

BURSA MALAYSIA SECURITIES BERHAD

PRACTICE NOTE NO-13/2002

REQUIREMENTS ~~RELATING TO~~ FOR DIRECTORS AND SIGNATORY ~~TO~~ OF STATUTORY DECLARATION ~~ACCOMPANYING ANNUAL AUDITED~~ ACCOUNTS ~~FOR ACCOUNTS~~

<u>Details</u>	<u>Cross References</u>
Effective date:	1 January 2003
Revision date:	3 August 2009

~~Issued in relation to paragraphs 1.01, 9.27, 15.07 and 15.10 of the Listing Requirements;~~

And

~~Pursuant to paragraph 2.08 of the Listing Requirements.~~

1.0 Introduction

- 1.1 A director who is appointed to act as an “independent director” of an applicant or a listed issuer must satisfy the definition of “independent director” set out in paragraph 1.01 of the Listing Requirements (~~hereinafter referred to as “the said definition”~~). The said definition reads as follows:-

“independent director” means a director who is independent of management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of an applicant or a listed issuer. Without limiting the generality of the foregoing, an independent director is one who -

- (a) *is not an executive director of the applicant, listed issuer or any related corporation of such applicant or listed issuer (~~hereinafter each corporation shall be referred to as “the said Corporation”~~);*
- (b) *has not been within the last 2 years and is not an officer (except as a non-executive director) of the said Corporation. For this purpose, “officer” ~~shall have~~ has the meaning given in section 4 of the Companies Act 1965;*
- (c) *is not a major shareholder the said Corporation;*
- (d) *is not a ~~relative~~ family member of any executive director, officer or major shareholder of the said Corporation. For this purpose, “relative” means the spouse, parent, brother, sister, child (including adopted or step child) and the spouse of such brother, sister or child;*
- (e) *is not acting as a nominee or representative of any executive director or major shareholder of the said Corporation (this paragraph is referred to as “paragraph (e)”);*

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- (f) has not been engaged as a ~~professional~~ an adviser by the said Corporation under such circumstances as prescribed by the Exchange or is not presently a partner, director (except as an independent director) or major shareholder, as the case may be, of a firm or corporation which provides professional advisory services to the said Corporation under such circumstances as prescribed by the Exchange (this paragraph is referred to as “**paragraph (f)**”); or
- (g) *has not engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange or is not presently a partner, director or major shareholder, as the case may be, of a firm or corporation (other than subsidiaries of the applicant or listed issuer) which has engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange (this paragraph is referred to as “**paragraph (g)**”).*
- 1.2 Pursuant to paragraph 9.27 of the Listing Requirements, the director or person primarily responsible for the financial management of the listed issuer, as the case may be, who signs the statutory declaration pursuant to section 169(16) of the Companies Act 1965 (~~hereinafter referred to as “the signatory”~~) must satisfy the requirements prescribed ~~therein~~ in that (~~hereinafter referred to as “the requisite qualifications”~~).
- 1.3 Further, paragraph 15.409 of the Listing Requirements also states that at least one member of the audit committee must satisfy the requisite qualifications (~~hereinafter referred to as “the said audit committee member”~~).
- 1.4 Pursuant to paragraph 15.06 of the Listing Requirements a director of an applicant or a listed issuer may only hold not more than 10 directorships in listed issuers and not more than 15 directorships in companies other than listed issuers (~~hereinafter referred to as “the non-listed issuers”~~).
- 1.5 Paragraph 15.07 of the Listing Requirements sets out the method of computing the number of directorships that may be held by a director as stipulated under paragraph 15.06.
- 1.6 This Practice Note clarifies the following:-
- (a) certain aspects of the said definition;
 - (b) the requisite qualifications in relation to the signatory and the said audit committee member; and
 - (c) the method of calculation of number of directorships held by a director of an applicant or a listed issuer.

