Corporate Governance: Moving from Aspiration to Actualisation

Corporate Governance Guide

Pull-out I

Guidance on board leadership and effectiveness

BURSA MALAYSIA

Contents

Introduction

Background

This Introduction to **Pull-out I ("Board leadership and effectiveness")** is designed to provide boards with broad guidance in promoting the application of good corporate governance within the company. The Introduction also intends to provide boards with direction in implementing the Practices and the Step Ups of **Principle A** in the **Malaysian Code on Corporate Governance** and thus, should be read in conjunction with the write-ups on the individual Practices and Step Ups encapsulated in this Pull-out.

For about 2,000 years, man thought of earth as the centre of the universe. Indeed, this was most famously postulated by Aristotle and became the accepted wisdom until after the end of the Middle Ages, when Galileo's observation dismantled the "truth" and disproved what was almost universally thought to be correct. Framers and thought leaders of corporate governance alike have always intended the board of directors to be the centre of the company's "universe", as it were, but unlike Aristotle's theory, this model still holds true**.** It is widely accepted that a company's corporate governance begins and ends with its board of directors.

The board has the power to shape the company's direction and culture through its corporate governance philosophy and practices. In addition, as strange as it might sound, the board also influences the company's corporate governance through its inaction, albeit in a negative way, leaving a vacuum that management and employees will fill.

An effective board does not place itself in a comfortable setting and it does not remain static. As with all living organisms, the board being a body of individuals should constantly evolve in response to the environment in which it operates. Challenge as well as teamwork are essential features of the board. Diversity in board composition is an important driver of a board's effectiveness, creating a breadth of perspective among directors. Whilst the importance of constituting a board optimal for the company's size and complexity is well understood, less appreciated is the need for the board to perform at the levels expected of it. Indeed, in the oft-cited story of Enron Corporation, its board was composed of eminent individuals who were all highly experienced and qualified. However, the board failed to discharge its duties adequately, ultimately leading to the company's demise.

It is vital that board members see their directorships as a journey of stewardship rather than a position of privilege. The notion of stewardship points that directors have a responsibility not only to themselves but to the company, its shareholders and the wider group of stakeholders as well. Having said that, it is also important to iterate that good corporate governance is not against self-enrichment, as this is a key driver in a free economy. Rather, good corporate governance calls for directors to walk down this path of enrichment in an ethical and sustainable manner.

This Introduction is set out over four sections. **Section I** addresses board leadership whilst **Section II** explores board dynamics. **Section III** sheds light on the nominating committee and lastly, **Section IV** discusses on the remuneration committee.

Section I Board leadership

Understanding board's responsibilities

In framing the responsibilities of the board in leading the company, **Guidance to Practice 1.1 of MCCG** makes a noteworthy statement. The term "amongst others" is used when outlining the roles and responsibilities of the board. This indicates that the board should not treat the responsibilities narrated in this **MCCG** as definitive and exhaustive. This approach recognises that companies are unique entities with their own circumstances and rigid prescriptions do not work. Considerations on the responsibilities of the board are covered in detail in the write-up to **Practice 1.1.**

In discharging their responsibilities, directors must fulfill their duty of care, skill and diligence in a conscientious manner. The following guidance may be helpful to directors:

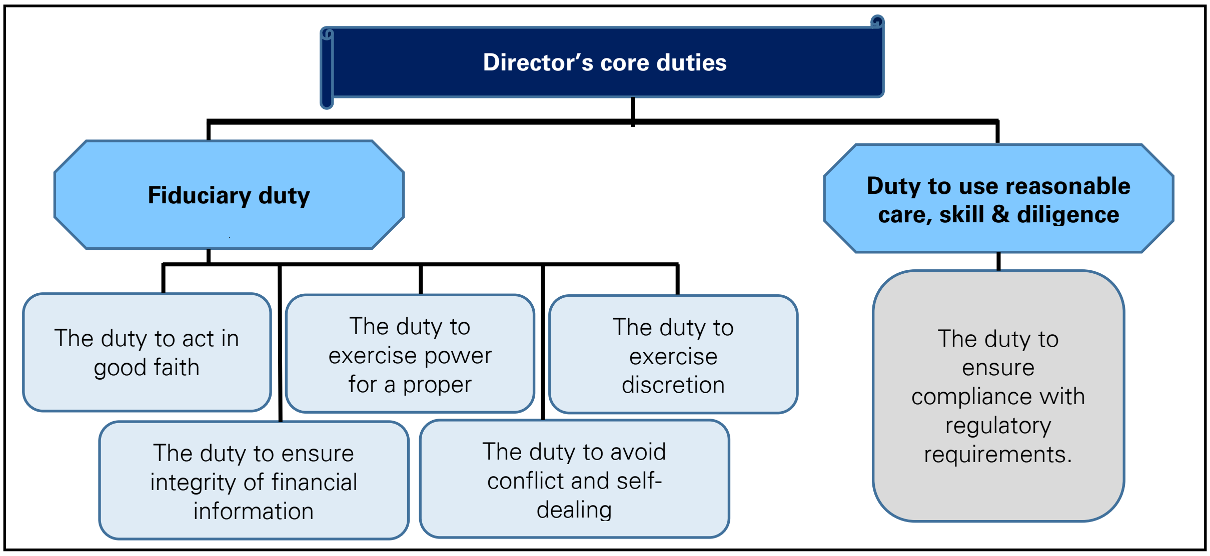
- ensure that the company has established an effective governance system and process;
- refrain from rushing into decision-making. Provide adequate time for deliberations and evaluations of transactional and financial matters;
- require sufficient notice and distribution of board papers and explanatory appendices in advance of meetings;
- make informed decisions based on the information and recommendations of the company's independent professional advisors;
- ensure that there is no undue pressure from dominant personalities or nominees of Large Shareholders[1];
- ensure proper record of key decision-making deliberations;
- base reliance on others where there is a sound basis for doing so; and
- take additional advice, independent from management if they feel it necessary.

Boards bear the ultimate responsibility for their company's values and actions. There is no single boardroom style that applies to all boards and what works for one board may not necessarily work for another. The style and approach of the board in the same company may also vary over time as circumstances change. Nevertheless, the following observations can be made:

- Boards impacted by personal conflicts rarely work well. Honest, open debate may be inhibited and personal agendas may be allowed to override a director's responsibility to shareholders;
- The chairman and chief executive officer play a key role in setting the board's approach;
- Good boards exhibit a degree of healthy skepticism. Differences are not suppressed, and issues are argued out with logic and passion. Differing opinions are respected and individual contributions encouraged. However, there is an underlying harmony driven by a collective understanding of the board's stewardship;
- External advisors should be used to enhance both board's and management's understanding of particular or emerging issues; and
- Good boards have the courage to make difficult decisions. Individuals stick by these collective decisions, even when they may have personally opposed them.

[1] As stated in **Guidance to Practice 4.2 of MCCG**, Large Shareholder means a person who is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company; is the largest shareholder of voting shares in the company; has the power to appoint or cause to be appointed a majority of the directors of the company; or has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to.

Directors of a company, executive or non-executive, have an obligation to exercise unfettered judgement, in good faith with due care and skill. A director must be aware of the legal parameters that defines the duties in law. A director owes fiduciary duties similar in some respects of those of a trustee. The diagram below illustrates the core duties of a director:



The primarily responsibilities and duties of the board in this regard are well contained in **Section 213 of Companies Act 2016**.

Section 213 of Companies Act 2016 – Duties and responsibilities of directors

1. A director of a company shall at all times exercise his powers in accordance with this Act, for a proper purpose and in good faith in the best interest of the company.
2. A director of a company shall exercise reasonable care, skill and diligence with-
   a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities: and
   b) any additional knowledge, skill and experience which the director in fact has.
3. A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or both.

Note: The above only represents an extract of the duties and responsibilities of directors.

Board's role in setting strategy

It is commonly observed that for some companies, the board is content to set the strategy at the highest level whilst for other companies, the board's approach is to be involved in strategy setting, even for each subsidiary.

In terms of strategy, there is a conscious shift by the **MCCG** which now calls upon boards to devote the necessary time and effort to set the company's strategy, as opposed to endorsing it. It is acknowledged that some boards have a tendency to "outsource" strategy setting entirely to management, leaving the board with little or no input on the company's long term direction. It is illuminating to note that in high performing companies, board members typically "roll their sleeves" and become involved intimately in the formation of corporate strategy. For example, General Electric Company holds its annual strategy session every mid-summer, and during this time board members and senior management break out into small groups, producing building blocks that make up the company's multi-year strategy[2].

Besides setting the strategic direction of the company, the board must also conduct review of the strategy from time-to-time. Boards must institute a regular and formal board strategy review. This involves analysing the existing corporate strategy, examining progress towards designated objectives and evaluating current performance in light of these objectives. It should be a high-level review of both the internal and external factors affecting the company, conducted by the board and separate from any management review of strategy.

Board strategy reviews should be undertaken periodically (depending on the requirements of the company) and in the midst of rapidly changing environments and market conditions, at short intervals. Boards need to be vigilant in assessing the company's performance in achieving its strategy. A report card (prepared by management) twice a year, should incorporate exception reporting to assist the board to come to terms with what is not working and why, whilst re-examining the underlying strategic issues.

Rather than merely trying to anticipate changes in the marketplace, a board should also ensure that the company's capabilities and resources are sufficient to manage uncertainties. In this regard, strategic plans should be flexible and this can be achieved by:

- scanning the business environment constantly and keeping abreast of changes that could materially affect the achievement of strategic objectives;
- exploring how business environmental shifts may impact on strategy;
- inviting subject matter experts to address the board and senior management;
- ensuring accurate and timely information reaches the board and is deliberated by directors and management; and
- scheduling "break-out" sessions to allow the board to critique the current strategy.

Ethical leadership by the board

A company's ethical culture is largely shaped by the tone at the top (i.e. the company's leadership). Ethical principles and values need to originate from the leaders and be embedded across the company.

In this regard, the code of conduct and ethics would go a long way in setting out the company's expectations with regard to business and professional behaviour and topics such as conflict of interest, insider trading, related party dealings, commitment against corrupt practices and of late, anti-money laundering and financing of terrorism.

In relation to anti-corruption measures, it has been noted that some countries have put in place legislations that penalise a company (and not only the individual) for corrupt practices, notably the United Kingdom through its Bribery Act 2010. The onus is placed on the company to demonstrate that it has put in place sufficient measures to counter corrupt practices, with a code of ethics and measures around assessing integrity and compliance being key defence points. Considerations on the establishment of a code of conduct and ethics are covered in detail in the write-up to **Practice 3.1.**

Whilst it is important for companies to develop codes of ethics and business conduct and for internal audit and compliance reviews to routinely uncover areas of concern, it would also be beneficial for companies to create an environment where management and employees can whistleblow on improper behaviour without being victimised for doing so. Improper behaviour is most commonly associated with corruption, but impropriety also extends to matters such as endangering the health and safety of workers, polluting the environment, and denying local communities their rightful dues when

[2] General Electric Company, Proxy Statement, 8 March 2017.

purchasing from them. Considerations on the establishment of a whistleblowing policy are covered in detail in the write-up to **Practice 3.2.**

The role of chairman and chief executive officer ("CEO")

Practice 1.3 of MCCG promotes for the role of chairman of the board and the CEO to be held by two different individuals. Separation in this regard is essential as both roles are distinct, have different expectations and serve different primary audiences (as depicted below).

The chairman	The CEO
Serves an audience of fellow directors. Runs the board efficiently and in an effective manner. Together with the board, holds the management team accountable towards meeting strategic objectives (covered in detail in the write-up to **Practice 1.2 of MCCG**)	Serves an audience of management team and employees. Contributes to strategy and runs the company to meet its objectives. Accountable to the board.

When each party is free to concentrate on his role, one can expect improved outcomes in terms of sharper focus and higher quality of deliberation. Similar to a thriving national democracy that features three distinct branches which share power and act as check and balance, namely the executive, legislative and judiciary, so does an appropriate balance of power between the chairman, CEO and the non-executive directors facilitate an accountable and high-performing board. Considerations on the separation of role between chairman and CEO are covered in detail in the write-up to **Practice 1.3**.

Support for directors

It is important for the board to be equipped with adequate resources to carry out its oversight duties. In this regard, it should be noted that the company secretary is slowly but surely transforming from being just an administrator and facilitator of board proceedings into an advisor on corporate governance. In fact, in Australia, the Chartered Secretaries Australia has rebranded itself as the Governance Institute of Australia. The increasing complexity of corporate law and listing rules, better awareness of corporate governance and higher acceptance of sustainability concepts, have all contributed to the importance of the company secretary.

The company secretary plays an important role in advising the board, usually through the chairman, on governance matters and in ensuring that there is an effective system of corporate governance in place. The company secretary also plays a key role in guiding and advising the board on compliance matters such as company law and listing requirements. In order to contribute and function effectively, the company secretary must be qualified, experienced and capable of carrying out duties attached to the post. In addition, the company secretary would need to keep himself or herself abreast with the many developments around corporate and securities law, listing rules and corporate governance practices. Accordingly, a structured training programme should be in place for the company secretary to maintain his or her knowledge and skills.

The board relies on the company secretary to furnish board papers and on this count, not only must the board papers be timely, they should also contain information at an adequate level of detail. **Guidance to Practice 1.5 of MCCG** calls for board papers to be circulated at least five business days before a board meeting, and whilst directors do not expect excessively voluminous papers, neither do they appreciate one pagers that overly summarise a key matter. Directors should also be aware that selective disclosure of information in board papers may happen, in which risk factors, worst case scenarios or less flattering information is filtered out. It is important to recognise that selective reporting to the board may lead to skewed decisions and the process of board's deliberation can only be enhanced through complete and balanced disclosure of information.

In terms of board discussions, it is in the directors' enlightened interest that the deliberations are recorded in an adequate and timely manner. This includes comments by each director, how the directors voted and whether pertinent objections and reservations have been minuted accordingly. As the saying goes, "what is not minuted, is not said". Considerations on information and support to directors are covered in detail in the write-up to **Practice 1.5.**

Professional development and continuous education for directors

Every board is unique in terms of its own history, culture and dynamics. Workings of one board may not be entirely applicable on another board. Therefore, induction will be vital for newly appointed directors to orientate themselves in the new environment in order to contribute to the board. A formalised orientation and education programme should be developed and provided to new members of the board to ensure that they understand:

- their roles and responsibilities;
- the board's expectations in terms of their knowledge contribution;
- the nature of the company's business;
- current issues faced; and
- strategies adopted by the company.

Induction programmes could comprise a combination of written materials, presentations and activities, such as meetings and site visits. Induction programmes of an interactive nature could also foster constructive relationships between the newly appointed director and existing directors and senior management.

Essential information during the induction of a new member may contain the following:

- Corporate information – company history, product and services information, strategic and business plans, financial accounts, major shareholders, corporate communications, business and industry environment, industry players, risk profile and appetite;
- Corporate governance framework – board charter, code of conduct and ethics, annual work plan[3], board and directors' details, committee structure and terms of reference, board processes, assurance providers, resources available, key stakeholders, policies and procedures; and
- Management information – names and background of senior management, organizational and management structure outline.

Directors who are well informed are in a better position to evaluate proposals made by management, to ask the right questions of management and to be more effective as directors. The board must evaluate the training needs of its directors and ensure that they undertake relevant professional development and upskilling programmes. Effective board, committee and director performance assessments are key in the identification of training, education and development needs *(note: considerations relating to the assessment of the board, board committees and individual directors are covered in detail in the write-up to **Practice 5.1 of MCCG**.)*

[3] Annual work plan is a document that sets out and prioritises the board's activities for the year to guide and ensure that the board focuses on important matters. It typically covers amongst others the annual review on the company's business, strategic and risk management plan; annual budget; board succession and assessment review; board induction and training programme; key reporting dates for board committees; meeting with auditors and engagement with stakeholders.

Typically, the competencies of board members can be enhanced and refreshed by amongst others:

- participating in seminars and workshops that highlight techniques of enhancement of shareholder value and methods of evaluating business performance and capital proposals;
- keeping themselves abreast of regulatory and legislative reforms that impact board and committee work;
- gaining understanding of financial statements and investment products which the company may be exposed to;
- participating in industry conferences and symposiums which strengthen professional networking and gain insights on customers and competitors; and
- visits to company's operations sites to gain insightful perspectives of matters concerning the staff, factory, department or plantation (as the case may be).

Regulatory requirements concerning directors' training are outlined below:

Paragraph 15.08 of Bursa's Listing Requirements

Directors' training

1. A director of a listed issuer must ensure that he attends such training programmes as may be prescribed by the Exchange from time to time.
2. The Exchange considers continuous training for directors of listed issuers as important to enable the directors to effectively discharge their duties. In this respect, the board of directors of a listed issuer must on a continuous basis, evaluate and determine the training needs of its directors. The subject matter of training must be one that aids the director in the discharge of his duties as a director.
3. The board of directors must disclose in the annual report of the listed issuer, a statement on the training attended by its directors which includes the following information:
   a) the board has undertaken an assessment of the training needs of each director;
   b) a brief description on the type of training that the directors have attended for the financial year; and
   c) in exceptional circumstances where any director has not attended any training during the financial year, valid justifications for the non-attendance of such director.

*Note: As stated in **Paragraph 2.2 of Practice Note 5, Bursa's Listing Requirements**, a director who is appointed for the first time as a director of a listed issuer must complete the Mandatory Accreditation Programme prescribed by the Exchange within 4 months from the date of appointment.*

Establishing a board charter

Similar to a company that has its constitution as a fundamental guiding document, a board has the board charter as its "constitution". The board charter plays a vital role in helping the board to focus on matters that are pertinent to the company whilst also reminding the board that such matters require consistent attention and are not just one-off items. The board charter sets out the board's strategic intent, authority and terms of reference and serves as a primary source of reference and induction literature. As the board charter is an avenue to communicate the company's approach to important governance practices, it should be accessible to all stakeholders via the company's website. The following are some of the matters that should be considered when developing a board charter:

- a general outline of the board's purpose, key values and principles;
- an overview of the board's monitoring role;

- structure and membership of the board (including appointment of directors[4], incorporating aspects of board independence and diversity);
- appointment of board committees;
- a formal schedule of matters reserved for the board including demarcation of responsibilities between board, board committees and management;
- a position description of the role of the chairman, CEO and executive directors as well as non-executive directors;
- expected time commitment of directors and limits on directorships (including a restriction of five directorships in listed issuers as stipulated in **Paragraph 15.06 of Bursa's Listing Requirements**);
- appointment of board committees;
- agreed procedure on taking independent professional advice at the company's expense in furtherance of the directors' duties (whether as a board or in their individual capacity); and
- procedures for the development, undertaking, and improvement of board processes, including the assessment of performance and continuing education and development of the board, its committees and directors.

In a similar fashion, charters for each board committee should clearly set out the duties, rights and expectations for the committee. There needs to be harmony between the board charter and board committee charters, with careful attention paid to the delegation of authority from the board to the board committees. This delegation should not contradict the company's authority matrix. A board committee charter may be expansive in describing the authority of the committee, but it should also be clear that ultimately, responsibility for decisions or recommendations taken by the board committee rests with the board as a whole.

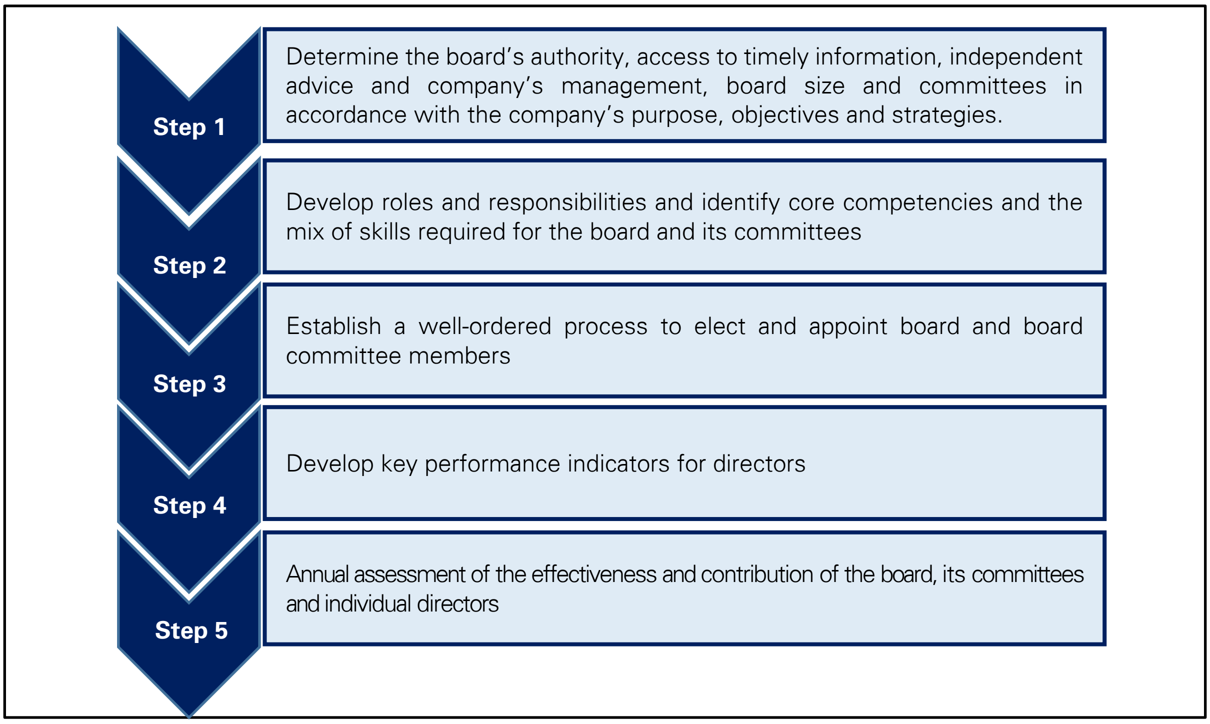
Considerations on the establishment of a board charter are covered in detail in the write-up to **Practice 2.1.**

Section II **Board dynamics**

The success of the board in fulfilling its oversight responsibility depends on its size, composition, and leadership qualities. A vigilant board, whilst supportive of management, must proactively participate in strategic decisions, challenge management with questions based on informed knowledge, oversee management's plans, decisions and actions, monitor management's ethical conduct, financial reporting and regulatory compliance and be capable of effectively achieving good governance and protecting stakeholders' interests.

[4] Criteria on qualification of directors and other key officers are stated in **Paragraph 2.20A of Bursa's Listing Requirements.**

The diagram below provides guidance on the five key steps in establishing an effective board:



Size and composition of the board

The composition of a board remains a key ingredient influencing how the board functions and the dynamics between its members. The term composition has a number of dimensions – independence, skills, knowledge and other aspects of diversity. Whilst **MCCG** has steered clear of prescribing a fixed formula for the board's composition, it does emphasise that the board should be composed of a strong element of independence (i.e. the board should comprise a group of independent directors who act as such in name and in substance). Whilst this is good practice for all companies, it is particularly pertinent for listed companies where some stakeholders (i.e. non-Large Shareholders) have a direct financial interest in the company, as opposed to a private company in which the shareholders and management are often the same people.

The **MCCG** has, through **Practices 1.3** and **4.1**, recognised the board as comprising three distinct parties, namely, the chairman, the executive directors (led by the chief executive or managing director), and the non-executive directors, whose figurehead is the senior independent director. Practice 4.1 **MCCG** has called upon companies to have at least half of board comprising independent directors. This goes beyond the requirement encapsulated in **Paragraph 15.02 of Bursa's Listing Requirements** which requires at least a third of the board is independent, or two directors whichever is higher.

Considerations on the composition of the board having a majority of independent directors are covered in detail in the write-up to **Practice 4.1**.

Independent directors

Independent directors are essential for protecting the interests of non-Large shareholders and can make significant contributions to a company's decision making by bringing in the quality of detached impartiality.

An independent director is especially important in areas where the interests of management, the company, the shareholders and other stakeholders diverge, such as executive performance and remuneration, related party transactions, environmental issues and audit. In this regard, an independent director ought to be able to approach any issues discussed or matters presented for approval at the board level, with a watchful eye and an inquiring mind.

An important facet of independent directors that is garnering increasing attention is their tenure of service. The argument in introducing limits to tenure of independent directors is that familiarity increases and objectivity decreases over time. This concept is not unique to independent directors – in Europe, rules have come into place on mandatory auditor rotation, on the very same grounds of familiarity and objectivity. Premised on the same reason of promoting independence and objectivity, **Practice 4.2 of MCCG** calls for the board to limit the tenure of independent directors to nine years. The said Practice further calls upon an independent director who continues to serve on the board after such a period to cease to be designated as one, and become a non-independent non-executive director. For companies that choose to retain the services of their independent directors after nine years, shareholders' approval should be sought on an annual basis and after the twelfth year, shareholders' approval is sought through what is termed as a "two-tier" voting process.

- the first tier comprises Large Shareholders[5] of the company; and
- the second tier comprising shareholders other than Large Shareholders.

Step Up 4.3 of MCCG calls upon Large Companies[6] to limit the tenure of their independent directors to nine years. Considerations relating to the board tenure limit for independent directors are covered in detail in the write-up to **Practice 4.2 and Step Up 4.3**.

Board diversity

Diversity and inclusiveness are becoming increasingly important in tandem with the globalisation agenda whereby world barriers are being broken down as people connect more and more through trade, travel and migration. Indeed, two notable studies have concluded that companies with more diversity have performed better than their peers[8].

Boards through their nominating committee should take appropriate measures to ensure that boardroom diversity is sought as part of their selection and recruitment exercise. In establishing measurable diversity objectives, the board should begin by assessing its current diversity levels and consider linking the achievement of these measurable objectives to key performance indicators (for example, where relevant, by way of targets or initiatives/development programs/career advancement plans) of the board, the CEO and key officers. These measures should be annually assessed and their progress monitored.

Nominating committees should put in place policies that actively support women to be directors by assisting women in senior management to build business networks, encouraging them to join boards as part of their professional development and addressing cultural impediments which prevent women from reaching senior management and board positions. The nominating committee should have measurable targets for achieving gender diversity. Nominating committees are strongly encouraged to annually assess their policies and outcomes to determine if they are effective. Where targets are not achieved, they should disclose their plans for improvement.

