

## GUIDANCE NOTE NO 9/2006

### REQUIREMENTS RELATING TO DIRECTORS, AUDIT COMMITTEE MEMBER AND SIGNATORY TO STATUTORY DECLARATION ACCOMPANYING ANNUAL AUDITED ACCOUNTS

Issued in relation to Rules 1.01, 2.07, 9.29, 15.06, 15.07 and 15.09 of the Listing  
Requirements;

And

Pursuant to Rule 2.09 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 company must satisfy the definition of “independent director” set out in Rule 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 listed company. Without limiting the generality of the foregoing, an independent director is one who:-*

- (a) is not an executive director of the applicant, listed company or any related corporation of such applicant or listed company (hereinafter each corporation shall be referred to as “the said Corporation”) .For the purposes of this definition, “related corporation” shall have the meaning given in section 6 of the Companies Act 1965;*
- (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 the meaning given in section 4 of the Companies Act 1965;*
- (c) is not a major shareholder of the said Corporation;*
- (d) is not a relative 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 (hereinafter the paragraph is referred to as “paragraph (e)”);*
- (f) has not been engaged as a professional 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 company which provides professional advisory services to the said Corporation under such circumstances as prescribed by the Exchange (hereinafter the 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 company (other than subsidiaries of the applicant or the listed company) which has engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange* (hereinafter the paragraph is referred to as “paragraph (g)”).
- 1.2 Pursuant to Rule 9.29 of the Listing Requirements, the director or person primarily responsible for the financial management of the listed company, 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 (hereinafter referred to as “the requisite qualifications”)
- 1.3 Pursuant to Rule 15.09 of the Listing Requirements, 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 Rule 15.06 of the Listing Requirements a director of an applicant or a listed company may only hold not more than 10 directorships in listed companies and not more than 15 directorships in companies other than listed companies (hereinafter referred to as “the non-listed companies”).
- 1.5 Rule 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 Rule 15.06.
- 1.6 This Guidance 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 company.

## **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 listed company 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 as set out in the said definition.
- 2.2 Paragraphs 3.0 to 5.0 of this Guidance Note must be read in conjunction with the said definition.

### **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 Under the circumstances as set out hereinafter, nominees or representatives of major shareholders who fulfil 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 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 contributors or investors who are members of the 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 had personally provided professional advisory services to the said Corporation within the last 2 years or is presently a partner, director (except as an independent director) or major shareholder, as the case may be, of a firm or company (hereinafter referred to as "Entity") which has provided professional advisory services to the said Corporation within the last 2 years, 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.

4.2 For the purposes of paragraph 4.1 above, where the Entity is a company, the computation of the gross revenue of the Entity shall be based on its annual audited accounts for the last 2 financial years. Where the service is rendered by the said Director personally or by an Entity which is other than a company, the computation of the gross revenue 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.

#### **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 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 is presently a partner, director, a major shareholder as the case may be, of an Entity (other than subsidiaries of the applicant or listed company) which has engaged in transactions with the said Corporation within the last 2 years, 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. However, "transactions" as stated above shall exclude transactions:-

(a) 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) 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 subject to paragraph 4.1 above), insurance, 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.

5.2 For the purposes of paragraph 5.1 above, where the Entity is a company, the computation of the gross revenue of the Entity shall be based on its annual audited accounts for the last 2 financial years. Where the transaction is entered into by the said Director personally or by an Entity which is other than a company, the computation of the gross revenue 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.

## **II REQUISITE QUALIFICATIONS FOR THE SIGNATORY AND THE SAID AUDIT COMMITTEE MEMBER**

### **6.0 General**

6.1 Paragraph 7.0 of this Guidance Note must be read in conjunction with Rules 9.29 and 15.09 of the Listing Requirements.

## **7.0 Requisite qualifications**

7.1 For the purposes of Rules 9.29(c) and 15.09(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 at least 3 years' post qualification experience in accounting or finance;
- (b) at least 7 years' experience being a chief financial officer of a company or having the function of being primarily responsible for the management of the financial affairs of a company.

7.2 In relation to paragraph 7.1(a) above, persons who are members of professional accountancy organisations 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 Guidance Note must be read in conjunction with Rule 15.07 of the Listing Requirements.

