

BURSA MALAYSIA SECURITIES BERHAD

GUIDANCE NOTE 9

REQUIREMENTS FOR DIRECTORS AND SIGNATORY OF STATUTORY DECLARATION FOR ACCOUNTS

Details	Cross References
Effective date:	3 July 2006
Revision date:	Rules 1.01, 9.27, 15.06, 15.07 and 15.09
	3 August 2009, 1 June 2013, 13 July 2015, 2 January 2018, 1 October 2020

1.0 Introduction

- 1.1 A director who is appointed to act as an “independent director” of an applicant or a listed corporation must satisfy the definition of “independent director” set out in Rule 1.01 of the Listing Requirements (“**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 corporation. Without limiting the generality of the foregoing, an independent director is one who -*

- (a) *is not an executive director of the applicant, listed corporation or any related corporation of such applicant or listed corporation (each corporation is referred to as “**said Corporation**”);*
- (b) *is not, and has not been within the last 3 years, an officer (except as an independent director) of the said Corporation. For this purpose, “**officer**” has the meaning given in section 2 of the Companies Act;*
- (c) *is not a major shareholder of the said Corporation;*
- (d) *is not a family member of any executive director, officer or major shareholder of the said Corporation;*
- (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)**”);*
- (f) *has not been engaged as 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*

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(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 the listed corporation) 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 Rule 9.27 of the Listing Requirements, the director or person primarily responsible for the financial management of the listed corporation, as the case may be, who signs the statutory declaration pursuant to section 251(1)(b) of the Companies Act (“**signatory**”) must satisfy the requirements prescribed in that section (“**requisite qualifications**”).
- 1.3 Further, Rule 15.09 of the Listing Requirements also states that at least 1 member of the audit committee must satisfy the requisite qualifications (“**said audit committee member**”).
- 1.4 [Deleted].
- 1.5 [Deleted].
- 1.6 This Guidance Note clarifies the following:
 - (a) certain aspects of the said definition; and
 - (b) the requisite qualifications in relation to the signatory and the said audit committee member.
 - (c) [deleted].

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 corporation must still apply the test of whether the said director is able to exercise independent judgement and act in the best interests of the applicant or listed corporation 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.

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- 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 total number of issued shares (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 corporations).

4.0 Paragraph (f)

- 4.1 In relation to paragraph (f), a person who is proposed to be or is an independent director (“**said Director**”) is disqualified from being an independent director if he –

- (a) had personally provided professional advisory services to the said Corporation within the last 3 years; or
- (b) is presently a partner, director (except as an independent director) or major shareholder, of a firm or corporation (“**Entity**”) which has provided professional advisory services to the said Corporation within the last 3 years,

and the consideration in aggregate is 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 must be based on its annual audited financial statements for the last 3 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 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 3 years.

5.0 Paragraph (g)

- 5.1 In relation to paragraph (g), the said Director is disqualified from being an independent director if he –

- (a) had engaged personally in transactions with the said Corporation (other than for board service as an independent director) within the last 3 years; or

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- (b) is presently a partner, director, a major shareholder, of an Entity (other than subsidiaries of the applicant or listed corporation) which has engaged in transactions with the said Corporation within the last 3 years,

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

5.2 However, “**transactions**” in paragraph 5.1 above excludes 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;
- (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;
- (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 persons as defined under the Financial Services Act 2013 (other than professional advisory services which 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:

- (a) where the Entity is a corporation, the computation of the gross revenue of the Entity must be based on its annual audited financial statements for the last 3 financial years;
- (b) 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 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 3 years.

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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 9.27 and 15.09 of the Listing Requirements.

7.0 Requisite qualifications

- 7.1 For the purposes of Rules 9.27(c) and 15.09(1)(c)(iii) of the Listing Requirements, it is prescribed that the following qualifications are also acceptable:

- (a) 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 organisation 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.

III. RESTRICTION IN NUMBER OF DIRECTORSHIPS

[Deleted].