
**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS
(As at 1 January 2022)**

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 issuer or its subsidiaries and includes any of the following actions undertaken by the listed issuer:

- 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 issuer'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 issuer or its subsidiaries.

10.2 For the purpose of Part D of Chapter 10 of the Main 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 issuer 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 issuer or its subsidiaries from a major shareholder or director considered a “transaction” for the purpose of Part E, Chapter 10 of the Main LR?

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

- 10.4** *A Bhd*, a listed issuer 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 Main 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 Main LR.

- 10.5** What amounts to an “interest” as referred to in the definition of related party transaction set out in paragraph 10.02(k) of the Main 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 issuer?

“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 issuer 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 Main LR, is the announcement to be made by both the listed issuer and its listed subsidiary?

No, only the listed subsidiary is required to make the announcement pursuant to Chapter 10 of the Main LR. The listed issuer 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 Main LR, will the listed issuer also be required to obtain the shareholder approval under the Main LR?

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

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

In applying the percentage ratios the listed issuer should take into account its interest in the subsidiary in question. For example, *A Bhd*, a listed issuer, 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 paragraph 10.02(g)(iii) should be as follows:

60% x RM10 million

Net assets of *A Bhd* on consolidated basis

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

A listed issuer must exclude treasury shares in computing the -

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

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

10.12 *XY Bhd*, a listed issuer 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 paragraph 10.02(g) of the Main LR, the only applicable percentage ratio of the said transaction which exceeds 5% is paragraph 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 Main LR? Similarly, will *XY Bhd* be required to comply with the relevant provisions of Part D of Chapter 10 of the Main LR if the parties agree that the consideration for the Land Transaction be in the form of *XY Bhd*’s shares?

Pursuant to paragraph 10.03(8) of the Main 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 Main 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 Main LR in relation to the Land Transaction where *XY Bhd* pays for the land in cash?

Pursuant to paragraph 10.03(8) of the Main 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 Main 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 paragraph 10.02(g)(vi) of the Main LR (“Total Assets Ratio”) be applicable?

Pursuant to paragraph 10.03(9) of the Main 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 Main LR, must a listed issuer 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 issuers 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 paragraph 10.04 of the Main LR is applicable?

For the purpose of determining whether the requirement of paragraph 10.04 of the Main 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.

Examples of the rights, interests and benefits related to the ownership of the real estate including development rights, timber concession, mining concession etc.

10.17 Paragraph 10.04 of the Main 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 Main LR. What will be considered as a transaction which “involves an acquisition or disposal of any real estate”?

This 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 paragraph 10.04 of the Main LR:

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

“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.

“**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.

- 10.18 In an acquisition or disposal of a manufacturing corporation by a listed issuer, 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 paragraph 10.04 of the Main LR, a valuation report only needs to be submitted for the real estate. The listed issuer 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 paragraph 10.04 of the Main 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 paragraph 10.04 of the Main LR?**

No, pursuant to paragraph 10.04(2)(b) of the Main 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.

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

A valuation report required under paragraph 10.04 of the Main LR must be submitted to Bursa Securities. A listed issuer need not submit the report to the SC.

- 10.21 Must a valuer who is required to submit an undertaking to Bursa Securities under paragraph 10.04 of the Main LR, file an undertaking each time it acts for a listed issuer?**

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

Related party transactions

- 10.22 Must a listed issuer immediately announce all related party transactions?**

A listed issuer 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 RM500,000 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 issuer 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 issuer 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 issuer 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 issuer 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 Main 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 issuer has obtained a general mandate pursuant to paragraph 10.09 of the Main 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 Practice Note 12, 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 paragraph 10.08 of the Main 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 issuer 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 Main LR and only a general undertaking letter under paragraph 2.21(1) of the Main LR is required. However, an independent adviser must ensure its independence within the definition of independence under paragraph 1.01 of the Main LR. Under paragraph 10.08(5) of the Main 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 paragraphs 10.08(6) to (8) of the Main 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 paragraph 10.08(11)(q) of the Main LR?**

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

- 10.29 Does the term “another person” as used in paragraph 10.08(11)(c), (g), (k), (l), (m), (n) and (o) of the Main LR include investee companies of the listed issuer?**

Yes, “another person” includes investee companies of the listed issuer.

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

For the purposes of paragraph 10.08(11)(c), (l), (m), (n) and (o) of the Main 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 paragraph 10.08(11)(g)(ii) of the Main 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 issuer 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 paragraph 10.08(11)(g) of the Main LR?**

Yes, provided that the provision of goods meets the conditions set out in paragraph 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 issuer, 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 paragraph 10.08(11)(g) of the Main 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 paragraph 10.08(11)(g) of the Main LR?

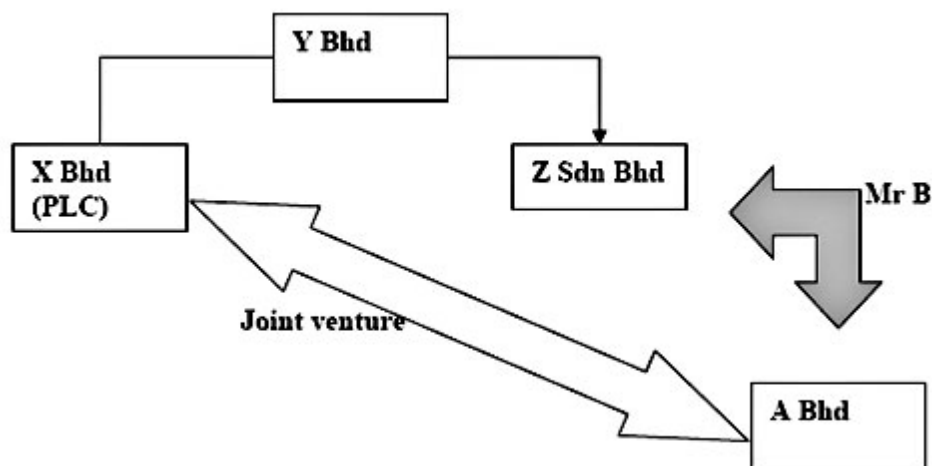
The products or services provided by *ZZ Bhd* to its related parties such as taking orders to acquire or dispose securities, nominees and custody services which although are in relation to securities, would come within the ambit of “stockbroking services” under paragraph 10.08(11)(g) of the Main LR. 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 paragraph 10.08(11)(g) of the Main LR are fulfilled. However, *ZZ Bhd*'s dealings in securities as a principal would not be exempted under paragraph 10.08(11)(g) of the Main 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 paragraph 10.08(11)(g) of the Main LR, must the prices be advertised to the public?

In order to satisfy the criterion of “published or publicly quoted” under paragraph 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 issuer, 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



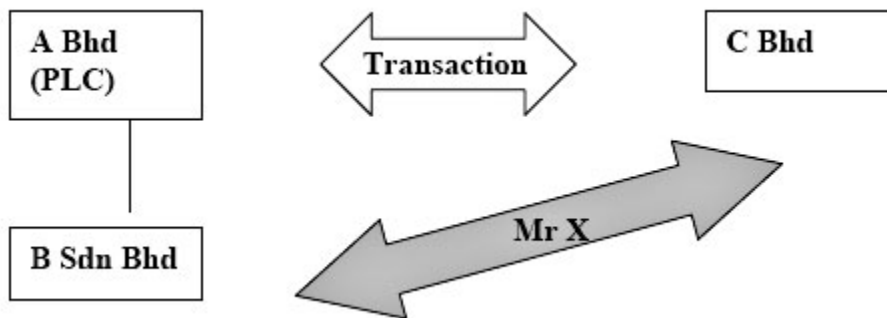
No, based on the above facts, in view of the definition of “related party” under the Main LR, the joint venture with *A Bhd* is not a related party transaction as it does not involve the interest of any related party (i.e. directors, major shareholders or persons connected with them) of *X Bhd* and *Y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