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

### **9.0 Method of computation**

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

- (a) a directorship in a non-profit organisation shall be excluded from the computation of the number of directorships held pursuant to the said Restriction;
- (b) a directorship in a listed company shall be counted as 1 directorship in a listed company and shall not be aggregated with the directorship held in any other company;
- (c) directorships held in the non-listed companies shall be aggregated in the following manner:-
  - (i) in relation to a listed group of companies, the following shall be aggregated and counted as 1 directorship in a non-listed company:-
    - (aa) directorships held in any of the listed company's subsidiaries, except where such subsidiaries are listed companies or are also subsidiaries of the listed company's listed subsidiaries;
    - (bb) directorships held in the listed company's immediate non-listed associated companies; and

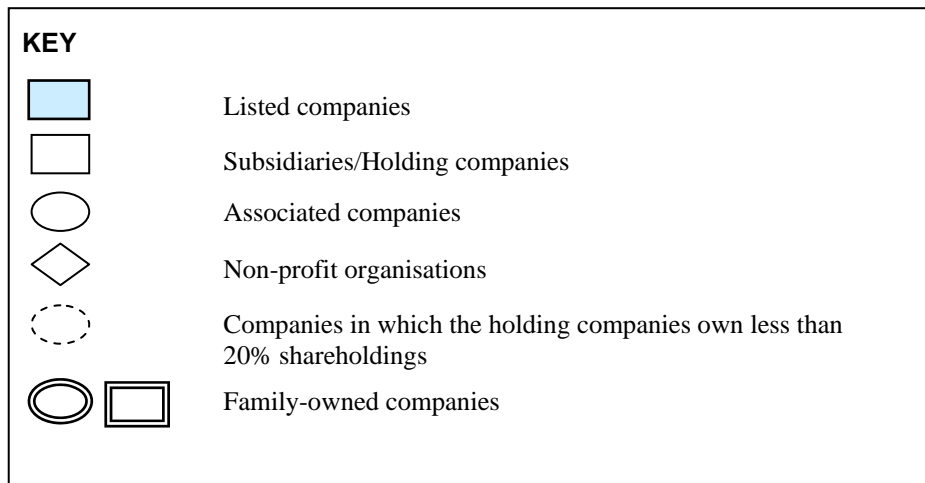
- (cc) directorships held in the immediate non-listed associated companies of the companies referred to in subparagraph (c)(i)(aa) above; and
- (ii) directorships held in family-owned companies shall be aggregated and counted as 1 directorship in a non-listed company;
- (d) for the avoidance of doubt, a directorship in a non-listed company that does not fall within paragraph (c) above shall be counted as 1 directorship in a non-listed company and shall 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) “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 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.

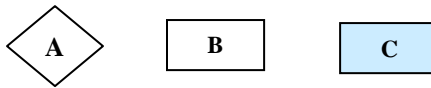
## 10.0 Illustrations

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



### 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:

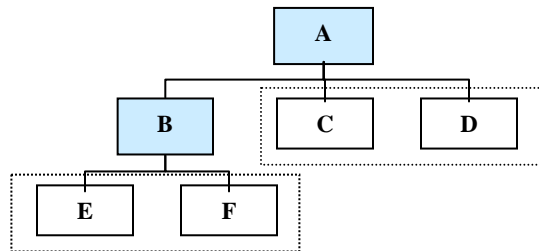
The number of directorships held by Mr X is 1 directorship in a listed company and 1 directorship in a non-listed company.

#### 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 company.
- The directorship in C is counted as 1 directorship in a listed company.

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

Facts:



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 companies and 2 directorships in non-listed companies.

#### Basis:

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

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:**

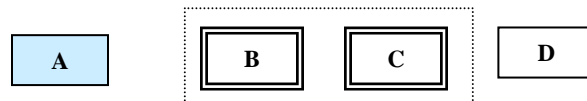
The number of directorships held by Mr X is 2 directorships in listed companies and 4 directorships in non-listed companies.

**Basis:**

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

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

Facts:



Mr X is a director of A to D.

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 company and 2 directorships in non-listed companies.

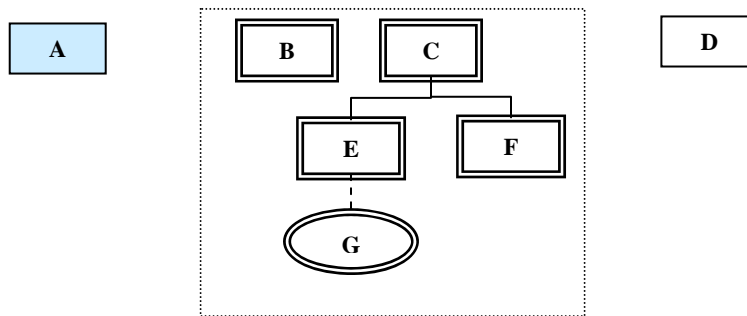
**Basis:**

- Directorship in A is counted as 1 directorship in a listed company.
- Directorships in B and C are aggregated and counted as 1 directorship in a non-listed company because they are family-owned companies.
- Directorship in D is counted separately as 1 directorship in a non-listed company 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:

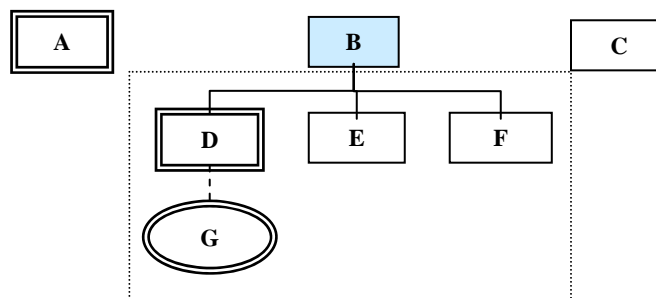
The number of directorships held by Mr X is 1 directorship in a listed company and 2 directorships in non-listed companies.

Basis:

- Directorship in A is counted as 1 directorship in a listed company.
- Directorships in B, C, E, F and G are aggregated and counted as 1 directorship in a non-listed company because they are family-owned companies.
- Directorship in D is counted separately as 1 directorship in a non-listed company 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:**

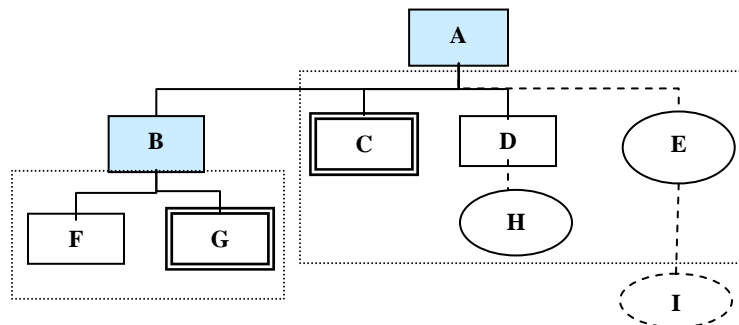
The number of directorships held by Mr X is 1 directorship in a listed company and 3 directorships in non-listed companies.

Basis:

- Directorship in B is counted as 1 directorship in a listed company.
- Directorships in E and F are aggregated and counted as 1 directorship in a non-listed company because they are non-listed subsidiaries of a listed company, 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 company. 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 company, 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 companies.

**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:**

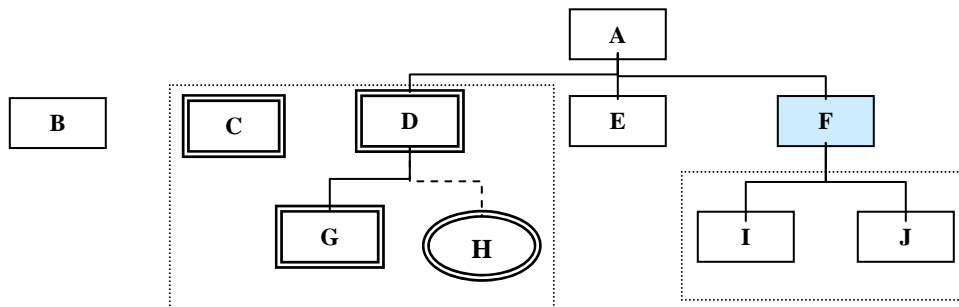
The number of directorships held by Mr X is 2 directorships in listed companies and 3 directorships in non-listed companies.

**Basis:**

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

**Computation:**

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

**Basis:**

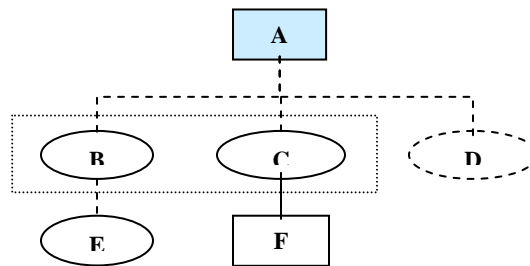
- Directorship in F is counted as 1 directorship in a listed company.
- Directorships in C, D, G and H are aggregated and counted as 1 directorship in non-listed company because C, D, G and H are family-owned companies.
- Directorships in I and J are aggregated and counted as 1 directorship in a non-listed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

**11.0 Effective Date**

- 11.1 This Guidance Note takes effect on 3 July 2006.

### 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 company and 4 directorships in non-listed companies.

#### Basis:

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

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

Facts:

