



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

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Via email: iicmsecretariat@mswg.org.my

July 15th, 2022

Dear Chairman Rohaya Mohammad Yusof,

Re: THE MALAYSIAN CODE FOR INSTITUTIONAL INVESTORS 2022- Draft for Comments

The International Corporate Governance Network (ICGN) welcomes the request for comments on the proposed revisions to The Malaysian Code for Institutional Investors (“MCII 2022” or “the Code”).

Led by investors responsible for assets under management of around \$70 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 45 countries and includes companies, advisors and other stakeholders. We are proud that leading institutional investors and asset managers in the Bursa Malaysia and Southeast Asian capital markets support ICGN as active and effective members. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org.

ICGN has noted the significant rise in the creation of national stewardship codes, many following the publication of the ICGN Global Stewardship Principles (“ICGN GSP”). The ICGN GSP were revised in 2020 to capture significant developments, however, “ICGN’s commitment and policy work on stewardship dates back to its 2003 Statement on Institutional Shareholder Responsibilities, the predecessor to the current Principles.”¹ ICGN adopted the Global Stewardship Principles to provide a framework for investors to implement stewardship practices in fulfilling their fiduciary obligations to beneficiaries or clients.²

The Institutional Investors Council Malaysia’s decision to revise the MCII Code after its issuance in 2014 to enhance and create new stewardship responsibilities is an important step in the global affirmation of the role that stewardship plays in an active investor portfolio. In the Foreword of the Code revisions, you noted that the revisions “aim to further strengthen reporting

¹ ICGN Global Stewardship Principles, [ICGN Global Stewardship Principles 2020](https://www.icgn.org/publications/icgn-global-stewardship-principles-2020), 2020.

² In the Preamble, ICGN stated “stewardship enhances overall financial market stability and economic growth, and, by focusing on long-term value creation, stewardship is directly linked to sustainable benefits for the economy, environment, and society”.

by the signatories by providing sufficient information for better understanding on the application of the Code. It is hoped that the enhanced expectations in respect of the compliance of the principles of the Code would be able to raise the bar on how the stewardship activities are proactively managed and reported by the signatories.”³

We appreciate the Council’s efforts to strengthen stewardship activities and provide signatories with the opportunity to report on the progress being made. ICGN does not have a reporting requirement for its members or those which have endorsed the ICGN GSP. The ICGN Global Stewardship Principles acknowledge that the prevalent corporate “comply or explain” framework requires investors to actively monitor the explanations of companies whether they comply with the corporate governance code in their region and challenge them, if necessary. As a global organisation, ICGN must take into account the multiple jurisdictions and regions in which investors have placed their assets.

We recognise that the revised MCII 2022 will now have an “apply and explain” approach in which the signatories, who are asset owners and asset managers, will be required to report on their effective stewardship program in a manner that is aligned with their own business model and strategy. They will need to explain their reasons for any departures from the Code and their timeline to comply with the entire Code. Particularly in light of the new Code’s enhancements, this can result in a notably higher reporting requirement for investors. In a few areas, we have suggested a degree of flexibility to the Code’s reporting and disclosure regime which may be challenging for institutional investors who have a large number of companies in their portfolios. As discussed below, we also question whether the Stewardship Spotlight, in particular, with its detailed voting recommendations, may be unduly prescriptive for inclusion in the Code itself.

Our response to the MCII Code revisions is set out in each of the MCII Principles relating to the new and/or enhanced language. As the predominant sources to our comments, ICGN has referred to the ICGN Global Stewardship Principles and the ICGN Guidance on Investor Fiduciary Duties.⁴ The ICGN Guidance on Investor Fiduciary Duties was adopted by the membership in 2018 and provides an “investor perspective of how fiduciary duties and responsibilities take shape when applied to the management of financial assets.”⁵

PRINCIPLE 1 – DISCLOSING POLICIES ON STEWARDSHIP

Institutional investors should disclose the policies on their stewardship responsibilities and review the effectiveness of their stewardship activities. (Enhanced language)

The new and enhanced language in MCII Principle 1 refers to disclosure of stewardship activities along the investment chain. The new language in MCII Principles 1.2 through 1.6 includes “governance and sustainability matters, including social and climate risks.”⁶ These additions align rather well with the ICGN GSP Principle 7, which mentions reporting as an additional element to transparency, says:

Meaningful transparency, disclosure and reporting. Investors should publicly disclose their stewardship policies and activities and report to beneficiaries or clients on how they

³ The Malaysian Code for Institutional Investors 2022, p.2.: <http://www.iicm.org.my/malaysian-code-for-institutional-investors/>

⁴ [ICGN Guidance on Investor Fiduciary Duties](#)

⁵ [ICGN Guidance on Investor Fiduciary Duties](#), Preamble, p. 3.