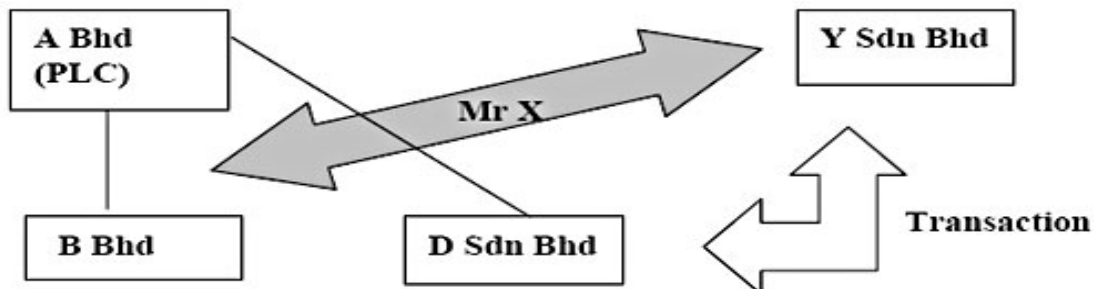
Illustration 2



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

- 10.38** *D Sdn Bhd*, a subsidiary company of *A Bhd*, the listed issuer, is entering into a transaction with *Y Sdn Bhd*. *Mr X* who is a director of *B Bhd*, a subsidiary of the listed issuer 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 paragraph 10.08(11)(o) of the Main LR.

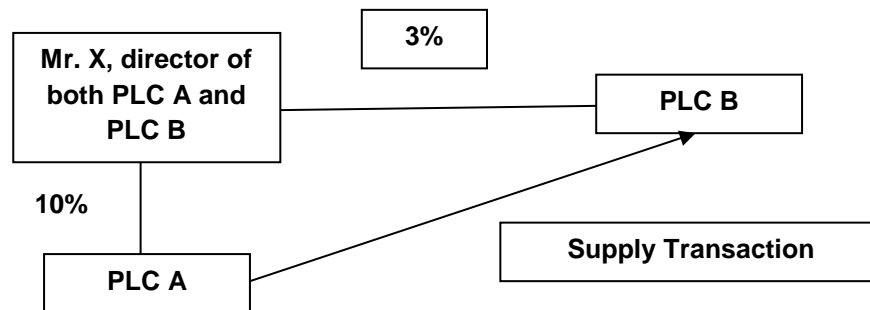
- 10.39** Referring to the facts as set out in Question 10.38 above, *D Sdn Bhd*, is entering into a transaction with *Y Sdn Bhd*. *Mr Z* who is a director and a substantial shareholder of *D Sdn Bhd* is also a director and a substantial shareholder of *Y Sdn Bhd*. *A Bhd* has no holding company. Assuming that *Mr Z* has no interest in *A Bhd*, the listed issuer, is this a related party transaction?

Yes, this situation is considered a related party transaction. However, pursuant to paragraph 10.08(9) of the Main 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 paragraph 10.08(1) of the Main 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*.

- 10.40** *X Bhd* is a listed issuer. *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 paragraph 10.08(11)(q) of the Main LR, this disposal will not be considered as a related party transaction.

- 10.41** *PLC A* and *PLC B* are listed issuers. *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 paragraph 10.08(11)(c) of the Main 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%	RM100,000
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

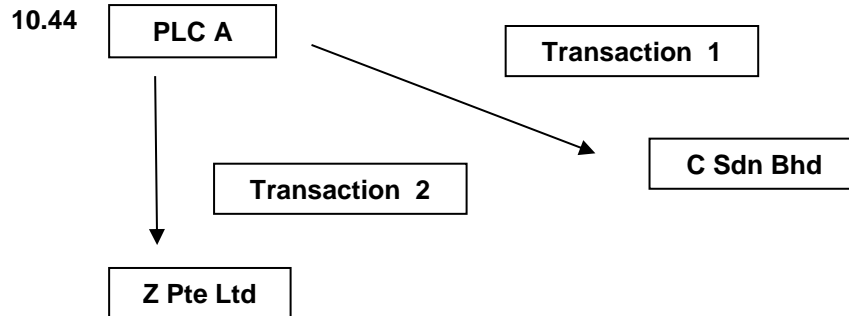
Pursuant to paragraph 10.08(1)(a) of the Main LR, no obligation is triggered by *ABC Berhad* in relation to the related party transaction as even though the highest percentage ratio triggered is 5% (i.e. threshold for shareholder approval for related party transactions), the value of consideration given is less than RM500,000.

