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Malaysian Code on Corporate Governance (2021 Update)

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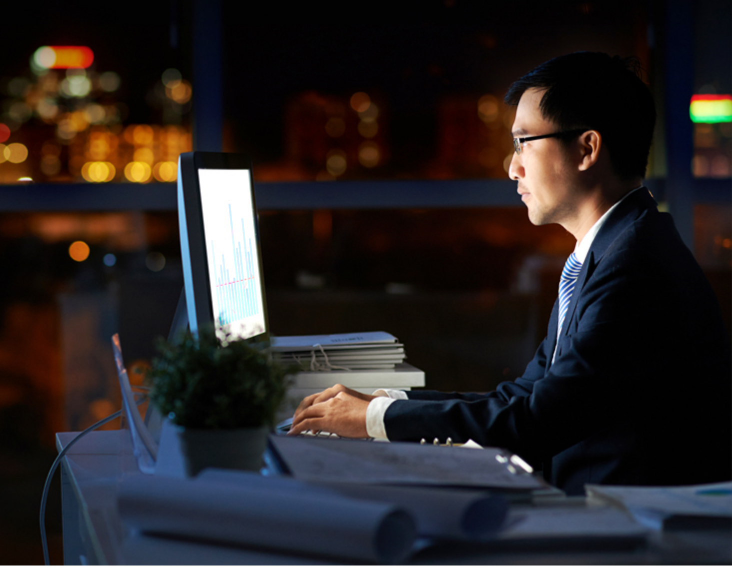

On 28 April 2021, Securities Commission Malaysia ("SC") released an updated iteration of the Malaysian Code on Corporate Governance ("MCCG") which features the **introduction of new best practices and further guidance to strengthen** the governance culture of corporate Malaysia. The latest update of the MCCG represents the 5th version since it was first introduced in 2000.

The MCCG is not pegged to a particular year to reflect the living nature of the document. As part of continuous monitoring, SC undertakes an annual assessment on the level of MCCG adoption and quality of disclosures.

Corporate lens – what are the driving forces?

The changes in the MCCG reflect the **evolving corporate governance landscape** as characterised by systemic considerations in conglomerates, accelerating adoption of technological solutions, growing trend of responsible ownership and the global commitment towards a net zero economy.

Time is of the essence – when will the changes be enforceable?

- The updated MCCG is **effective from 28 April 2021**.
- A specified practice, namely a two-tier voting process for retention of independent directors beyond 9 years, will be applicable for resolutions tabled at general meetings held on or after 2 January 2022.
- The first batch of companies to begin reporting on the adoption of the practices in the updated MCCG will be those with **financial years ending 31 December 2021**.

Clarion calls in the updated MCCG

Avoid "spray and pray" disclosures
The standard of meaningful disclosures should not be viewed from the consideration of the board but **rather from the perspective of stakeholders**. Confidence of stakeholders can only be engendered if companies think seriously about their raison d'etre, how they deliver value and then **explain, in their own words, the application of MCCG (rather than templated disclosures).**

Avert the "set and forget" conundrum
Large Companies (market capitalisation of RM 2 billion and above) that depart from any of the MCCG practices are required to identify and disclose a reasonable timeframe for the adoption of the practice(s). A short timeframe will signify commitment with **a horizon of three years or less being considered as reasonable.** Departures of practices by listed companies and accompanying disclosures thereof will be closely monitored by SC.

Recognise "what is good for the goose is also good for the gander"
Where applicable, a Public Listed Company ("PLC") should advocate the **adoption of the best practices in the MCCG by its subsidiaries**, in order to promote a holistic adoption of corporate governance practices and culture within the group (i.e. a PLC and its subsidiaries). This dovetails with Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries issued by SC.

Lay of the land

70%

Application to MCCG

Majority of the best practices in the 2017 iteration of MCCG recorded adoption levels of more than 70%.

25.3%

Gender diversity

The participation of women on boards currently stands at 25.3% for the top 100 listed companies.

Tenure

434 independent directors have tenures of more than 12 years, out of which 49 independent directors have served on the same board for more than 20 years

Source: Securities Commission Malaysia 2021

Salient reinforcements in Principle A: Board leadership & effectiveness

Driving 3 "I's" in the boardroom – Impartiality, Inclusion and Integration

Restriction for chairman of the board from occupying positions in the audit committee, nomination committee or remuneration committee - Practice 1.4 New

- This represents a higher call than Standard 12.4 of Policy Document on Corporate Governance by Bank Negara Malaysia ("BNM") which only restricts the chairman of the board from chairing any board committee. In fact, only 32% of the non-executive chairmen amongst the top 100 PLCs do not occupy positions on any board committee (*Source: Intelligence of KPMG Management & Risk Consulting Sdn Bhd*).