[5] As stated in **Guidance to Practice 4.2 of MCCG**, Large Shareholder means a person who is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company; is the largest shareholder of voting shares in the company; has the power to appoint or cause to be appointed a majority of the directors of the company; or has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to

[6] Large companies are companies on the FTSE Bursa Malaysia Top 100 Index or Companies with market capitalisation of RM2 billion and above,

[8] In a regional study conducted by Korn Ferry in 2016 across the largest 100 companies in 10 Asia-Pacific countries (including Malaysia), it was found that companies with at least 10% female board representation recorded higher returns on assets and equity than companies which lack thereof. A global study by McKinsey in 2015 across 366 public companies in Canada, Latin America United Kingdom, and United States revealed that companies in the top quartile for gender or racial and ethnic diversity are more likely to reap the "diversity's dividend" by having financial returns above their national industry medians.

Gender diversity policies will only bring about desired outcomes if there is commitment and promotion of a corporate culture that embraces diversity. The **MCCG** recognises that benefits can accrue through all levels of the company, and has accordingly also asked that diversity be reflected in the senior management team. In particular, women are now recognised an equal contributor to the prosperity of companies and the wider economy. Volvo, for example, has long involved women in the design and development of its cars, including an all-female focus group, engineering teams and designers[9]. Considerations on board diversity are covered in detail in the write-up to **Practice 4.4 and 4.5**.

In relation to sourcing of directors, **Practice 4.6 of MCCG** calls upon independent sources to identify suitably qualified candidates. As stated in **Guidance to Practice 4.6 of MCCG**, companies should disclose how newly appointed non-executive directors are identified – were they recommended by board members, or were other means used to locate and recruit them. If non-executive directors were ones recommended by current board members, the onus is on the company to explain why alternative channels were not considered. Considerations in relation to sourcing of directors are covered in detail in the write-up to **Practice 4.6**.

Given the importance of objectively sourcing the right candidate and with diversity and inclusiveness high on the agenda, there is clearly a need for an independent director or a senior independent director to chair the nominating committee. In addition to vetting the candidates, the chairman of the nominating committee also has the responsibility of assessing the performance of directors, be it newly appointed directors or existing ones. Inevitably, the time will come when directors leave the company and it is incumbent upon the chairman to lead the necessary conversations around succession planning, particularly for the chairman of the board and the CEO. Considerations on nominating committee being chaired by an independent director or senior independent director is covered in detail in the write-up to **Practice 4.7**.

Section III **Nominating committee**

Establishing a nominating committee is essential to ensure that there is structured oversight process in recruiting, retaining, training and developing the best available executive and non-executive directors and that board renewal and succession are managed effectively. Understanding the role played by the nominating committee is integral to understanding how interactions among the directors from their varied backgrounds can have an impact on decision-making and outcomes. This will enable the nominating committee to build the right board structure and develop an effective functioning group, rather than a group of independently operating individuals or a group of collegial friends.

Paragraph 15.08A of Bursa's Listing Requirements mandates the establishment of the nominating committee which should comprise exclusively of non-executive directors, a majority of whom must be independent.

[9] Madslien, J 2004, *Girl Power softens Volvo's edges*, BBC

Paragraph 15.08A of Bursa's Listing Requirements

Nominating committee

1. A listed issuer must establish a nominating committee which comprises exclusively of non-executive directors, a majority of whom must be independent.
2. The nominating committee must have written terms of reference dealing with its authority and duties which must include the selection and assessment of directors, and such information must be made available on the listed issuer's website.
3. The listed issuer must provide, in its annual report, a statement about the activities of the nominating committee in the discharge of its duties for the financial year. Such process of directors and criteria used by the nominating committee in the selection process; and statement must include how the requirements set out in Paragraph 2.20A[10] of these Requirements are met and contain the following information:
   a) the policy on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer
   b) the board nomination and election and election process of directors and criteria used by the nominating committee in the selection process; and
   c) the assessment undertaken by the nominating committee in respect of its board, committees and individual directors together with the criteria used for such assessment.

The nominating committee should establish clear and appropriate criteria on the selection and recruitment as well as on the annual assessment of directors of the board and board committees. Such criteria should be developed, taking into consideration the suitability of candidates against considerations such as competencies, commitment, contribution and performance, including the current composition of board and board committees, mix of skills and experiences of directors whilst taking into account the current and future needs of the company, boardroom diversity (including gender diversity) and other soft attributes required as company directors.

A far-sighted and effective nominating committee will normally keep an eye on the need for succession in the boardroom, identify appropriate candidates for board's approval to fill casual vacancies and nominate candidates for the board's consideration. Such activities should be carried out without being beholden to executive directors or Large Shareholders. The nominating committee and the board should devote sufficient time to review, deliberate and finalise the selection of directors. In a 2014 study conducted by PwC covering over 2,300 family businesses of varying revenue, only 16% have a documented succession plan. Closer to home, the PwC stated that only 15% of Malaysian family business have such a plan[11]. Succession planning has gained added significance given contemporary thinking that independent directors should not stay beyond a certain period of time. If the board wants to increase the survivability of its company, it would do well to maintain succession planning on its radar.

In considering a senior management vacancy, the board should benchmark internal candidates against external applicants. A well thought-out succession plan considers a process that recruits employees, develops their skills and abilities, and prepares them for advancement. Succession planning involves:

- developing a recruitment and communication strategy;
- identifying expected critical position vacancies;

[10] **Paragraph 2.20A of Bursa's Listing Requirements** stipulates that every listed corporation, management company or trustee-manager must ensure that each of its directors, chief executive or chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, as the case may be, of the listed corporation, or the collective investment scheme

[11] *Up Close and Professional: The Family Factor - Global Family Business Survey* 2014, PricewaterhouseCoopers.

- determining critical positions, identifying current and future competencies;
- identifying gaps in current employees' competency levels;
- identifying high calibre internal candidates;
- developing individual development plans for employees;
- developing and implementing coaching and mentoring programs; and
- assisting with leadership transition and development, i.e. the right leader at the right time.

On a related note, it is not often understood or appreciated that the succession planning process is closely linked to the performance evaluation of directors. To put it in another way, the assessment outcome has a bearing on the coming and going of directors. In essence, the assessment process for the board, board committees and individual directors, when done correctly, can impact the board in a few ways:

- gaps in skills, competency or experience are identified and plugged through recruitment of suitably qualified directors;
- under-performing directors receive notice that improvement is expected lest they find themselves being eased out of the board; and
- better ways of doing things are explored and considered.

Boards can benefit from engaging an external and independent party to facilitate the assessment process. The said party is expected to deliver a neutral view of the board's strengths and areas for improvement, and can also add insights gained from other evaluations. This is a benefit that is not often taken into account when considering the use of an external party, which obviously carry a cost to the company. In respect of Large Companies, **Guidance to Practice 5.1 of MCCG** calls upon these companies to disclose the assessment process, whether external facilitators were involved, what were the major findings and how does the board intend to address weaknesses identified. Considerations on the board evaluation process are covered in detail in the write-up to **Practice 5.1.**

Section IV **Remuneration committee**

Establishing a committee to assist the board in developing and administrating a fair and transparent procedure for setting policy on remuneration of directors and senior management is important because this would ensure that remuneration packages are determined on the basis of the directors' and senior management's merit, qualification and competence, having regard to the company's operating results, individual performance and comparable market statistics. The remuneration committee's remit should cover not only directors' remuneration but also that of the senior management team. In some companies, the committee addresses remuneration for the whole company. In all cases, both salient features of the company's remuneration structure and the work of the committee in arriving at the structure should be disclosed by the company.

As stated in **Guidance to Practice 6.2 of MCCG**, 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. Directors who are shareholders should abstain from voting at general meetings to approve their fees. Similarly, executive directors should not be involved in deciding their own remuneration.

It is clearly important for the remuneration of directors and senior management to be determined adequately and fairly. Whilst not new concepts, the terms "adequately" and "fairly" have been gaining increasing attention in recent years in relation to directors' remuneration. Firstly, it is no longer acceptable for directors and senior management to be remunerated without a reasonable basis for arriving at the quantum. There needs to be an appreciable link between the directors' and senior management's remuneration packages and how the company is performing, and also appropriate reasoning behind how remuneration is structured (i.e. whether short term or long term).

Secondly, consideration needs to be given to the ratio between the directors' and senior management average remuneration versus that of the wider employee group. In this regard, the following questions may be asked:

- Is the ratio excessive or within reasonable levels? Would the company be able to justify a substantial increase in director or senior management's remuneration when the average pay of the broader group of employees remains the same?
- What would the perception of stakeholders be on the remuneration awarded to directors and senior management? Requirements on transparency of remuneration structure, activism of stakeholders and the media have combined to force the topic of remuneration onto the public space.

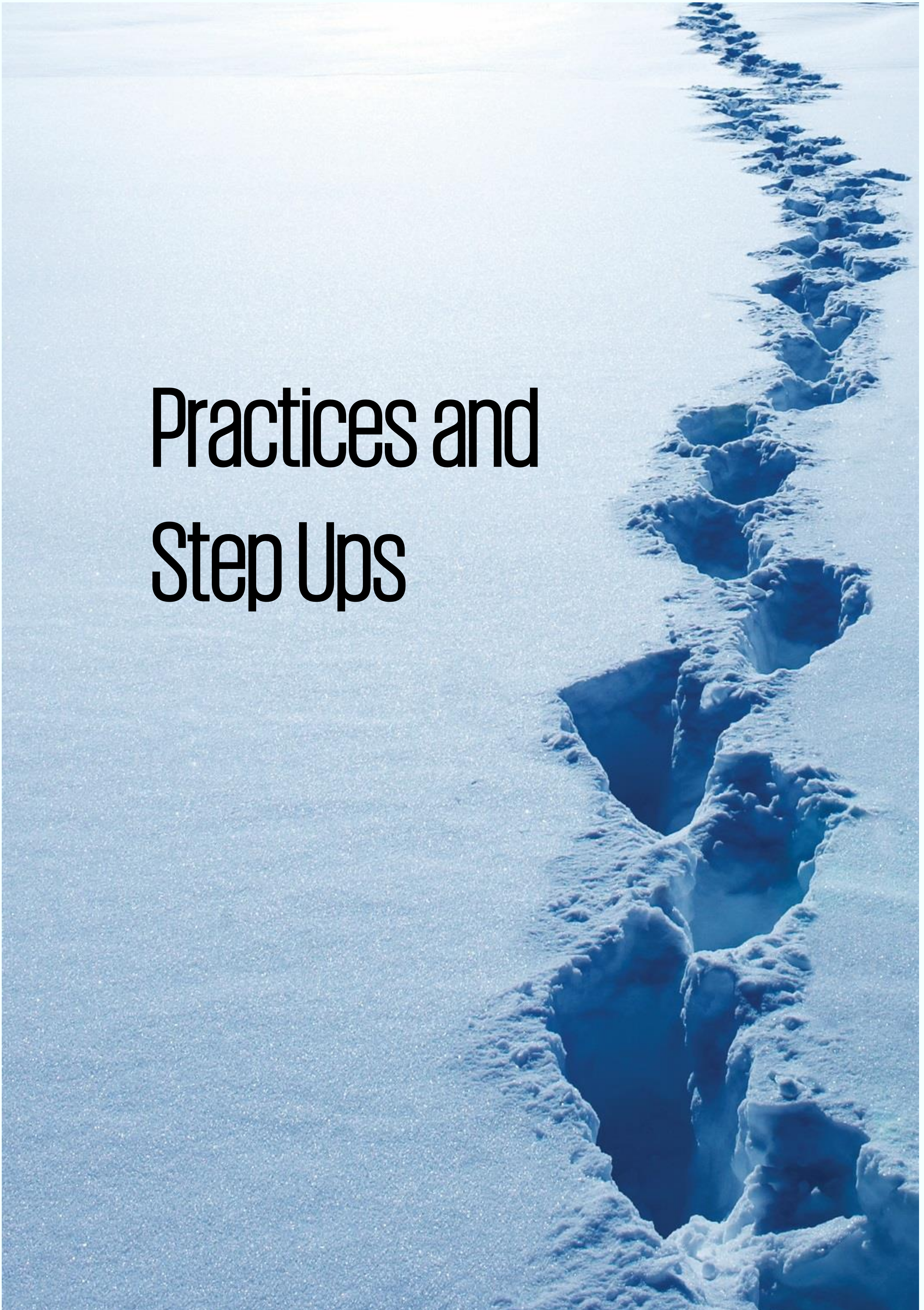
Considerations on remuneration policies and procedures of directors and senior management and the establishment of remuneration committee is covered in detail in the write-up to **Practice 6.1 and 6.2** respectively.

In line with contemporary thinking, the **MCCG** also emphasises that disclosure not only refers to features of the company's remuneration structure, but extends to identifying directors and senior management along with their remuneration. The **MCCG** intends for stakeholders to be able to assess whether the remuneration of directors and senior management is commensurate with their performance and the company's performance. After all, by the very term of listed company, certain matters that affect the perception of investors and stakeholders require transparency.

Directors should bear in mind that the intent of disclosure is not for frivolous reasons but for investors and other key stakeholders to assess the reasonableness of remuneration, in light of the company's circumstances, performance and prospects. This disclosure forms a key input in a shareholder's evaluation of the directors and how they have discharged their stewardship duties. In particular, companies who put their remuneration structure to vote can expect shareholders to support if the bases behind the structure are clear, reasonable and defensible.

Considerations on the disclosure of directors and senior management's remuneration are covered in detail in the write-up to **Practice 7.1, 7.2 and Step Up 7.3.**

Practices and Step Ups



Board leadership

MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.1
The board should set the company's strategic aims, ensure that the necessary resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards, and ensure that its obligations to its shareholders and other stakeholders are understood and met.

Why

The case for change

The board is the apex governing body of a company that is responsible for leading the company and ensuring that the interests of shareholders and stakeholders alike are protected whilst enabling the company to achieve long long-term sustainability. For a company to be well governed and managed, it is paramount for the board to consist of capable, dedicated, ethical and dynamic directors.

Directors appointed to the board play an integral role by undertaking to oversee and manage the strategies and matters of the board. In order to perform its obligations, a board must ensure the following:

- Ensure its members are proactive and partake in the decision making processes of the company;
- Move to challenge and discuss with management on matters in relation to the company's performance based on information provided to them;
- Oversee the plans of the management and their execution of the plans;
- Oversee the management's ethical conduct, financial reporting; and
- Ensure practice of good governance is instilled and the interest of stakeholders are protected.

A McKinsey survey covering approximately 1,600 directors globally yielded surprising results in this regard – one of which is that only 21% of directors claimed to have complete understanding of the strategy of their company[1]. Strikingly, about a quarter of directors have only a limited understanding (or none at all) of their company's strategy. This certainly makes for a sobering reading. If such statistic represents a true cross-section of directors (which in all likelihood is reasonably correct given the anonymity of the survey respondents), then how comfortable and confident can investors be in the boards of their companies?

What could go wrong:

- Implementation of poor strategies and policies that do not align with the objectives of the company.
- Management does not follow the direction of the board.
- The company is unable to address the challenges it faces.
- Company is unable to respond to the dynamic nature of the business circumstances.
- Inadequate focus on strategies in the meetings.
- Too much emphasis on short-term financial performance measures.
- Environmental, economic and social ("EES") aspects of sustainability are not embedded in the strategy and operations of the company.

[1] Bhagat, C et al 2013, *Tapping the strategic potential of boards*, McKinsey

In showcasing the importance of having a capable and responsible directors on the board, the MCCG has over its period of evolution defined the roles and en below:

The evolutionary tone of the MCCG

MCCG 2007	MCCG 2012	MCCG 2017
Principal Responsibilities of the Board	Recommendation 1.2	Practice 1.1
Principal responsibilities of the board: "**Reviewing and adopting** a strategic plan for the company"	The board should assume, amongst others, the following responsibilities: "**review, challenge and approve** management's proposal on a strategic plan for the company"	The board **should set the company's strategic aims**, values and standards.

The function of the board in directing the company, as well as the duties and responsibilities of directors are enumerated in **Companies Act 2016**. The said legislation further outlines provisions on the business judgment rule to assist and guide directors in terms of decision-making in the business of the company.

An extract of the primary responsibilities of the board in the aforementioned areas (as contained in **Companies Act 2016**) are outlined as follows:

Section 211(1) and (2) of Companies Act 2016

(1) The business and affairs of the company shall be managed by or under the direction of the board.

(2) The Board has all the powers necessary for managing and for directing and supervising the management of the business.

Section 213(1), (2) and (3) of Companies Act 2016

(1) A director of a company shall at all times exercise his powers in accordance with this Act, for a proper purpose and in good faith in the best interest of the company.

(2) A director of a company shall exercise reasonable care, skill and diligence with –

(a) the knowledge, skill and experience which may reasonable be expected of a director having the same responsibilities; and

(b) any additional knowledge, skill and experience which the director in fact has.

(3) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

Dos

- ✓ Make strategy a key matter reserved for the board's deliberation and decision.
- ✓ Seek advice on factors affecting the company's strategy, e.g. resourcing situation, regulatory considerations, competition and external risks.
- ✓ Consider avenues to gauge management and employee sentiment on the company's culture, e.g. survey or pulse checks.
- ✓ Live out the company's code of ethics in daily business dealings.

Don'ts

The following would render the application of this practice ineffective:

- × Allowing management a free hand to manage the company without any strategic direction or check and balance from the board.
- × Failing to keep abreast of the conduct, business activities and developments of a company.

Section 214(1) and (2) of the Companies Act 2016

(1) A director who makes a business judgement is deemed to meet the requirements of the duty under subsection 213(2) and the equivalent duties under the common law and in equity if the director –

(a) makes the business judgment for a proper purpose and in good faith;

(b) does not have a material personal interest in the subject matter of the business judgment;

(c) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(d) reasonable believes that the business judgment is in the best interest of the company.

(2) For the purposes of this section, "business judgment" means any decision on whether or not to take action in respect of a matter relevant to the business of the company.

HOW

The practice in substance

Practice 1.1 of MCCG calls upon the board to set the company's strategic aims and ensure that the necessary resources are in place for the company to meet its objectives and review management performance. **Practice 1.1 of MCCG** also calls the board to set the company's values and standards, and ensure that its obligations to its shareholders and other stakeholders are understood and met.

Guidance to Practice 1.1 of MCCG further outlines the factors that would a enable board to discharge its responsibilities, All directors should objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company. Every director is required to keep abreast of his responsibilities as a director and of the conduct, business activities and development of the company.

Key considerations relating to the application of this Practice are discussed below.

What are the key responsibilities of the board?

In reference to **Guidance to Practice 1.1 of the MCCG**, the board in meeting its goals and objectives of the company, should amongst others, undertake the following responsibilities:

- **together with senior management, promote good corporate governance culture within the company which reinforces ethical, prudent and professional behaviour;**

  The board should foster a healthy corporate governance culture which is founded on the principles of transparency, objectivity and integrity. The board should set the "tone from the top" by formalising and committing to ethical values.

- **review, challenge and decide on management's proposals for the company, and monitor its implementation by management;**

Hot-button issue

When directors are side-lined

Who calls the shots – directors or management? Whilst in theory the board of directors is the supreme governing body, situations can occur when the company is driven by executive management instead. Reasons for this include the following:

- Controlling shareholders who are also active in management consider it as their right to dictate the direction of the company;
- Management perceives the directors to lack in-depth knowledge about the company and its challenges particularly from an operational perspective; and
- Ineffective members of the board who are overly reliant on the chief executive officer ("CEO") or management for information on company performance.

The board should bring objectivity and breadth of judgment by scrutinising management's proposals. The board should satisfy itself that management has taken into account all appropriate considerations in tabling the proposals. The board must demarcate the day-to-day operational functions of the management and the overall responsibilities of the board by clarifying the duties and responsibilities of the both parties. In addition, the board must ensure that the goals and targets set for the CEO are met and in line with the company's long terms objectives.

- **ensure that the strategic plan of the company supports long-term value creation and includes strategies on economic, environmental and social considerations underpinning sustainability;**

  Stakeholders are now more aware of the impact that businesses have on the economy, environment and society. This impact may be positive or negative. As such, relevant economic, environmental and social considerations should be embedded in the company's business strategies and operations.

  Sustainability-related issues, can significantly impact a company's risk profile, potential liabilities, reputation and overall value. For example, companies involved in the oil and gas industry are increasingly faced with the challenges of volatile crude oil prices, geopolitical risks, climate change, and emission reductions – all of which has a bearing on the company. Having in place a sound sustainability policy would enable the company to be well-placed to deal with these challenges and create value in the long-term.

  Business leaders have also begun to recognise the benefits of integrating sustainability in the strategy and operations of a company. In the United Nations Global Compact – Accenture CEO Study, 93% of CEOs stated that they consider sustainability as important to the future success of their business[2].

- **supervise and assess management performance to determine whether the business is being properly managed;**

  The board must ensure that there are measures in place against which management's performance can be assessed. The board is obligated to oversee the performance of management whilst maintaining a relationship that is supportive yet vigilant. There should be a comprehensive process for requesting, and considering reports from the nominating committee on the performance of the board, board committee and individual directors.

  The board should also put in place key performance indicators ("KPIs") for the executive management to ensure the management's strategy and performance would align with the company's strategic objective. The KPIs should relate with the company's business activities, the targets set by the board and the company's short, medium and long-term objectives. The KPIs may include the following:

  - financial performance and targets (e.g. earnings before interest, tax, depreciation and amortisation; returns on asset; returns on equity; and earnings per share);
  - strategic performance in line with the company's strategic plan and direction including short, medium and long-term value of the business (e.g. market share, market development and sustainability ratings);

[2] *CEO Study on Sustainability – Architects of a Better World 2013*, United Nations and Accenture

  - o operational performance (e.g. productivity rate, time to market new products, reduction in carbon footprint); and
  - o corporate culture of the company (e.g. outcome of cultural surveys and pulse checks, regulatory and supervisory findings pertaining to the company).

- **ensure there is a sound framework for internal controls and risk management;**

  The board should ensure that there is a framework of prudent and effective internal control and risk management systems which enables risk to be assessed and managed. Further considerations on the establishment of framework for internal controls and risk management are provided in the write-ups to **Practices 9.1 and 9.2** as contained in Pull-out II.

- **understand the principal risks of the company's business and recognise that business decisions involve the taking of appropriate risks;**

  The board should be cognisant of the significant financial and non-financial elements that could results in exposures and alter the risk profile of the company.

- **set the risk appetite within which the board expects management to operate and ensure that there is an appropriate risk management framework to identify, analyse, evaluate, manage and monitor significant financial and non-financial risks;**

  The board should set the risk appetite within which the board expects management to operate and ensure that there is an appropriate risk management framework to identify, analyse, evaluate, manage and monitor risks. Detailed considerations on the framework of internal controls and risk management are provided in **Practice 9.1 and 9.2** of Pull-out II.

- **ensure that senior management has the necessary skills and experience, and there are measures in place to provide for the orderly succession of board and senior management;**

  The board should ensure that candidates appointed to senior management positions are of sufficient calibre and that the collective competence of senior management would allow them to effectively lead the operations of the company. The board should also be satisfied that there are plans in place to provide for the orderly succession of board members and senior management. The absence of succession planning can result in hasty promotion of individuals who may be unsuitable or not ready for the position.

  When putting a succession plan in place, it might not be necessary to identify persons by name relative to a position on the board. Instead, a clear direction as to what the board is facing and the type and depth of experience required in order for the board to continue functioning effectively should be considered by the board in its succession planning programme.

- **ensure that the company has in place procedures to enable effective communication with stakeholders; and**

  The board should promote effective and timely communication with its stakeholders. The procedures in this regard should include how feedback received from its stakeholders is considered by the company when making business decisions.

- **ensure the integrity of the company's financial and non-financial reporting.**

  The board should ensure that there is a sound framework on corporate reporting, including financial and non-financial reporting. Due cognisance should be given to the disclosures on corporate governance, sustainability and other non-financial aspects. The board should draw guidance from relevant documents such as ***Statement on Risk Management and Internal Control: Guidelines for Directors of Listed Issuers issued by the Taskforce on Internal Control with the support and endorsement of the Exchange***, ***Bursa Malaysia's Sustainability Reporting Guide and Toolkits*** as well as various other guides and communication notes issued by Bursa Malaysia such as the ***Management Discussion and Analysis Disclosure Guide*** and ***Guidance on Disclosures in Notes to Quarterly Report***.

What are key aspects that the board should be cognisant of in leading the company?

The board's roles and responsibilities and related considerations such as effective conduct in meeting its obligations may be articulated in a formal and authoritative document which is commonly known as board charter. Refer to the write-up to **Practice 2.1** of this Pull-out for detailed considerations regarding the board charter.

The responsibilities of the board in leading the company are closely related to four distinct elements:

a) Setting the strategic direction;

b) Monitoring the outcome of efforts to reach that direction;

c) Setting the company's culture and outlining its values; and

d) Meeting obligations to shareholders and stakeholders.

The company's culture and its strategic direction are intrinsically linked. The culture and the resultant ethical tone determine how much risk the directors are willing to take to achieve their goals, and set the moral boundaries in the pursuit of these aspirations. The diagram below illustrates the process of how culture and strategy lead to outcome results for a company.

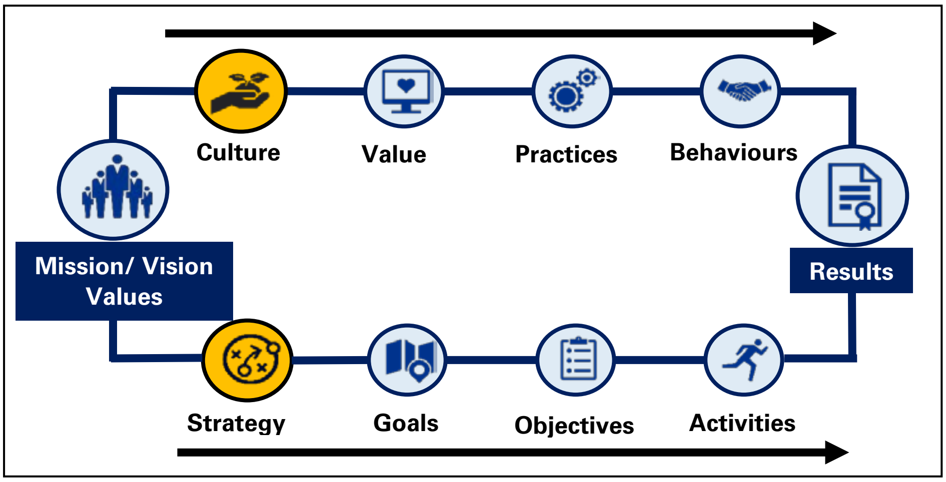


Diagram showing how strategy and culture drives the operations of a company

Therefore, the first steps to be addressed by the board is to include strategy setting and review of culture as an integral part of matters reserved for the board's deliberation and decision.

