

13 JANUARY 2022

## Initial Proposed Offering: Can Proposed Independent Directors Offer Advisory Services To The Applicant?

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The Main Market Listing Requirement (MMLR) of Bursa Malaysia Securities Berhad (Bursa Securities) defines an “independent director” as 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 a listed issuer.

This alert sets out the threshold of advisory service that a proposed independent director is permitted to provide to a listed issuer or to a corporation seeking to list on the Bursa Malaysia (Applicant) under the MMLR.

### General Requirement Under MMLR

Further to the definition of “independent director” as stated above, a proposed independent director is one who:

- (a) Is not an executive director of the Applicant, listed issuer or any related corporation of such Applicant or listed issuer.
- (b) Is not and has not been within the last 3 years, an officer (except as an independent director) of the said corporation.
- (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.

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- (f) Has not been engaged as an adviser by the said corporation under such circumstances as prescribed by Bursa Securities, 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 Bursa Securities.
- (g) Has not engaged in any transaction with the said corporation under such circumstances as prescribed by Bursa Securities, 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 said corporation under such circumstances as prescribed by Bursa Securities.

## Circumstances As Prescribed By Bursa Securities

As stated in paragraph (f) above, the circumstances prescribed by the Bursa Securities refer to Practice Note 13 of the MMLR or Guidance Note 9 of the ACE Market Listing Requirements of Bursa Securities (ACE LR), as the case may be.

It is stated that a person who is proposed to be or is an independent director (said Director) is disqualified from being an independent director if he/she:

- Had personally provided professional advisory services to the said corporation within the last 3 years.
- 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.

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## Conclusion

The provision of advisory services by a proposed independent director to an Applicant or listed issuer (whether in his/her personal capacity or in his/her capacity as partner/director/major shareholder of a firm) does not automatically disqualify him/her from being appointed as an independent director. One must first assess the aggregate consideration derived from the provision of such services against the prescribed threshold in the MMLR or ACE LR.

Authored by Vincent Kow, an Associate with the firm's Capital Markets & M&A practice.

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