Transaction 2

Pursuant to paragraph 10.08(1) of the Main 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 issuer and he is not the largest shareholder of *ABC Berhad*. Is he a major shareholder in *ABC Berhad* under Chapter 10 of the Main 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 Main 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 Main 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 Main 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 issuer announce the RRPT?

No, the threshold set out in paragraph 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 paragraph 10.09(1) of the Main LR.

10.46 Must a listed issuer 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 paragraph 10.09 of the Main 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 Must a listed issuer appoint a main adviser for a RRPT, where such transaction triggers the percentage ratio of 25% or more and specific shareholders' approval (instead of a general mandate) is sought for the RRPT?

Under paragraph 10.08(4) of the Main LR, the listed issuer is no longer required to appoint a main adviser for such RRPT. This however, does not restrict the listed issuer from appointing a Recognised Principal Adviser for the RRPT if it wishes to do so.

Notwithstanding the above, the listed issuer must still appoint an independent adviser for the RRPT where specific shareholder approval is sought.

10.48 *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 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 paragraph 10.09(2)(e) of the Main LR ("Announcement 1"). *A Berhad* must include in Announcement 1 the information set out in Annexure PN12-B of Practice Note 12.

- (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.

10.49 *A Bhd's* AGM for its financial year ended 31 December 2008 was held 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* 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 PN12-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.

- 10.50** Pursuant to paragraph 3 of Annexure PN12-A, a listed issuer 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 PN12-A, the listed issuer 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 10.09(2)(e) of the Main LR, a listed issuer must immediately announce to the Exchange when the actual value of a RRPT (“Actual Value”) entered into by the listed issuer, exceeds the estimated value of the RRPT (“Estimated Value”) disclosed in the circular by 10% or more. Can the listed issuer wait until its next AGM (which is the date on which the current mandate expires) to make this announcement?

No, the listed issuer 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 issuer is expected to closely monitor and track the value of the RRPTs transacted, as and when a transaction is entered into.

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

Transaction No.	Description	Estimated Value (RM)	Actual Value
1	acquisition of stationery	500,000	520,000 (< 10%)
2	provision of secretarial, accounting and registration services	2,500,000	2,800,000 (> 10%)
3	receipt of insurance services/products	4,000,000	3,500,000
	Total	7,000,000	6,820,000

- (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 Transactions 1, 2 and 3 involve the interests of the same related party, pursuant to paragraph 10.12 of the Main 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 paragraph 10.09(2)(e) of the Main LR relating to Transaction 2 only?**

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

10.53 Pursuant to paragraph 11 of Annexure PN12-A, a listed issuer must disclose the thresholds for the approval of RRPTs within its group of companies.

- (a) **What is the “approval” referred to in this paragraph 11?**

It refers to the listed issuer’s internal approval.

- (b) **Does Bursa Securities prescribe these thresholds?**

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

- (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 PN12-A?**

Yes, so long as the said authority matrix is wide enough to cover the RRPTs for which shareholder approval is being sought, *A Bhd* may use its internal authority matrix for the purpose of disclosure under paragraph 11 of Annexure PN12-A.

10.54 Pursuant to paragraph 12 of Annexure PN12-A, a listed issuer 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 products/services and/or quantities. If a listed issuer can find only one other contemporaneous transaction with an unrelated third party, would it be deemed in compliance with paragraph 12 of Annexure PN12-A?

Yes, but the listed issuer 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.

Major Disposal**10.55 What is meant by “substantially all of a listed corporation’s assets” under the definition of “Major Disposal” in paragraph 10.02(eA) of the Main 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 paragraph 8.03 and Practice Note 16, the criteria for inadequate level of operations under paragraph 8.03A, or any of the criteria prescribed under paragraph 8.04 and Practice Note 17 of the Main LR.

10.56 Under paragraph 10.11A(1)(bA) of the Main LR, a listed issuer 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 issuer’s real estate contributes 50% or more to the total assets of the listed issuer on a consolidated basis. What constitutes material real estate for the purpose of paragraph 10.11A(1)(bA) of the Main LR?

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

10.56A A listed issuer 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 of the Main 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 issuer and its board should be guided by paragraphs 3.09 and 3.10 of the Rules on Take-Overs, Mergers and Compulsory Acquisitions¹.

¹ 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 paragraph 10.11A(4) of the Main 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.

