

**QUESTIONS AND ANSWERS IN RELATION TO  
BURSA MALAYSIA SECURITIES BERHAD LISTING REQUIREMENTS  
FOR THE ACE MARKET**

(As at 1 June 2023)

**CHAPTER 1 – DEFINITIONS AND INTERPRETATION**

**1.1 Definition of “core business”**

Pursuant to Rule 1.01 of the ACE LR, “core business” means the business which provides the principal source of operating revenue or after-tax profit to a corporation and which comprises the principal activities of the corporation and its subsidiary companies.

The principal activities of ABC Bhd are manufacturing and property development.

**(i) Scenario 1**

Both principal activities of ABC Bhd generate the following operating revenue and after-tax profit for ABC Bhd:

	Manufacturing Business	Property Development Business
Operating Revenue	RM20 million	RM30 million
After-Tax Profit	RM15 million	RM24 million

Pursuant to the definition of “core business” in Rule 1.01 of the ACE LR, what is the core business of ABC Bhd?

As the operating revenue and after-tax profit of its property development business provide the higher quantitative contribution compared to the operating revenue and after-tax profit of its manufacturing business, the core business of ABC Bhd is property development.

**(ii) Scenario 2**

How does ABC Bhd determine its core business if both its principal activities generate the following operating revenue and after-tax profit?

	Manufacturing Business	Property Development Business
Operating Revenue	RM25 million	RM30 million
After-Tax Profit	RM18 million	RM15 million

If the figures in relation to the quantitative aspect of the core business definition do not clearly show the core business of ABC Bhd (i.e. where the operating revenue of its property development business is higher than that for its manufacturing business but its after-tax profit of its manufacturing business is higher than that for its property development business), ABC Bhd may take into account other relevant factors such as its corporate objectives and plans when determining its core business.

## 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 the applicant, 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)<sup>1</sup> of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

- (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.

<sup>1</sup> 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 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.

- (iv) **If *Mr A* were to be appointed by a listed corporation to act as a non-executive director of the listed corporation's unlisted subsidiary, would such appointment disqualify him from being an independent director of the listed corporation pursuant to sub-Rule (e) of the said definition?**

No, the appointment of *Mr A* by the listed corporation as a non-executive director of a non-listed subsidiary of a listed corporation would not disqualify him from being an independent director of such listed corporation pursuant to sub-Rule (e) of the said definition.

- (v) **What are the examples of "adviser" used in sub-Rule (f) of the said definition?**

"Adviser" is as defined in Rule 1.01 of the ACE LR and includes, amongst others, Advisers or Sponsors, Qualified Persons and Senior Officers of the Advisers or Sponsor, advocates and solicitors, licensed investment banks, universal brokers, tax consultants, accounting firms, auditing firms etc offering professional advisory services to the listed corporation or its related corporation.

- (vi) **Paragraph 5.1 of Guidance Note 9 in relation to sub-Rule (g) of the said definition states that a person is disqualified from being an independent director of a listed corporation if he –**

- **had engaged personally in transactions with the listed corporation or its related corporation (other than for board services as an independent director) within the last 3 years; or**
- **is presently a partner, director or major shareholder of a firm or corporation ("the Entity") (other than subsidiaries of the listed corporation) which has engaged in transactions with the listed corporation or its related corporation within the last 3 years,**

**and the consideration in aggregate exceeds 5% of the gross revenue on a consolidated basis (where applicable) of the person or the Entity or RM1 million, whichever is the higher ("the said Threshold").**

***Mr A* is an independent director of *X Bhd*, a listed corporation. If *Mr A* were to purchase a car from *X Bhd* for his own use, the value of which exceeds the said Threshold, would he be disqualified from being an independent director of *X Bhd* pursuant to sub-Rule (g) of the said definition and Paragraph 5.1 of Guidance Note 9?**

As clarified under paragraph 5.2(a) of Guidance Note 9, an acquisition of a car from the listed corporation will not be considered a "transaction" where it is purchased for personal use provided that the transaction is on normal commercial terms. Therefore, *Mr A* would not be disqualified from being an independent director of *X Bhd* pursuant to sub-Rule (g) of the said definition and paragraph 5.2(a) of Guidance Note 9 due to the purchase of the car, provided that the purchase is on normal commercial terms.

