

**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD LISTING REQUIREMENTS
FOR THE MAIN MARKET
(As at 1 March 2021)**

CHAPTER 1 – DEFINITIONS AND INTERPRETATION

1.1 Definition of “core business”

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

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

(i) Scenario 1

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

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

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

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

(ii) Scenario 2

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

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

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

1.1A Definition of “collective investment scheme”

Pursuant to paragraph 1.01 of the Main LR, “collective investment scheme” includes REITs, ETFs and closed-end funds. Does “collective investment scheme” include business trusts?

No, the definition of “**collective investment scheme**” under the Main LR does not include business trusts. This is aligned with the definition of “**collective investment scheme**” under the SC’s Guidelines for Listed REITs.

1.2 Definition of “independent director”

- (i) **Is there a difference between the definition of “officer” in paragraphs (b) and (d) of the said definition of “independent director” in Chapter 1 of the Main LR (“the said definition”)?**

Yes. For the purpose of paragraph (b) of the said definition, “officer” has the meaning set out in section 2 of the Companies Act 2016 (e.g. director, secretary or employee of a corporation) whereas for the purpose of paragraph (d) of the said definition, “officer” has been defined in paragraph 1.01 of the Main LR to be the chief executive, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of an applicant, a listed issuer or its related corporation, by whatever name called.

- (ii) **Mr Y is currently a non-executive director of C Bhd, a listed issuer. Can Mr Y subsequently be designated as an independent director of C Bhd?**

Mr Y can only be designated as an independent director –

- after he observes a cooling-off period of 3 years as prescribed in paragraph (b)¹ of the said definition; and
- he meets the other independence criteria stipulated in the said definition.

¹ Paragraph (b) of the said definition stipulates that an independent director is one who is not, and has not been within the last 3 years, an officer (except as an independent director) of the applicant, listed issuer or any related corporation of such applicant or listed issuer. For this purpose, “**officer**” has the meaning given in section 2 of the Companies Act 2016.

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- (iii) **Would an independent director of a subsidiary of a listed issuer, who is proposed to be appointed as an independent director of such listed issuer, be disqualified from acting as an independent director of such listed issuer pursuant to paragraph (b) of the said definition?**

No, an independent director of a subsidiary will not be disqualified from acting as an independent director of such listed issuer pursuant to paragraph (b) of the said definition.

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

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

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

"**Adviser**" is as defined in paragraph 1.01 of the Main LR and includes, amongst others, advocates and solicitors, licensed investment banks, universal brokers, tax consultants, accounting firms, auditing firms etc offering professional advisory services to the listed issuer or its related corporation.

- (vi) **Paragraph 5.1 of Practice Note 13 in relation to paragraph (g) of the said definition states that a person is disqualified from being an independent director of a listed issuer if he -**

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

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

***Mr A* is an independent director of *X Bhd*, a listed issuer. If *Mr A* were to purchase a car from *X Bhd* for his own use, the value of which exceeds the said Threshold, would he be disqualified from being an independent director of *X Bhd* pursuant to paragraph (g) of the said definition and paragraph 5.1 of Practice Note 13?**

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As clarified under paragraph 5.2(a) of Practice Note 13, an acquisition of a car from the listed issuer will not be considered a “transaction” where it is purchased for personal use provided that the transaction is on normal commercial terms. Therefore, *Mr A* would not be disqualified from being an independent director of *X Bhd* pursuant to paragraph (g) of the said definition and paragraph 5.2(a) of Practice Note 13 due to the purchase of the car, provided that the purchase is on normal commercial terms.

- (vii) ***Mr X* is a director (and not a major shareholder) of *A Bhd*, a listed issuer. He is proposed to be appointed as an independent director of *B Bhd*, another listed issuer. *A Bhd* and *B Bhd* are engaged in transactions, the consideration of which exceeds the said Threshold. Would paragraph 5.1 of Practice Note 13 preclude *Mr X* from being appointed as an independent director of *B Bhd*?**

Mr X would not be disqualified from being an independent director of *B Bhd* pursuant to paragraph (g) of the said definition and paragraph 5.2(b) of Practice Note 13 if *Mr X* is not involved in the transactions entered into between *A Bhd* and *B Bhd*, i.e. *Mr X* is not the initiator, promoter, agent or is not a party to such transactions, and provided that such transactions are on normal commercial terms.

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

Mr X would not be disqualified from being an independent director of *B Bhd* pursuant to paragraph (g) of the said definition and paragraph 5.2(c)(i) of Practice Note 13 provided that the services rendered by *A Bhd* are based on a non-negotiable fixed price or rate, which is published or publicly quoted, and the material terms including the prices or charges are applied consistently to all customers or classes of customers.

- (ix) **In order to come within the ambit of “published or publicly quoted” as provided under paragraph 5.2(c) of Practice Note 13, must the prices be advertised to the public?**

In order to satisfy the criterion of “published or publicly quoted” under paragraph 5.2(c) of Practice Note 13, 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.

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

The relevant threshold to be considered pursuant to paragraph 5.1 of Practice Note 13 is RM1 million or 5% of Y Sdn Bhd's gross revenue for the last 3 financial years whichever is the higher. As 5% of the gross revenue of Y Sdn Bhd for the last 3 financial years amounted to only RM800,000, the relevant threshold is RM1 million. Pursuant to paragraph 5.1 of Practice Note 13, Mr A will not be disqualified from being an independent director of X Bhd because the value of the transactions entered into with Y Sdn Bhd of which Mr A is a major shareholder does not exceed RM1 million.

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

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

- (xii) ***Would the issuance of shares by a listed issuer or its subsidiary to a director of such listed issuer constitute a "transaction" as used in paragraph (g) of the said definition?***

No, the issuance of shares by a listed issuer or its subsidiary to a director of such listed issuer would not constitute a "transaction" for the purposes of paragraph (g) of the said definition.

