

10.62 “Conflicts of interest” on the part of the adviser or expert, where appointed which is required to be disclosed in circulars to shareholders has been defined to mean circumstances or relationships which affect or may affect the ability of the adviser or expert to act independently and objectively or where the adviser or expert has an interest in the outcome of the proposal which interferes or is likely to interfere with its independence and objectivity. What are the factors that should be taken into consideration by the adviser or expert to ascertain whether the “conflict of interest” exists?

The factors that should be taken into consideration by the adviser or expert to ascertain whether the “conflict of interest” exists or is likely to exist in relation to its role as an adviser or expert are varied and subjective. The adviser or expert must make that assessment and take all reasonable steps to ascertain whether the conflict of interest exists or is likely to exist. After that, full disclosure must be made in the circular of the nature and extent of the conflict of interests.