- (vii) ***Mr X is a director (and not a major shareholder) of A Bhd, a listed corporation. He is proposed to be appointed as an independent director of B Bhd, another listed corporation. A Bhd and B Bhd are engaged in transactions, the consideration of which exceeds the said Threshold. Would paragraph 5.1 of Guidance Note 9 preclude Mr X from being appointed as an independent director of B Bhd?***

*Mr X would not be disqualified from being an independent director of B Bhd pursuant to sub-Rule (g) of the said definition and paragraph 5.2(b) of Guidance Note 9 if Mr X is not involved in the transactions entered into between A Bhd and B Bhd, i.e. Mr X is not the initiator, specified shareholder, agent or is not a party to such transactions, and provided that such transactions are on normal commercial terms.*

- (viii) ***Mr X is an executive director of A Bhd, a listed corporation and is proposed to be appointed as an independent director of B Bhd, another listed corporation. A Bhd is a telecommunications corporation and provides telecommunications services to B Bhd, the amount of which exceeds the said Threshold. Mr X, being the executive director of A Bhd, is directly involved in the transactions entered into with B Bhd. Would sub-Rule (g) of the said definition preclude Mr X from acting as an independent director of listed corporation B Bhd?***

*Mr X would not be disqualified from being an independent director of B Bhd pursuant to sub-Rule (g) of the said definition and paragraph 5.2(c)(i) of Guidance Note 9 provided that the services rendered by A Bhd are based on a non-negotiable fixed price or rate, which is published or publicly quoted, and the material terms including the prices or charges are applied consistently to all customers or classes of customers.*

- (ix) ***In order to come within the ambit of “published or publicly quoted” as provided under paragraph 5.2(c) of Guidance Note 9, must the prices be advertised to the public?***

*In order to satisfy the criterion of “published or publicly quoted” under paragraph 5.2(c) of Guidance Note 9, 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.*

- (x) ***Mr A is appointed a director of X Bhd, a listed corporation on 5 August 2010. Mr A is also a major shareholder of Y Sdn Bhd. 5% of Y Sdn Bhd’s gross revenue for the financial years ending 31 December 2007, 31 December 2008 and 31 December 2009 amounted to RM800,000. Y Sdn Bhd supplied X Bhd with raw materials in March 2010 and April 2010, the value of which amounted to RM900,000. Is Mr A disqualified from being an independent director of X Bhd?***

*The relevant threshold to be considered pursuant to paragraph 5.1 of Guidance Note 9 is RM1 million or 5% of Y Sdn Bhd’s gross revenue for the last 3 financial years whichever is the higher. As 5% of the gross revenue of Y Sdn Bhd for the last 3 financial years amounted to only RM800,000, the relevant threshold is RM1 million. Pursuant to paragraph 5.1 of Guidance Note 9, Mr A will not be disqualified from being an independent director of X Bhd because the value of the transactions*

entered into with *Y Sdn Bhd* of which *Mr A* is a major shareholder does not exceed RM1 million.

- (xi) **Mr A is an independent director of *X Bhd*, a listed corporation. Mr A entered into a contract to provide technical services to a subsidiary of *X Bhd*, the consideration of which is RM5 million and constitutes 10% of Mr A's gross revenue. Does this mean that Mr A is disqualified from being an independent director insofar as that transaction is concerned?**

The disqualification to act as an independent director is not specific to a transaction. As *Mr A* had entered into a transaction that exceeds the said Threshold, *Mr A* is disqualified from being an independent director. *Mr A* would not qualify to act as an independent director of *X Bhd* until such time when he fulfils all the requirements of the said definition.

- (xii) **Would the issuance of shares by a listed corporation or its subsidiary to a director of such listed corporation constitute a “transaction” as used in sub-Rule (g) of the said definition?**

No, the issuance of shares by a listed corporation or its subsidiary to a director of such listed corporation would not constitute a “transaction” for the purposes of sub-Rule (g) of the said definition.

- (xiii) **Mr X will receive remuneration from the listed corporation for services rendered to the listed corporation as a director. Would Mr X be disqualified from being an independent director pursuant to sub-Rule (g) of the said definition, for receiving remuneration from the listed corporation, particularly if the remuneration exceeds the said Threshold?**

No, the receipt of remuneration for services rendered to the listed corporation as a director would not constitute a “transaction” for the purposes of sub-Rule (g) of the said definition.

- (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:

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No.	Illustrations	Tenure of service
(a)	<p><i>Mr. A</i> serves as an independent director in the –</p> <ul style="list-style-type: none"> <li>• listed corporation from 1 January 2023 - 31 December 2025 (3 years); and</li> <li>• listed subsidiary from 1 January 2027 – 31 December 2029 (3 years).</li> </ul>	His total period of service is 6 years.
(b)	<i>Mr. B</i> 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).	The period of service is 3 years.
(c)	<p><i>Mr C</i> serves as an independent director in the –</p> <ul style="list-style-type: none"> <li>• listed corporation from 1 January 2023 – 31 December 2025 (3 years);</li> <li>• listed subsidiary I from 1 January 2024 – 31 December 2025 (2 years); and</li> <li>• listed subsidiary II from 1 January 2025 – 31 December 2027 (3 years).</li> </ul>	The period of service is 5 years (from 1 January 2023 - 31 December 2027).
(d)	<ul style="list-style-type: none"> <li>• <i>Mr. D</i> serves as an independent director in <i>X Berhad</i> (a listed corporation) from 1 January 2023 – 31 December 2025 (3 years).</li> <li>• <i>Mr. D</i> is also an independent director in <i>Y Bhd</i> from 1 January 2024 – 31 December 2027 (4 years).</li> <li>• <i>Y Bhd</i> is a listed subsidiary of <i>X Berhad</i>.</li> <li>• On 1 January 2027, <i>X Berhad</i> disposes all of its equity interests in <i>Y Bhd</i>.</li> </ul>	The period of service is 4 years (1 January 2023 – 31 December 2026 i.e. up until <i>Y Bhd</i> ceases to be a subsidiary of <i>X Berhad</i> , irrespective of whether <i>Mr. D</i> continues to be a director in <i>Y Bhd</i> ).

(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?**

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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 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 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.

### **1.3 Definition of "person connected"**

**Is the stepmother of a director of a listed corporation deemed a family member of that director and hence, a person connected with that director?**

Although a stepmother would not be regarded as a family member for purposes of the ACE LR, a stepmother may still be regarded as a person connected with the director if she fulfils the other criteria of the definition of "person connected" as stipulated under Rule 1.01 of the ACE LR.

### **1.4 Definition of "public"**

- (i) A collective investment scheme or statutory institution that is managing funds belonging to contributors or investors who are members of the public, subject to fulfilling certain conditions as set out in the ACE LR, would be deemed as "public" where its interest, direct or indirect, in a listed corporation is more than 5% but less than 15% of the total number of shares of such listed corporation. Would an associate of such collective investment scheme or statutory institution also be deemed as "public"?**

No, the associate of such a collective investment scheme or statutory institution would not be deemed as "public" under sub-Rule (c) of the definition "public" in Rule 1.01 of the ACE LR. Accordingly, the associate's shareholdings should be excluded from comprising the public shareholding spread.

- (ii) **Scheme A is a unit trust with an interest in 10% of the total number of listed shares in X Bhd. B is the fund manager of Scheme A. B holds 3% of the total number of shares of X Bhd. In computing its public spread, can X Bhd include both Scheme A and B as part of the public spread?**

X Bhd may include Scheme A in computing its public spread provided that Scheme A satisfies certain conditions as set out in the ACE LR but it cannot include B as "public". This is because B is an associate of Scheme A, which is a substantial shareholder of X Bhd.

- (iii) **It is noted that a “public” shareholder excludes a person who holds or acquires shares through artificial means. What are the circumstances or examples where a person is deemed to hold or acquire shares through artificial means?**

Some examples which fall within the ambit of “artificial means” are as follows:

- (a) shares given away as free shares;
- (b) shares given as a gift; and
- (c) providing financial assistance or loans to acquire shares to nominees of the directors or substantial shareholders.

**1.5 What is the definition of “year” in the ACE LR? Does it refer to a calendar year or a financial year?**

Where there is a reference to “year” in the ACE LR, it refers to a calendar year. Where the reference is intended to be in relation to a “financial year”, the provision in the ACE LR will clearly state so.

**1.6 Definition of “Surprise Holiday” and “market day”**

- (i) **What is a Surprise Holiday, and under what circumstances will the Exchange operate on a Surprise Holiday?**

Under Rule 1.01 of the ACE LR, Surprise Holiday means a day that is declared as a public holiday in the Federal Territory of Kuala Lumpur that has not been gazetted as a public holiday at the beginning of the calendar year. An example of a Surprise Holiday would be the declaration of a public holiday on 3 December 2021 for the Federal Territories of Kuala Lumpur, Putrajaya and Labuan in celebration of Kuala Lumpur City Football Club winning the Malaysia Cup on 30 November 2021.

Therefore, the provisions relating to Surprise Holidays in the ACE LR are meant to address public holidays which are unscheduled or unanticipated only.

The Exchange will take into consideration the following factors before deciding to operate on a Surprise Holiday, i.e. whether -

- (a) the Real-Time Electronic Transfer of Funds and Securities System, being the financial market infrastructure, is also operating on such day to facilitate the clearing and settlement service; and

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(b) there is concurrence from the SC for the capital markets to remain open on the Surprise Holiday.

(ii) **How soon will the Exchange notify the market before it operates on a Surprise Holiday, and how will the market be notified?**

The Exchange will endeavour to provide advance notice to the industry and market in a timely manner. The Exchange will issue a media release to inform the public if it decides to operate on a Surprise Holiday.