In setting the strategy and direction of the company, it is imperative that strategies and processes are put in place to allow the directors and management to:

(a) create, review and assess strategic decisions of the company;

(b) understand what are the key drivers of company performance;

(c) ensure that the company's strategy is in line with the operations and external environment; and

(d) evaluate and understand potential risks and incorporate risk management as well as sustainability considerations into strategic decision-making.

Management is key in collecting, scrutinising and elucidating strategic options to the board for its review and consideration. Hence, it is important that both management and the board work cohesively to successfully formulate and implement the company's business strategy.

In defining the board's role in maximising shareholders value whilst considering the interests of stakeholders and setting and monitoring strategies that cater to the growth of sustainable performance of the company, it is helpful for the board to consider some key parameters, as follows:

- Directors must showcase critical thinking in setting goals and strategies during board meetings. The personal need of a director cannot supersede the needs of the board. Questions on business operations that lead to insights into strategy, performance, investment decisions, hiring or removal of key personnel and risk assessment must take priority. In certain instances, directors can be seen micromanaging by picking up on a small point and challenges it for the sake of showing who is right or what could have been done differently. Trivial matters must not be discussed in length and hindsight discussions should be minimalised[3].
- When devising a strategic plan, the board must include the elements of strategic risk, i.e. linking business strategy to the critical risks the company faces including, but not limited to, sovereign risk, risks related to reputation, ethics, e-commerce, and safety, health, and environment (not just financial or insurable hazards) and should not just relate the level of risk to size of investment. There are many cases of small and apparently inconsequential investments having very serious consequences on large companies.
- Off-site strategy session serves as a valuable platform to explore strategic issues in depth for several days[4]. The factors that should be considered in having off-site strategy sessions include nature of strategy discussions, off-site plans, number and identity of invitees, timing of off-site strategy sessions[5]. However, board should be cognisant that organising an off-site may be challenging in certain instances as it may be difficult to get all directors present to participate. Directors may have their responsibilities on other boards coinciding with the scheduling. It may also not be applicable for companies with a large board structure where discussion on issues may take longer than anticipated.

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[3] *What Is and Isn't Micromanaging* 2013, Strategy+business
[4] Frish B and Chandler L 2006. *Off-Sites That Work*. Harvard Business Review.
[5] Bhagat C, Hirt M and Kehoe C 2013, Tapping the strategic potential of boards. McKinsey

- Visits to operational sites or key subsidiaries assist in deepening the board's understanding of the company, in particular for the non-executive directors. In the case of The Home Depot, Inc., directors are annually required to visit four stores and have in-depth meetings with four different members of the senior management team[6].

  The involvement of directors by frequently "spot checking" is a useful way of ensuring the management is kept on its toes. This also gives the directors an opportunity to directly talk to operational staff and receive feedback on their implemented plans.

- The board should receive both, information on financial and non-financial matters in relation to the company's performance including, but not limited to information on company's performance benchmarked against its competitors and industry players. The board must specify the required information to management and work with management on refining the board information package to tailor it to the board's needs and wants. Examples of non-financial information may include:

  - market positioning and performance of key brands;
  - customer satisfaction index;
  - employee turnover rate and satisfaction;
  - product development and research; and
  - social and environmental performance.

  The case study below demonstrates the importance for boards to scrutinise the information that has been presented to it:

Case study: Tesco PLC (United Kingdom)

Background:

- On 29 August 2014, Tesco informed investors to expect profits of about £1.1bn for the six months to 23 August, down from £1.6bn a year earlier. However, the subsequent discovery of the overstatement of £250m revenue paid to Tesco by its suppliers meant the supermarket's first-half profit was halved to about £850m.
- The estimated profit overstatement, identified three weeks after Dave Lewis took over as Tesco's chief executive officer from Philip Clarke, was later raised to amount of £263m. Clarke had been fired due to the company's poor performance.

Facts:

- On 22 September 2014, Tesco issued a statement to the London Stock Exchange informing that during its final preparations for an interim results announcement, it identified a £250m overstatement of its expected profit for the half year, mainly due to erroneous booking commercial deals as revenue when they have yet to realise.
- Three former senior executives at Tesco, Christopher Bush (former managing director), Carl Rogberg (former finance director) and John Scouler (former food commercial director) were accused of fraudulent accounting. According to the charges, all three men concealed Tesco's true financial position from its auditors and other employees between 1 February 2014 and 23 September 2014.

[6] *Corporate Governance Guidelines 2016*, The Home Depot Inc.

Lessons Drawn:

- The aftermath of the revelation led to a decrease in Tesco's share price to as low as a fifth of its value at that point of time, impacting all its stakeholders.
- In additional to financial losses, the company also suffered damaging reputational loss due to this controversy.
- Directors must be mindful that there is always a possibility of the board being misled by management. It is important for them to exercise due diligence, skill and care in carrying out their duties. The misdirection of the executives could have been detected if the directors and the committees delved further into the reporting and communicated better with the people within the company and not just at the executive levels.

- Boards should ensure that the information required to aid them in performing their duties are provided in a timely and orderly manner. Directors should allocate time to consider their information needs by asking the following:
  - what information would they require to perform their roles effectively?
  - what measures should be put in place to ensure their needs are met?
  - when should the information be given to them? and
  - in what form must the information be presented to the board?
- It is vital for the board to take interest on how the data regarding company performance is presented to them as information presented in a cluttered and unsystematic manner would make it difficult for comprehension. Management should present the information in a clear and systematic format that is easily understood by the board. A typical report can be set out under the following headings:
  - an executive summary that clarifies major themes of the report and its main conclusions;
  - emerging issues that may affect business in the future;
  - strategic issues for discussion;
  - market and competitor news;
  - financial and non-financial performance;
  - key value drivers' performances;
  - business unit performance; and
  - company performance in relation to strategic initiatives.

What are symptoms or indicators which may indicate concerns on the discharge of duties by the board?

The following would be considered as red-flags in this regard:

- Lack of oversight over management by the board;
- Presentation made to the board does not have sufficient information to guide the board or contains too much information that leaves the board with little time for thoughtful and reflective deliberations that hinders the board in scrutinising the management;
- Lack of alignment between the board's strategic goals and the management's goals;

- Board places inadequate focus on the core issues that are impacting the company; and
- Insufficient time spent by the board to educate themselves on the company's operations.

Where

Regional/international perspectives

The board's role in strategy and ethics has been clearly addressed in corporate governance codes around the world.

Country	Provision(s)
Singapore	The Board's role is to: a. provide entrepreneurial leadership, set strategic objectives, and ensure that the necessary financial and human resources are in place for the company to meet its objectives; and b. set the company's values and standards (including ethical standards), and ensure that obligations to shareholders and other stakeholders are understood and met. ***(Guideline 1.1)***
Australia	Usually the board of a listed entity will be responsible for: • providing leadership and setting the strategic objectives of the entity. ***(Commentary under Recommendation 1.1)*** The board of a listed entity should lead by example when it comes to acting ethically and responsibly and should specifically charge management with the responsibility for creating a culture within the entity that promotes ethical and responsible behaviour ***(Commentary under Principle 3)***.

Regional/ international perspectives

The Report on Corporate Governance for South Africa 2016 (King IV) is perhaps the code with the strongest emphasis on ethics and morality. King IV makes a strong and passionate argument linking ethics with a company's responsibility over the economy, people and the environment.

In fact, King IV even addresses the current issue of tax morality, calling upon companies to ensure that its tax policies are compliant and in line with "responsible corporate citizenship", i.e. to pay taxes fairly where taxes are due.

Country	Provision(s)
United Kingdom	The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met ***(Supporting principles under A1, Role of the Board)***.
South Africa	Members of the governing body should assume collective responsibility for steering and setting the direction of the organisation, approving policy and planning; overseeing and monitoring of implementation and execution by management; and ensuring accountability for organisational performance ***(Recommended Practice 1, under Principle 1)***. The governing body should oversee that the organisation's core purpose and values, strategy and conduct are congruent with it being a responsible corporate citizen ***(Recommended Practice 13 under Principle 3)***.

The board chairman

MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.2
A chairman of the board who is responsible for instilling good corporate governance practices, leadership and effectiveness of the board is appointed.

Why

The case for change

The chairman is a key pivot in board dynamics, being one of the three cornerstones of the board – the other two being the chief executive/managing director (representing executive directors) and the senior independent director/independent director, who is the figurehead of the non-executive directors.

The chairman can be regarded as a position, or it can be seen as a role. It may be just semantics, but each word implies different approach that fundamentally determines the success of the chairman.

A position is a point of reference about something or someone whereas a role is a position that comes with a great deal of responsibilities and an expectation that these will be carried out.

American academic Jeffrey A. Sonnenfeld[1] remarked that structurally, practically everything is in place for the board – rules, policies, procedures, the need for committees and the number of meetings. Nevertheless, what has often been ignored is that the board is a social system and many of the key factors for a successful social system apply to the board as well. Clearly, this includes the need for an effective leader – beginning with the chairman.

It is important to note that the MCCG does not emphasise on who should be a chairman of the board. It does, however, state in **Practice 1.3** that the chairman and chief executive officer ("CEO") should be different individuals.

It would be fair to say that the chairman's will and tenacity have more of a bearing on his impact than his status. The board can only be as effective as the chairman allows it to, and it can also be overrun by vested interests and personal agendas should the chairman allow this to happen as well.

What could go wrong:

- Lack of healthy discussions as dissenting views cannot be freely expressed and discussed.
- Agenda items and discussions of the board are detached from the core matters that relate to the board and company.
- Expectations on the company's culture, values and behaviours are not well articulated.
- Communication between board and management is inept, thus, leading to unhealthy tension.

[1] Jeffrey, A 2002, *What Makes Great Boards Great*, Harvard Business Review

How — The practice in substance

The chairman should be appointed by the board and the chairman's primary role is to preside over meetings of directors and ensure the smooth functioning of the board in the interest of good corporate governance.

Given the prevalence of the scorecard methodology and how easily it is now understood, it is perhaps helpful to present example traits of an effective chairman in the same manner.

The Chairman's Scorecard

A baseline authority
The chairman is fundamentally well regarded due to his reputation, experience and accomplishments.

Socially adept not awkward
The chairman understands the dynamics of the board, the social ties amongst members and any potentially disruptive power plays.

Mirror-gazing
Not content with the status quo, the chairman seeks ways to improve himself and the board.

"Unconfused" not "I'm confused"
The chairman knows that understanding of matters brought for deliberation is key to informed decision making.

Activist and change coach Joan Garry coined an apt term for the chairman, concisely, she recognises that an effective chairman is a valued "thought partner" to the chief executive and the directors[2]. Again, the theme behind this argument is that the chairman's role is not a matter of procedure but a responsibility to encourage a high performing board through continuous debate and challenge.

It would also be useful to consider the other side i.e. the signs that a chairman is not effective. They include the following:

- Being unable to control board proceedings, either from an agenda perspective or from a time perspective, including allowing board papers to be submitted late or not at all;
- Micro-managing[3];

Hot-button issue

Casting a long shadow

Should a retiring chief executive or managing director remain on the board as chairman? This is a corporate governance issue that many commentators have grappled with.

There is a great deal of debate with proponents arguing that such a presence "casts a long shadow "over the board whilst opponents counter by valuing the leadership, advice and experience of these individuals.

The technology company Intel needs no introduction to all of us. Its products have permeated daily life for the last 50 years, but what is less known outside of corporate governance circles is that Intel's four CEOs, starting from the legendary Andy Grove, went on to become chairmen of the board upon their retirement, in an orderly and announced succession plan.

The problem with this practice is that the chairman may think the company should be run in a certain way. When the strategy diverts from what they had implemented, the CEO turned chairman, might influence the board to hinder the performance and strategy of the new CEO. It is important to complement the incumbent CEO with a balanced board that would not interfere with his or her strategy for the company.

[2] Garry J 2017, *The Five Star Board Checklist*
[3] Anecdotally, some boards were observed reviewing operational matters such a promotional videos produced for the company. It was little surprise that board meetings stretched to hours on end.

- Allowing factions to develop;
- Himself joining a faction; and
- Other directors developing alternative channels of communication with the management team, excluding the chairman.

Additional considerations relating to the application of this Practice are discussed below:

Point for reflection

Although this may be apparent, it is worth noting that a company does not always stay in a normal, "business-as-usual" state of affairs. An effective chairman recognises that his company will be in a number of phases throughout its life, and adapts himself accordingly.

The global change management firm Alvarez & Marsal (2014) posited that the board chairman can find himself in one of three scenarios:

Planned change
Change is upon the company but this is known beforehand, (e.g. regulatory change, a new product or new market). Can the chairman ensure that management is fully prepared for the transition?

Turnaround
The company finds itself falling behind in its market and all of a sudden, things are no longer rosy. This is often a cumulative effect from inaction of the last few years. Can the chairman galvanise the chief executive officer and the board to "turn the ship" around?

Crisis
Events throw "a spanner in the works". These could range from fraud, accidents, and regulatory investigations to hostile takeovers. Some events may cast doubt on ability of the company to continue. Can the chairman lead the company through the crisis?

Dos

- ✓ Have a leading influence on board agenda and matters reserved for the board.
- ✓ Manage the meeting time.
- ✓ Encourage feedback, from all directors on the board, especially from directors whom the Chairman is aware has a passion in the subject.

Don'ts

The following would render the application of this practice ineffective:

- × Being overly rigid with time although a matter warrants serious discourse.
- × Suppress certain matters reserved for the board's deliberation and decision.
- × Assume an executive role when he is not supposed to.
- × Consistently excuse misbehaving or recalcitrant directors.
- × Allow certain group of directors to dominate the boardroom discussion.
- × Devote minimal, if not no effort to lead the board.

What are the responsibilities of the chairman?

The chairman is primarily responsible for the workings of the board so as to ensure the smooth functioning of the board in the interest of good corporate governance. The key responsibilities that are customarily undertaken by the chairman based on the MCCG are outlined below:

- Provides leadership for the board so that the board can perform its responsibilities effectively:
  - Ensures that the board plays a full and constructive part in the determination of the company's strategies and policies, and that board decisions taken are in the company's best interests and fairly reflect board's consensus; and
  - Ensures that procedures are in place to govern the board's operations.
- Sets the board agenda and ensures that board members receive complete and accurate information in a timely manner:
  - Plans the board meeting agenda in advance alongside the company secretary and the chief executive officer. Other directors and key members of management may also be consulted;
  - Ensures the provision of accurate, timely and clear information to the other directors; and
  - Ensures all directors are properly briefed on issues arising at board meetings in a timely manner.
- Leads board meetings and discussions:
  - Ensures that adequate time is available for thorough deliberation of key issues; and
  - Ensures that decisions are taken on a sound and well-informed basis, including by ensuring that all strategic and critical issues are considered by the board.
- Encourages active participation and allowing dissenting views to be freely expressed:
  - Promotes a culture of openness and debate whilst ensuring that no one director dominates the discussion; and
  - Obtains suggestions and comments from directors and encourage those who are less vocal to be more proactive in providing views.
- Manages the interface between board and management:
  - Acts as the main conduit between management and the board; and
  - Develops a positive relationship with the chief executive officer, acting as a confidant and advisor.
- Ensures appropriate steps are taken to provide effective communication with stakeholders and that their views are communicated to the board as a whole:
  - Acts as a spokesperson for the board; and
  - Acts as the main representative of the company at shareholders' meetings and on other occasions when actions are taken or statements are made in the name of the company.
- Leads the board in establishing and monitoring good corporate governance practices in the company:
  - Leads the creation of an effective corporate governance system, including the establishment of board and committee charters, a committee structure and induction as well as an ongoing education program for directors; and
  - Oversees and facilitates board, committee and board member evaluation reviews and succession planning alongside the chairman of the nominating committee.

The responsibilities of the chairman of a financial institution in leading the board and being responsible for the effective overall functioning of the board are enumerated in **Standard 9.1 of Bank Negara Malaysia's Policy Document on Corporate Governance.**

Should companies appoint a deputy chairman?

Subject to the company's constitution, **Paragraph 1 of the Third Schedule of Companies 2016** stipulates that the "directors may elect one of their numbers as a chairperson of the board and determine the period for which he is to hold office".

There are no prescriptions which calls for the appointment of a deputy chairman. However, it is not uncommon for companies to appoint a deputy chairman to deputise and assist in providing leadership to the board. In the absence of the chairman, the deputy chairman usually chairs the meetings of the board. The deputy chairman also often acts as a "sounding board" and confidant to the chairman in the execution of his or her role. Although there is no guiding principles on who should be appointed as a deputy chairman, it is worth noting that in most cases, when a deputy chairman is appointed, the chairman of the board would be an executive chairman. In line with good corporate governance practice, it would be advisable for the board to appoint an independent director to the position of deputy chairman as he or she would be better placed to provide objective views.

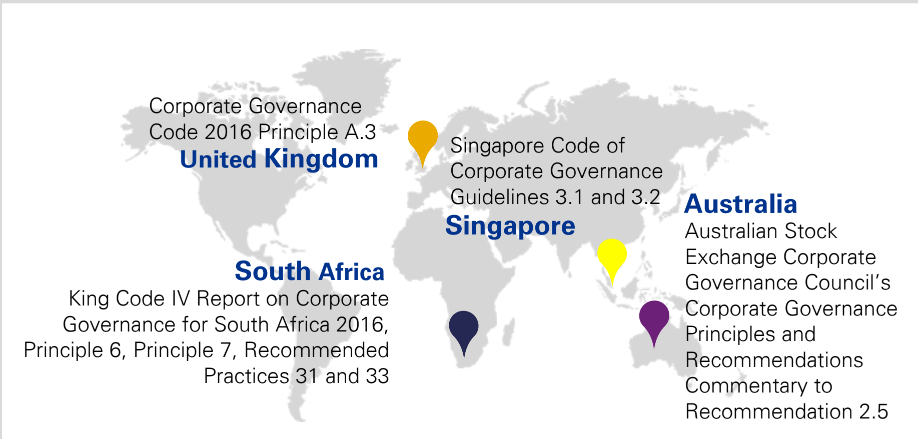
Examples of tasks or duties performed by the deputy chairman are shown below:

- assists the chairman in conducting meeting in his or her absence;
- ensures there is a strong relationship between the board and chairman;
- promotes constructive dialogues between non-executive and executive directors;
- provides assistance and support to the chairman during meetings; and
- ensures the board and chairman are communicating well with stakeholders.

Where

Regional/international perspectives

The responsibilities of a chairman are well enumerated across global jurisdictions.



Country	Provision(s)
Singapore	The chairman and the CEO should in principle be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the board for independent decision making ***(Guideline 3.1)***. The chairman should: (a) lead the board to ensure its effectiveness on all aspects of its role; (b) set the agenda and ensure that adequate time is available for discussion of all agenda items, in particular strategic issues; (c) promote a culture of openness and debate at the board; (d) ensure that the directors receive complete, adequate and timely information; (e) ensure effective communication with shareholders; (f) encourage constructive relations within the board and between the board and management; (g) facilitate the effective contribution of non-executive directors in particular; and (h) promote high standards of corporate governance. The responsibilities set out above provide guidance and should not be taken as comprehensive list of all the duties and responsibilities of a chairman ***(Guideline 3.2)***.

Regional/ international perspectives

The chairman of the board and his weighty role are universal topics addressed by corporate governance promulgations throughout the world.

Country	Provision(s)
Australia	The chair of the board is responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management ***(Commentary to Recommendation 2.5)***.
United Kingdom	The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role ***(Principle A.3)***.
South Africa	The governing body should elect an independent non-executive member as chair to lead the governing body in the objective and effective discharge of its governance role and responsibilities ***(Recommended Practice 31)***. The chair's roles and responsibilities and term in office, as well as that of the lead independent should be documented in the charter of the governing body or elsewhere ***(Recommended Practice 33)***.

Separation in the roles of chairman and chief executive officer

MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.3
The positions of chairman and chief executive officer (CEO) are held by different individuals.

Why

The case for change

The chairman and the CEO are two key levers of a company. The chairman is responsible for **marshalling the effective functioning of the board** including the collective oversight of management. The CEO meanwhile spearheads the **business and day-to-day management of the company**.

Given the different nature of responsibilities that rests with the chairman and CEO, having these positions combined could potentially diminish the board's role in exercising objective oversight over management. Conflicts could be particularly prevalent in the areas of performance evaluation, executive remuneration, succession planning and the appointment of new directors. A representative of the California Public Employees' Retirement System (CalPERS) once argued at the ExxonMobil's Annual General Meeting in United States that having a dual chairman and CEO is "**like grading your own exam papers**"[1].

The combination of these roles may also lead to an **excessive concentration of power** that is vested in one individual. At its worst, this could result in the infamous corporate governance issue of "imperial CEOs".

What could go wrong:

- The oversight role of the board over management is diminished.
- Deliberations in the boardroom are controlled by one individual.
- The director who assumes the position of chairman and CEO is accorded with uncheck power, giving rise to potential abuse.
- Time commitment of the combined CEO and chairman is impaired which hinders the effective discharge of duties for both positions.

[1] Larcker, DF and Tayan, B 2016, *Chairman and CEO: The Controversy over Board Leadership Structure*, Stanford University.

Point for reflection

An imperial CEO refers to a single autocratic individual who wields significant power by assuming the role of the Chairman as well as CEO of the company.

Imperial CEOs have unfettered control of the board and, intentionally or not, discourage- discourse in the boardroom. More often than not, these individuals implement a range of policies that are tilted towards management's interests as opposed to the shared needs of management and shareholders. Their unchecked power is further cemented by their unwillingness to relinquish the authority they have achieved and the board's reluctance to limit their powers as these individuals are viewed as integral to the company[2].

Given the ever increasing workload of board members in light of rising stakeholders' expectations, coupling the position of a chairman and CEO could also raise serious concerns on the time commitment of said director.

Understandably, the **commitment expected from a chairman would be greater** as opposed to a typical non-executive director as he or she would be involved in amongst others, setting the agenda of the board as well as in managing the interface between board and management. This is well encapsulated in the Walker Report (2009) of United Kingdom which recommends that whilst a non-executive director of a major bank should expend thirty to thirty six days for boardroom activities, the chairman is expected to commit a substantial proportion of his or her time (probably around two-thirds of his or her working time) to the business of the entity.

Clearly, if an individual acts as both the chairman and CEO (who is a full-time employee of the company), he or she runs the risk of lacking engagement in each of these roles which in turn could have adverse effects on the company's performance. An illustration of the expected time commitment from directors based on their varying positions is depicted below:

Expected time commitment from directors (large companies)

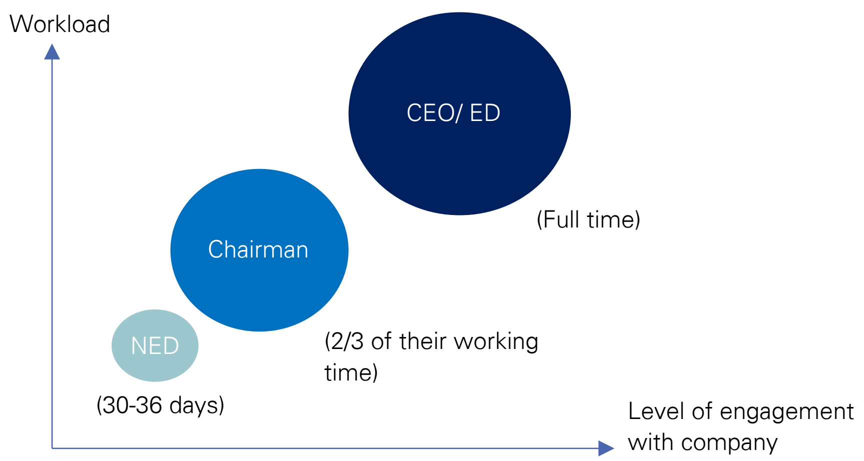


Chart illustrating the expected time commitment from directors of large companies (e.g. financial institutions). Adapted from Walker Report (2009).

Investors' perspectives

Companies with a combined chairman and CEO have often been subject to shareholders' scrutiny.

In addition, shareholders, particularly large institutional investors, are increasingly casting attention on companies with governance models that allow individual directors to be dominant or have unfettered powers.

For example, in 2014, a group of large shareholders in Oracle Incorporated, including California State Teachers' Retirement System (CalSTRS) wrote a letter to the other shareholders citing concerns about the board's accountability in the company. In the case of Oracle Incorporated, the CEO has stepped down (in title) to become an Executive Chairman of the Board and the Chief Technology Officer. In his place, the board appointed two CEOs from the executive suite to serve co-extensively - an unsustainable model that further consolidates the former CEO's control.

These institutional investors classified the company's leadership changes "as simply a rearrangement of the deck chairs which serves to further empower executive management".

[2] Scott, G 2004, *Unfinished Business: Abolish the Imperial CEO*, Journal of Corporate Accounting and Finance.

Premised on the need to promote accountability and facilitate division of responsibilities between the chairman and CEO, enumerations such as the aforementioned **Practice 1.3 of MCCG** and **Standard 11.3 of Bank Negara Malaysia's Policy Document on Corporate Governance**[3] call for separation between the chairman and CEO.

How The practice in substance

It is therefore important for the company to ensure that the positions of chairman and CEO are held by different individuals with a view of averting instances whereby one individual can dominate the board's discussions and decision-making.

The division in the roles of the chairman and CEO should be clearly defined in the board charter.