I. INDEPENDENCE OF DIRECTORS

2.0 General

- 2.1 Directors must give effect to the spirit, intention and purpose of the said definition. If a person does not fall within any of paragraphs (a) to (g) of the said definition, it does not mean that the person will automatically qualify to be an independent director. The director concerned as well as the board of directors of the applicant or listed issuer must still apply the test of whether the said director is able to exercise independent judgement and act in the best interests of the ~~company~~ applicant or listed issuer as set out in the said definition.
- 2.2 Paragraphs 3.0 to 5.0 of this Practice Note must be read in conjunction with the said definition.

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3.0 Paragraph (e)

3.1 **"Nominee"** as used in paragraph (e) means a person who has been designated to act for another in his or her place. It denotes a person who is accustomed, or is under an obligation, whether formal or informal to act in accordance with the directions, instructions or wishes of another person.

3.2 A nominee or representative of major shareholders who fulfils all requirements of the definition of "independent director" except for the said paragraph (e), may nevertheless be considered as an "independent director" if -

(a) the major shareholder's aggregate shareholding in the said Corporation, directly or indirectly, is not more than 15% of the issued and paid-up capital (excluding treasury shares) of the said Corporation;

(b) the major shareholder is not deemed to be a promoter of the said Corporation; and

(c) the major shareholder is either -

(i) a statutory institution who is managing funds belonging to the general public;
or

(ii) an entity established as a collective investment scheme, such as closed-end funds, unit trusts or investment funds (but excluding investment holding companies).

4.0 Paragraph (f)

4.1 In relation to paragraph (f), ~~it is prescribed that~~ a person who is proposed to be or is an independent director (~~hereinafter referred to as "the said Director"~~) ~~would be~~ disqualified from being an independent director if he ~~is~~ —

(a) had personally provided professional advisory services to the said Corporation within the last 2 years; or

(b) is presently a partner, director (except as an independent director) or major shareholder, as the case may be, of a firm or corporation (hereinafter referred to as "Entity") which has provided professional advisory services to the said Corporation within the last 2 years,

and the consideration of which in aggregate exceeds more than 5% of the gross revenue on a consolidated basis (where applicable) of the said Director or the Entity or RM1 million, whichever is the higher.

4.2 For the purposes of paragraph 4.1 above, the following applies:-

(a) where the Entity is a corporation, the computation of the gross revenue of the Entity shall must be based on its annual audited accounts financial statements for the last 2 financial years-; and

(b) Where the service is rendered by the said Director personally or by an Entity which is other than a corporation, the computation of the gross revenue must shall be based on the income tax returns of the said Director or the Entity, as the case may be, submitted to the Inland Revenue Board for the last 2 years.

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5.0 Paragraph (g)

5.1 In relation to paragraph (g), ~~it is prescribed that the said Director would be~~ disqualified from being an independent director if he -

(a) had engaged personally in transactions with the said Corporation (other than for board service as a non-executive director) within the last 2 years; or

(b) is presently a partner, director, a major shareholder ~~as the case may be~~, of an Entity (other than subsidiaries of the applicant or listed issuer) which has engaged in transactions with the said Corporation within the last 2 years,

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

5.2 However, “**transactions**” ~~as stated in paragraph 5.1 above shall exclude~~ transactions:-

(a) on normal commercial terms entered into between the said Corporation and the said Director or between the said Corporation and an Entity where the said Director is also a director, major shareholder or partner;-

(i) for personal use of the said Director; or

(ii) for personal investment of the said Director but not for the purpose of carrying on a trade or business;-

~~provided that such transactions are on normal commercial terms;~~

(b) on normal commercial terms entered into between the said Corporation and an Entity where the said Director is also a director (and not a major shareholder) but is not involved in the said transactions ~~provided that such transactions are on normal commercial terms;~~

(c) for the following goods and services, provided that they are sold or rendered 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:-

(i) provision or usage of public utility services such as water, electricity and telecommunications and data, postal or courier services, services by licensed institutions as defined under the Banking and Financial Institutions Act 1989 (other than professional advisory services which ~~shall be~~ are subject to paragraph 4.1 above), insurance, unit trusts, stockbroking services, public transport, education, medical services, provision or usage of tolled highways, hotel facilities and recreational services, provision or consumption of fuel on retail or food and beverage at eateries, provision or purchase of goods at retail outlets such as supermarkets, hypermarkets or departmental stores; and

(ii) such other types of goods or services that may be prescribed by the Exchange from time to time.