⁶ The Malaysian Code for Institutional Investors 2022, p. 15.

have been implemented so as to be fully accountable for the effective delivery of their duties.⁷

We do ask for clarification on MCII Principle 1.2 to clarify the requirement of a risk assessment statement in all stewardship policies. It says, “The stewardship policies should incorporate risk assessment statement of investee companies and how it is managed to minimise negative impact to the investments, which includes governance and sustainability matters, including social and climate risks. We are unclear if it should say that the stewardship policies should incorporate a risk assessment statement or that the stewardship policies should incorporate risk assessment *statements* of investee companies. (italics added as proposed language) As fiduciaries, institutional investors must assess their own stewardship policies and utilise their engagement activities in the best interests of beneficiaries.

ICGN would note the inclusion of “ESG”, in MCII Principle 1.5., new language which states, “Institutional Investors should incorporate ESG factors into their ownership policies and practices”. The term, “ESG”, though prominently used, has become a catchphrase that is subject to wide interpretation. Given that ESG factors are not covered under any global standard at present, investors need to decide how they will facilitate their stewardship responsibilities within the environmental, social and governance pillars. We have been increasingly utilising the term, “sustainability” to frame the environmental and social issues that face both investors and companies.

With respect to the enhanced language in MCII Principle 1.7 which requires that “policies should be disclosed in a more transparent manner and made easily accessible to investee companies, beneficiaries and clients in plain and understandable language”, ICGN would suggest that the MCII make it clear that these policies should be disclosed on a platform that is *publicly available* as new language. In our experience, the platform should not be placed behind a firewall or only available to certain people or organisations, even though individual client reporting can be bespoke. In the ICGN GSP, ICGN has recommended that disclosure should also include an annual reporting to beneficiaries of stewardship activities as a way to show progress towards the Principles and sustainable practices that will lead to comparable stewardship reporting.⁸

With regard to MCII Principle 1.8, which provides, “Where the stewardship activities are outsourced, institutional investors should explain in the stewardship policies what steps have been taken to ensure that the investment activities are carried out in line with their own approach to stewardship”, ICGN would refer the MCII to the recently revised ICGN-GISD Model Mandate as a resource that is publicly available for use. The Model Mandate’s primary purpose is “to provide guidance to asset owners to ensure that their stewardship and sustainability objectives are fully reflected in investment management agreements (IMAs) and contract terms with the managers they have selected to manage their assets, and to provide practical assistance to enable them to do so.”⁹ The Model Mandate would be useful as a reference point and resource under MCII Principle 1.9, which requires that asset owners disclose general guidelines on the selection of asset managers and other service providers.

⁷ [ICGN Global Stewardship Principles 2020](#), p. 24.

⁸ [ICGN Global Stewardship Principles 2020](#), Principle 7, p. 24.

⁹ ICGN-GISD Model Mandate, revised June 2022. [ICGN GISD Model Mandate 2022](#), p. 6.

PRINCIPLE 2 – MONITORING INVESTEE COMPANIES

Institutional investors should monitor their investee companies. (Current language)

ICGN agrees that investors should monitor investee companies and provides expansive guidance in the ICGN GSP. The ICGN GSP Principle 3 states, “Investors should exercise diligence in monitoring companies held in investment portfolios and in assessing new companies for investment.”¹⁰

The enhanced guidance under MCII Principle 2.2, which lists new areas for monitoring and MCII Principle 2.3, which lists engagement activities including attendance at annual meetings where practicable and exercising voting rights, is welcomed by ICGN. We observe as a practical matter, however, that overseas investors are often practically unable to attend shareholder meetings and rely on proxy voting to exercise their shareholder rights.

Under MCII Principle 2.4, we would recommend that the MCII add the following additional language (strike out and in italics): “Institutional investors should carefully consider explanations (or lack thereof) given by their investee companies, for any departure from the MCCG. The investee company’s board should be informed where appropriate, if the institutional investor does not agree with the investee company’s explanation or position taken on how the investee company applies the MCCG together with its reasons and any voting decisions that were made to hold the board to account.”