Key considerations relating to the application of this Practice are outlined below:

What are the factors that should be considered when demarcating the roles of the chairman and CEO?

Unless the roles are clear, the relationship between the CEO and the board including the chairman, risks devolving into misunderstandings, loss of trust, and ineffectiveness. To this end, it is important for the board to clearly define the respective functions and set out the boundaries of the chairman and the CEO.

Pertinent considerations in carrying out the demarcation are outlined below:

- articulate the expected time commitment in the service contracts of the chairman and CEO;
- define the criteria for evaluating the chairman and CEO, taking into account the responsibilities outlined in the board charter and job descriptions;
- provide the CEO with the room to perform, but be prepared to intervene when the need arises; and
- clarify the nature and extent of the other directorships that can be held by the chairman and CEO.

An annual discussion between the board (led by chairman) and management (led by the managing director) and perhaps, including a written letter of understanding setting out the roles of each party, is always a productive exercise[4].

Dos

- ✓ Clearly delineating the roles and responsibilities of the chairman and CEO in the company's board charter.
- ✓ Articulating the time commitment that is expected of the chairman and CEO
- ✓ Promoting a culture of openness and constructive challenge that allows for a diversity of views to be considered by the board.

Don'ts

The following would render the application of this practice ineffective:

- × Not putting in place procedures to deal with instances which involves a conflicted chairman

[3] The chairman of the board must not be an executive, and must not have served as a CEO of the financial institution in the past five years.
[4] Casal, C and Caspar, C 2014, *"Building a forward looking board"*, McKinsey

What are the safeguards that should be put in place to foster greater objectivity in the boardroom when the company has an executive chairman?

An inherent safeguard is built from the application to **Practice 4.1 of MCCG** which stipulates that "at least half of the board comprises independent directors. For Large Companies, the board comprises a majority independent directors". A board comprising a majority of independent directors allows for more effective oversight of management. Such a board composition would support objective and independent deliberation, review and decision-making.

In addition, companies may consider **appointing a senior independent director** to serve as a sounding board to the chairman and in leading the performance evaluation of the chairman. The appointment of a senior independent director would particularly go a long way in fostering objectivity in instances whereby the chairman and the CEO are immediate family members[5].

What are some of the symptoms which may indicate that power is concentrated in one individual director?

The board should be watchful of some of the following indicators which may indicate concentration of power in one individual director.

Echo chambers	Disparity in remuneration	Risk taking
The boardroom is reduced to an "echo chamber" whereby deliberations are centred around echoing the sentiments of an individual director. Succinctly put, there is a tendency for the views of the said individual to be deferred to and agreed with.	An individual director is being rewarded with a grossly excessive remuneration package and the "pay gap" vis-à-vis other directors and management personnel is hugely significant, after normalising factors such as responsibilities, credentials and performance.	An individual director has the propensity to engage in imprudent risk taking due to vested interests.

[5] **Guideline 3.3. of Singapore's Code of Corporate Governance**

Where

Regional/international perspectives

Recognising the need to promote accountability amongst board and management, many jurisdictions across the globe have emphasised the need to separate the positions of the chairman and CEO.

Selected jurisdictions such as United Kingdom and Australia have also gone further to call upon public listed companies to appoint an independent chairman.

Regional/ international perspectives

Public listed companies in United Kingdom and Australia are urged to appoint an independent chairman to lead in the effective functioning of the board.

United Kingdom further calls upon public listed companies to set in writing, the division of responsibilities between the chairman and chief executive.

Country	Provision
United Kingdom	The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board ***(Provision A.2.1)***. The chairman should on appointment meet the independence criteria set out in B.1.1 below. A chief executive should not go on to be the chairman of the same company. If exceptionally a board decides that a chief executive should become a chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report ***(Provision A.3.1)***.
Australia	The chair of the board of a listed entity should be an independent director, and in particular, should not be the same person as the CEO of the entity. ***(Recommendation 2.5)***.

Company secretary

MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

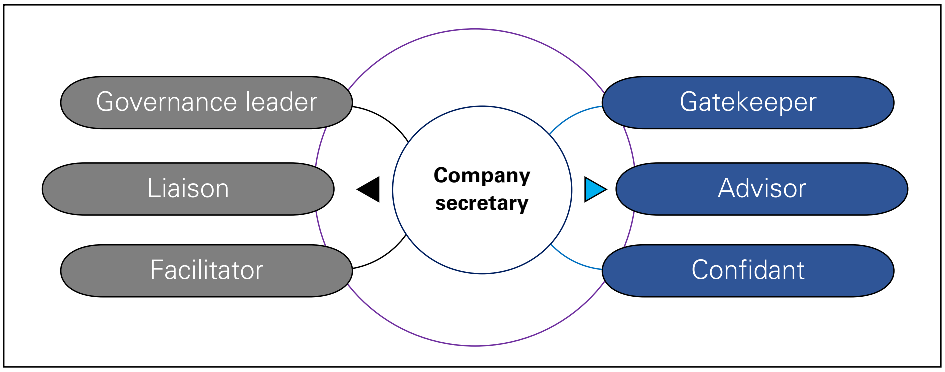
MCCG Practice 1.4
The board is supported by a suitably qualified and competent company secretary to provide sound governance advice, ensure adherence to rules and procedures, and advocate adoption of corporate governance best practices.

Why The case for change

The responsibility of the modern day company secretary has evolved from merely advising on administrative matters to now advising boards on governance matters, board policies and procedures as well as pertinent regulatory requirements (e.g. company and securities regulations and listing requirements including disclosure obligations). In the oft-cited words of the learned judge, Lord Denning, "**a company secretary is no longer a clerk**"[1].

As the focus on directors' accountability and performance increases, directors are increasingly demanding company secretaries to act as a key resource support so as to ensure that the board operates effectively and governance practices are upheld.

In this regard, the breadth of a company secretary's role has radically shifted from that of a "note taker" at board meetings or "administrative servant of the board"[2] to one which encompasses broader corporate governance functions.



The undertakings of a company secretary are also becoming more outward-focused and not just confined to internal matters. Company secretaries are increasingly expected to be more involved outside the company's boundaries to interact with shareholders, public bodies and regulators.

What could go wrong:

- Board members are not kept apprised on developments and relevant matters on corporate governance.
- Decisions of the board are not well-captured for management to act upon them accordingly in a timely manner.
- Lack of a structured approach to board or board committees' proceedings.
- Information flow between the board, board committees, individual directors and management is discontinuous.
- Failure of the company to comply with corporate or securities legislative requirements, particularly on provisions relating to corporate governance and disclosure obligations.

[1] Tricker, B. 2012, *The significance of a company secretary*, Hong Kong Institute of Chartered Secretaries
[2] *The changing role of the company secretary* 2016, Deloitte

Point for reflection

In tandem with the evolution in the role of company secretary, there is a growing school of thought which suggest that the term "company secretary" falls short of the duties undertaken. To this end, some professional bodies of company secretaries have changed their names to align with the new reality.

For example, the Australian company secretary industry body, Chartered Secretaries Australia, is now known as the Governance Institute of Australia, and in the United States, the Association of Corporate Secretaries changed its name to the Association of Corporate Secretaries and Governance Professionals.

The recognition of company secretaries as a **central point for governance matters** is driven in large part from the fact that company secretaries work closely with the board and the chairman, in particular, placing them in a position to influence the formulation of agenda and the direction of debates in the boardroom. They are well-placed to provide viewpoints, perspectives and challenges, thus, influencing the tone at the top. Company secretaries are also often the only people to know first-hand how the board-decisions made have been reached as they are privy to board discussions.

Given that company secretaries are well-placed to shape the corporate governance culture of a company, regulators have recognised the need to elevate the position and function of company secretaries to allow them to assume a stronger role in promoting governance. As with the MCCG, **Bank Negara Malaysia's Policy Document on Corporate Governance** also encapsulates enumerations for financial institutions in this regard[3].

HOW The practice in substance

It is therefore important for the board to ensure that it is supported by a suitably qualified and competent company secretary. The company secretary should play an important role in advising the board on governance matters and in ensuring that there is an effective system of corporate governance in place.

Key considerations relating to the application of this Practice are outlined below:

Who can be a Company Secretary?

Requirements concerning the appointment of a company secretary are primarily outlined in **Section 235 and 236(3) of Companies Act 2016**.

[3] **Standard 15.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** states that "the company secretary is responsible for supporting the effective functioning of the board. In discharging this role, the company secretary provides counsel to the board on governance matters and facilitates effective information flows between the board, the board committees and senior management.

Section 235 of Companies Act 2016

(1) A company shall have at least one secretary who shall be —

(a) a natural person;

(b) eighteen years of age and above; and

(c) a citizen or permanent resident of Malaysia, who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

(2) A secretary shall be —

(a) a member of a body as set out in the Fourth Schedule; or

(b) a person licensed by the Commission under **section 20G of the Companies Commission of Malaysia Act 2001**.

(3) For the purposes of paragraph (2)(a), the Minister may prescribe any professional body or any other body by notification in the Gazette and may impose any terms and conditions as he thinks fit.

Section 236(3) of Companies Act 2016

No person shall be appointed as a secretary unless:

(a) he has consented in writing to be appointed as a secretary;

(b) he is qualified under **subsection 235(2)**; and

(c) he is not disqualified under **section 238**[4].

Fourth Schedule

Approved bodies [in relation to **Section 235(2)(a)**]

(1) Malaysian Institute of Chartered Secretaries and Administrators;

(2) Malaysian Institute of Accountants;

(3) Malaysian Bar;

(4) Malaysian Association of Company Secretaries;

(5) Malaysian Institute of Certified Public Accountants;

(6) Sabah Law Association; and

(7) Advocates Association of Sarawak.

Dos

✓ Providing support for company secretaries to undertake continuous professional development and up-skill themselves.

✓ Performing an annual assessment of the Company Secretary (conducted by the board and board committees).

✓ According the company secretary with sufficient standing and authority to discharge his or her duties effectively.

✓ Putting in place a manual to guide the workflow of the secretarial function.

Don'ts

The following would render the application of this practice ineffective:

× Confining the role of the company secretary to be that of administrative or procedural in nature

× Combining the role of a company secretary with that of another position to the extent that it hinders the objectivity and impairs the time commitment of the company secretary.

What are some of the key attributes of an effective company secretary?

Company secretaries would need more than technical skills to appreciate what corporate governance practices are needed in a company and why. Technical skills must be complemented by emotional intelligence, interpersonal skills, and experience to ensure that they know how the practices would typically be implemented to work effectively.

[4] **Section 238 of the Companies Act 2016** states the company secretary will be disqualified if he is an undischarged bankrupt; convicted of offences under **Section 198** (i.e. offences relating to the disqualification of a director); or has ceased to be a holder of a practicing certificate issued by the Registrar under **Section. 241** (i.e. registration with Registrar).

Some of the attributes (non-exhaustive) that are commonly observed in a high performing company secretary are outlined below[5]:

- Possesses sound knowledge in company and securities law, finance, governance, company secretaryship and other areas of compliance such as the listing requirements;
- Diligently undertakes continuous professional development to keep abreast of relevant corporate governance and regulatory requirements;
- Respectful, diplomatic, and effective in communicating;
- Active listening;
- Brings issues to the surface, especially those relating to reputational risk;
- Describes common concerns and interests;
- Generates alternative solutions;
- Respects confidences;
- Demonstrates appreciation for all parties;
- Disagrees constructively; and
- Emphasises commercially minded approaches.

What are the primary responsibilities of a Company Secretary?

The key responsibilities of company secretaries are outlined below:

Corporate governance advisory

- Advise the board on its roles and responsibilities;
- Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations (e.g. advising directors to abstain from decision making in conflict of interest situations); and
- Ensure that the board and board committees' policies and procedures are adhered.

Compliance advisory

- Provide updates and assist the board with interpreting regulatory requirements related to company and securities regulations as well as listing requirements;
- Advise the board on its obligatory requirements to disclose material information to shareholders and financial markets in a timely manner; and
- Notify the chairman of any possible violations of regulatory requirements.

[5] *The Corporate Secretary: The Governance Professional* 2016, International Finance Corporation

Can the role of company secretary be combined with that of another position?

As observed in many countries including Malaysia, it is not uncommon for the role of the company secretary to be combined with another position[6]. For example, due to the compliance aspect present in the company secretary's role, some companies have opted to combine the position of a company secretary with that of head of legal or compliance.

Notwithstanding the above, it should be noted that if the company secretary function is combined with another position, **care should be taken to ensure that the effectiveness of the company secretary including its governance role is not compromised**. The company secretary's governance role, requires impartiality when providing advice on governance issues. In this regard, both the board and the corporate secretary should ensure that there is no conflict between the functions performed in both positions.

In establishing reporting lines, it is important to ensure that company secretaries have direct access to the chairman and other directors to act as a conduit to the board. As company secretaries are officers of the company with legal responsibilities to assist in the proceedings of the company, it is essential for this position to be taken in a serious light by the company[7]. Accordingly, company secretaries with appropriate standing and authority will enable them to position issues sufficiently, drive the board to work better and ultimately discharge their functions with stature and credibility.

At all times, the appointment and removal of the company secretary should be determined by the board[8]. A job description for the company secretary should be established with an annual performance evaluation conducted by the board, taking into account the responsibilities assigned to the company secretary.

Outsourcing the role of company secretaries

Some companies may decide to outsource the role of a company secretary to an external person. This would usually be the case in instances where the company deems an external person to be better able to render the service as a result of his or her specialist knowledge or ability to function more productively which can result in a lower overall cost to the company.

In the event the company decides to outsource the role of a company secretary, it is imperative for the board to ensure that the relevant criteria, such as qualification, skills experience and time commitment have been considered and assessed. The board should exercise oversight on the how the external person fulfills his or her role as a company secretary.

[6] It should be noted that **Section 242 of Companies Act 2016** prohibits a person to act in a dual capacity as both a director and a secretary in a situation that requires or authorises anything to be done by a director or secretary.
[7] *The Company Secretary as Polymath* 2016, International Finance Corporation
[8] **Section 236(1) of Companies Act 2016** states that "the board shall appoint a secretary and determine the terms and conditions of such appointment" whilst **Section 239 of Companies Act 2016** states "the board may remove a secretary from his office in accordance with terms of appointment or the constitution".

Where Regional/international perspectives

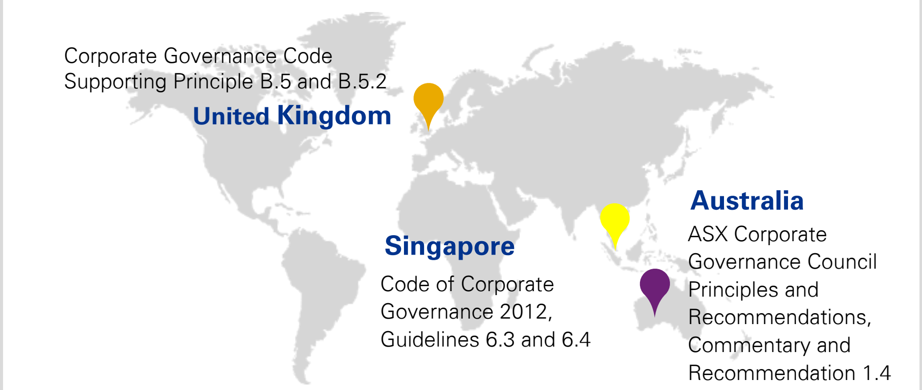
The responsibilities of a Company Secretary are well codified across the globe with jurisdictions such as United Kingdom, Singapore and Australia placing prominence on the advisory role of the company secretary, particularly in relation to corporate governance.

Information flows and meetings

- Manage board and board committee meeting logistics, attend and record minutes of board and board committee meetings as well as facilitate board communications; and
- Ensure that the decisions of the board and board committees are relayed to management to act upon.

Stakeholder communication

- Manage processes pertaining to the annual shareholder meeting; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.



Country	Provision(s)
Singapore	Directors should have separate and independent access to the company secretary. The role of the company secretary should be clearly defined and should include responsibility for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Under the direction of the Chairman, the company secretary's responsibilities include ensuring good information flows within the Board and its board committees and between Management and non-executive directors, advising the Board on all governance matters, as well as facilitating orientation and assisting with professional development as required. The company secretary should attend all board meetings (***Guideline 6.3***). The appointment and the removal of the company secretary should be a matter for the Board as a whole (***Guideline 6.4***).

Regional/ international perspectives

Selected jurisdictions including Singapore, United Kingdom and Australia have called upon company secretaries of public listed companies to be more proactive in performing an advisory role with regards to corporate governance.

Country	Provision(s)
United Kingdom	Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should be responsible for advising the board through the chairman on all governance matters ***(Supporting Principle B.5)***. All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole ***(Principle B.5.2)***.
Australia	The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board ***(Recommendation 1.4)***. The company secretary of a listed entity plays an important role in supporting the effectiveness of the board and its committees. The role of the company secretary should include: • advising the board and its committees on governance matters; • monitoring that board and committee policy and procedures are followed; • coordinating the timely completion and despatch of board and committee papers; • ensuring that the business at board and committee meetings is accurately captured in the minutes; and • helping to organise and facilitate the induction and professional development of directors. Each director should be able to communicate directly with the company secretary and vice versa. The decision to appoint or remove a company secretary should be made or approved by the board ***(Commentary to Recommendation 1.4)***.

Information and support for directors

MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.5
Directors receive meeting materials, which are complete and accurate within a reasonable period prior to the meeting. Upon conclusion of the meeting, the minutes are circulated in a timely manner.

Why **The case for change**

Information is the lifeblood of a board. Owing to the oversight nature of their roles, directors (particularly non-executive directors) inherently lack **in-depth knowledge** on the operations of a company in comparison to senior management. Directors rely on management for the information necessary to carry out their oversight duties.

In a similar vein, management cannot properly execute the directives of the board if those views are not communicated in an effective and timely manner. Thus, information flow between the board and management is critical to the proper functioning of both, as well as the execution of a company's strategic plan and many other critical processes.

What could go wrong:

- Lack of robust challenge during board and board committees' deliberations due to the lack of information or information not being provided to the board in a timely manner. evidence of the board and board committees' proceedings at material the time due to poorly captured meeting minutes.
- Directives from the board are not carried out accordingly in a timely manner by management.

Point for reflection

The changing corporate landscape and rising stakeholders' expectations have resulted in directors being more proactive by **deepening their commitment** and **becoming more engaged** in their roles. Directors are also increasingly devoting more time to strategic and forward-looking aspects (i.e. spending more time to "scan the road ahead" rather than just looking in the "rear-view mirror")[1].

This shift has **naturally driven the volume of information** that is being presented to boards. A Thomson Reuters global survey in 2013 ("Board Governance Survey") which covered more than 125 general counsels and company secretaries across a cross-section of industries highlighted that on average, companies prepared 92 board books annually; each an average of 116 pages. This represents a 50% uplift from the average pages reported in the prior year (2012).

Directors are also growingly seeking additional sources of strategic context and financial insights. The aforementioned survey revealed that over 70% of directors reported a need for competitor insights, financial analytics and industry information – all of which are sought outside of traditional board materials.

The trend on the intensity and complexity of information disseminated to directors is expected to continue as companies increasingly compete in the **data-driven marketplace**, owing to technological advances such as "big data".

Recognising the importance of sound information flow to board effectiveness, regulators have enumerated provisions to allow directors to receive relevant information prior to meetings whilst also ensuring that the proceedings and decisions of the board are properly recorded for further action.

Third Schedule of Companies Act 2016[2]

Paragraph 3 (Notice of meeting)
A notice of a meeting of the board shall be sent to every director who is in Malaysia, and the notice shall include the date, time and place of the meeting and the matters to be discussed.

Paragraph 13 (Minutes)
The board shall ensure that the minutes of all proceeding at meetings of the board are kept.

The rights of directors to rely on information and seek resources in furtherance of their services as directors are provided for in **Companies Act 2016** and **Bursa's Listing Requirements.**

[1] Casal, C and Caspar C 2014, *Building a forward looking board*, McKinsey
[2] As stated **in Section 212 of the Companies Act 2016**, "subject to the constitution, the provisions set out in the Third Schedule shall govern the proceedings of the Board".

Section 215(1) of Companies Act 2016

A director in exercising his duties as a director may rely on information, professional or expert advice, opinions, reports or statements including financial statements and other financial data, prepared, presented or made by:

a) any officer of the company whom the director believes on reasonable grounds to be reliable and competent on the matters concerned;

b) as to matters involving skills or expertise, any other person retained by the company in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence;

c) another director in relation to matters within the director's authority; or

d) any committee to the board of directors on which the director did not serve in relation to matters within the committee' s authority.

Paragraph 15.04 of Bursa's Listing Requirements

Unless otherwise provided by or subject to any applicable laws or these Requirements, a listed issuer must ensure that every director has the right to the resources, whenever necessary and reasonable for the performance of his duties, at the cost of the listed issuer and in accordance with a procedure to be determined by the board of directors, including but not limited to –

a) obtaining full and unrestricted access to any information pertaining to the listed issuer;

b) obtaining full and unrestricted access to the advice and services of the company secretary; and

c) obtaining independent professional or other advice.

Provisions for financial institutions in this regard are encapsulated in **Standard 9.1** (supply of information) and **Standard 9.6** (minutes of meeting) of **Bank Negara Malaysia's Policy Document on Corporate Governance.**

How

The practice in substance

As stated in **Guidance to Practice 1.5 of MCCG**, in order to facilitate robust deliberations, the chairman together with the company secretary should ensure that directors are provided with sufficient information and time to prepare for board meetings.

The information provided should be of a quality which is appropriate to enable decision making on the issues at hand. In other words, the information should be accurate, clear, comprehensive, and timely, and inform the director of what is expected of him or her on that issue.

Upon conclusion of the meeting, all directors should ensure that the minutes of meetings **accurately reflect the deliberations and decisions** of the board or board committee, including whether any director abstained from voting or deliberating on a particular matter.

Key considerations relating to the application of this practice are discussed on the following page.

How should the board formulate its meeting agenda?

The board meeting serves as an avenue for governance discussions and decision-making by the board. Whilst the minimum number of meetings is not prescribed, it would be in the best interest of the company for the board to meet regularly (i.e. at least once every quarter if not more frequently as circumstances dictate).

In this regard, the board (led by the Chairman) should be in control of the meeting agenda, rather than delegating the development of board agenda to management or the company secretary.

A carefully prepared board agenda will enhance the board's productivity and strengthen its strategic and supervisory role. The agenda should be prepared, taking into account the **formal schedule of matters reserved for the board's decision.**

The following is a range of matters that should be periodically included in a board agenda:

Examples of agenda items (non-exhaustive):

- business planning;
- direction and strategy formulation, including review;
- risk management issues and resolution;
- budget, approval and monitoring against actual performance, including variance reporting;
- funding requirements;
- formulation and monitoring of key company policies;
- evaluation of management's performance;
- corporate exercises, e.g. acquisitions, mergers, divestments and takeovers;
- regulatory changes that impact the company's business;
- emerging business issues;
- corporate disclosures and announcements;
- investor and stakeholder relations;
- litigation matters against the company;
- board, committee and individual director performance assessment; and
- board, committee and individual director training, education and development.

A similar process can be adopted in developing the agenda for meetings of board committees.

Dos

✓ Encapsulating the right of directors to seek additional resources and formalising the relevant procedures for the furtherance of their duties in the board charter.

✓ Confining the use of circular resolutions to administrative matters.

✓ Preparing in advance an annual tentative calendar for the scheduling of the meetings of board and board committees (usually performed in the last quarter of the current financial year).

✓ Establishing procedures to ensure that matters arising from the board or board committee meetings are acted upon.

Don'ts

× Having irregular and infrequent board and board committee meetings.

× Omitting matters reserved for the board and terms of reference of the respective committees in developing the meeting agenda.

What materials or information should be provided to directors before a board or board committee meeting?

The information provided (meeting pack) should at the very least include the following**:**

Notice and agenda	Previous meeting minutes	Board or board committee papers
The notice and agenda shall include the date, time and place of the meeting and the matters to be discussed.	Prior to approving the previous meeting minutes at the upcoming board or board committee meeting, every director should have the opportunity to review them, and make any necessary corrections.	The papers should address the core issues on which the board or board committee must deliberate. In developing the papers, prior exploration of the issues by management committee may help to gather relevant information and frame issues.

In the process of handling information, attention should be paid to the following:

- graphical presentations may be utilised but care must be taken that they are not overwhelming in terms of superfluous information or misleading;
- long management presentations which leave little time for thoughtful, reflective deliberations or presentation that is too short and contains little value to the board should be avoided;
- filtering of unfavourable information (e.g. key risk factors, worst case scenarios, less flattering information) should be avoided; and
- information should be used to assist the board in discharging its role and should not be scrutinised to an extent of obsession where the board micro-manages the company.

When should the meeting materials be distributed to the board or board committee?

As stated in **Guidance to Practice 1.5 of MCCG**, the meeting materials should be circulated **at least five business days in advance** of the board meeting.

The general rule of thumb may also be applied for meetings of board committees. It is important for directors to be provided with sufficient time to review the relevant materials and prepare for meetings.

Information flow in group structures

A parent company (also known as apex entity) has the overall responsibility for ensuring the establishment and operation of a clear governance structure which is appropriate to the nature, size and complexity of the group and its entities.

As the risk of downstream governance failure can have a profound impact on the group as a whole, the board of the parent company should ensure that **reporting arrangements** are in place to enable "top-down" and "bottom-up" communication. The information flow should enable the board of the parent company to communicate its views whilst facilitating pertinent matters to be relayed to the board of parent company for direction and further action.

The reporting arrangements and interfaces put in place should clearly set out the types of reports to be received and the frequency of such reports between entities within the group.

What should be encapsulated in the meeting minutes of the board or board committees?

The purpose of the minutes is to accurately record the proceedings and decisions of the meeting. The way in which they are prepared may also assist to establish that directors applied their minds sufficiently to the matters under consideration in the discharge of their duties.