5.3 For the purposes of paragraph 5.1 above, the following applies:-

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(a) ~~_____~~ where the Entity is a corporation, the computation of the gross revenue of the Entity ~~shall must be based on its annual audited accounts financial statements for the last 2 financial years-;~~

(b) ~~_____~~ ~~Where~~ where the transaction is entered into by the said Director personally or by an Entity ~~which is~~ other than a corporation, the computation of the gross revenue ~~shall must be based on the income tax returns of the said Director or the Entity, as the case may be, submitted to the Inland Revenue Board for the last 2 years.~~

II. REQUISITE QUALIFICATIONS FOR THE SIGNATORY AND THE SAID AUDIT COMMITTEE MEMBER

6.0 General

6.1 Paragraph 7.0 of this Practice Note must be read in conjunction with paragraphs 9.27 and 15.409 of the Listing Requirements.

7.0 Requisite qualifications

7.1 For the purposes of paragraphs 9.27(c) and 15.409(1)(c)(iii) of the Listing Requirements, ~~it is prescribed that~~ the following qualifications are also acceptable:-

(a) ~~a degree/masters/doctorate in accounting or finance and either one of the following qualifications and at least 3 years' post-qualification experience in accounting or finance;~~

(i) ~~a degree/masters/doctorate in accounting or finance; or~~

(ii) ~~a member of any professional accountancy organization which has been admitted as a full member of the International Federation of Accountants;~~

~~or~~

(b) at least 7 years' experience being a chief financial officer of a corporation or having the function of being primarily responsible for the management of the financial affairs of a corporation.

~~7.2 In relation to paragraph 7.1(a) above, persons who are members of professional accountancy organizations which have been admitted as full members of the International Federation of Accountants and who have at least 3 years' post-qualification experience in accounting or finance are deemed to fulfil the qualifications set out in paragraph 7.1(a).~~

III. RESTRICTION IN NUMBER OF DIRECTORSHIPS

8.0 General

8.1 Paragraphs 9.0 and 10.0 of this Practice Note must be read in conjunction with paragraph 15.07 of the Listing Requirements.

8.2 Pursuant to paragraph 15.06 of the Listing Requirements a director may only hold not more than 10 directorships in listed issuers and not more than 15 directorships in non-listed issuers ~~(hereinafter collectively referred to as "the said Restriction")~~. **the said Restriction"**

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9.0 Method of computation

9.1 The calculation of the number of directorships that may be held by a director of a listed issuer pursuant to the said Restriction ~~shall be~~ is as follows:-

- (a) a directorship in a non-profit organisation ~~shall be~~ is to be excluded from the computation of the number of directorships held pursuant to the said Restriction;
- (b) a directorship in a listed issuer ~~shall be~~ is to be counted as 1 directorship in a listed issuer and ~~shall will~~ not be aggregated with the directorship held in any other company;
- (c) directorships held in the non-listed issuers ~~shall be~~ are to be aggregated in the following manner:-
 - (i) in relation to a listed group of companies, the following ~~shall will~~ be aggregated and counted as 1 directorship in a non-listed issuer:-
 - (aa) directorships held in any of the listed issuer's subsidiaries, except where such subsidiaries are listed issuers or are also subsidiaries of the listed issuer's listed subsidiaries;
 - (bb) directorships held in the listed issuer's immediate non-listed associated companies; and
 - (cc) directorships held in the immediate non-listed associated companies of the companies referred to in subparagraph (c)(i)(aa) above; and
 - (ii) directorships held in family-owned companies ~~shall will~~ be aggregated and counted as 1 directorship in a non-listed issuer;
- (d) for the avoidance of doubt, a directorship in a non-listed issuer that does not fall within paragraph (c) above ~~shall will~~ be counted as 1 directorship in a non-listed issuer and ~~shall will~~ not be aggregated with the directorship held in any other company.

