



APPENDIX 3

MAIN MARKET AND ACE MARKET

ISSUERS COMMUNICATION

GUIDANCE ON CONFLICT OF INTEREST (ICN 1/2023)

[Issuance Date: 26 May 2023]

[Updated: 29 November 2024]

A. INTRODUCTION

1. The Main Market Listing Requirements ("**Main LR**") and ACE Market Listing Requirements ("**ACE LR**") (collectively, "**LR**") require a listed issuer to disclose the nature and extent of any conflict of interest ("**COI**") or potential COI including interest in competing business involving directors, key senior management and legal representative of a listed corporation, as well as directors and chief executive of the management company or trustee-manager of a collective investment scheme¹ (collectively, the "**said person**") in the following documents:
 - (a) statement accompanying notices of annual general meetings pertaining to election of directors²;
 - (b) relevant immediate announcements of the said person's appointment³; and
 - (c) annual report in the various sections including those on the profile of directors, chief executive and key senior management⁴.

¹ The collective investment scheme refers to a real estate investment trust ("**REIT**"), business trust ("**BT**"), closed-end fund ("**CEF**") and exchange-traded fund ("**ETF**").

² Paragraph (1)(f) of Appendix 8A, LR.

³ Paragraph (e) in Part A, Part B and Part B(B) as well as paragraph (d) in Part B(A), of Appendix 9A, LR.

⁴ Paragraphs 3(g), 4(g) and 4A(f) in Part A, of Appendix 9C, LR; and paragraphs 1(c) and 2(c) in Part B, paragraphs 3(c) and 4(b) in Part C, paragraphs 3(c), 5(c) and 6(b) in Part E, paragraphs 3(c) and 5(b) in Part F, of Appendix 9C, Main LR.



2. The listed issuer's audit committee ("**AC**") must also review and report to the board, any COI situation that arose, persist or may arise together with the measures taken to resolve, eliminate or mitigate such conflicts⁵, as well as disclose them in the AC report⁶. For this purpose, the AC's review and disclosure in the AC report must cover any COI that arose or might arise during the financial year as well as persisting COI from previous financial years.
3. These enhancements are aimed at improving the quality of COI disclosures of directors and key senior management, promoting better governance practices and accountability in relation to managing COI among listed issuers and enhancing investors' confidence. Further, Bursa Malaysia Securities Berhad ("**the Exchange**") also expects that directors and key senior management would be more vigilant in discharging their duties and obligations to the listed issuer, given the important fiduciary position they hold in the listed issuer.
4. The Exchange notes that there is a need to provide some guidance to facilitate listed issuers' compliance with the enhanced requirements above. Accordingly, we issued this ICN 1/2023 to highlight some key considerations in determining COI and clarify as well as illustrate application of the LR.
5. The guidance provided in this ICN 1/2023 is not meant to be exhaustive. The situations which will or will not give rise to COI may be subjective and will depend on the specific facts and circumstances. Hence, when in doubt, it is best for the listed issuer to disclose the matter⁷.

B. GUIDANCE ON COI

6. A listed issuer may be guided by the principles and illustrations below in determining situations of COI, potential COI and interest in competing business for purposes of the COI requirements in the LR.

Ambit of COI

7. Generally, COI refers to situations where –
 - (a) the interests of the said person (who is often a person in a position of trust), interfere, or appear to interfere, with the interests of the listed issuer or its subsidiaries ("**listed issuer group**"); or

⁵ Paragraph/Rule 15.12(1)(h), LR.

⁶ Paragraph/Rule 15.15(3)(f), LR.

⁷ This was cited in *Delta-Pelita Sebakong Sdn Bhd v Wong Hou Liang & Ors and Other Appeals [2020] MLRAY 41* where the Court of Appeal held that "...disclosure of potentially conflicting information is part of the commercial morality expected of company directors, and the general rule should be, when in doubt, disclose".