The minutes of the meeting proceedings shall be prepared with, but not limited to, the following details[3]:

Suggested content of meeting minutes (non-exhaustive):

- the name of the company;
- the time, date and place at which the meeting was held (including the time at which the meeting was opened and closed);
- names of those present and in attendance, as well as any apologies (for absence or lateness);
- those who arrived or left during the meeting and the time at which they did so;
- the agenda and other materials that the board members received either before or during the meeting;
- what was decided and why – resolutions passed and actions to be taken by the board and delegates (including deadlines);
- fundamental questions raised and key points of discussions;
- any dissent, abstentions (and reasons provided for them); and
- any conflicts of interest including what the conflict was and how the board handled the situation.

What procedures should be put in place to facilitate timely circulation of accurate meeting minutes upon conclusion of the meeting?

The chairman of the board should agree with the board members and company secretary upon a procedure for circulating and approving minutes, taking into account the nuances of the company.

In drafting the minutes, the company secretary should, where relevant, seek the clarification from technical experts within management (e.g. chief executive officer, chief operating officer) to ensure that the draft minutes appropriately capture relevant technical points and issues discussed at the meeting.

The draft minutes should be reviewed by the chairman of the meeting prior to being circulated to all board members or board committee members for approval. Any amendments that may be required should be communicated to the company secretary within the time period agreed in the procedure.

As a general rule of thumb, meeting minutes shall be entered into the books **within 14 days** of the relevant meeting date.

Circular resolution

It would not be reasonable to expect the board to meet on every decision especially where it is administrative in nature. For this reason, the practice of using **circular resolutions** is sometimes deployed by companies.

However, caution should be exercised as there is a risk that the written resolutions are circulated to avoid discussion or scrutiny on certain contentious matters.

In this regard, the following safeguards should be applied:

- relevant information pertaining to the said resolution to be passed should be attached to the circular resolution which is circulated to the directors, so as to enable the directors to make an informed decision;
- circular resolutions which do not require the signature of all directors' should still be circulated to the entire board. This is to ensure that the board, as a whole, is aware of decisions that are being made; and
- circular resolutions, which have been passed since the last board meeting, should be circulated for notation of the board and minuted.

Boards should refrain from using circular resolutions to approve complex matters requiring rigorous deliberation

[3] *Board Meetings Practice Guide: Good decision making through effective meetings* 2015, Institute of Directors New Zealand.

Case study: James Hardie Industries Limited (Australia)

Background:

- The Australian Securities and Investments Commission ("ASIC") brought civil penalty proceedings against the directors and an officer (company secretary) of James Hardie Industries Limited for contravening Section 180(1) of the Corporations Act 2001 in Australia which relates to failure to act with care and diligence as officers and directors of a corporation.

Facts:

- The James Hardie group of companies had been involved in the manufacture and sale of products containing asbestos. The subsidiaries responsible for the distribution of these products were subject to claims for damages for personal injury. In response, the board of James Hardie Industries Limited (i.e. parent company) decided to separate the relevant subsidiaries from the rest of the group, by creating the Medical Research and Compensation Foundation ("Foundation") to manage and pay out asbestos claims made against the subsidiaries.
- The minutes of the meeting of the board of James Hardie on 15 February 2001 recorded that the board had approved a draft Australia Stock Exchange ("ASX") announcement containing statements to the effect that the Foundation was "fully-funded" and would have "sufficient funds to meet all legitimate compensation claims".
- On the next day, a finalised ASX announcement was made (in similar form to the draft ASX announcement, including the reference to "fully funded") which was ultimately shown to be incorrect as there were not sufficient funds to meet all claims. It was discovered that the Foundation was underfunded by over $1 billion. The ASIC then commenced proceedings against the directors and officer (i.e. general counsel and company secretary) of James Hardie.
- The directors in their defence submitted that the minutes tendered as evidence of the board meeting in February were false and no draft ASX announcement was tabled at the meeting, or approved by resolution of the board. They further submitted that the board's subsequent adoption of the minutes was also false, as the minutes adopted were not an accurate record of the proceedings of that February meeting. The respondents admitted that the **errors in the minutes had not been picked up because of a lack of care**.
- The High Court found that the minutes were a **contemporaneous record of the board meeting** and were the only direct evidence of the proceedings of that meeting. The High Court found that the directors and officer of James Hardie were in breach of their duty of care [Section 180(1) of the Corporations Act 2001] by failing to prevent the company from making false or misleading statements to the market.

Lessons Drawn:

- Directors should **exercise care when reviewing and approving minutes** to ensure they are an accurate record of the meeting proceedings. Otherwise, directors may be faced with evidence in a proceeding that does not correctly reflect the relevant state of events.

Where

Regional/international perspectives

In order to enhance the effectiveness of board or board committee meetings, numerous jurisdictions enumerated provisions to govern the supply of information to directors as well as the recording of meeting minutes.

The Hong Kong Corporate Governance Code and Corporate Governance Report, for example, has provided detailed prescriptions on the setting and distribution of board meeting agenda, the supply of information to directors and the capturing and dissemination of meeting minutes.

Country	Provision(s)
Hong Kong	Arrangements should be in place to ensure that all directors are given an **opportunity to include matters in the agenda** for regular board meetings ***(Provision A.1.2)***. **Notice of at least 14 days should be given of a regular board meeting** to give all directors an opportunity to attend. For all other board meetings, reasonable notice should be given ***(Provision A.1.3)***. Minutes of board meetings and meetings of board committees should record in sufficient detail the matters considered and decisions reached, including any concerns raised by directors or dissenting views expressed. Draft and final versions of minutes should be sent to all directors for their comment and records respectively, **within a reasonable time** after the board meeting is held ***(Provision A.1.5)***. There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek **independent professional advice** in appropriate circumstances, at the issuer's expense. The board should resolve to provide separate independent professional advice to directors to assist them perform their duties to the issuer ***(Provision A.1.6)***. For regular board meetings, and as far as practicable in all other cases, an agenda and accompanying board papers should be sent, in full, to all directors. These should be sent in a timely manner and **at least 3 days before the intended date of a**

Regional/ international perspectives

Public listed companies in Hong Kong are called upon to provide directors with a notice of at least 14 days prior to convening a board meeting.

Public listed companies in Hong Kong are also urged to ensure that the minutes of meetings of the board and board committees are recorded in a detailed manner, incorporating the matters considered and decisions reached, including any concerns raised by directors or expressed dissenting views.

Country	Provision(s)
	board or board committee meeting (or other agreed period) ***(Provision A.7.1)***. Management has an obligation to supply the board and its committees with adequate information, in a timely manner, to enable it to make informed decisions. The information supplied must be complete and reliable. To fulfil his duties properly, a director may not, in all circumstances, be able to rely purely on information provided voluntarily by management and he may need to make further enquiries. Where any director requires more information than is volunteered by management, he should make further enquiries where necessary. So, the board and individual directors should have **separate and independent access to the issuer's senior management** ***(Provision A.7.2)***. All directors are entitled to have access to board papers and related materials. These papers and related materials should be in a form and quality sufficient to enable the board to make informed decisions on matters placed before it. **Queries raised by directors should receive a prompt and full response, if possible**. ***(Provision A.7.3)***.

Board charter

MCCG Intended Outcome 2.0

There is demarcation of responsibilities between the board, board committees and management.

There is clarity in the authority of the board, its committees and individual directors.

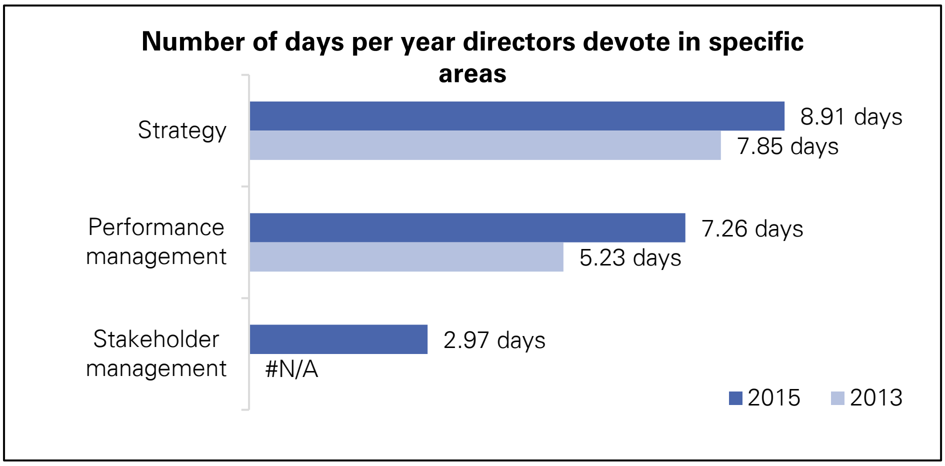
MCCG Practice 2.1
The board has a board charter which is periodically reviewed and published on the company's website. The board charter clearly identifies:

- the respective roles and responsibilities of the board, board committees, individual directors and management; and
- issues and decisions reserved for the board.

Why **The case for change**

Whilst the general roles and responsibilities of boards are well founded, the expectations on directors have evolved significantly owing to changes in the corporate landscape. High-profile board failures, the boom in responsible investing, and the disruptive forces of technology are placing directors under an unprecedented level of pressure from shareholders, regulators and other stakeholders.

In response to this change, directors today are expected to deal with a breadth of issues in a timely manner. A study of over 1000 global companies by McKinsey in 2015 showed that directors are increasingly deepening their commitment, investing more time and going beyond the minimum prescribed to engage more deeply on aspects such as strategy, performance management and stakeholder management.



Number of days per year directors devote to board work. Source: Toward a value creating board 2016, McKinsey and Co

What could go wrong:

- Expectation gap between the board, management and other stakeholders regarding the board's role.
- Selected individuals having unfettered powers of decision making.
- Directives by the board are not acted upon in a timely manner by management.
- Deliberations and decision making are dominated by a select group of individuals.
- Lack of a structured approach to board proceedings, resulting in ineffective deliberation and decision making process.

In tandem with this heightening demand for greater accountability, it is imperative for the board to clarify its responsibilities as well as that of the board committees, individual directors and management. Considering the accountabilities through the lens of each of these positions can provide the board with a holistic view of corporate governance. As the former Chief Executive Officer (CEO) of Medtronic and a veteran of ten corporate boards, William George puts it, "**one's perspective on board governance depends on the board seat one holds**".[1]

To this end, the establishment of a **board charter** would go a long way in defusing potential tensions at the outset by clearly defining the roles of the respective parties as well as establishing well-understood boundaries. The board charter will serve as an authoritative policy document that sets out the board's strategic intent, authority and terms of reference.

Point for reflection

There is an increasing blurring of lines between the role of the board and management. Directors today are demanded to be more vigilant in the operations and drivers on businesses including understanding technical details. Directors are expected to have a granular understanding of the business model, be able to challenge assumptions underlying the strategies proposed and to master the complexities of risk management. Such expectations call for boards to become more involved and engaged, thus, leading to the "**oversight versus micromanagement debate**".

The blurring of lines becomes more apparent when the company is at critical stage of development or when it goes through periods of stress, crisis or trust deficit, all of which necessitates a greater intervention amongst directors.

As the board cannot both manage and oversee, it is essential for the delineation of roles to be clearly crystallised to avoid overlaps in the points of accountability. Being the focal point of the company, the board should at all times exercise collective oversight of the board committees and management.

HOW The practice in substance

It is therefore clear that the board should formalise a board charter to serve as a primary reference and literature that guides the governance and conduct of the board.

Given that the charter is an avenue to communicate the company's approach to governance, the document should be published on the website and made accessible to all stakeholders of the company.

Similar to Practice 2.1 of MCCG, **Standard 8.2 of Bank Negara Malaysia's Policy Document on Corporate Governance** outlines a prescription for financial institutions to set out a board charter including the mandate, responsibilities and procedures of the board and the board committees as well as the matters reserved for the board's decision.

[1] *The CEO guide to boards* 2016, McKinsey Quarterly

1. What should be encapsulated within a board charter?

The following are some of the matters that should be considered when developing a board charter:

- a general outline of the board's purpose, key values, ethos and principles;
- an overview of the board's monitoring role;
- structure and membership;
- a formal schedule of matters reserved for the board, including the type and nature of issues, transactions and thresholds and the process for deliberation;
- appointment of board committees;
- roles and responsibilities of the board, board committees and individual directors;
- expectations on time commitment and protocols for accepting new directorships;
- director's orientation and education programme;
- agreed upon procedures in enlisting independent professional advice at the company's expense in furtherance of the directors' duties (whether as a board or in their individual capacity); and
- procedures for the development, undertaking, and improvement of board processes, including the assessment of performance and continuing education and development of the board, its committees and directors.

Dos

✓ Having at least an annual discussion between the board and management to ensure the content set out in the board charter reflects the company's current needs.

✓ Ensuring the board charter is sufficiently detailed to capture the types and nature of issues that are to be dealt with by the board, board committees, individual directors and management

✓ Making the delegation of authority clear and ensuring that such delegation is in line with the legal and regulatory requirement.

Don'ts

The following would render the application of the practice ineffective:

× Having a board charter which is overly broad and general, which is of little value to shareholders to understand the delineation of roles and responsibilities within the board or between the management and the board.

× Maintaining that the responsibilities of the various parties as encapsulated in the legal and regulatory requirement is the be-all and end-all.

× Utilising an existing board charter template that does not reflect the company's needs and nuances.

× Poor implementation of the elements contained in the board charter.

Illustrative outline of board charter

Outline of board charter:

- Introduction
- Role of the board
- Board reserved powers and responsibilities
- Board membership, independence and conduct
- Role of the chairman
- Role of the company secretary
- Delegation to management
- Committees
- Meetings
- Declaration of interests
- Access to management
- Access to independent professional advice
- Induction and training
- Review of board performance and charter

Salient features of the Charter:

- **Matters reserved for the board –** identifies issues that need to be finally decided on by the Board.
- **Role profiles –** defines and clearly separates the roles of the Group Chairman and the Group Chief Executive, as well as the Board's expectations of the chairmen of the Board Committees.
- **Delegation to management** – Outlines that the Chief Executive Officer is responsible to the Board for the development and implementation of strategy, as well as the day to day management.
- **Terms of reference of board committees –** outlines the approved mandates of each Board Committee.

The Board undertakes an **annual** assessment of its performance including its performance against the **requirements** of its **charter**, the performance of individual Committees and the performance of individual Directors.

Illustrative outline of a board charter. Source: Telstra Ltd (Australia) Board Charter October 2015

2. What are the underlying principles to consider when demarcating the responsibilities between board, board committees and management?

In carrying out the delineation of responsibilities, the board should be guided by the following principles:

Delegate, not abdicate

As stated in **Section 211 of Companies Act 2016**, "the business and affairs of a company must be managed by, or under the direction of, the board of directors".

It should be noted that whilst the board may appropriately delegate its authority to board committees or management, it should not abdicate its responsibility and should at all times exercise collective oversight of the board committees and management[2].

The board should not delegate matters to a committee or management to an extent that would significantly hinder or reduce the board's ability to discharge its functions.

Supplement, not supplant

The board may engage on the field but shall not excessively intervene on the operational and implementation role of management

The over interference with the management of the company's processes, people and administration, in a manner which is intrusive may slow down or even inhibit business processes. Such actions of micromanagement could also create conflict and lead to demotivated management.

Senior Managers Regime

The Senior Managers Regime in United Kingdom came into force in the year 2016 for the banking and insurance industries.

Under this regime, key activities, business areas and management functions must be identified and prescribed responsibilities must be allocated amongst senior management. Pertinent documents including job descriptions, reporting lines and management committee structures must be made available for inspection.

Enumerations on the Senior Managers Regime are encapsulated in the Financial Conduct Authority's Handbook, issued pursuant to the Financial Services and Markets Act 2010.

3. How frequently should the board charter be reviewed?

The board should review its board charter periodically or as changes arise (e.g. restructuring and strategic initiatives) to ensure that the allocation of responsibilities reflect the dynamic nature of the relationship necessary for the company to adapt to changing circumstances.

Whilst no numerical prescriptions are enumerated, it is commonplace for companies across the globe to undertake a review at least annually to raise the directors and management's awareness of the company's overall governance framework.

An annual discussion between the board and management, perhaps including a written terms of reference setting out the roles of each party, is always a productive exercise. It is common for large companies to create work and role descriptions, for the board and management that are reviewed and approved every year. This process always generates valuable discussions and makes roles clearer.

[2] As stated in **Section 216(2) and (3) of Companies Act 2016**, where the directors have delegated any power, the directors are responsible for the exercise of the power by the delegatee as if the power had been exercised by the directors themselves unless the directors believed on reasonable grounds at all times that the delegatee would exercise the power in conformity with the duties imposed (in **Companies Act 2016 and the Constitution**); and the directors believed on reasonable grounds, in good faith and after making a proper, necessary inquiry that the delegate was reliable and competent in relation to the power delegated.

The process involved in the development and/or review of board charter is depicted below:

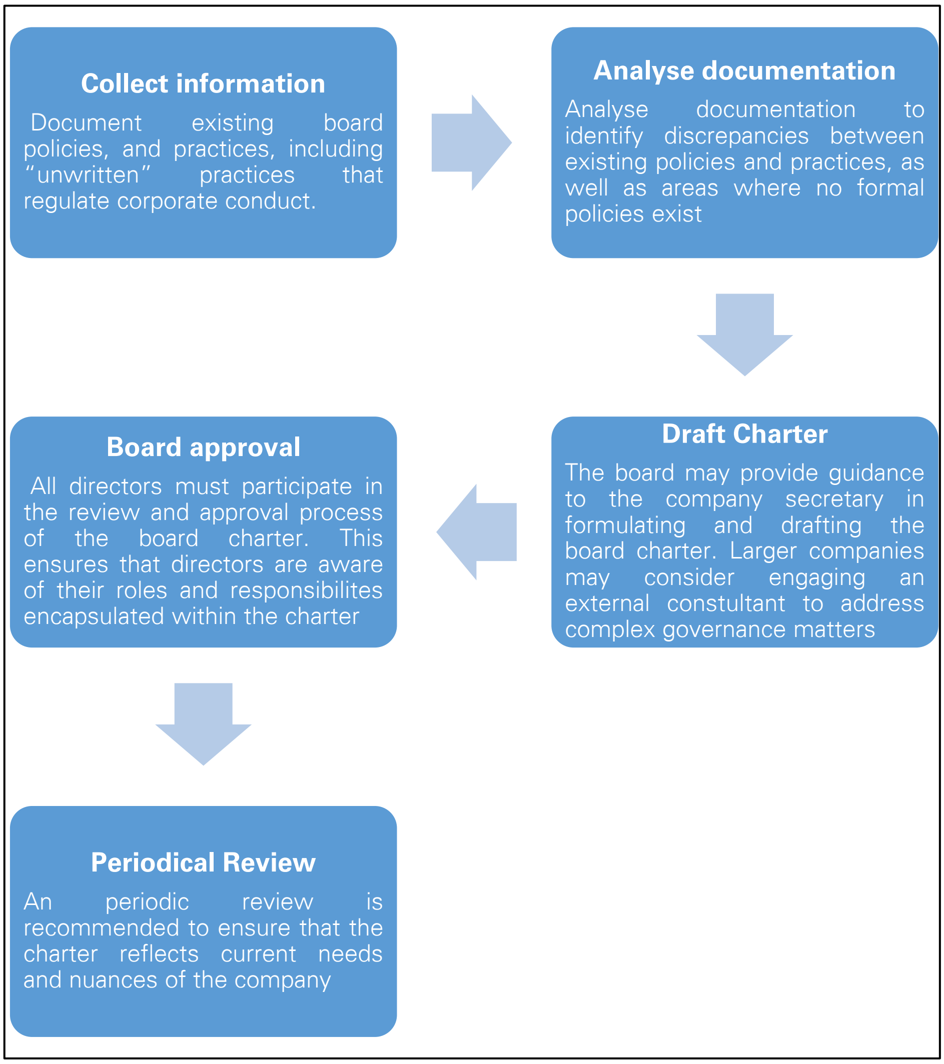


Diagram illustrating process in developing and reviewing a board charter.

Where

Regional/international perspectives

Premised on the importance of establishing clear accountability amongst those charged with governance and management, many jurisdictions have called for clear demarcation of roles and responsibilities between Board and Management.

Country	Provision(s)
Singapore	Every company should prepare a document with guidelines setting forth: (a) The matters reserved for the Board's decisions; and (b) Clear directions to Management on matters that must be approved by the Board. The type of material transactions that require board approval under such guidelines should be disclosed in the company's Annual Report ***(Guideline 1.5)***.
Australia	A listed entity should disclose: (a) the respective roles and responsibilities of its board and management; and (b) those matters expressly reserved to the board and those delegated to management. ***(Recommendation 1.1)***
United Kingdom	The board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management ***(Provision A.1.1)***.

Regional/ international perspectives

Enumerations for companies to clearly delineate matters under the purview of the board and management respectively are well codified across the globe.

In addition to setting out a formal schedule of matters specifically reserved for its decision, companies in the United Kingdom are called upon to provide a statement in the annual report of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.

Establishing and implementing a code of conduct and ethics

MCCG Intended Outcome 3.0

The board is committed to promoting good business conduct and maintaining a healthy corporate culture that engenders integrity, transparency and fairness.

The board, management, employees and other stakeholders are clear on what is considered acceptable behaviour and practice in company.

MCCG Practice 3.1
The board establishes, a Code of Conduct and Ethics for the company, and together with management implements its policies and procedures, which include managing conflicts of interest, preventing the abuse of power, corruption, insider trading and money laundering.

The Code of Conduct and Ethics is published on the company's website.

Why

The case for change

Lessons learnt from the numerous episodes of corporate misconducts (e.g. corruption, fraudulent reporting and insider trading) in recent years point towards a common denominator, which is **ethics**. Accounts of such incidences may be peppered with references to terms such as "market complexity", "financial intermediation" and "creative accounting", but at their very heart lies the failure of ethics. In many instances, unethical behaviour went unchecked, proliferated and eventually became the norm within the company.

A close examination of misconducts revealed that lapses in the ethical framework allowed some individuals to push, and in several cases, break the boundaries of what is permissible. As quoted in a speech by the President of Federal Reserve Bank of New York, William Dudley, "ethical problems in companies originate not with a few bad apples but with the barrel makers"[1]. In other words, the problems originate from the **ethical culture** of the company.

What could go wrong:

- Corporate misconducts are not detected at the "get-go" (early) stage.
- Frequent incidences of imprudent risk taking within the company.
- Adverse reputational effect to the company (due to poor ethical behaviour) despite complying with legal requirements.
- Breakdown of internal controls.

[1] Dudley, C 2014, *Enhancing Financial Stability by Improving Culture in the Financial Services Industry*, Federal Reserve Bank of New York

Point for reflection

Ethical culture reflects the prevailing attitudes and behaviours within the company. It is how individuals react not only to legislations ("black and white"), but to all of the ethical dilemmas ("shades of grey").

For an ethical culture to become part of a company's DNA, the existing ethical framework must be supplemented by **human governance**, a governance structure that is human-centric, principles-based and relies on conviction to make decisions.

A company's culture is largely shaped by the **company's leadership**. Ethical principles and values need to originate from the leaders and be cascaded across the company. This notion is well encapsulated by the oft-cited phrase of "tone at top, tune in the middle, and beat at the feet".

Tone at the top	Tune in the middle	Beat of the feet
Board members and senior management encourage employees across the company and business partners to behave ethically.	Front-line and mid-level managers turn principles into practice by actively engaging with employees in developing an ethical culture within the company.	The company rewards and promotes individuals in the company in part for their adherence to ethical values. Good behaviour is rewarded and negative behaviour is punished.

To this end, a well-designed Code of Conduct and Ethics could go a long way in shaping the corporate culture and driving conduct within a company. It serves as both an internal guideline and an external statement of corporate values and commitment. It could also act as a central point of reference for employees to support day-to-day decision making.

On the contrary lack of ethical guidance could lead to **diminution of personal accountability**. In a survey performed by KPMG in 2013 across a cross-section of approximately 100 public-listed companies in Malaysia, respondents opined that the most prevalent factor which contributed to unethical behaviour was poor communication of the company's values or Code of Conduct and Ethics.

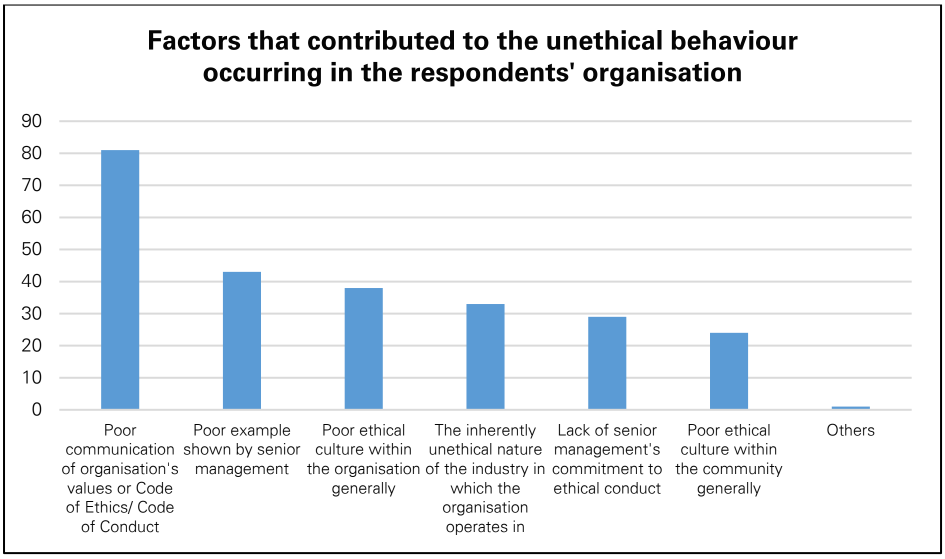


Chart illustrating factors that contributed to the unethical behaviour occurring in the respondent organisations (Source: KPMG Malaysia Fraud, Bribery and Corruption Survey 2013).

Recognising the need to foster an ethical culture that is grounded on ethical, prudent and professional behaviour, **Standard 18.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** (as with **Practice 3.1 of MCCG**) has emphasised the need for boards of financial institutions to formalise a Code of Ethics and ensure its implementation[2].

How

The practice in substance

The board should therefore commit to ethical values through a Code of Conduct and Ethics and ensure the implementation of appropriate internal systems to support, promote and ensure its compliance.

