Corporate Governance Developments in Malaysia

As is generally known, corporate governance plays a very important role in the development of a nation particularly in the enhancement and deepening of its financial and capital market. This is certainly also very true in the case of Malaysia’s experience where the need for good corporate governance was sparked off by the 1997/98 Asian Financial Crisis. There was then an urgent need, among others, to introduce good governance practices to stabilise the financial and capital market and to put it on a stronger footing.

As a backdrop, following the financial crisis, as a government initiative under a broader capital market framework, the Minority Shareholder Watchdog Group (MSWG) was established in 2000 to primarily advocate good corporate governance practices in the capital market and also to safeguard the interests of minority shareholders. In addition, in 2000, the first Malaysian Code on Corporate Governance was introduced and this was subsequently replaced by the revised Codes in 2007, 2012 and the latest being the Malaysian Code on Corporate Governance\(^1\) released in April 2017. In 2011, Securities Commission Malaysia (SC) launched the Corporate Governance (CG) Blueprint 2011 which represents another significant milestone to enhance further Malaysia’s corporate governance framework.

Other significant corporate governance developments within the last few years in Malaysia were the launch of the Malaysian Code for Institutional Investors (MCII)\(^2\), the formation of the Institutional Investors Council Malaysia (IIC), amendments to Bursa Malaysia Listing Requirements, introduction of the newly amended Companies Act 2016, and the launch of MCCG 2017.

The MCII was launched jointly by MSWG and SC on 27 June 2014. It was felt that institutional investors, due to their significant shareholdings in their investee companies, are able to more effectively influence these companies in practising good corporate governance. To-date, endorsements to MCII have been received from 15 signatories\(^3\) from various institutional funds, retirement funds such as Employees Provident Fund (EPF) and Kumpulan Wang Persaraan (Diperbadankan) and asset management companies.

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3. List of Signatories [https://www.mswg.org.my/list-of-signatories](https://www.mswg.org.my/list-of-signatories)
As a consequence of an industry-led initiative, the IIC was established on 3 July 2015 following the launch of the MCII. The Council provides a platform representing the common interests of institutional investors in Malaysia with the view of influencing corporate governance culture through, among others, the effective adoption of MCII. At present, there are 15 members representing various organisations, institutional funds, retirement funds and asset management companies.

Bursa Malaysia Listing Requirements are periodically being amended to improve on the standards of disclosure and corporate governance practices with the primary objective of promoting greater transparency, maintaining market integrity and investor protection. Among some of the recent key amendments are as follows:

- Disclosure of a narrative statement of the listed issuer’s management of material sustainability matters (Sustainability Statement) (staggered implementation for annual reports issued for FYE on or after 31 December 2016 depending on market capitalisation).
- Enhancements to the contents of the annual report (Annual reports issued on or after financial years ended 30 April 2016).
- All resolutions at any general meeting are to be voted by poll. At least one scrutineer must be appointed to validate the votes cast at the general meeting. (General meetings held on or after 1 July 2016).
- A listed issuer must immediately announce to the Exchange the total number of votes cast on the poll (together with the percentage) in favour of and against the resolution; and the name of the scrutineer.
- A listed issuer must publish on its website a summary of the key matters discussed at the annual general meeting, as soon as practicable after the conclusion of the annual general meeting. (AGMs held on or after 1 July 2016).
- Disclosure of management discussion and analysis in annual reports (Annual reports issued for FYE on or after 31 December 2016).

The recent introduction of the new Companies Act 2016⁴, with implementation effective from 31 January 2017, certainly represents another very important milestone in the journey towards lifting further the bar of corporate governance. Among the key matters relating to corporate governance which the new Act focuses on are in respect of enhancements of shareholders’ rights and protection, strengthening the corporate governance structure in relation to the affairs of the directorship of a company and through refinement of auditors’ role and responsibilities.

Specifically, some of the pertinent key areas introduced are:

- The chairperson of a meeting of members of a company shall allow a reasonable opportunity for members to question, discuss, comment or make recommendation on the management of the company.
- The fees of the directors, and benefits payable to the directors including any compensation for loss of employment of a director or former director—

⁴ Companies Act 2016
of a public company; or

- of a listed company and its subsidiaries, shall be approved at a general meeting.

- An auditor of a public company shall attend every AGM where the financial statements of the company for a financial year are to be laid, so as to respond according to his knowledge and ability to any question relevant to the audit of the financial statements.

The latest corporate development was in regard to the release of the new MCCG 2017 by SC on 26 April 2017. The new Code which is a set of best practices to strengthen corporate culture anchored on accountability and transparency, represents Malaysia’s continued effort in promoting good corporate governance to further enhance its capital market and ensure its sustainability. The Code which will take effect for financial year ending 31 December 2017 essentially centres on three principles namely board leadership and effectiveness; effective audit, risk management, and internal controls; and corporate reporting and relationship with stakeholders.

A key feature of the new Code is the introduction of the “Comprehend, Apply and Report (CARE)” approach, moving from “comply or explain” to “apply or explain an alternative”. This is meant to encourage listed companies to put more thought and consideration when adopting and reporting on their corporate governance practices. There is also a differentiated and proportional approach in the application of the code taking into account the differing size and complexity of listed companies where certain practices and reporting expectations are to only apply to companies in the FTSE Bursa Malaysia Top 100 Index, and those with a market capitalisation of RM2 billion or more.

The key recommended practices and guidance are as follows:

- **Large Companies** are not encouraged to retain an independent director for a period of more than 12 years.

  In such cases, companies should use the two-tier voting process in seeking annual shareholders’ approval to retain an Independent Director beyond 12 years.

  Under the two-tier voting process, shareholders’ votes will be cast in the following manner at the same shareholders meeting:

  Tier 1: Only the **Large Shareholder(s)** of the company votes; and
  Tier 2: Shareholders other than **Large Shareholders** votes.

  The decision for the above resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. If there is more than one **Large Shareholder**, a simple majority of votes determine the outcome of the Tier 1 vote.

  The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution.

- At least half of the board comprises independent directors. For **Large Companies**, the board comprises a majority independent directors.

- If the selection of candidates as directors was solely based on recommendations made by existing board members, management or major shareholders, the Nominating Committee should explain why other sources were not used.
• The Nominating Committee is chaired by an Independent Director or the Senior Independent Director.

• The Remuneration Committee should only consist of non-executive directors and a majority of them must be Independent Directors, drawing advice from experts, if necessary.

• There is detailed disclosure on named basis for the remuneration of individual directors.

The board discloses on a named basis the top five senior management’s remuneration component including salary, bonus, benefits in-kind and other emoluments in bands of RM50,000.

• The Chairman of the Audit Committee is not the Chairman of the board.

• The Audit Committee has a policy that requires a former key audit partner to observe a cooling-off period of at least two years before being appointed as a member of the Audit Committee.

• The Audit Committee should comprise solely of Independent Directors.

• The board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company’s risk management framework and policies.

• Notice for an Annual General Meeting should be given to the shareholders at least 28 days prior to the meeting.

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