- (b) the said person has interests that may make it difficult to perform his or her role objectively and effectively.
8. In the past, assessment of COI largely revolved around situations where the director concerned had personal pecuniary interests which were in conflict with those of the listed issuer group⁸. With the enhanced COI requirements in the LR as discussed in paragraphs 1 and 2 above, the Exchange would like to clarify our expectations that interest in a COI involving the said person is not limited to direct financial interest but also include an indirect financial interest, non-financial interest (e.g. arising from relationships whether family, business or professional interests), or competing loyalties or interests.

Key CA 2016 requirements on COI

9. The legal duty to avoid COI for directors and officers of a company are codified in the Companies Act 2016 ("**CA 2016**"). In this regard, the CA 2016 recognises situations of COI under section 218. In the said section, a director or officer must not do the following to gain a benefit for himself or any other person, or cause detriment to the company, without the consent or ratification of a general meeting:
- (a) using the property of the company;
 - (b) using any information acquired by virtue of his position as a director or officer of the company;
 - (c) using his position as such director or officer;
 - (d) using any opportunity of the company which he became aware of, in the performance of his functions as the director or officer; or
 - (e) engaging in business which is in competition with the company.
10. In addition to the above, the CA 2016 also specifies requirements for a director interested in a proposed or existing contract with the company. In such instances, the director must⁹ -
- (a) declare the nature of his interest at a board meeting;
 - (b) not participate in any discussion while the contract or proposed contract is being considered during the board meeting; and
 - (c) not vote on the contract or proposed contract.

⁸ This was clarified in the Questions and Answers 9.43 for the Main LR and Questions and Answers 9.38 for the ACE LR. These Questions and Answers have since been superseded.

⁹ Sections 221 and 222 of CA 2016.



11. Further, a director who holds any office or owns any property which may give rise to a conflict with his duties or interest as director must declare the fact and nature, character and extent of the conflict at a board meeting¹⁰.

COI examples for the LR

12. For purposes of the LR, in addition to the above, the following are some examples of COI involving a said person which would warrant disclosure i.e. where the said person-
 - (a) uses property or resources of the listed issuer group for his or her personal purpose or business;
 - (b) channels benefits or resources meant for the listed issuer group to a company which he or she has an interest in;
 - (c) discloses trade secrets to a competitor where he or she has an interest in;
 - (d) influences decision of the property developer listed issuer to develop an area where the said person owns property so that he or she will also enjoy the benefit either financially (e.g. capital appreciation of the property) or non-financially (e.g. convenience from the infrastructure developed) from such development;
 - (e) prioritises his or her private venture by depriving the listed issuer from an identified business opportunity;
 - (f) leverages on the listed issuer's business or developmental plan by acquiring adjacent lands using the said person's private company;
 - (g) is involved in a business which offers similar products or services that are likely to replace or substitute the products or services offered by the listed issuer group;
 - (h) holds offices or directorships in competitors of the listed issuer group; or
 - (i) provides financial assistance to, or receives financial assistance from, the listed issuer group on terms and conditions which are more favourable to the said person than normal commercial terms.

Potential COI

13. A potential COI is a COI that has yet to materialise or happen, but may arise subsequently due to, among others, prevailing relationships or interests of the said person. Examples (which are not exhaustive) include the following:

¹⁰ Section 221(6) of CA 2016.



- (a) The said person having similar business with that of the listed issuer group in a geographical location which the listed issuer group is not currently operating in, but which the listed issuer group may expand its venture in subsequently.
- (b) The said person purchasing substantial building materials for construction of his or her own property at a massive discount from a contractor which has been shortlisted as one of the contractors for the listed issuer's project. There could be potential COI as the said person may favour awarding the listed issuer's project to the contractor that gave him the discount.

Illustrations

14. The following are illustrations on compliance with the COI requirements in the LR for reference:

ILLUSTRATION I

Facts:

- *Mr. A* has a family-owned business, *ABC Sdn Bhd*, which undertakes property development of luxury condominiums in Klang Valley.
- *PLC X* is in the business of property development of residential apartments in Penang and Johor.
- *PLC X* appoints *Mr. A* as its director on 15 June 2023.
- *PLC X* has a financial year ending on 31 December 2023.