The board should also satisfy themselves that the Code of Conduct and Ethics is taken seriously throughout the company, and make it known that they will take serious action against any conscious and recurring breaches. The policies of the Code of Conduct and Ethics should be integrated into company-wide management practices and be periodically reviewed.

Key considerations relating to the application of this Practice are outlined in the following page:

[2] As stated in **Standard 18.1 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the implementation includes maintaining a record of breaches of the Code of Ethics and address such breaches in a manner that upholds high standards of integrity.

What are the factors that should be taken into account in developing a Code of Conduct and Ethics?

David Murray lists the following critical success factors for the formulation of a Code of Conduct and Ethics[3]:

Clear purpose	Understanding of predecessor codes	Understanding of existing values and principles
The board and senior management should know why they want to develop a code and what the benefits will be. There has to be a development process and this has to involve participation from employees at all levels, as well as the inclusion of stakeholders.	If a previous code is outdated there should be clarity on why this is the case and, if there is an industry specific code, adequate care should be taken that there is no conflict between the two.	The code has to be based on these existing values, otherwise employees will not be able to associate with or endorse the contents.

In addition, companies would need to answer the following basic but critical questions, which are:

- Does the company adhere in practice to a Code of Conduct and Ethics?
- What should be the coverage of the Code of Conduct and Ethics? *(Note: **Guidance to Practice 3.1 of MCCG** states that the Code of Conduct and Ethics should articulate practices and guide the behaviour of directors, management and employees)*.
- How to obtain buy-in for the company's Code of Conduct and Ethics?
- What measures which help to reinforce the practices contained in the company's Code of Conduct and Ethics?

What should be encapsulated in a Code of Conduct and Ethics?

As stated in **Guidance to Practice 3.1**, the Code of Conduct and Ethics should describe measures put in place to:

- handle actual or potential conflict of interest;
- prevent corrupt practices which include the offering and acceptance of gifts and other form of benefits;
- encourage the reporting of unlawful or unethical behaviour;
- protect and ensure the proper use of the company's assets; and
- ensure compliance with laws, rules and regulations.

Dos

- ✓ Undertaking a periodic review of the Code of Conduct and Ethics to ensure that the document is current and relevant.
- ✓ Reinforcing the ethical standards espoused in the Code of Conduct and Ethics via training programmes and other engagement efforts within the company.
- ✓ Designating a board committee to oversee ethical matters.

Don'ts

The following would render the application of this practice ineffective:

- × Inadequate attention accorded to ethical matters by the board and senior management.
- × Not establishing communication channels for matters concerning ethics to be disseminated across the company.

[3] Lagan, A 2000, Why *Ethics Matter: Business Ethics for Business People*, Information Australia

In addition, companies may consider the following list of issues and risk areas that could be addressed in the said document, either under their own subject heading or as part of a broader topic:

Example of areas that can be covered in a Code of Conduct and Ethics (non-exhaustive):

- anti-trust/competitive information/fair competition;
- tender/procurement/purchasing;
- confidential and proprietary information;
- record keeping and document retention;
- political participation, contribution and lobbying;;
- outside employment and other activities;
- holding directorships in other entities;
- donation and sponsorship;
- gifts, entertainment, gratuities, favours and other items of value to/from stakeholders;
- health and safety;
- marketing, sales, advertising, and promotions;
- securities trading and insider information;
- personal conduct;
- harassment (sexual and other forms of discrimination); and
- employment practices and affirmative actions.

How can the board set the tone in driving ethical culture within the company?

The foundation of an ethical culture largely depends on the leadership, and the responsibility begins with the board.

The directors should lead by example and embody the ethical values that are being espoused. The board together with management should also put in place policies and procedures which engender ethical conduct throughout all levels of the company. This includes the implementation of appropriate internal systems to ensure adherence to the Code of Conduct and Ethics.

The roles and responsibilities of the board in driving effective ethical leadership is depicted as follows:

Corporate Integrity System Malaysia

In 2011, the Corporate Integrity System Malaysia (CISM) initiative was introduced to secure the co-operation of companies to develop their own anti-corruption programmes. This initiative was driven by the Malaysian Anti-Corruption Commission (MACC) alongside other regulatory bodies and government agencies.

The CISM initiative encourages companies to take personal responsibility for matters concerning ethics and integrity. It outlines a framework to help companies and businesses in identifying gaps and obstacles that they face in pursuing corporate integrity[4].

Under CISM, companies are called upon to **sign the Corporate Integrity Pledge** (a unilateral declaration that the organisation will not commit corrupt acts) and **submit an annual report on integrity initiatives**. As of the end of 31 December 2016, there are over 800 signatories who have committed to this initiative.

[4] *From Pledge to Practice : A Guide to implement the Corporate System Malaysia* 2014, Corporate Integrity System Malaysia

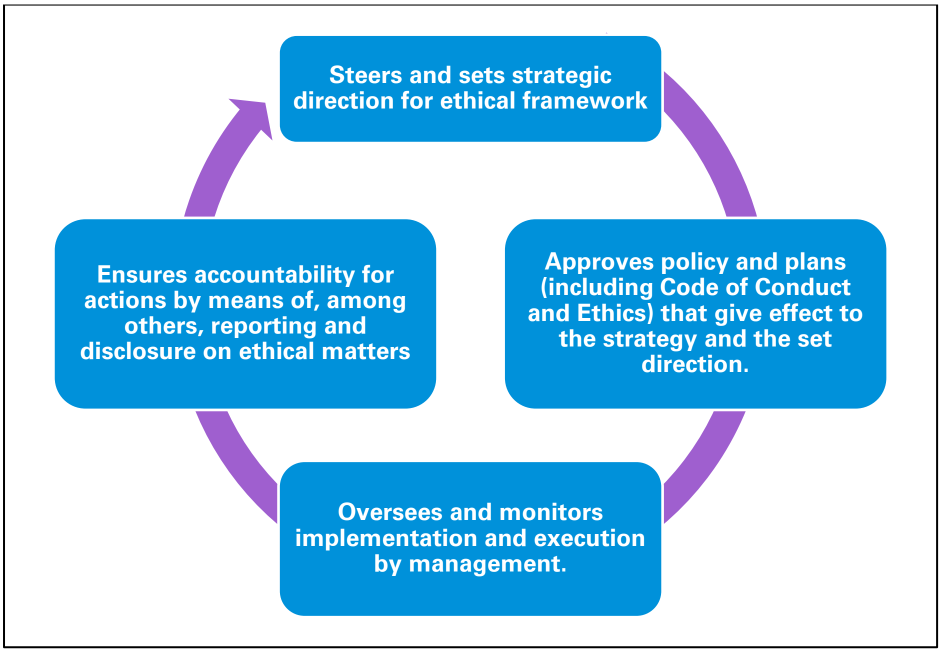


Diagram illustrating effective ethical leadership in a cyclical manner

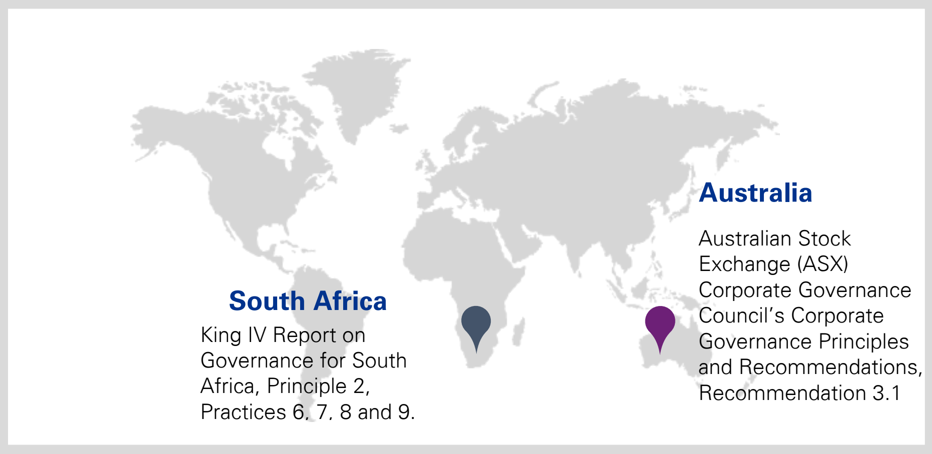
As illustrated above, ethical leadership is results driven. It is about achieving strategic objectives and positive outcomes.

In this regard, the board is responsible to steer the strategic direction of the company in terms of ethics. The board should determine the way in which ethical considerations are to be approached, conducted and addressed. In order to give effect to the company's ethical strategy, management then implements and executes the strategy in accordance with the policy and plans (including the Code of Conduct and Ethics) which are approved and overseen by the board. The board finally ensures that there is accountability for the actions through, amongst others, reporting and disclosure by the management to the board on ethical matters. This in turn forms the basis for reviewing strategic direction which starts the cycle anew.

Where

Regional/international perspectives

Enumerations for companies to have a code of conduct and ethics have been well established including in jurisdictions such as Australia and South Africa.



Regional/ international perspectives

Companies in Australia and South Africa are called upon to establish a Code of Conduct and Ethics and publish the said document on the website.

Country	Provision(s)
Australia	A listed entity should: (a) have a code of conduct for its directors, senior executives and employees; and (b) disclose that code or a summary of it. ***(Recommendation 3.1)***
South Africa	6. The governing body should ensure that codes of conduct and ethics policies: a. encompass the organisation's interaction with both internal and external stakeholders and the broader society; and b. address the key ethical risks of the organisation ***(Practice 6)*** 7. The governing body should ensure that the codes of conduct and ethics policies provide for arrangements that familiarise employees and other stakeholders with the organisation's ethical standards. These arrangements should include: a. publishing the organisation's codes of conduct and policies in the organisation's website, or on other platforms or through other media as is appropriate; b. the incorporation by reference, or otherwise, of the relevant codes of conduct and policies in supplier and employee contracts; and c. including the codes of conduct and ethics policies in employee induction and training programmes. ***(Practice 7)***

Country	Provision(s)
	8. The governing body should delegate to management the responsibility for implementation and execution of the codes of conduct and ethics policies. ***(Practice 8)*** 9. The governing body should exercise ongoing oversight of the management and ethics and, in particular, oversee that it results in the following: a. Application of the organisation's ethical standards to the processes for the recruitment, evaluation of performance and reward of employees, as well as the sourcing of suppliers. b. Having sanctions and remedies in place for when the organisation's ethical standards are breached. c. The use of protected disclosure or whistle-blowing mechanisms to detect breaches of ethical standards and dealing with such disclosures appropriately. d. The monitoring of adherence to the organisation's ethical standards by employees and other stakeholders through, among others, periodic independent assessments. ***(Practice 9)***

Establishing and implementing whistleblowing policies and procedures

MCCG Intended Outcome 3.0

The board is committed to promoting good business conduct and maintaining a healthy corporate culture that engenders integrity, transparency and fairness.

MCCG Practice 3.2
The board establishes, reviews and together with management implements policies and procedures on whistleblowing.

Why — The case for change

Corporate crimes including fraud and corruption are one of the main obstacles to sustainable socioeconomic development for emerging and developed economies alike. Weaknesses in averting such crimes would **undermine governance**, **leading to knock-on effects which include distortion of market mechanisms** like fair competition, diminution of domestic and foreign investments as well as loss of future business opportunities for stakeholders.

Estimates show that the worldwide cost of corruption equals to more than 5% of global Gross Domestic Product (GDP) with over US$1 trillion paid in bribes each year[1]. In Malaysia, it is estimated that corrupt practices cost the country up to RM10 billion a year or around 1%-2% of the national GDP, when decisions (e.g. contracting, human resourcing) are made in a suboptimal fashion[2].

A recent study by PwC also found that bribery and corruption in Malaysia has risen sharply, from 19% in 2014 to 30% in 2016[3]. The report notes that **whilst such economic crime risks are increasing in complexity, Malaysian companies are not evolving fast enough to mitigate them**.

The prevalence of such incidences and the profound impact that stems from them highlight the importance of building a corporate culture that supports the giving and receiving of "bad news", i.e. **creating a candid environment of openness and honesty** and the presentation of unfavourable information.

In the absence of a well-designed internal complaints framework for employees to raise concerns about illegal or unethical activity that they are aware of through their work (or better known as **whistleblowing policy and procedures**), companies risk falling into a vicious cycle, as illustrated below.

What could go wrong:

- Reluctance by employees to report misconducts due to the fear that they may not be protected from retaliation or the lack of proper channel for reporting.
- Misconducts are not detected at the "get-go" (early) stage.
- Adverse reputational effect to the company due to misconducts committed by individuals affiliated to the company.

[1] *Integrity in Practice* 2014, Organisation of Economic Co-operation and Development (OECD)
[2] *From Pledge to Practice* 2014, Companies Commission of Malaysia
[3] *Global Economic Survey (Malaysia)* 2016, PwC

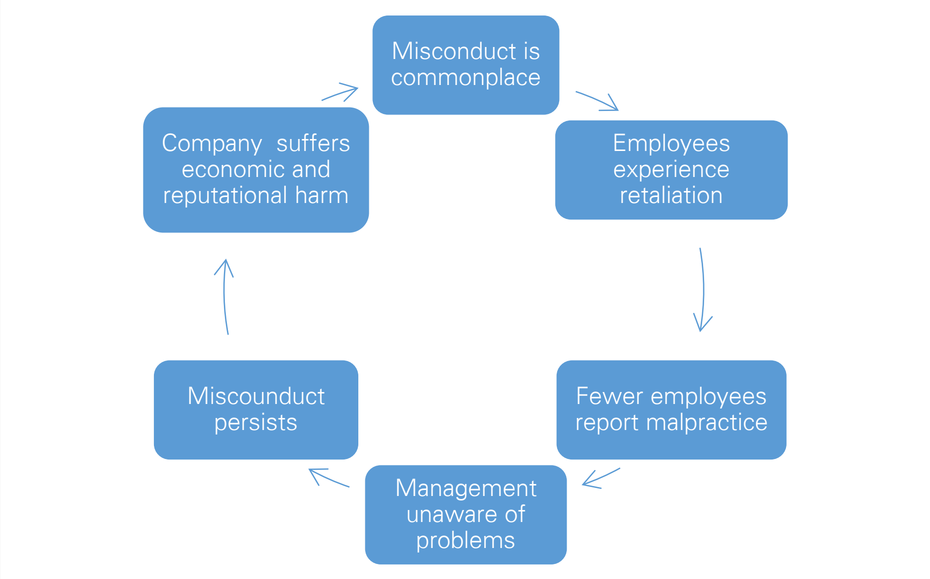


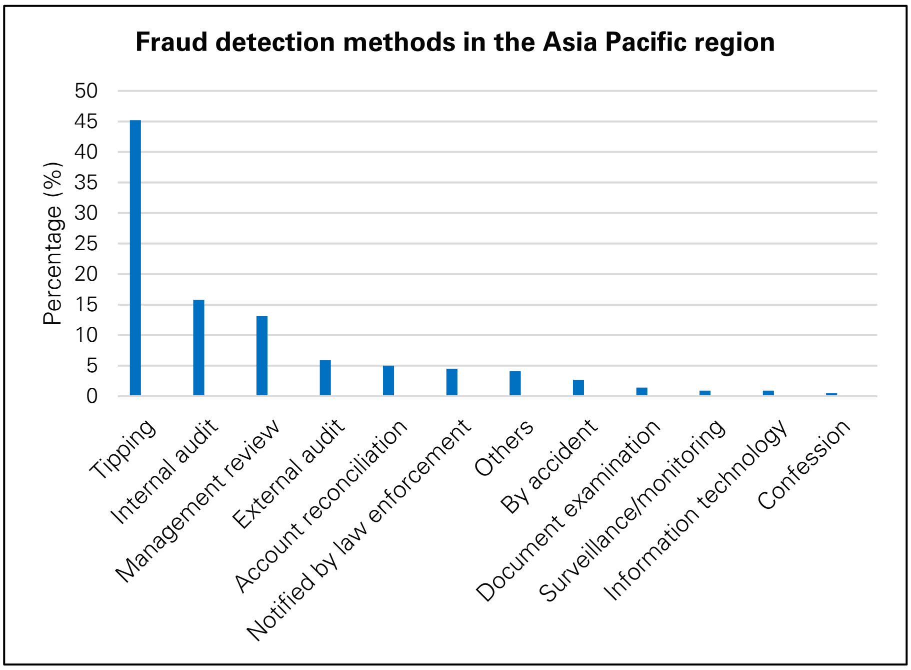
Diagram on the consequences of ineffective whistleblowing policy and procedures

Point for reflection

Over the years, whistleblowing has proven to be the **most prevalent detection technique** to uncover white collar crimes in corporations. In many instances, employees accounted for most of the whistleblowing tips that led to the discovery of fraud.

In KPMG's forensic survey titled "Global Profiles of the Fraudster 2016", it was found that 44% of fraudsters were detected as a result of a tip, complaint and formal whistleblowing reports either via hotline or other than formal hotline channels.

The observation that whistleblowing is a major line of defence against fraud and corruption was corroborated by numerous other research studies including the Global Fraud Study (2016) by Association of Certified Fraud Examiners, as illustrated below:



How — The practice in substance

As stated in **Guidance to Practice 3.2 of MCCG**, the board should encourage employees to report **genuine concerns** in relation to breach of a legal obligation (including negligence, criminal activity, breach of contract and breach of law), miscarriage of justice, danger to health and safety or to the environment and the cover-up of any of these in the workplace.

As with the MCCG, **Bank Negara Malaysia's Policy Document on Corporate Governance** recognises that whistleblowing can serve as an important tool in preventing misconducts at the "get-go" stage. **Standard 18.2** of the said document has impressed upon the need for financial institutions to establish a whistleblowing policy, accompanied with the relevant procedures avenues for legitimate concerns to be objectively investigated and addressed. The provision further states that individuals must be able to raise concerns about illegal, unethical or questionable practices in confidence and without the risk of reprisal.

Regulatory requirements have also placed a **positive obligation** on selected gatekeepers (e.g. external auditors and audit committees) to whistleblow given their position of power and nexus to confidential proceedings. In such instances, the failure to whistleblow by these gatekeepers would constitute an offence.

The **Capital Market and Services Act 2007** enumerates provisions concerning obligation of external auditors to whistleblow on matters under their purview.

Section 320(1) of Capital Market and Services Act 2007 ("CMSA")

If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter:

(a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

(b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; or

(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.

The obligation of an audit committee is meanwhile outlined in **Bursa's Listing Requirements.**

Paragraph 15.16 of Bursa's Listing Requirements

Where an audit committee is of the view that a matter reported by it to the board of directors of a listed issuer has not been satisfactorily resolved resulting in a breach of these Requirements, the audit committee must promptly report such matter to the Exchange.

Inaction as an offence

As with gatekeepers such as external auditors and audit committee, any individual to whom any gratification is given, promised or offered is obligated to whistleblow.

Section 25(1) of Malaysian Anti-Corruption Commission Act 2009 states that, "any person to whom any gratification is given, promised or offered, in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or police officer".

Any person who fails to comply with the aforementioned provision is deemed to have committed an offence.

Key considerations relating to the application of this Practice are discussed below:

What are the common barriers faced by companies in implementing whistleblowing policy and procedures and how can they be managed?

Factors that commonly pose a challenge in operationalising whistleblowing as well as the pertinent steps that can be taken to manage such challenges are outlined below:

Operational barrier	Emotional barrier	Cultural barrier
The whistleblowing process is not fully embedded throughout the company and reporting lines are not operating in practice with a lack of communication to all employees on available avenues. In this regard, the board must ensure that there is a clear channel of communication between the board and the employees and employees must be well-informed on the whistleblowing policy as well as the relevant procedures including the avenues available for them to whistleblow.	Whistleblowers are commonly deterred from reporting incidents to management due to reasons such as fear of trouble and potential dismissal. In accordance with the regulatory provisions in Companies Act 2016 and CMSA[4], the board must ensure that employees are not discriminated against a lawful employment or livelihood as a result of whistleblowing on non-observance of regulations. Further provisions on the protection of whistleblowers are outlined in Whistleblowers Protection Act 2010 (covered in the ensuing pages of this write-up).	Whistleblowers are commonly viewed with a negative connotation such as "source of friction". This perception can make it difficult to blow the whistle although individuals recognise that it is good for the company and other stakeholders. To this end, reward mechanisms (e.g. financial reward and non-financial recognition such as publication of success stories) can go a long way in incentivising whistleblowing.

How can the board determine the approach to develop whistleblowing policy and procedures?

In deciding on the approach to develop whistleblowing policies and procedures, the board must first undertake an assessment of the existing internal control measures that have been established by the company. This will allow the board to evaluate if the framework in place is effective and adequate to identify and combat illegal, unethical or questionable practices within the company. Some of the key considerations in relation to the assessment are as follows:

- How does the company identify illegal, unethical or questionable practices?
- What form of risk management programme does the company have in relation to the said practices?
- What is being done within the company to better prevent the said practices or at least discover it sooner?

- What processes are in place to investigate the said practices and take corrective action?

What are the elements that should be considered in developing and reviewing the whistleblowing policy and procedures?

The board or the board committee charged with the responsibility of overseeing integrity matters should consider the following[4]:

- Are whistleblowing procedures documented and communicated throughout the company?
- Does the whistleblowing policy make clear that it is both safe and acceptable for employees to raise concerns about wrongdoing?
- Were the whistleblowing procedures arrived at through a consultative process? Do management and employees "buy into" the process?
- Are concerns raised by employees (and others) responded to with a reasonable timeframe?
- Are procedures in place to ensure that all reasonable steps are taken to prevent the victimisation of whistleblowers?
- Are there procedures to ensure that all reasonable steps are taken to keep the identity of whistleblowers confidential?
- Has a senior person been identified to whom confidential concerns can be disclosed? Does this person have the authority and determination to act if concerns are not raised with, or properly dealt with, by line management and other responsible individuals?
- Are success stories on whistleblowing publicised and made known?
- Does management understand how to act if a concern is raised? Do they understand that employees (and others) have the right to blow the whistle?

A sample whistleblowing policy is outlined in Appendix I of this Pull-out.

Who should be the recipients of whistleblowing reports?

The whistleblowing report should be addressed to an independent individual in the company who is not subject to undue influence or pressure by management. Individuals who may be considered appropriate ("**designated parties**") include:

- member of the audit committee (overall oversight);
- senior independent director (usually for complaints relating to directors and other senior management positions);
- head of internal audit department;
- a dedicated department that handles investigations of misconduct or any other related matters and has a direct reporting line to independent directors; and
- use of an independent advice centre (i.e. an independent entity that provides consultancy services which is tailored to the company's requirements. This method is commonly deployed by multinational companies).

Dos

✓ Extending the coverage of the whistleblowing policy and procedures beyond employees to also include directors and other key stakeholders along the supply chain.

✓ Reassessing the effectiveness of the whistleblowing policy and procedures if complaints are minimal or non-existent.

✓ Setting the "tone from the top" by articulating the company's commitment to foster an open and transparent environment.

Don'ts

The following would render the application of this practice ineffective:

× Maintaining that whistleblowing channels established and protection accorded by regulatory authorities are an effective substitute for not having an internal whistleblowing policy and the accompanying procedures.

× Not designating an independent individual to oversee the implementation of whistleblowing policies and procedures.

[4] *Audit Committee Handbook* 2017, KPMG

Where the whistleblowing report is against an individual who is not an employee of the company or where the complaint involves a breach of statutory provisions, an official report should also be made to the relevant regulatory authorities, upon consultation with the designated parties within the company.

What is the nature of protection accorded to whistleblowers?

The mere existence of a whistleblowing policy, although crucial, cannot operate in isolation. As commonly cited, "a whistleblowing policy without protection mechanisms is a paradox". A survey conducted by OECD in 2015 showed that 85% of the global companies surveyed have mechanisms in place to report suspected serious corporate misconduct, but over one-third of these either did not have a written policy of protecting whistleblowers from reprisals or did not know if such a policy existed[5]. It is therefore incumbent on the board to provide employees with effective protection.

A company must therefore ensure that there are mechanisms in place to accord whistleblowers with anonymity and access to management and selected representatives of the board, if needed. The company should also express zero tolerance for retaliation and if such acts were committed, they should be punishable.

It is also important to note that protection can extend beyond that provided by companies. In Malaysia, under the **Whistleblower Protection Act 2010**, a whistleblower who makes a disclosure in good faith[6] to an enforcement agency[7] is accorded with the following protection:

- Protection of confidential information **[Section 7(1)(a) of Whistleblower Protection Act 2010]**;
- Immunity from civil and criminal action **[Section 7(1)(b) of Whistleblower Protection Act 2010]**;
- Protection from detrimental action [**Section 7(1)(c) of Whistleblower Protection Act 2010]**; and
- Protection extended to any person related to or associated with the whistleblower **[Section 7(1) of Whistleblower Protection Act 2010]**.

Hot-button issue

It is often argued that measures must be put in place **not only to protect whistleblowers but also to encourage them**. Reward schemes are commonly regarded as a key mechanism to incentivise whistleblowing.

For example, in United States, **Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010** provides that the Securities and Exchange Commission ("**SEC**") shall pay awards to eligible whistleblowers who voluntarily provide the SEC with original information that leads to a successful enforcement action yielding monetary sanctions of over $1 million. The award amount is required to be between 10% and 30% of the total monetary sanctions collected in the SEC's action or any related action such as in a criminal case.

Notwithstanding the above, it should be noted that reward schemes, if abused, could create a number of **moral hazards** including malicious reporting, entrapment as well as hindering resources from investigating genuine cases.

As such, companies must be mindful of the advantages and pitfalls of reward mechanisms in implementing procedures to encourage whistleblowing.

