



Good Governance Guide: No. 5.1

Category: Independent Director

Subject: Who is an independent director?

Source: Chartered Secretaries Malaysia

Paragraph 1.01 of the Listing Requirements of Bursa Malaysia Securities Berhad and Practice Note No. 13/2002 provide as follows:

An independent director is one 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 interest of a listed company. Without limiting the generality of the foregoing, an independent director is one who:-

- (a) is not an executive director of the listed company or any related corporation of such listed company (hereinafter referred to as "the listed Corporation");
- (b) has not been within the last 2 years and is not an officer (except as a independent director) of the listed Corporation.
 - *"officer" shall have the meaning given in section 4 of the Companies Act, 1965 which states that an "officer" in relation to a corporation includes any director, secretary or employee of the corporation; a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and any liquidator of a company appointed in a voluntary winding up.*
- (c) is not a major shareholder the listed Corporation;
- (d) is not a relative of any executive director, officer or major shareholder of the listed Corporation.
 - *"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 listed Corporation;
 - *"Nominee" 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 directors, instructions or wishes of another person.*
 - *Nominees or representatives of major shareholders may apply to Bursa Malaysia Securities Berhad to be considered as an independent director if:*
 - *The major shareholder's aggregate shareholding in the listed corporation, directly or indirectly, is not more than 15% of the issued and paid-up capital of the listed corporation;*

- *The major shareholder is not deemed to be a promoter of the listed corporation; and*
 - *The major shareholder is either:*
 - *A statutory institution who is managing funds belonging to contributors or investors who are members of the public; or*
 - *An entity established as a collective investment scheme, such as closed-end funds, unit trusts or investment funds (but excluding investment holding companies)*
- (f) is not engaged as a professional adviser by the listed Corporation under such circumstances as prescribed by Bursa Malaysia Securities Berhad 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 listed Corporation under such circumstances as prescribed by Bursa Malaysia Securities Berhad;
- *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:*
 - i. he had personally provided professional advisory services to the listed Corporation within the last 2 years; or*
 - ii. is presently a partner, director (except as an independent director) or major shareholder, as the case may be, of a firm or corporation (hereinafter referred to as the "Entity")*

which has provided professional advisory services to the listed Corporation within the last 2 years, the consideration of which:

 - i. in aggregate exceeds 5% of the gross revenue on a consolidated basis (where applicable) of the said Director or Entity; or*
 - ii. RM1 million,*

whichever is higher.
 - *Where the Entity is a corporation, 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 corporation, 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.*
- (g) has not engaged in any transaction with the listed Corporation under such circumstances as prescribed by Bursa Malaysia Securities Berhad or is not presently a partner, director or major shareholder, as the case may be, of a firm or corporation (other than subsidiaries of the applicant or listed issuer) which has engaged in any transaction with the listed Corporation under such circumstances as prescribed by Bursa Malaysia Securities Berhad.
- *The said Director would be disqualified from being an independent director if:*
 - i. he had engaged personally in transactions with the listed Corporation (other than for board service as a non-executive director) within the last 2 years; or*

- ii. *is presently a partner, director, a major shareholder as the case may be, of an Entity (other than subsidiaries of the listed Corporation) which has engaged in transactions with the listed Corporation within the last 2 years,*

the consideration off which is aggregate exceeds 5% of:

- i. *the gross revenue on a consolidated basis (where applicable) of the said Director or the Entity; or*
- ii. *RM1 million,*

which ever is the higher.

- *However, "transaction" as state above shall exclude transactions:-*

- i. *Entered into between the listed Corporation and the said Director or between the listed Corporation and an Entity where the said Director is also a director, major shareholder or partner;*

- *for personal use of the said Director; or*
- *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.

- ii. *Entered into between the listed 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 normal commercial terms;*

- iii. *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:*

- *Provision or usage of public utility services such as water, electricity and telecommunications and date, postal or courier services, services by licensed institutions as defined under the Banking and financial Institutions Act 1989 (other that professional advisory services), 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*
- *Such other types of goods or services that may be prescribed by the Bursa Malaysia Securities Berhad from time to time.*

- *Where the Entity is a corporation, 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 corporation, 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.*