Disclosure Obligations:

While *ABC Sdn Bhd* and *PLC X* may not be in direct competition with each other given the different location and types of property development, there is still potential COI as *Mr. A* may be put in a position where his duty to act in the best interest of *PLC X* may conflict with his personal interest in *ABC Sdn Bhd*. For example, *Mr. A* may not propose or vote for *PLC X*'s future plan to expand its project to Klang Valley, due to his interest in *ABC Sdn Bhd*.

Hence, *PLC X* must disclose the nature and extent of *Mr. A*'s potential COI with *PLC X*, in the immediate announcement of *Mr. A*'s appointment and the directors' profile section of its annual report. The disclosure must include description of –

- *ABC Sdn Bhd* including its business;
- *Mr. A*'s interest in *ABC Sdn Bhd* (e.g. through his family relationship etc); and
- how the potential COI arises.



ILLUSTRATION II

Facts:

- *Mr. C* is a director of *PLC Z* whose principal business is in the food and beverage industry. *PLC Z* has several full-service restaurants, fast food chains and cafes in Selangor and Kuala Lumpur. As part of *PLC Z*'s expansion plan in 2023, it will be setting up restaurants offering Malaysian-fusion cuisine in selected shopping malls in Melaka by the 4th quarter of 2023.
- *DEF Sdn Bhd*, a private limited company owned by *Mr. C*'s wife and daughter, has, in May 2023, embarked on a Nyonya restaurant chain business in Melaka.
- *Mr. C* declares this to the board of directors of *PLC Z* immediately.

Disclosure Obligations:

With *PLC Z*'s expansion plan to Melaka in the 4th quarter of 2023, *PLC Z* and *DEF Sdn Bhd* could be potential competitors since both will be in the same industry offering substitutable products or services (restaurant business) in the same geographical location.

As such, *PLC Z* must disclose the nature and extent of the potential COI as well as interest in competing business involving *Mr. C*, in the directors' profile section of its annual report. The disclosure must include description of –

- *DEF Sdn Bhd* including its business;
- *Mr. C*'s indirect interest in *DEF Sdn Bhd* through his family members; and
- how the potential COI arises.

Oversight by the AC¹¹

15. As highlighted in paragraph 2 above, an AC must review and report to the board, any COI situation that arose, persist or may arise during the financial year together with the measures to resolve, eliminate or mitigate such conflicts. The AC must also disclose them in the AC report.

¹¹ The audit committee obligations apply to a foreign listed issuer (by virtue of paragraph 4A.07(1), Main LR), a listed REIT (by virtue of paragraph 8.36(b), Main LR), as well as BT and CEF (given that there are no express provisions disapplying the requirements to the BT and CEF in Chapter 8).



16. In this regard, listed issuers may refer to the Corporate Governance Guide (4th Edition) ("**CG Guide**")¹² for further guidance on how the AC may carry out its role in reviewing situations of COI such as ensuring that management establishes a comprehensive framework for the purposes of identifying, evaluating, approving, reporting and monitoring COI. The CG Guide also provides key factors, considerations as well as information that should be taken into account by the AC.
17. Some other possible non-exhaustive measures to address the COIs include the following:
 - (a) requiring declaration of COI as soon as practicable after the relevant facts have come to the knowledge of the said persons, as well as on a periodic and regular basis including at all board meetings;
 - (b) restricting participation of the said persons in any applicable board, committee or general meetings and requiring the said persons to abstain or recuse themselves from deliberation and voting on matters relating to the said COIs;
 - (c) undertaking an assessment on COI of the said persons during the performance appraisal on an annual basis and for new appointments, before the appointment;
 - (d) requiring the said persons to execute a non-disclosure or confidentiality agreement to protect any type of confidential and proprietary information or trade secrets;
 - (e) restricting the said persons from participating in businesses which compete with the listed issuer group; or
 - (f) in extreme circumstances where the COI is likely to affect the performance of the said persons, requiring such persons to either divest the interest causing the conflict or resign from the listed issuer group.
18. Situations of COI for purposes of disclosure in annual report and the AC report exclude transactions entered into by a listed issuer group involving the interest of related parties which are regarded as related party transactions, as these are subject to specific disclosure requirements pursuant to Chapter 10 of the LR.