9.2 For the purpose of paragraph 9.1 above, unless the context otherwise requires:-

~~(a) (Deleted)~~

- (a) **"family-owned companies"** means private limited companies where the person has an interest or interests in voting shares of the company, the aggregate of the nominal amounts of which is not less than 20% of the nominal amounts of all the voting shares in the company. In this regard, **"interest in shares"** ~~shall have~~ has the meaning given in section 6A of the Companies Act 1965; and
- (b) **"non-profit organisations"** means organisations whose objectives are not for profit such as charitable organisations, sports organisations, trade associations, social organisations or training organisations which are not for profit.

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10.0 Illustrations

10.1 The following are illustrations of the application of paragraphs 9.1 and 9.2 above.

KEY

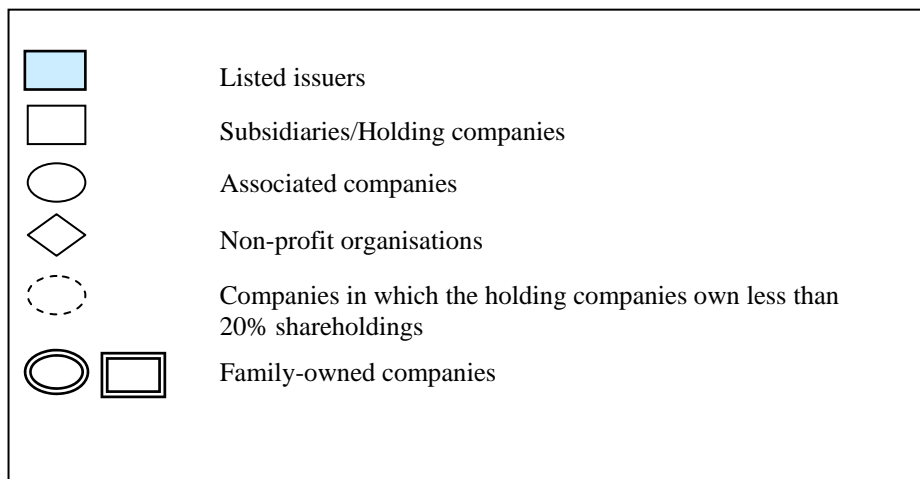
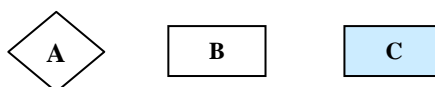


Illustration 1 (of paragraphs 9.1(a) and (b))

Facts:



Mr X is the director of A to C. Mr X has no shareholdings in A to C.

Computation:

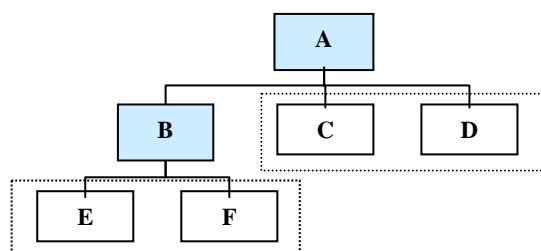
The number of directorships held by Mr X is 1 directorship in a listed issuer and 1 directorship in a non-listed issuer.

Basis:

- The directorship in A is excluded from the computation as A is a non-profit organisation.
- The directorship in B is counted as 1 directorship in a non-listed issuer.
- The directorship in C is counted as 1 directorship in a listed issuer.

Illustration 2 (of paragraph 9.1(c)(i))

Facts:



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Mr X is a director of A to F. Mr X has no shareholdings in A to F.

Computation:

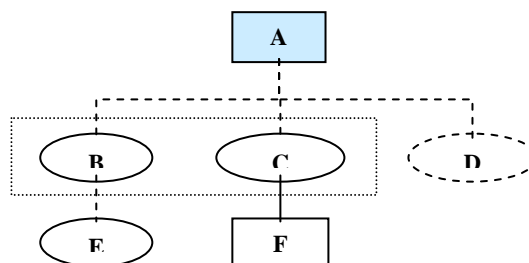
The number of directorships held by Mr X is 2 directorships in listed issuers and 2 directorships in non-listed issuers.