We note that many investment managers hold large portfolios and vote at the AGMs of many companies. In such cases the provision for written explanations in all votes can seem burdensome. While some voting platforms have the functionality to do this electronically with the submission of voting instructions, this can be a very difficult criterion to satisfy for investors without these platforms.

PRINCIPLE 3 – ENGAGING INVESTEE COMPANIES

Institutional investors should engage with investee companies as appropriate and collaborate with investors to enhance engagement outcomes. (Current language)

ICGN agrees that investors should engage with investee companies and collaborate with other investors. The enhanced language in MCII Principle 3 is similar to the ICGN GSP Principle 4, which states, “Investors should engage with investee companies with the aim of preserving or enhancing value on behalf of beneficiaries or clients and should be prepared to collaborate with other investors to enhance engagement outcomes.”¹¹

ICGN supports the enhanced language in MCII Principles 3.4 and 3.5 which refer to how investors deal with “situations where the normal avenues of dialogues with boards and management do not meet the expected outcome and how the engagements are escalated if issues are not resolved and describe the outcomes of the escalation”. We have encouraged our own members to work collaboratively as they engage companies, policy makers and regulators to improve governance practices. There are several tools available for investors to support their stewardship responsibilities when escalation is required. One important mechanism is the filing of a shareholder proposal, if warranted. ICGN issued a Viewpoint on “Shareholder Proposals –

¹⁰ [ICGN Global Stewardship Principles 2020](#), p. 17.

¹¹ [ICGN Global Stewardship Principles 2020](#), p. 19.

An Essential Instrument for Ensuring Corporate Accountability”, in which we noted, “shareholder proposals can be an important management and board oversight mechanism.”¹² We believe that enhanced MCII Principle 3.6 has captured this mechanism by referring to “submitting resolutions and expressing concerns at the general meeting.”

With respect to the new language in MCII 3.7, which calls for institutional investors to explain the results of engagements that are continuing or have ended since the “last reporting, whether they were carried out by the institutions or by others on their behalf or collaboratively”, ICGN would note that some investors prefer to utilise “quiet diplomacy” as they engage with companies until the engagement is resolved one way or another. One of the tenets of a quiet diplomacy strategy is to maintain discretion on the engagement in order to facilitate trust. In such cases, the ongoing negotiations may not be widely announced or reported until investors are able to report on the results.

PRINCIPLE 4 – MANAGING CONFLICTS OF INTEREST

Institutional investors should adopt a robust policy on managing conflicts of interest which should be publicly disclosed. (Current language)

ICGN also has a strong interest in encouraging investors to manage conflicts of interest and disclose them accordingly. In the ICGN GSP, Principle 1.8, we state:

Conflicts of interest. Investors should have robust policies to minimise or avoid conflicts of interest, covering identification, assessment, escalation, mitigation, and disclosure of real or potential conflicts of interest. These policies should address how matters are handled when interests with clients or beneficiaries diverge and make it clear that the interest of the client or beneficiary should be prioritised. Policies should identify specific cases where conflicts might arise. Investors should rigorously review their investment activities and their client interests to identify and appropriately manage real or potential conflicts of interest. Such conflicts of interest should be disclosed, along with the remedies to mitigate them.¹³

In the enhanced language in MCII Principle 4.2, it states that institutional investors should “communicate to their service providers the need to publicly disclose all known potential conflicts of interest and to explain how they are managed as well as mitigating measures of potential conflict of interest.” We would agree and have stated as such in ICGN Principle 1.8.

Conflicts of interest are critical governance questions for investors; but they are not the only ones. ICGN’s first stewardship principle, GSP 1, focuses on investor governance more broadly— including, but not limited to, conflicts of interest. You may wish to consider broader language relating to the importance of the investor’s own internal governance to ensuring good stewardship outcomes.

¹² [ICGN Shareholder Proposal Viewpoint review 021221 Final.pdf](#), p. 2.

¹³ [ICGN Global Stewardship Principles 2020](#), p. 14.