¹² In particular, please refer to Section II under the heading "Review of COI situations and related party transactions" at pages 11 to 14 of the Guide which is available at: <https://bursasustain.bursamalaysia.com/droplet-details/resources/corporate-governance-guide-4th-edition>.



19. Apart from ensuring compliance with the LR, listed issuers are also reminded to ensure that any requirements under the law or guidelines¹³ relating to COI are complied with.

C. ADDITIONAL INFORMATION

20. In addition, the Exchange has also provided the "Questions and Answers" in Annexure 1 to facilitate better understanding of common issues raised by directors and listed issuers.

[End]

¹³ These include, among others, the CA 2016 and the Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries issued by the Securities Commission Malaysia ("**said Guidelines**").

- The CA 2016 is available at:
https://www.ssm.com.my/Pages/Legal_Framework/Document/Act%20777%20Reprint.pdf
- The said Guidelines is available at:
<https://www.sc.com.my/api/documentms/download.ashx?id=e5c77f58-2055-4d1c-82f2-79f552a67682>



ANNEXURE 1

QUESTIONS AND ANSWERS

1. Are there any issues of conflict of interest ("COI") or potential COI if –

- a director is appointed to a listed issuer's board by a particular shareholder ("nominee director"); or
- a director holds multiple directorships in various listed issuers?

Generally, being a nominee director or a director with multiple directorships does not automatically give rise to a COI. Directors, including nominee directors, are required to observe the duties and obligations imposed on them, such as those under the Companies Act. For example, section 217 of the Companies Act imposes the responsibility of a nominee director to act in the best interest of the company, and in the event of any conflict between his or her duty to act in the best interest of the company and his or her nominator, he or she shall not subordinate his or her duty to act in the best interest of the company to his or her nominator. A nominee director may only act in the interest of his or her nominator provided that such act does not conflict with the interest of the company of which he or she is the director. In situations where the company's interest comes in conflict with the nominator's interest, the former takes precedence¹⁴.

Hence, it is a question of fact whether there is any COI or potential COI, and this would depend on, among others, whether the listed issuer has common business activities, especially competing businesses and the capacity and involvement of the director in the decision-making of the listed issuer in respect of "conflicted" situations. A general principle that a listed issuer and its directors could be guided by is to consider whether a reasonably informed independent observer would infer from the circumstances that the director's judgement is likely to be influenced or affected to the detriment of the listed issuer's best interests.

The assessment of COI must, at the first instance, be done by the individual director as part of his or her duties under the Companies Act in which the director shall at all times exercise his or her powers in accordance with the Companies Act, for a proper purpose and in good faith and in the best interest of the company¹⁵.

Where there is a COI or potential COI, the director should declare the nature and extent of the COI or potential COI as soon as practicable after the relevant facts have come to the director's knowledge. If the director is uncertain whether there is a conflict, he or she should discuss it with the board or audit committee and, if necessary, seek professional advice.

¹⁴ As cited in the case of *Scottish Co-Operative Wholesale Society Ltd v Meyer and Another* [1958] 3 All ER 66.

¹⁵ Section 213 of the CA 2016.



Some possible scenarios for consideration are set out below:

Investor A invests in multiple listed issuers, some of which are operating in similar industries.

(a) Investor A appoints Mr. B as its nominee director in PLC K and PLC M. Both PLC K and PLC M are operating in the healthcare business in Klang Valley.

- There could be potential COI with the appointment of Mr. B in both PLC K and PLC M as the 2 listed issuers are operating within the same or similar economic sphere. Mr. B may have competing or conflicting interests arising from his duties towards PLC K and PLC M.

(b) Investor A invests in PLC L and PLC P, both of which are involved in the healthcare business. Investor A nominates Ms. X and Mr. Y as a director in PLC L and PLC P respectively and Ms. X and Mr. Y are appointed by the respective boards. Ms. X and Mr. Y are senior managers in Investor A and they attend Investor A's management meeting together.