Basis:

- Directorships in A and B are counted separately as 2 directorships in listed issuers.
- Directorships in C and D are aggregated and counted as 1 directorship in a non-listed issuer because they are non-listed subsidiaries of a listed issuer i.e. A.
- Directorships in E and F are aggregated separately and counted as 1 directorship in a non-listed issuer because they are non-listed subsidiaries of a listed issuer, i.e. B.

Illustration 3 (paragraph 9.1(c)(i)(bb))

Facts:



Mr X is a director of A to F. Mr X has no shareholdings in A to F.

B – 20% owned by A
 C – 50% owned by A
 D – 15% owned by A
 E – 40% owned by B
 F – 60% owned by C

Computation:

The number of directorships held by Mr X is 1 directorship in a listed issuer and 4 directorships in non-listed issuers.

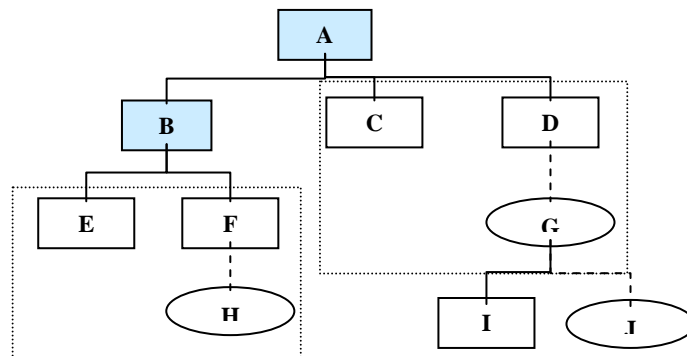
Basis:

- Directorship in A is counted as 1 directorship in a listed issuer.
- Directorships in B and C are aggregated and counted as 1 directorship in non-listed issuer because they are immediate non-listed associated companies of a listed issuer, i.e. A.
- Directorship in D is counted separately as 1 directorship in a non-listed issuer because it is neither an associated company nor a subsidiary of a listed issuer, i.e. A.
- Directorships in E and F are counted separately as 2 directorships in non-listed issuers because they are not the immediate non-listed associated companies of a listed issuer, i.e. A.

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Illustration 4 (of paragraph 9.1(c)(i)(cc))

Facts:



Mr X is a director of A to J. Mr X has no shareholdings in A to J.

C – a subsidiary of A

D – a subsidiary of A

E – a subsidiary of B

F – a subsidiary of B

G – 30% owned by D

H – 20% owned by F

I – 60% owned by G

J – 30% owned by G

Computation:

The number of directorships held by Mr X is 2 directorships in listed issuers and 4 directorships in non-listed issuers.

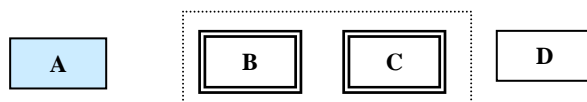
Basis:

- Directorships in A and B are counted separately as 2 directorships in listed issuers.
- Directorships in C, D and G are aggregated and counted as 1 directorship in non-listed issuer because C and D are non-listed subsidiaries of a listed issuer and G is an immediate non-listed associated company of D.
- Directorships in E, F and H are aggregated and counted as 1 directorship in a non-listed issuer because E and F are non-listed subsidiaries of a listed issuer and H is an immediate non-listed associated company of F.
- Directorships in I and J are counted separately as 2 directorships in non-listed issuers because they are not immediate non-listed associated companies of D.

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Illustration 5 (of paragraph 9.1(c)(ii))

Facts:



Mr X is a director of A to D. Mr X has no shareholdings in A to D unless otherwise stated below.