PRINCIPLE 5 – INCORPORATING SUSTAINABILITY CONSIDERATIONS

Institutional investors should incorporate corporate governance and sustainability considerations, including climate-related matters into their decision-making process and should seek to deliver sustainable returns in the long-term interest of their beneficiaries or clients. (Current language)

ICGN GSP Principle 6 addresses similar sustainability considerations. It calls for investors to “promote the long-term performance and sustainable success of companies and should integrate material environmental, social and governance (ESG) factors in investment decision-making and stewardship activities.”¹⁴

In the MCII Principle 5.4, it calls for institutional investors to “describe *and report* how they incorporate sustainability considerations including climate-related matters in their investment decision making process and disclose the method and metrics used to identify those factors which are most material when assessing an investee company.” We would suggest that the words, “*and report*” should be added after the word, “describe” as referenced in the italics above.

Reporting on the sustainability considerations that investors are focusing on is critically important. As I mentioned during a recent workshop on transition finance with some of our Asian peers:

Sustainability reporting is no longer a ‘nice’ to have – it really is ‘must’ have. As well as reducing the reporting burden on companies, harmonised standards will equip investors with rigorous, consistent, comparable, and verifiable sustainability information, backed (we hope) by regulation and enforcement. This will enable the proper assessment and pricing of climate-related risk, opportunity, and resilience in investee companies. More broadly it provides a tool for assessing progress towards achieving corporate transition plans and carbon neutral investment portfolios as we collectively advance towards a net-zero global economy by 2050.¹⁵

With respect to the enhanced language in MCII 5.5, which describes some of the ESG factors that institutional investors may evaluate, ICGN would suggest the addition of three more (in italics):

- *Executive pay and compensation packages that are tied to short and long-term sustainability goals;*
- *Risks including market quality and stability and the mitigation of system-level risk and respect for basic norms (for example climate risk, pandemics, human rights and anti-corruption) over short term value. (Taken from ICGN GSP 6.3);¹⁶*
- *Shareholder rights.*

¹⁴ [ICGN Global Stewardship Principles 2020](#), p. 23.

¹⁵ Speech by Kerrie Waring, CEO of ICGN, at the ADBI Institute: Workshop on Transition Finance in Asia Climate-related disclosure effective for transition finance in Asia, 7 July 2022.

¹⁶ [ICGN Global Stewardship Principles 2020](#), p. 23.

PRINCIPLE 6 – PUBLISHING CORPORATE GOVERNANCE POLICY AND VOTING GUIDELINES

Institutional investors should publicly disclose their corporate governance policy and voting guidelines. (Current language)

ICGN agrees and has provided for a similar disclosure in the ICGN GSP, Principle 5.1, which states:

Investors should publicly disclose clear voting policies which should be reviewed periodically. The voting policy should outline the principles guiding voting decisions, highlight scope for derogation in specific cases and make clear any differences in approach between domestic and international holdings. Where an investor chooses not to vote in specific circumstances, for example where holdings are below a certain threshold, this should be disclosed.¹⁷

We do have a question on MCII Principle 6.3, which requires that the “reasons for voting against or abstaining from voting at a general meeting should be communicated to the investee company, preferably in writing and to subsequently be made publicly available. Where the decision deviates from the regular policy, institutional investors should disclose and explain the reasons to their beneficiaries or clients.” For many institutional investors, the votes are posted on their public-facing website and available for review. In addition, the voting policy or guidelines may contain the rationale why votes are cast against, or an investor chooses to abstain. There are times that information is not made available prior to the AGM and investors are not able to confidently vote for an item on the ballot or a director. A considered course is to abstain or vote against a management proposal because management did not provide the requisite amount of time or information to cast an informed vote. We would suggest that there be some flexibility in this “in writing” requirement for each vote under these two scenarios, as long as, voting is disclosed after the annual general meetings, or any special meetings called. Sensitive votes or votes cast in collaboration with other investors may be publicly announced under the terms of the arrangement.

ICGN also agrees with MCII Principle 6.8, in which the new language calls for institutional investors to “disclose their approach to securities lending and situations where they will recall lent securities to exercise the vote.” ICGN has issued Guidance on Securities Lending which has similar requirements.¹⁸

PRINCIPLE 7 – COLLABORATIVE RESPONSE ON CORPORATE GOVERNANCE AND SUSTAINABILITY ISSUES

Institutional investors should collaborate where appropriate to respond to corporate governance and sustainability concerns or risks. The collective voice and views of institutional investors is an important lever in shaping behaviour and promoting good corporate governance, in particular, on emerging issues such as sustainability reporting and investing.