- Having a common nominator does not automatically make the appointment of Ms. X in PLC L or Mr. Y in PLC P a COI. Both Ms. X and Mr. Y owe their respective listed issuers the same fiduciary duties as any other directors. Further, both Ms. X and Mr. Y must also be mindful of their legal obligation under section 217 of the Companies Act i.e., not to subordinate their duty to act in the best interest of the company to their nominator.
- However, a potential COI would arise if Ms. X or Mr. Y acquires confidential information that could be misused for the benefit of Investor A and to the detriment of the respective listed issuers. What is therefore required is for the respective listed issuers to have processes in place to manage the COI or potential COI. Where appropriate, such processes should allow Ms. X and Mr. Y to leverage their expertise and fulfil their responsibilities as directors, ensuring that the board benefits from the collective insights of its members, while adhering to legal and regulatory requirements relating to COI or potential COI.

2. Mr. X is a director of PLC Y. Mr. X declares to the board that he has a COI or potential COI with PLC Y.

(a) Is Mr. X precluded from attending and participating in a board meeting where the conflict-related matter is being discussed?

Mr. X's participation in the board meeting where the conflict-related matter is being discussed would depend on the requirements under the relevant laws, the Main LR, the constitution of PLC Y as well as PLC Y's COI policy, board charter or code of conduct/ethics (collectively referred to as "COI policy/charter") that are in place.



In the absence of any prohibition in the laws, Main LR, constitution or COI policy/charter of PLC Y, it is still prudent for Mr. X not to attend and participate in the discussion of the conflicted-related matter during the board meeting unless permitted by the board. In determining whether Mr. X's participation is beneficial to the discussion, the board may take into account considerations such as -

- whether Mr. X's participation in the discussion would influence the board from exercising independent judgement;
- whether Mr. X's participation in the discussion would facilitate the board in considering all relevant matters to make a sound decision; and
- the extent of participation that is allowed e.g. whether it is to provide information or clarification, state matters of facts or answer questions but does not take part in decision-making.

If Mr. X is permitted to participate in the discussion of the conflict-related matter, he should volunteer to withdraw himself for an appropriate period during the board meeting to facilitate an open and frank discussion among the other directors without his presence.

(b) Can Mr. X vote at the board meeting where the conflict-related matter is being deliberated?

It is good practice for Mr. X to abstain from voting on the conflict-related matter even if there is no such prohibition under the relevant laws, Main LR, constitution, or COI policy/charter. Mr. X should also offer to excuse himself from the board meeting when voting takes place to provide the other directors with the opportunity to make their decision without the presence of Mr. X.

3. One of the measures to address COI proposed in the Issuers Communication Note No. 1/2023 – Guidance on Conflict of Interest ("ICN 1/2023") includes requiring a director to resign from the board of the listed issuer in extreme circumstances where COI is likely to affect the performance of the director¹⁶. What are these extreme circumstances?

Resignation from the board of the listed issuer group should only be considered where the director has a continuing material COI that is irreconcilable with acting in the best interest of the listed issuer or its subsidiaries or where the COI is likely to impede the ability of the director to effectively carry out his or her duties in the listed issuer group. Examples include –

¹⁶ Paragraph 17(f) of ICN 1/2023 stipulates that in extreme circumstances where COI is likely to affect the performance of the said persons, the measure proposed in addressing the COI is to require the said persons to divest the interest causing the COI or resign from the listed issuer group.

"Said persons" here refers to directors, key senior management and legal representative of a listed corporation, as well as directors and chief executive of the management company or trustee-manager of a collective investment scheme.



- a director's family member embarking on a business venture in which he has substantial control or interest in, and the business venture is in direct competition with the listed issuer or its subsidiaries; or
- a director accessing and using the listed issuer's confidential information, trade secrets or resources for his or his family's personal venture, to the detriment or disadvantage of the listed issuer or its subsidiaries.

In such situations, the COI cannot be mitigated or addressed by the director by abstaining from deliberations and voting as such abstention would be required for a prolonged period or at a frequency which may affect his role and participation in the board. Hence, the option available would be for the director to resign from the listed issuer group or for the director or his family to divest the interest in such a business venture.

However, in instances where the director's experience and expertise are not easily replaceable, the board and the director may resort to taking the appropriate measures to mitigate or resolve the COI first. Resignation is the only option if the COI is material and cannot be mitigated or resolved in any other way.

[End of Annexure 1]