B – 20% shareholdings owned by Mr X

C – 50% shareholdings owned by Mr X

D – 15% shareholdings owned by Mr X

Computation:

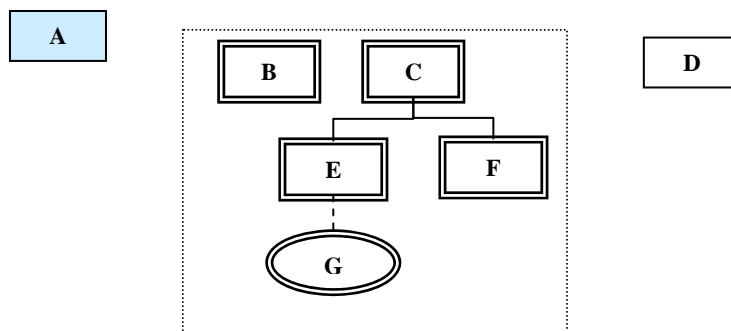
The number of directorships held by Mr X is 1 directorship in a listed issuer and 2 directorships in non-listed issuers.

Basis:

- Directorship in A is counted as 1 directorship in a listed issuer.
- Directorships in B and C are aggregated and counted as 1 directorship in a non-listed issuer because they are family-owned companies.
- Directorship in D is counted separately as 1 directorship in a non-listed issuer because it is not a family-owned company.

Illustration 6 (of paragraph 9.1(c)(ii))

Facts:



Mr X is a director of A to G. Mr X has no shareholdings in A to G unless otherwise stated below.

B – 20% shareholdings owned by Mr X

C – 50% shareholdings owned by Mr X and his wife

D – 15% shareholdings owned by Mr X

E – a subsidiary of C

F – a subsidiary of C

G – 40% owned by E

Computation:

The number of directorships held by Mr X is 1 directorship in a listed issuer and 2 directorships in non-listed issuers.

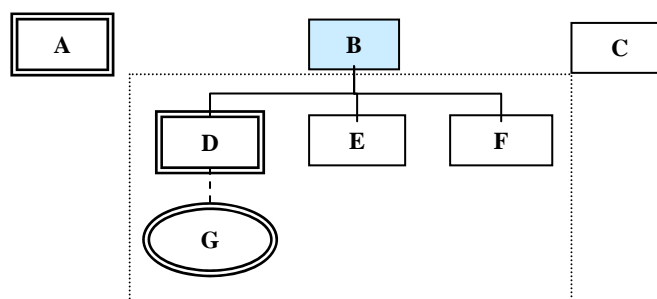
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Basis:

- Directorship in A is counted as 1 directorship in a listed issuer.
- Directorships in B, C, E, F and G are aggregated and counted as 1 directorship in a non-listed issuer because they are family-owned companies.
- Directorship in D is counted separately as 1 directorship in a non-listed issuer because it is not a family-owned company.

Illustration 7 (of paragraphs 9.1(c)(i) and (ii))

Facts:



Mr X is a director of A to G. Mr X has no shareholdings in A to G unless otherwise stated below.

A - 20% shareholdings owned by Mr X
 C – 15% shareholdings owned by Mr X
 D – 21% shareholdings owned by Mr X
 E – a subsidiary of B
 F – a subsidiary of B
 G – 30% shareholdings owned by D

Computation:

The number of directorships held by Mr X is 1 directorship in a listed issuer and 3 directorships in non-listed issuers.

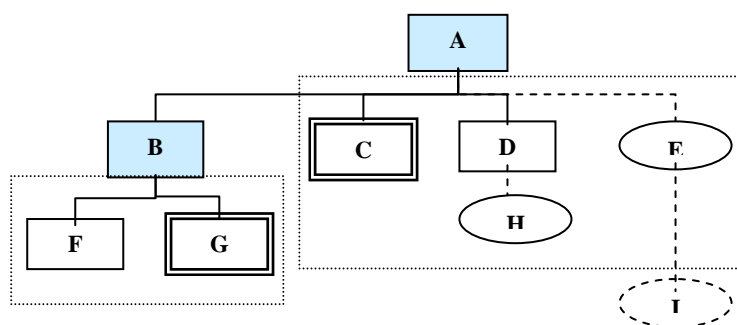
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Basis:

- Directorship in B is counted as 1 directorship in a listed issuer.
- Directorships in E and F are aggregated and counted as 1 directorship in a non-listed issuer because they are non-listed subsidiaries of a listed issuer, i.e. B.
- Directorships in D and G may either be aggregated with the directorship in A or with the directorships in E and F, and be counted as 1 directorship in a non-listed issuer. For the purpose of this illustration, the directorships in D and G are aggregated with E and F on the basis that D is non-listed subsidiary of a listed issuer, i.e. B, and G is the immediate non-listed associated company of D.
- Directorships in A and C are counted separately as 2 directorships in non-listed issuers.

Illustration 8

Facts:



Mr X is a director of A to I. Mr X has no shareholdings in companies A to I unless otherwise stated below.

C – 20% shareholdings owned by Mr X

D – a subsidiary of A

E – 20% shareholdings owned by A

F – a subsidiary of B

G – 20% shareholdings owned by Mr X and his wife

H – 20% shareholdings owned by D

I – 15% shareholdings owned by E

Computation:

The number of directorships held by Mr X is 2 directorships in listed issuers and 3 directorships in non-listed issuers.

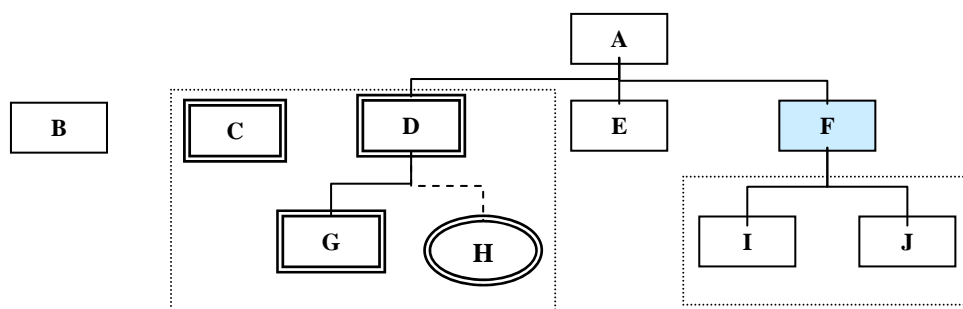
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Basis:

- Directorships in A and B are counted separately as 2 directorships in listed issuers.
- Directorships in C, D, E and H are aggregated and counted as 1 directorship in a non-listed issuer because C and D are non-listed subsidiaries of a listed issuer, i.e. A, E is an immediate non-listed associated company of A and H is an immediate non-listed associated company of D.
- Directorships in F and G are aggregated and counted as 1 directorship in a non-listed issuer because F and G are non-listed subsidiaries of a listed issuer, i.e. B.
- Directorship in I is counted separately as 1 directorship in a non-listed issuer because it is not an immediate non-listed associated company of a listed issuer or its non-listed subsidiaries.
- Although C and G are family-owned companies, they need not be aggregated separately and counted as 1 directorship in a non-listed issuer because they have already been aggregated with the other non-listed subsidiaries of A and B respectively.

Illustration 9

Facts:



Mr X is a director of A to J. Mr X has no shareholdings in companies A to J unless otherwise stated below.

- B – 15% shareholdings owned by Mr X
- C – 70% shareholdings owned by Mr X and his wife
- D – 40% shareholdings owned by Mr X
- E – a subsidiary of A
- G – a subsidiary of D
- H – 20% shareholdings owned by D
- I – a subsidiary of F
- J – a subsidiary of F

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Computation:

The number of directorships held by Mr X is 1 directorship in a listed issuer and 5 directorships in non-listed issuers.

Basis:

- Directorship in F is counted as 1 directorship in a listed issuer.
- Directorships in C, D, G and H are aggregated and counted as 1 directorship in a non-listed issuer because C, D, G and H are family-owned companies.
- Directorships in I and J are aggregated and counted as 1 directorship in a non-listed issuer because I and J are non-listed subsidiaries of a listed issuer, F.
- Directorships in A, E and B are counted separately as 3 directorships in non-listed issuers.

~~11.0 Effective Date~~

~~11.1 This Practice Note takes effect on 1 January 2003.~~