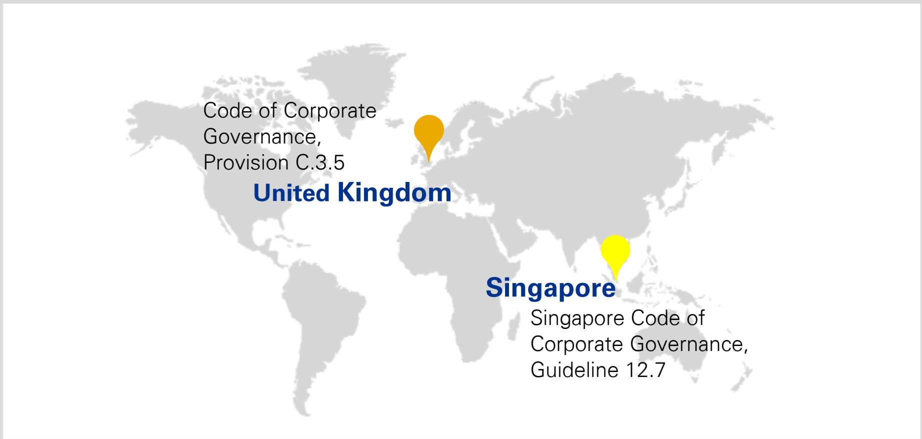
[5] *Committing to Effective Whistleblower Protection* 2016, OECD,
[6] Revocation of whistleblower protection is set out in **Section 11 of Whistleblower Protection Act 2010**. Circumstances which would result in a revocation of protection amongst others include frivolous and vexatious whistleblowing disclosures.
[7] Defined in accordance with **Section 2 of Whistleblower Protection Act 2010**. This includes any ministry, department, agency or other body set up by the Federal Government, State Government or local government or established by the Federal law or State law with investigation and enforcement functions.

Where

Regional/International perspectives

Enumerations for companies to establish whistleblowing policy and procedures are well codified across the globe.

United Kingdom and Singapore have placed the responsibility on the audit committee to review and ensure that whistleblowing arrangements are in place for appropriate follow-up action.



Country	Provision(s)
United Kingdom	The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action ***(Provision C.3.5)***.
Singapore	The audit committee should review the policy and arrangements by which staff of the company and any other persons may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for such concerns to be raised and independently investigated, and for appropriate follow-up action to be taken. The existence of a whistle-blowing policy should be disclosed in the company's Annual Report, and procedures for raising such concerns should be publicly disclosed as appropriate ***(Guideline 12.7)***.

Regional/ international perspectives

Audit committees of public listed companies in the United Kingdom and Singapore are called upon to oversee the effective implementation of whistleblowing mechanisms.

Presence of independent directors on the board

MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights

MCCG Practice 4.1
At least half of the board comprises independent directors. For Large Companies, the board comprises a majority independent directors.

Why

The case for change

Independent directors have the mandate of bringing objectivity to the oversight function of the board. The objectivity inherent to these directors allows them to debate with and challenge the senior management team in a relatively more unbiased manner compared to executive directors, who play a key role in developing strategic direction and running the business.

Whilst the roles of independent directors are well defined, there are growing observations that independent directors are often impeded in standing up for their views, thus, affecting their ability to influence decision-making by the board.

The underlying causes commonly hindering independent directors from acting independently in name and deed can be attributed to the following practical barriers outlined on the following page[2].

What could go wrong:

- Lack of scrutiny on key proposals and transactions.
- Decision making is unfairly biased towards the interest of Large Shareholders[1], dominant directors or a member of the management team.

[1] As stated in **Guidance to Practice 4.2 of MCCG**, Large Shareholder means a person who is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company; is the largest shareholder of voting shares in the company; has the power to appoint or cause to be appointed a majority of the directors of the company; or has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to.
[2] Growth and Emerging Market (GEM) Report, International Organisation of Securities Commission (IOSCO), 2016.

Practical barriers for independent directors:

Personal authority

Individual directors may display traits of a domineering character and high-handed leadership style (commonly observed in charismatic Managing Directors). Such directors may regard challenge as causing offence or a trait of disloyalty.

Positional authority

The positions of Chairman and Managing Director are vested with a high degree of power, conferring them with positional authority. In the absence of balancing factors, there is a natural tendency for their views to be deferred to and agreed with.

Information asymmetry

Due to limited engagement with the company, independent directors generally lack detailed knowledge about the business. Lack of granular understanding can deprive independent directors of the confidence to challenge management and evaluate their responses.

Cultural environment

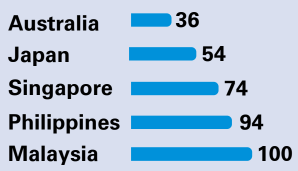
The emphasis placed on harmony makes it difficult for board members to express divergent points of view. This is evident in the domestic landscape, whereby a culture of high "Power-Distance" and therefore high deference is observed (refer to the side box).

It is clear that, lacking the counterweight, directors, even those with all the requisite elements and levers of independence often find it difficult to move boldly against convention, rally for support and facilitate a robust deliberation process in the boardroom. Succinctly put, the collective voice of the incumbent independent directors may be encumbered.

The reasoning behind calling upon companies to have a prescribed number of independent directors is thus to create a "critical mass" of directors, who can encourage, support and drive each other in the value creation and sustainability of the business[3].

The Hofstede Power Distance Index

The Hofstede Power Index expresses the degree to which members of the society accept a hierarchical order. An index of 100 indicates a relatively high level of conformance and a culture of deference. Snapshot of Hofstede Power-Distance Index for selected Asia-Pacific countries is depicted below.



Source: Geert Hofstede 2017

How — The practice in substance

Whilst there is no absolute formula in determining an ideal composition of independent directors, boards with a balanced or higher proportion of independent directors would certainly go a long way in alleviating boardroom dominance, stereotype discussions and complacency. Meaningful application of this practice would mean that boards must go beyond the existing prescriptions in **Paragraphs 3.04 and 15.02 of Bursa's Listing Requirements**.

Paragraphs 3.04 and 15.02 of Bursa's Listing Requirements

(1) An applicant must ensure that at least 2 directors or 1/3 of the board of directors of the applicant, whichever is the higher, are independent directors.

(2) If the number of directors of the applicant is not 3 or a multiple of 3, then the number nearest 1/3 must be used.

[3] *Independent Non-Executive Directors: A Search for True Independence in Asia 2010, Chartered Financial Analyst (CFA) Institute*

In addition, **Standard 11.6 of Bank Negara Malaysia's Corporate Governance Policy Document** calls upon the board of financial institutions to have a majority of independent directors at all times.

Point for reflection

In the course of ensuring that at least half of the board comprises independent directors, boards are not expected to compromise on the business imperative and make unwieldy changes to its composition.

In order to create a more conducive environment for insightful deliberations and informed decision making, boards may consider enlisting independent directors who to some extent, understand the nature of the company's business (e.g. business model, key drivers that are shaping in the industry and key risk factors).

Independent directors who are conversant with the business are able to exercise intelligent reviews of transactions involving management, directors and Large Shareholders. They could also prove to be a valuable resource in the arena of strategic planning and risk management by providing insights on trends and forecasts.

Key considerations relating to the application of this Practice are discussed below:

How to harness the collective wisdom and benefit from the greater participation of independent directors?

- Having a private session of independent directors without the presence of executive directors and senior management is increasingly recognised as a good practice with numerous jurisdictions including Singapore and Hong Kong encapsulating this practice in their respective codes of corporate governance. It is commonplace for company secretaries to organise a private session of independent directors after the meeting of a board or board committee and the frequency of such sessions will vary based on the nuances of the company. Apart from independent directors, these sessions will typically involve key gatekeepers of the company such as external and internal auditors[4]. This provides independent directors with the opportunity to candidly share concerns about the company and exchange views on potential improvements in governance.
- Having in place a balanced or higher proportion of independent directors allows these directors to rotate across board committees. The committees will be able to benefit from greater checks and balances and deliberations would be enhanced from the contributions of directors with diverse backgrounds.

Why limit the same independent directors sitting across group entities?

Whilst common directors can contribute to group alignment, excessive overlaps of independent directors (as shown in the following diagram) may result in conflict of interest situations. Directorships in multiple entities within the group may also potentially create undue dependence in terms of remuneration received by independent directors, thus, raising concerns on the objectivity of these directors.

Dos

- ✓ Minimising or limiting independent directors sitting on subsidiaries.
- ✓ Developing a policy to rotate independent directors across board committees.
- ✓ Providing independent directors with a platform to meet privately without the presence of executive directors.

Don'ts

The following would render the application of this practice ineffective:

- × Accepting the separation of Chairman and CEO as a substitute for not having a balanced board or a majority of independent directors.
- × Maintaining that adherence to Bursa's Listing Requirements (i.e. one third of the board comprising independent directors) is the be-all and end-all.
- × Having in place an internal policy on meritocracy that overrides the element of independence.

[4] *In Camera Directors' Meetings* 2013, Minden Gross LLP

The need for financial institutions to minimise excessive common directorships in group entities is highlighted in **Standard 11.1 of Bank Negara Malaysia's Corporate Governance Policy Document**.

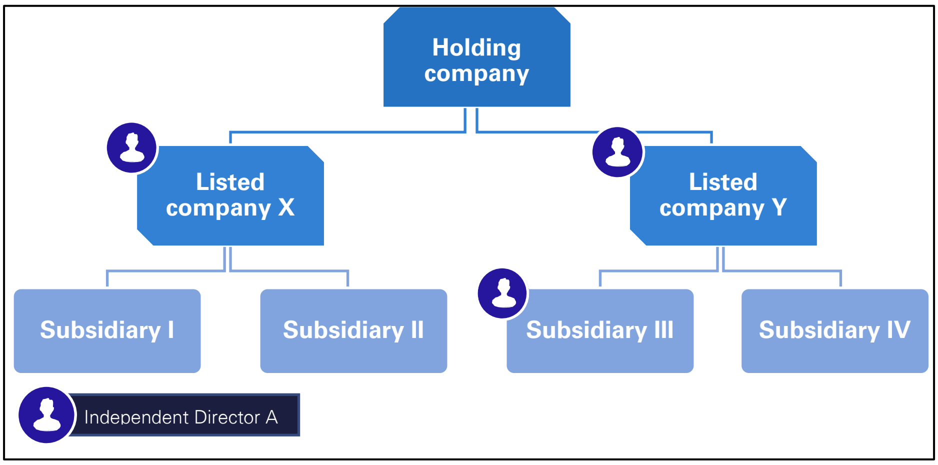


Diagram illustrating overlaps of independent directors in entities across a group structure

How do owner-managed companies with a small board size structure their composition of independent directors?

In owner-managed companies (particularly those with a small board size), whilst the Chairman and Managing Director may be two different individuals, they are often related to each other and/or to the Large Shareholder(s) .

In such a situation, the need for a majority of independent directors becomes even more imperative to prevent deliberations and decision-making from being dominated by a select group of individuals, comprising family members.

An example of a structure for a board size with five members and related Chairman-Managing Director is outlined below:

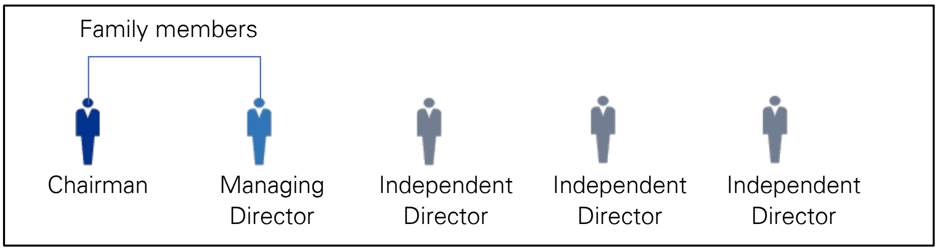


Diagram depicting the proposed structure for a small board size structure (e.g. five members) in owner–managed companies

Where

Regional/international perspectives

In recent years, there has been a move by global regulators to prescribe a more even balance of independent and non-independent directors on the board. The recommendation for boards to be composed of an independent Chairman and at least 50% independent directors (excluding the Chairman) is the prevailing voluntary standard in more developed markets such as United Kingdom and Australia.

Country	Provision(s)
United Kingdom	The Chairman should on appointment meet the independence criteria. A Chief Executive should not go on to be Chairman of the same company. If exceptionally a board decides that a Chief Executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report (***Provision A.3.1***). Except for smaller companies[6], at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors ***(Provision B.1.2)***.
Australia	A majority of the board of a listed entity should be independent directors ***(Recommendation 2.4)***. The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity ***(Recommendation 2.5)***.

Regional/ international perspectives

Jurisdictions such as the United Kingdom and Australia call upon the Chairman of the Board to be independent and the Board to comprise majority independent directors.

[6] A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

Tenure of independent directors

MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 4.2
The tenure of an independent director does not exceed a cumulative term limit of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director. If the board intends to retain an independent director beyond nine years, it should justify and seek annual shareholders' approval. If the board continues to retain the independent director after the twelfth year, the board should seek annual shareholders' approval through a two-tier voting process

MCCG Step up 4.3
The board has a policy which limits the tenure of its independent directors to nine years.

Why — The case for change

The notion of independence is inherently situational and is more than anything, a state of mind. Viewed as a solution for balancing influence, independent directors are expected to display a strong element of objectivity, both in **appearance** ("perceived independence") as well as of **mind** ("independence in thought and action") as illustrated below:

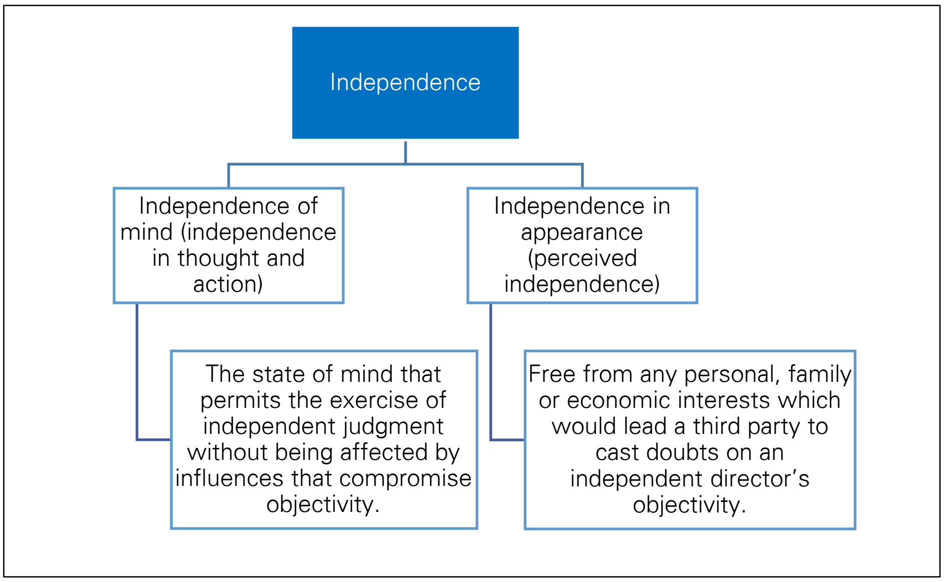


Diagram outlining the elements of independence (independence of mind and independence in appearance).

What could go wrong:

- Lack of a robust challenge process during board deliberations.
- Implementation of poor decisions by the company and perpetuation of poor decision making due to the tendency of directors to defend their previous actions.
- Inability of the board to respond to the evolving and changing business circumstances.

In order to carry out their mandate effectively, independent board members must have the intellectual honesty and moral courage to advocate professional views without fear or favour. The presence of such attributes will allow independent directors to constructively challenge decisions proposed by other board members and contribute in meaningful ways to the strategic objectives and stewardship of companies.

Paragraph 1.01 of Bursa's Listing Requirements (definition of an independent director)

Independent director means 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. Without limiting the generality of the foregoing, an 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 (each corporation is referred to as "said Corporation");

(b) has not been within the last 2 years and is not an officer (except as a non-executive director) of the said Corporation. For this purpose, "officer" has the meaning given in section 4 of the Companies Act 1965;

(c) is not a major shareholder 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;

(f) has not been engaged as an adviser by the said Corporation under such circumstances as prescribed by the Exchange 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 the Exchange; or

(g) has not engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange 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 the Exchange.

*Note: Similar provisions are applicable for financial institutions under **Standard 11.7 of Bank Negara Malaysia's Policy Document on Corporate Governance.***

Investors' perspectives

A survey conducted by Institutional Shareholders Services (ISS) in United States and Canada in the year 2014 revealed that 74% of investors were concerned with the negative impact that long tenure may have on independent directors[1].

Major institutional investors have also been proactive in this regard. California Public Employees' Retirement Scheme (CalPERS) for example, has taken the position that a director's independence can be compromised at 12 years of service unless justified otherwise[2].

On the domestic front, the largest institutional investor in Malaysia, namely, the Employee Provident Fund (as stated in its revised Voting Guidelines 2017) has adopted the position that it would vote against any resolution to reappoint an independent director who has served on the Board for more than 12 years.

The definition of an independent director is well enumerated in **Paragraph 1.01 of Bursa's Listing Requirements**.

In addition to the factors outlined above, the **length of service of an independent director** is increasingly being recognised as a key element in the review of a director's independence. Whilst it is recognised that independence

[1] Nili, Y, 2016, *The New Insiders: Rethinking Independent Directors' Tenure,* Harvard Law School Forum on Corporate

[2] *CalPERS Revises Governance Policy, Adopts 12 Years as Threshold for Director Independence on Corporate Boards* 2016, CalPERS

is ultimately a subjective element, there are heightened concerns amongst stakeholders that extended tenure may give rise to independent directors having a close relationship with board and management and thus, becoming too sympathetic to their interests or too accepting of their work. Tenure is also increasingly regarded as a potential indicator of entrenchment and thus, the need for board refreshment.

Against this backdrop, the MCCG has expressly stipulated a limit on the tenure of independent directors. As with many other global jurisdictions, the yardstick adopted by the MCCG is a cumulative (consecutive or intermittent) term of 9 years.

Why is a quantitative tenure limit of 9 years prescribed?

It is important to note that the establishment of quantitative tenure limits is not arbitrary but rather it is based on well-founded empirical and research studies.

For example, a prominent research study undertaken by a distinguished scholar from INSEAD Business School in 2013 highlighted that the objectivity and performance of independent directors commonly reach a turning point between the 7th to 11th year[3]. The said turning point is the period at which an independent director has accumulated the benefits of institutional knowledge but has yet to accumulate the costs of entrenchment. Beyond this point, there is commonly a shift in an independent director's performance (from rigorous oversight to complacency).

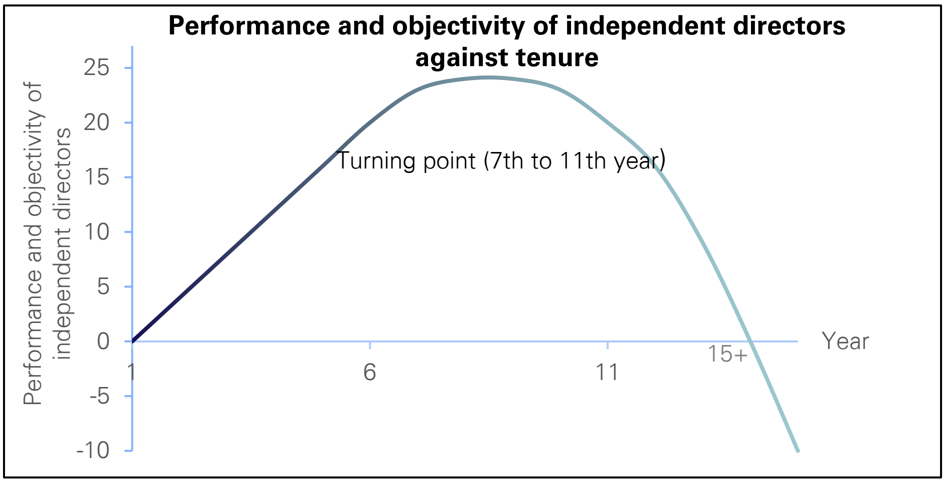


Diagram illustrating Performance and objectivity of independent directors against tenure.

Given that long tenures of independent directors may potentially erode the board's objectivity, the board should consider utilising tenure limits as a mechanism to facilitate board renewal and thus, enhance the effectiveness of the board. As an exemplary practice, **Practice 4.3 of MCCG** urges companies to establish a policy which limits the tenure of its independent directors to nine years. A similar enumeration is also encapsulated in **Bank Negara Malaysia's Policy Document on Corporate Governance**[4].

[3] Huang, S, 2013, *Zombie Boards: Board Tenure and Firm Performance*, Essays on Corporate Finance

[4] **Standard 11.7 of Bank Negara Malaysia's Policy Document on Corporate Governance** states that the tenure limits for independent directors should generally not exceed nine years, except under exceptional circumstances or as part of transitional arrangements towards full implementation of the succession plans of the financial institution.

HOW The practice in substance

Recognising that all companies are not homogenous, **Practice 4.2 of MCCG** meanwhile provides companies with the flexibility, in exceptional circumstances, to retain an independent director beyond nine years. As stated in **Practice 4.2**, "if the board intends to retain an independent director beyond nine years, it should justify and seek annual shareholders' approval. If the board continues to retain the independent director after the twelfth year, the board should seek annual shareholders' approval through a two-tier voting process".

Key considerations relating to the application of these Practices **(Practices 4.2 and 4.3 of MCCG)** are discussed below:

How can the nominating committee or board assess if a long-serving independent director continues to be "independent in mind"?

In assessing whether a long-serving independent director continues to be "independent in mind", the Nominating Committee should consider if the said director displays some of the following key characteristics:

- possesses sufficient self-esteem and confidence to stand up for an independent point of view;
- approaches any transaction that requires board's approval with a watchful eye and an inquiring mind (professional scepticism);
- unafraid to express an unpopular stance on issues, or express disagreement on matters and actively pursue them with the rest of the board and with the management team; and
- does not shy away from asking hard and uncomfortable questions during board deliberations and willing to delve deeper if the responses provided are not satisfactory.

Dos

✓ Conducting a thorough annual assessment on directors' independence and outlining the reasons for determining that a director is independent notwithstanding the long tenure.

✓ Incorporating enabling provisions in the company's constitution to allow for the operationalisation of two-tier voting as enumerated in Practice 4.2 of MCCG.

Don'ts

The following would render the application of this practice ineffective:

× Maintaining that an annual assessment of directors' independence is a substitute for not obtaining shareholders' approval.

× Providing generic justification to accompany a resolution seeking to retain an independent director who has served more than nine years (e.g. "tenure has not impacted the independent director and the board is of the view that the said director continues to be independent").

× Not tabling specific resolutions for the re-appointment of independent directors on grounds that independent directors are also subjected to the normal course of re-election as a director under the company's constitution.

What are the potential indicators of entrenchment amongst independent directors?

Some of the signs of entrenched independent directors include the following:

- failure of independent directors to act independently because of strong personal ties that developed over the years;
- tendency of independent directors to defend decisions and policies that have been supported in the past, but now, are no longer relevant.
- lack of new insights and the display of passivity during deliberations; and
- failure of independent directors to keep up with changes in the external business environment.

What should a justification to retain a long-serving independent director contain?

The board in proposing to retain an independent director beyond nine years, should seek shareholders' approval annually through a separate resolution and provide pertinent justification

However, it should be noted that disclosure in this area has been traditionally poor. As stated in the "Analysis of Corporate Governance Disclosures in Annual Reports" performed by Bursa Malaysia in 2016 across 280 listed issuers, listed issuers were commonly found to provide weak justification for re-appointing independent directors beyond 9 years. In many instances, the explanatory notes to the resolution in the notice of AGM provided the same justification for several independent directors.

In this regard, boards should undertake to provide shareholders with clear and detailed justification so as to enable shareholders to make an informed decision on whether the said director should be re-elected as an independent director. The considerations that should be contained in a justification to retain a long serving independent director are as follows:

- nature of assessment performed to evaluate the independence of the said independent director;
- the outcome of the assessment and the bases for arriving at the outcome;
- a statement by the board as to whether the said director can continue to perform his or her duties without being subject to undue influence; and
- additional considerations such as the peculiarities of the company itself, possession of special knowledge and commitment displayed by the said director.

An illustrative disclosure in this regard is provided in the following page.

Hot-button issue

In the past, there have been instances whereby an independent director upon the end of his or her tenure is replaced by a family member, giving rise to a scenario dubbed as "independence can be inherited". Whilst such an appointment is not an outright breach of regulatory requirements, it may cast serious doubts on the ability of the director to exercise objective judgment

Independent directors who are elected in the aforementioned circumstances are likely to have a sense of loyalty to the controlling shareholders or the directors who have nominated them, thus, potentially impairing their "independence of mind".

Companies should therefore internalise the spirit of law and endeavour to make sustained changes in order to truly benefit from the presence of independent directors.

Illustrative disclosure

Mr Ong Chin Lin, the Company's Lead Independent Director has served on the Board for more than nine years since the date of his first appointment on 16 November 2007. The Board has in particular rigorously reviewed Mr Ong's independence and has determined that Mr Ong's independence has not in any way been affected or impaired by the length of service as he has, among others:

a) Contributed significantly to the discussion on matters before the Board, which includes matters relating to the strategic direction, key financial matters and corporate governance of the Company;

b) Sought clarification and amplification as he deemed necessary, including through direct access to key management personnel; and

c) Provided impartial advice and insights, and has exercised his independent judgment in doing so.

The following assessments were conducted and deliberated by the Board before arriving at the conclusion:

i. Review of Board and Board Committee meetings minutes to assess questions and voting actions of Mr Ong Chin Lin;

ii. Mr Ong Chin Lin's declaration and individual evaluation; and

iii. Peer and Board Committees performance assessment done by the other Directors.

Mr Ong's depth of experience and skills and his continual contributions since the initial public offering of the Company makes him an invaluable member of the Board. The Board has also determined that there were no relationships or circumstances which were likely to affect, or could appear to affect, Mr Ong's judgment. Therefore, the Board is satisfied as to Mr Ong's performance and his continued independence of judgment.

Illustrative disclosure on justification to retain a long-serving independent director. Source: Annual Report of Old Chang Kee Ltd (Singapore) for the financial year ended 31 December 2016.

How does the two tier-voting model operate?

The two tier voting model advocated by the MCCG serves to empower minority shareholders with a greater voice in determining the retention of long-serving independent directors.

Under the two-tier voting process, shareholders' votes will be cast in the following manner at the 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 aforementioned 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 determines the outcome of the Tier 1 vote. The resolution is deemed successful if both Tier 1 and Tier 2 vote in favour of the resolution.