10.57 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 Main 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 Main LR.

10.58 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. 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 paragraphs 10.08 (Related Party Transaction) and 10.11A (Major Disposal) of the Main LR.

10.59 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 Main LR?

The announcement in relation to the Major Disposal as required under paragraph 4 in Part I of Appendix 10A of the Main 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

10.60 What is the definition of “parties connected with one another” as used in paragraph 10.12(2)(a) of the Main 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 Main LR.

10.61 Z Bhd, a listed issuer 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%

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

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 Main LR in respect of the aggregated transactions?

Yes, pursuant to paragraph 10.12(2)(b) of the Main LR and paragraph 2.0 of Practice Note 14, 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 paragraph 10.06 of the Main 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 paragraph 10.07 of the Main 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

10.62 Can a listed issuer appoint a foreign valuer to prepare the requisite valuation report on the foreign assets proposed to be acquired under item 1(f) of Part C and item 3 of Part E, Appendix 10B of the Main LR?

Yes, a listed issuer 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 issuer 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.

10.63 “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.

MOG listed issuer

- 10.64 The criteria of “MOG listed issuer” in paragraph 3.2 of Practice Note 32 of the Main LR excludes a listed issuer which purely provides services or equipment to other corporations engaged in such core business i.e. mineral, oil and gas exploration or extraction activities. What are examples of such services or equipment?**

In relation to mineral exploration or extraction activities, examples of such services or equipment include but are not limited to contract field exploration services or assay equipment. In relation to oil and gas exploration or extraction activities, examples of such services or equipment include but are not limited to engineering project support services or the manufacturing or fabrication of offshore cranes.

Listed issuers which are in doubt about the nature of their activities are invited to seek further clarification from Bursa Securities.

- 10.65 *DEF Bhd*, a MOG listed issuer, has diversified its operations pursuant to paragraph 10.13 of the Main LR, resulting in its mineral, oil and gas exploration or extraction activities no longer contributing 25% or more of its net profits. Must *DEF Bhd* continue to comply with the specific disclosure obligations applicable to a MOG listed issuer?**

Yes, *DEF Bhd* must continue to comply with the specific disclosure obligations applicable to a MOG listed issuer after the diversification in operations, unless it has procured an exemption from Bursa Securities. Such exemptions will be considered on a case by case basis, having regards to the relevant facts and circumstances.

Transactions by REITS

- 10.66 It is noted that paragraph 10.04 of the Main LR requires valuation to be conducted for transactions entered into by a REIT which trigger the percentage ratio for unit holders’ approval. Does this mean that a REIT is not required to conduct valuation for transactions which do not require unit holders’ approval?**

No. Pursuant to paragraph 10.02(b) of the SC’s Guidelines on Listed REITs, a REIT must carry out valuation on all real estate to be acquired or disposed by the REIT.

- 10.67 Where valuation is conducted for a transaction that does not require unit holders’ approval, is the valuation report required to be submitted to the Exchange?**

No, the valuation report is not required to be submitted to the Exchange.

- 10.68 A REIT has completed its property development project on its vacant land and intends to dispose the developed real estate immediately after completion for a consideration of RM2 million, to a related party (“said disposal”). The percentage ratio for the disposal is 3%.**

- (a) Is the REIT required to procure unit holders’ approval for the said disposal under the Main LR?**

Yes. Pursuant to paragraph 10.16 of the Main LR, a REIT must, among others, procure its unit holders’ approval for the said disposal by way of special resolution, irrespective of the materiality threshold of the transaction.

-
- (b) **Is the REIT required to appoint an independent adviser for the purpose of the said disposal?**

No. Even though unit holders' approval is required for the said disposal, the REIT is only required to appoint an independent adviser if the percentage ratio of the transaction is 5% or more and the value of the consideration of the transaction is RM500,000 or more, as set out in paragraph 10.16(2) of the Main LR.

- 10.69 Paragraph 10.16(1) of the Main LR sets out the requirements pertaining to disposal of developed real estate by a REIT within 2 years from the date of completion of property development activities. What does the "date of completion" refer to?**

The "date of completion" in paragraph 10.16(1) of the Main LR refers to the date the developed real estate attains its certificate of fitness.