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

No, the receipt of remuneration for services rendered to the listed issuer as a director would not constitute a "transaction" for the purposes of paragraph (g) of the said definition.

1.3 Definition of “person connected”

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

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

1.4 Definition of “public”

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

No, the associate of such a collective investment scheme or statutory institution would not be deemed as "public" under paragraph (a)(iii) of the definition “public” in paragraph 1.01 of the Main LR. Accordingly, the associate’s shareholdings should be excluded from comprising the public security holding spread.

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

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

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

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

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

1.5 Definition of “public” in relation to a business trust

- (i) Under paragraph 1.01 of the Main LR, the definition of “public” in relation to business trust excludes subsidiary entity as defined under the SC’s Business Trust Guidelines. What is a subsidiary entity?

Under paragraph 2.01 of the SC’s Business Trust Guidelines, “**subsidiary entity**” is defined to mean any corporation or other entity where:

- (a) the trustee-manager (acting in its capacity as trustee-manager of the business trust) –
- (i) controls the composition of the board of directors of the corporation or board of persons of the entity which performs similar function as with a board of directors of a corporation, (“**Board**”);
 - (ii) controls more than half the voting shares of the corporation or voting rights of the entity; or
 - (iii) holds more than half of the issued share capital of the corporation (excluding preference shares) or its equivalent in the case of the entity; or
- (b) the corporation or entity is a subsidiary entity of another corporation or entity which is a subsidiary entity of the business trust.

Based on the above definition, apart from a corporation, a subsidiary entity of a business trust may include, among others, the following:

- a collective investment scheme;
- a management company of a collective investment scheme whose board of directors is controlled by the trustee-manager; or
- a subsidiary of the trustee-manager.

- (ii) The facts in relation to Illustration 1 below are as follows:

- **A Sdn Bhd** is a trustee-manager of **C Trust**, a business trust listed on the Main Market.
- **A Sdn Bhd** has a wholly-owned subsidiary, **B Sdn Bhd**, a management company who manages a collective investment scheme, **CIS M**.
- **Mr. K** is a director of **A Sdn Bhd** and **B Sdn Bhd**.
- **Corporation K** and **CIS M** are subsidiary entities of **C Trust** as defined under the SC’s Business Trust Guidelines.
- **Mr. L** is a director in **Corporation K**.
- Both **A Sdn Bhd** and **B Sdn Bhd** hold less than 5% in **C Trust**.

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Based on the facts above and Illustration 1 below, who are excluded from the definition of “public” under paragraph 1.01(e) of the Main LR in relation to *C Trust*, the listed business trust?

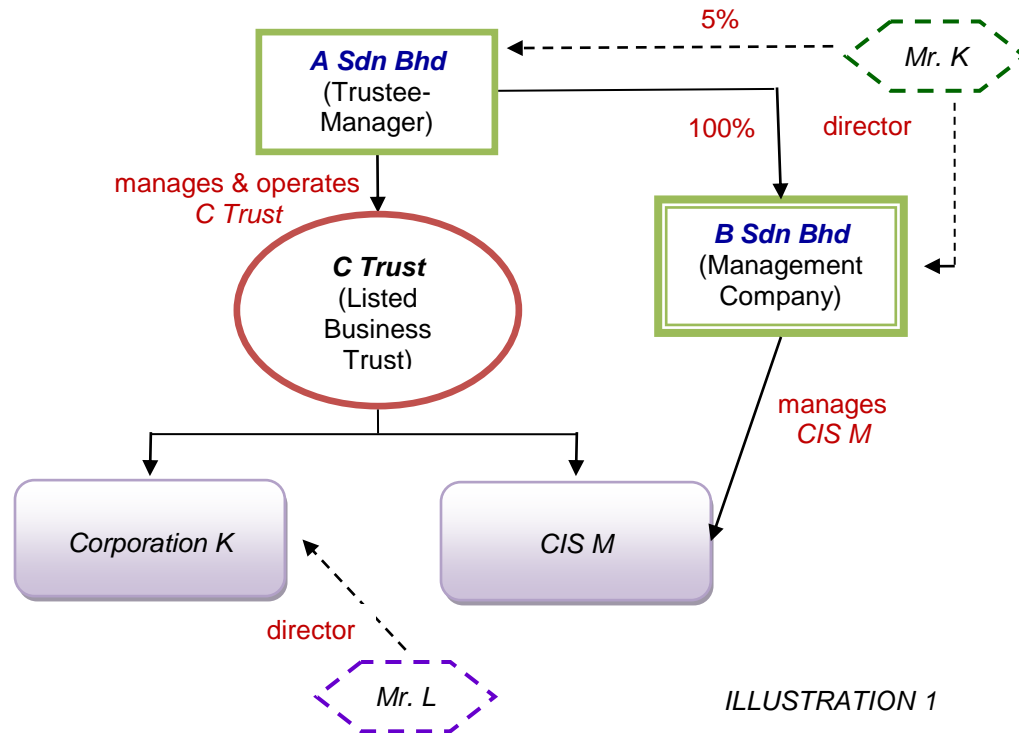


ILLUSTRATION 1

The following are excluded from the definition of public in relation to *C Trust*, the listed business trust:

| Entity | Basis |
|-------------------|---|
| (a) A Sdn Bhd | the trustee-manager |
| (b) Corporation K | a subsidiary entity |
| (c) CIS M | a subsidiary entity |
| (d) B Sdn Bhd | a subsidiary entity |
| (e) Mr. K | a director and substantial shareholder of the trustee-manager |
| (f) Mr. L | a director of a subsidiary entity |

1.6 What is the definition of “year” in the Main LR? Does it refer to a calendar year or a financial year?

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