Board and management to collectively drive to address and integrate sustainability risks and opportunities in setting the company's strategies, priorities and targets – Practices 4.1 to 4.4 and Step Up 4.5 New

- Whilst some PLCs have begun to address climate-related risks, a proactive approach to holistically integrate environmental, social and governance considerations into business strategies and throughout its value chain must be taken to accelerate efforts in transitioning towards a net-zero economy.

Review of each director's tenure by the nomination committee and annual re-election of directors that is contingent upon on satisfactory evaluation of the director's performance and contribution to the board – Practice 5.1 New

- Tenure of the individual director and the overall board composition should be considered in deciding to appoint or re-appoint a director. Outcome of the board effectiveness evaluation exercise would be a key substantiating factor.

Two-tier voting for retaining independent directors beyond 9 years – Practice 5.3 Updated

- The yardstick for two-tier voting in the preceding iteration of MCCG was 12 years. Practice 5.2 of the updated MCCG is to be augmented with a requirement (vide upcoming amendments to Listing Requirements of Bursa Malaysia Securities Berhad in Quarter 4, 2021) to outright disallow the extension of independent directors' tenure beyond the 12th year.

Avoidance of directors' appointment which cast doubt on the integrity and governance of the company - Practice 5.5 and dissuasion for head of states, heads of government, ministers and active politicians to be on boards – Guidance to Practice 5.5 Updated

- This stipulation is in line with Strategic Initiative 2.1.2 of the National Anti-Corruption Plan and Standard 12.4 of Policy Document on Corporate Governance by BNM, premised on grounds of objectivity and time commitment.

The board comprises of at least 30% women directors – Practice 5.9 New

- Large Companies represented the catchment for the stipulation on 30% women directors in the preceding iteration of MCCG. Given that this target has been virtually achieved, the catchment is now widened to all PLCs.

Enlisting third party experts to facilitate board evaluation at least once every three years for Large Companies and disclosure by companies on how the board evaluation was carried out, its outcome, actions taken and how it has or will influence board composition. – Practice 6.1 Updated

- Clarity is provided on the frequency of externally facilitated board evaluation exercise as compared to the general reference of "periodically" in the preceding iteration of MCCG. Greater emphasis is given on the disclosure aspects of the board evaluation exercise. At present, only 2% of the top 150 companies conduct an externally facilitated evaluation every year whilst the remaining which deploy third party experts conduct them periodically or once every three years *(Source: Intelligence of KPMG Management & Risk Consulting Sdn Bhd).*

Salient reinforcements in Principle B: Effective audit & risk management

Maintenance of independence – audit committee and auditors

Cooling-off period of 3 years for former audit partners to become a member of the audit committee – Practice 9.2 Updated

- The cooling-off period is elongated from 2 years (in the preceding iteration of MCCG) to 3 years for former audit partners to be members of the audit committee. This is in line with the yardstick applied on cooling-off period for former executives to be independent directors (paragraph 1.01 of Listing Requirements of Bursa Malaysia Securities Berhad).

Note: *This applies to all former partners of the audit firm and/or the affiliate firm (including those providing advisory services, tax consulting etc.)*

Salient reinforcements in Principle C: Integrity in corporate reporting & meaningful relationship with stakeholders

Recognising that virtual is the new reality

The chairman of the board ensures meaningful engagement during virtual general meetings and questions posed by shareholders should be made visible to all participants – Practices 13.4 and 13.5 New

- PLCs are called upon to take steps to mirror the conditions of a physical general meeting (also underscored in Guidance and Frequently Asked Questions on the Conduct of General Meetings for Listed Issuers by SC)

Minutes of general meeting are to be circulated to shareholders within 30 days – Practice 13.6 New

- PLCs are already required under paragraph 9.21(2)(b) of Listing Requirements of Bursa Malaysia Securities Berhad to publish a summary of the key matters discussed at the annual general meeting, as soon as practicable after the conclusion of the annual general meeting (clarified as within 30 days in the Communication Note- Issuers Communication Corporate Website for Listed Issuers by Bursa Malaysia Securities Berhad).

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

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