¹⁷ [ICGN Global Stewardship Principles 2020](#), p. 21.

¹⁸ [ICGN068_Guidance_On_Securities_Lending_24pp_AUG16-v3_0.pdf](#)

ICGN appreciates the addition of the new Principle 7 in the Code revisions. The collective views of investors can provide powerful voices to address systemic governance problems, human capital concerns, and risks that can harm a company's long-term sustainability business model.

STEWARDSHIP SPOTLIGHT

ICGN reviewed the new "Stewardship Spotlight" section for institutional investors that provides voting recommendations for board composition and appointment, tenure of independent directors, director and key senior management remuneration, and sustainability matters- board oversight role. (Note: There is a small typo at the top of page 14 in which "Oversight" in the heading is misspelled.)

We understand that the Stewardship Spotlight is intended to highlight "key corporate governance and sustainability matters which institutional investors should focus on during their engagement with their investee companies and recommended voting decisions." These topics may well indeed be key governance and sustainability issues that should be part of a discussion. Depending on the sector in which the company operates and specific company issues, there will be other relevant engagement topics that institutional investors wish to address, such as human capital management, decisions related to financial capital and capital allocations, and natural capital or biodiversity in line with climate change disclosures.

While we appreciate the detailed focus that the Stewardship Spotlight provides on application of the Code, we are concerned that it may run the risk of being too prescriptive. In particular it we question whether an 'apply and explain' Code should also include voting recommendations. For this reason, you may wish for the Stewardship Spotlight to be a standalone document that can be expanded and updated before each proxy season to give institutional investors who are your signatories, time to evaluate the proposed voting recommendations and consider incorporating them into their own voting policies or guidelines. Providing the Stewardship Spotlight within the proposed Code could take away the focus on each of the new or enhanced Principles.

ICGN would also note that institutional investors have a fiduciary obligation to make voting decisions in the best interests of their beneficiaries. The ICGN Guidance on Investor Fiduciary Duties calls for investors to develop and use "bespoke proxy voting guidelines and corporate governance principles to adequately manage shareholder rights. The investor fiduciary should take care to ensure votes are cast in the interests of beneficiaries or clients and that shareholder voice is appropriately exercised."¹⁹ The proposed language stating that the "Stewardship Spotlight highlights what is expected of investee companies in relation to key corporate governance and sustainability matters" and "Signatories should also focus on these issues in their monitoring and engagement activities as well as voting decisions" may be too prescriptive given these fiduciary obligations.

¹⁹ [ICGN Guidance on Investor Fiduciary Duties](#), p. 18.

GLOSSARY

Under the definition of Stewardship, ICGN would recommend that the Council expand upon the definition of stewardship from “responsible management and oversight of assets” to include “addressing the systemic risks across the operating environment in which those assets exist.” Many investors have begun to work with the concept of “beta stewardship” — a term of art that means focusing engagement activities that address systemic risks relating to climate, natural and social capital.

OTHER SUGGESTIONS

In 2020, ICGN revised and updated its Global Stewardship Code, in which we included language for “investors to recognise that systemic risks, including those relating to climate change, wealth inequality and anti-corruption, can affect the sustainable value creation of individual companies as well as the health of economies and financial markets”.²⁰ The Council may wish to add a new Principle 8 or add to the language in Principle 7 that institutional investors should also consider ways to identify and respond to “market-wide and systemic risks and promoting well-functioning financial markets.”²¹

Thank you for the opportunity to comment on the proposed Stewardship Code revisions, which should serve to help institutional investors advance their stewardship roles in such ways to facilitate a strong capital market in Malaysia, assist in carrying out their fiduciary duties to beneficiaries and help companies create long-term plans for sustainable business practices. If you would like to follow up with questions or comments, please contact me or Carol Nolan Drake: carol.nolandrake@icgn.org.

Yours faithfully,



Kerrie Waring

Chief Executive Officer, ICGN

CC: George Dallas, ICGN Policy Director
Catherine McCall, Chair of the ICGN Global Stewardship Committee

²⁰ [ICGN Global Stewardship Principles 2020](#), p. 7.

²¹ See also the UK Stewardship Code, Principle 4, [UKStewardship-Code \(frc.org.uk\)](#).