Examples of possible scenarios and the corresponding outcomes are outlined below:

Scenario	Tier 1	Tier 2	Successful/ not successful
Scenario I	✓	✓	Successful
Scenario II	Abstained	✓	Not successful
Scenario III	✓	✗	Not successful
Scenario IV	✗	✓	Not successful

Regardless of the outcome of the voting in Tier 1, companies should proceed to conduct the voting of Tier 2 so as to allow non-large shareholders to express their "voice" and have a say on the retention of an independent director who has served for more than 12 years.

Where

Regional/international perspectives

Recognising the potential adverse effects of tenure on independence, many jurisdictions, including United Kingdom, India, Hong Kong and Singapore have put in place tenure limits for independent directors. The quantitative limits placed and approach adopted are outlined below:

Regional/ international perspectives

Premium listed companies[5] with controlling shareholders on the London Stock Exchange are required to undertake the election or re-election of an independent director by way of a two-tier voting structure (i.e. all shareholders and independent shareholders in separate tiers respectively). *Note: Details of this mechanism are explained below.*

Country	Tenure limit	Approach
United Kingdom	9 years *Note: The board should state its reasons if it determines that a director is independent notwithstanding that the independent director has served on the board for more than nine years.*	Comply or explain ***(Provision B 1.1. of Code of Corporate Governance)***
Hong Kong	9 years *Note: Appointment beyond the ninth year should be subject to a separate resolution for the approval of shareholders.*	Comply or explain ***(Provision B 1.1. of Code of Corporate Governance)***
Singapore	9 years *Note: The independence of any director who has served on the Board beyond nine years from the date of his first appointment should be subject to particularly rigorous review.*	Comply or explain ***(Provision A.4.3 of Code of Corporate Governance)***
India	10 years *Note: No independent director of a public listed company shall hold office for more than ten years, but such independent director shall be eligible for appointment after three years of ceasing to become an independent director.*	Mandatory ***[Section 149(11) of India's Companies Act 2013]***

In order to enhance the accountability of independent board members, selected regulators have also acted on complementary fronts. The United Kingdom's Listing Authority for example, requires the election or re-election of independent directors in a Premium-listed company with controlling shareholder(s) to be undertaken through a two-tier voting structure (i.e. all shareholders and independent shareholders in separate tiers respectively), regardless of the said director's tenure. If the election or re-election of an independent director is not approved by both the tiers of the listed company and the said company wishes

[5] Issuers with a Premium Listing are required to meet the United Kingdom's super-equivalent rules which are higher than the European Union's minimum requirements. A Premium Listing means the company is expected to meet the highest standards of regulation and corporate governance.

to propose that person to be an independent director, the subsequent election or re-election will be based on an approval by a simple majority of all shareholders after a lapse of a specified period (as outlined below).

Country	Provision(s)
United Kingdom	Where a listed company has a controlling shareholder, the election or re-election of any independent director by shareholders must be approved by: • the shareholders of the listed company; and • the independent shareholders of the listed company. ***(Listing Rule 9.2.2E)*** Where **Listing Rule 9.22E** applies, if the election or re-election of an independent director is not approved by both the shareholders and the independent shareholders of the listed company, but the listed company wishes to propose that person for election or re-election as an independent director, the listed company must propose a further resolution to elect or re-elect the proposed independent director which: 1) must not be voted on within a period of 90 days from the date of the original vote; 2) must be voted on within a period of 30 days from the end of the period set out in (1); and 3) must be approved by the shareholders of the listed company. ***(Listing Rule 9.2.2F)*** *Note: "Independent shareholder" refers to any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company.* *"Controlling shareholder" means any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company.*

Diversity on boards and in senior management

MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 4.4
Appointment of board and senior management are based on objective criteria, merit and with due regard for diversity in skills, experience, age, cultural background and gender.

MCCG Practice 4.5
The board discloses in its annual report the company's policies on gender diversity, its targets and measures to meet those targets. For **Large Companies**[1], the board must have at least 30% women directors.

Why — Case for change

Diversity is a critical attribute of a well-functioning leadership team. It is widely accepted that a more diverse leadership team better reflects the realities of the society, strengthens strategy formulation and risk-management by adding varying perspectives and enhances the overall credibility of the company.

Boards need a diverse range of perspectives to respond to the shifting market landscape:

- Changes in business model – A mix of insights is needed to understand the different drivers that are impacting the business model of the industry. These drivers may include innovation in the financial markets and the emergence of disruptive technologies.
- Changes in consumer demands – Strategic direction from the leadership level need to match and respond to real-time market signals from consumers.
- New and emerging risks – Discussions at leadership level need to be broadened and enriched to cover nascent risk areas such as cybersecurity, reputational and social risks.

On the contrary, experiences from the past have shown that the effectiveness of board and senior management can be severely hampered by lack of diversity which creates **"groupthink"** and **"blind spots"**.

A growing body of research and empirical studies has shown that the pursuit of the diversity agenda makes business sense as companies which embrace diversity are associated with stronger financial performance. For example, a regional study conducted by Korn Ferry in 2016 across the largest 100 companies in 10 Asia Pacific countries, including Malaysia illustrated that companies with at least 10% female board representation recorded higher

What could go wrong:

- Prevalent instances of board members and senior management advocating common views which dilute objective assessment and challenge process during the deliberations.
- Lack of fresh insights and new perspectives at the leadership level which hinders the company from driving innovation.
- Adoption of overzealous stance by the board which could result in an unhealthy tension between directors and also between the board and management.

[1] Companies on the FTSE Bursa Malaysia Top 100 Index; or companies with market capitalisation of RM2 billion and above, at the start of the companies' financial year (defined on page 3 of MCCG).

returns (Return on Assets and Return on Equity) than companies which lack thereof[2].

Similarly, a global study by McKinsey in 2015 covering 366 public companies across a range of industries in Canada, Latin America United Kingdom, and United States revealed that companies in the top quartile for gender or racial and ethnic diversity are more likely to reap the "diversity's dividend" by having financial returns above their national industry medians[5].

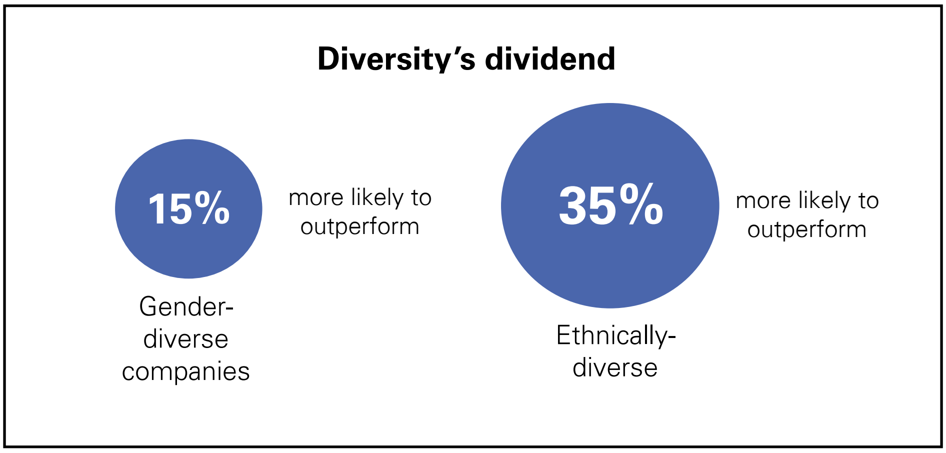


Diagram illustrating the diversity's dividend for gender diverse and ethically-diverse companies.

Investors' perspectives

The demand for greater diversity is increasingly brought about by institutional investors, making the diversity agenda a multi-stakeholder effort.

Guidance 5.2 of the Malaysian Code on Institutional Investors (MCII) urges institutional investors to assess the quality of disclosures made by investee companies including disclosure of diversity targets and policies, covering gender, age and ethnicity. In tandem with this clarion call by the MCII, the Retirement Fund Incorporated of Malaysia encourages its investee companies to disclose their workforce ethnicity composition in the annual report[3].

Similar efforts are also evident on the global front. For example, during the second quarter of 2017, the world's largest asset manager, Blackrock voted for eight proposals to call upon companies in the United States and Canada to adopt policies in facilitating board diversity. During the same period, Blackrock also voted against board members at five companies who were on nominating committees but failed to respond to investors' concerns about diversity[4].

[2] *Building diversity in Asia Pacific Boardrooms* (2016), Korn Ferry
[3] Guideline 3.2.1 of Corporate Governance Principles and Voting Guidelines (2014), Retirement Fund Incorporated
[4] *Blackrock supports effort to boost number of women board members* (2017), The Star
[5] Hunt et. al 2015, *Why Diversity Matters*, McKinsey

Point for reflection

It is commonplace for companies to **erroneously view "meritocracy" and "diversity" as a trade-off against each other**. Indeed, the "Analysis of Corporate Governance Disclosures in Annual Reports" performed by Bursa Malaysia in 2016 across 280 listed issuers revealed striking findings in this regard. As highlighted in the analysis, a substantial majority of the listed issuers disclosed that whilst they were aware of the enumeration under the predecessor Malaysian Code on Corporate Governance (MCCG 2012) which calls for companies to have a policy formalising its approach to boardroom diversity, their policy was to make appointments to the board based on merit. This is compounded by the fact that only 5% of the said listed issuers disclosed the targets and measures to appoint more women on boards.

To this end, it is imperative for companies to dispel the misconception and view the elements "meritocracy" and "diversity" as **complementary to each other**. The pursuit of meritocratic ideals without due consideration of diversity could result in a missed opportunity for the board to consider a breadth of perspectives. Likewise, the pursuit of diversity without due consideration of merit criteria could result in "tokenism", whereby the appointed director is unable to add tangible value to the board.

As Scott Page (a prominent academician in Sante Fe Institute, United States) explains, the aforementioned situation is akin to comparing "apples to a fruit basket". An apple, like a director candidate, may be evaluated as desirable based on his or her individual characteristics. In contrast, the fruit basket is evaluated on the basis of how the arrangement of fruits complement each other as a whole. It is therefore important for both the factors to be considered when selecting board members[6].

Whilst diversity has a much broader dimension and includes skills, experience, age and cultural background, there is generally a heightened focus on the aspect of gender given that the "**biggest gap"** is often observed on this front.

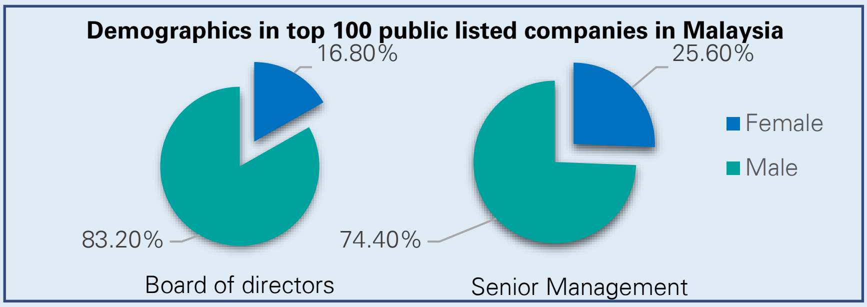
Current state of gender diversity in Malaysia

Concerted efforts are needed to meet the national target of 30% women on board and in senior management positions by the year 2020.

As at 31 December 2016, women only made up 16.8% of the directorships and 25.6% of senior management positions in the top 100 public listed companies[7].

The current state is more seemingly reflected by the broader market whereby it was noted that approximately 40% of all the public listed companies in Malaysia do not have any woman on board - a scenario dubbed as the "all-male boards" syndrome.

Figure illustrating the demographics of directorships and senior management in top 100 public listed companies in Malaysia as at 31 December 2016, is shown below:



[6] *Diversity and Meritocracy: What Tradeoff* (2015), The Great Divide
[7] Bursa Malaysia 2017

Given the value proposition of diversity, regulators are increasingly recognising the need for companies to incorporate diversity as a key strategic consideration. In Malaysia, such efforts are primarily carried out through disclosure-based requirements.

Paragraph 15.08(3)(a) of Bursa's Listing Requirements

The Statement by listed issuers about the activities of the Nominating Committee must include a disclosure of their policies on board composition, having regard to the mix of skills, independence and diversity (including gender diversity) required to meet their needs.

Paragraphs 9.19(12), (14) and (14A) of Bursa's Listing Requirements

Announcements of changes in the board of directors, chief executive and chief financial officer must include the gender of the person appointed.

Paragraphs 3, 4 and 4A in Part A of Appendix 9C of Bursa's Listing Requirements

The profiles of a listed issuer's directors, chief executive and key senior management in its annual report must include the gender of such directors, chief executive and key senior management.

How The practice in substance

In fostering diversity, boards, should formalise a policy, set targets and assess annually both the targets and the company's progress in achieving them.

In tandem with the heightened emphasis on the dimension of gender, boards should also demonstrate clear commitment to developing a corporate culture that also embraces the aspect of gender diversity.

Key considerations relating to the application of these Practices **(Practices 4.4 and 4.5)** are discussed below:

What are the different types of objectives on diversity that a company should consider pursuing[8]?

Procedural or structural objectives	Target based objectives	Capacity building objectives
Foundations or "building blocks" should be established to foster a culture which embraces diversity. To this end, the board may delegate the responsibility to a specific committee (e.g. nominating committee), set up internal review, establish a policy on boardroom diversity and ensure directors and senior management personnel are selected from diverse candidate pools.	Diversity-related targets should be put in place by companies to benchmark their position. Companies should report on these targets as well as the measures taken in this regard. The targets should incorporate specific quantitative benchmarks (e.g. percentage of women at the board and senior management level) that can be monitored for effectiveness.	Programmes or initiatives should be put in place to support the implementation efforts on diversity. For example, companies may introduce coaching and career development programmes to motivate, support and train talented professionals to prepare them for senior management or board positions.

Dos

- ✓ Extending diversity initiatives across different levels of management to form a pipeline of candidates potentially available for directorships and senior management roles.
- ✓ Disclosing a board skills matrix to outline the mix of skills and diversity that the board currently has and is looking to achieve.

Don'ts

The following would render the application of this practice ineffective:

- × Altering diversity targets year-on-year without a sound explanation.
- × Having in place an internal policy on meritocracy which overrides the diversity policy.

[8] *New Corporate Governance Recommendations on Diversity: Tips for getting started* 2010, Australian Institute of Corporate Directors.

What are the elements that can be considered in the formulation of a diversity policy?

Suggestions for the content of a diversity policy (non-exhaustive):

- Communicate the definition of diversity and recognise that diversity includes numerous dimensions including skills, experience, age, ethnicity, and gender.
- Articulate the benefits of diversity and the importance of being able to attract and retain board members and senior management personnel from a wide pool of talent.
- Express the company's commitment to diversity at the leadership level and employee level.
- Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and that there are no conscious or unconscious biases that might discriminate against certain candidates.
- Identify and implement programmes that will assist in the development of a more diverse pool of skilled and experienced employees that, over time, will prepare them for senior management and board positions.
- Introduce Key Performance Indicators ("KPIs") for senior management personnel to measure the achievement of diversity objectives and link part of their remuneration (either directly or as part of a "balanced scorecard" approach) to the achievement of those objectives. Examples of such KPIs could amongst others include number of suitable candidates sourced for leadership positions, reduction in incidences of discrimination cases reported and participation of employees in diversity programmes organised by the company.

Suggestions for content of a diversity policy (Adapted from the Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations 2014)

What are the key elements that should be included in providing disclosures on gender diversity?

Elements that should be contained in relation to disclosures on gender diversity are outlined in **Practice 4.5 of MCCG** as follows:

- policies on gender diversity;
- targets set on gender diversity; and
- measures undertaken to meet the aforementioned targets.

An illustrative disclosure in this regard is outlined on the following page.

Target of 30% women on board.

The Malaysian government outlined a vision for women participation on boards of all public listed companies to reach 30% by the year 2020. Given the socioeconomic impact that large companies bring to bear, they are expected to lead the way in meeting the nation's goal.

In advancing the gender diversity agenda, boards should take steps to ensure that women candidates are sought in its recruitment exercise. For example, when the need for a new director is identified or a casual vacancy arises, suitably qualified women candidates should be identified and considered. This should also be extended to senior management personnel as they form a talent pipeline for board candidacy.

Efforts in this regard will place the board in a good stead to benefit from greater diversity without compromising on the selection criteria of a director.

Illustrative disclosure

Policy statement

Since the launch of the **Board Diversity Policy** in 2012, the Board has made progress in broadening the diversity of the Board and senior management. In 2015, the Board reviewed the policy to ensure that it continues to drive the benefits of a diverse Board and workforce across the business.

The Board agreed that the ambitions and objectives set out in the policy remain relevant targets against which to measure our progress (i.e. maintain a level of at least **30% female directors on the Board over the short to medium term**).

Progress Update

Changes to the Board were made during the year to 2 April as the Board experienced two retirements and one resignation. Despite the reduced overall size of the Board, the percentage of women on the Board remains strong at **36% at time of publication.**

The Board remains committed to maintaining at least a **30% female representation on the Board**, whilst ensuring that diversity in its broadest sense remains a central feature. However, the Nomination Committee will continue to recommend appointments to the Board based on merit, measured against objective criteria and the skills and experience the individual offers.

The Board is also committed to strengthening the pipeline of senior female executives within the business and has taken steps to ensure that there are no barriers to women succeeding at the highest levels within Mark & Spencer.

Other measures on gender diversity include:

- assist the development of a pipeline of high-calibre candidates by encouraging a broad range of senior individuals within the business to take on additional roles to gain valuable Board experience;
- consider candidates for appointment as non-executive directors from a wider pool, including those with little or no listed company board experience;
- ensure long lists of potential non-executive directors include 50% female candidates;
- only engage executive search firms who have signed up to the voluntary Code of Conduct on gender diversity and best practice;
- report annually against these objectives and other initiatives taking place within the Company which promote gender and other forms of diversity; and
- report annually on the outcome of the Board evaluation, the composition and structure of the Board as well as any issues and challenges the Board is facing when considering the diverse make-up of the Company.

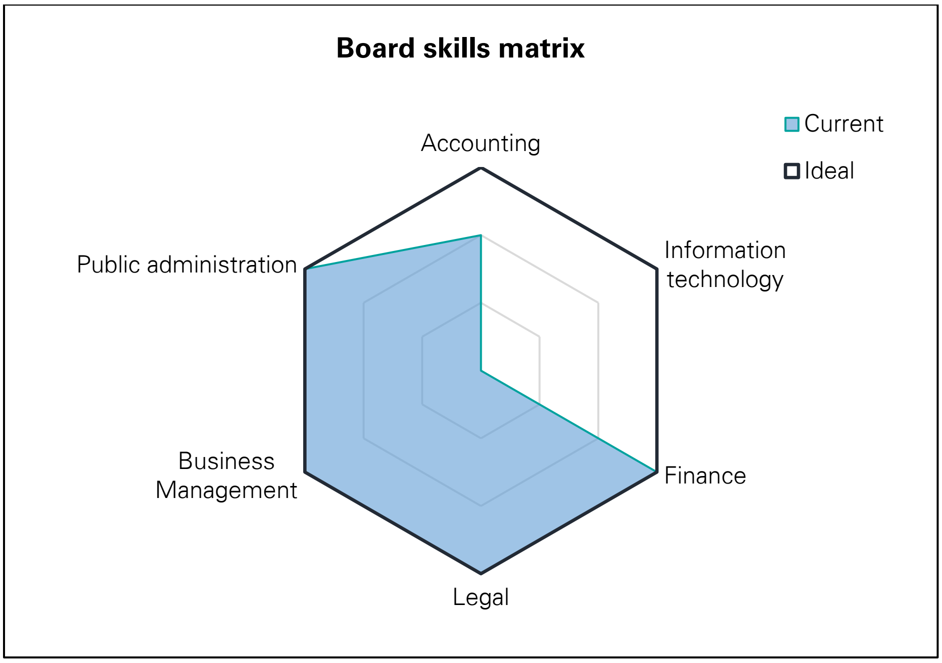
How can the board articulate the diversity of skills that the board is seeking to achieve in its composition?

It is increasingly regarded as a good governance practice for the nominating committee or board to outline a skills matrix in relation to its board composition. A company's board skills matrix typically illustrates the **mix of skills that the board currently has (current skill set)** and **is looking to achieve in its membership (envisioned or ideal skill set)**.

Facilitated by the company secretary, the nominating committee should also consider reflecting any gaps in skills that may be created by the forthcoming retirement of a director or any change in the company's strategic direction. In addition to providing stakeholders with a collective view to evaluate the competencies of the board, the matrix will also serve to guide the board in the selection of new candidates. It is an opportunity for considered reflection and productive discussion on how the board is constituted currently and also how the board believes it should best be constituted in the future.

It is important that the desired skill sets are regularly reviewed by the nominating committee to ensure alignment with the objective, strategic direction and emerging challenges faced by the company.

A hypothetical example of a board skills matrix for a development financial institution based on the suggested skill set prescribed by the Bank Negara Malaysia's Guidelines on Corporate Governance for Development Financial Institution is depicted below[9] *(Note: The difference between current skill set and the ideal skill set indicates existing gaps that the board is seeking to bridge)*:



Diagrammatic example of a board skills matrix showing the distribution of various skills amongst board members.

Appendix I of this Pull-out outlines a sample assessment to determine the knowledge, skills and experience of the current board, in light of the company's business and strategies.

[9] **Guideline 2.18 of Bank Negara Malaysia's Guidelines on Corporate Governance for Development Financial Institutions 2011**

Case study: Mangalore Chemical and Fertilisers Ltd (India)	
Background:	• Section 149(1)(b) of the Companies Act 2013 in India and the subsequent guidelines (Clause 49 of the Listing Agreement) issued by the Securities and Exchange Board of India (SEBI) made it mandatory for all listed companies to have at least one woman on their boards, either as an executive or a non-executive director, before April 1, 2015.
Facts:	• In order to meet the aforementioned requirement, the executive director and controlling shareholder of Mangalore Chemical and Fertilisers Ltd, Vijay Mallaya appointed his step-mother, Ritu Mallya to be the sole women director (non-executive director) on the board of the said company. • The appointment was met with strong objections from stakeholders who were unconvinced that the company would benefit from fresh perspectives emanating from an insider and family member of the current management. The company was heavily criticised for making a "token" appointment and hence, diluting the intention of the requirement which aims to enhance board effectiveness.
Lessons Drawn:	• Companies should internalise the spirit of law and endeavour to make sustained changes in order to truly benefit from diversity. • At all times, the appointment of board members should be based on objective criteria, merit and with due regard for diversity.

Hot-button issue

When Norway initially introduced quota (commonly cited as the 40% quota) for female directors of listed companies in 2006, a sizeable number of companies resorted to appointing a small pool of eligible women, nicknamed the "golden skirts". Some of these women directors held positions in multiple boards, ranging from tens to hundreds of directorship positions, inclusive of non-listed companies. Whilst these appointments were in compliance with the law, such actions may have produced unintended consequences and raise serious questions on the time commitment of these directors.

As such, in order to support long term change, it is important for companies to **incorporate diversity as a continuous strategic consideration** and take steps to ensure that diversity initiatives are sustainable and not counter-productive.

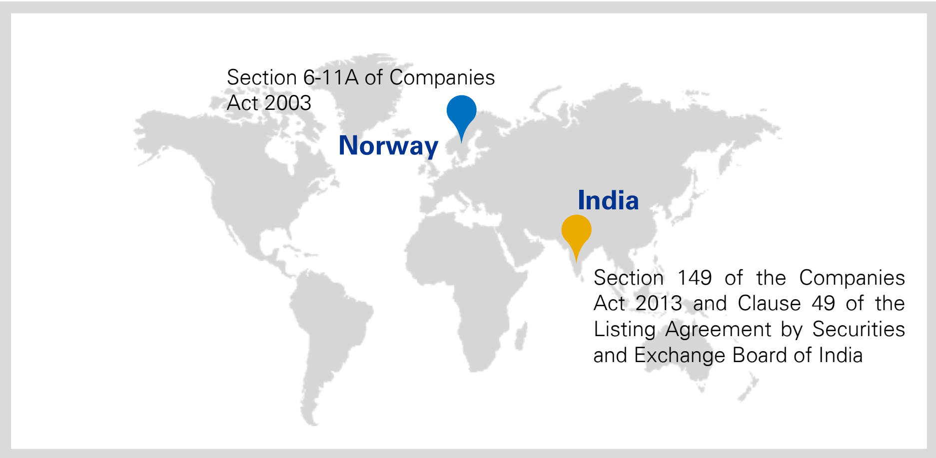
Where

Regional/international perspectives

In order to facilitate greater inclusion and diversity, particularly on gender, many countries including United Kingdom, Hong Kong and Singapore have (via their respective codes of corporate governance) urged companies to a have a policy on diversity.

Jurisdictions such as Norway and India have meanwhile prescribed mandatory quotas for women on boards.

Regional/ international perspectives
Countries such as Norway and India have introduced mandatory prescriptions on boardroom quotas for women.



Country	Provision
Norway	In the boards of publically listed companies, both genders should be represented, as follows: • Where there are two or three board members, both genders should be represented. • Where there are four or five board members, both genders should be represented with at least two members each. • Where there are six to eight board members, both genders should be represented with at least three members each. • Where there are nine or more members of the board, each gender should be represented with at least 40 percent each. ***(Section 6-11A)***
India	Every company shall have at least one woman director ***(Section 149 of the Companies Act 2013)***. The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director ***(Clause 49 of the Listing Agreement by Securities and Exchange Board of India)***.

Sourcing of directors

MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 4.6
In identifying candidates for appointment of directors, the board does not solely rely on recommendations from existing board members, management or major shareholders. The board utilises independent sources to identify suitably qualified candidates.

Why — The case for change

The intensifying nature of globalisation, the emergence of novel technologies and the continuous pressure on companies to innovate have heightened the need for **professional boards**. Board members are now increasingly expected to possess a granular understanding of the business model, ability to challenge assumptions underlying the strategies proposed and scrutinise the risks that entail.

However, evidence from corporate governance failures has shown that the **influence of "informal networks" on board appointments and opaque selection criteria are significant barriers to the professionalisation of boards**.

Point for reflection

Anecdotal evidence suggests that controlling shareholders cum directors often nominate friends, former colleagues or relatives to the board regardless of their experience, qualifications or objectivity[1].

This is compounded by the general tendency for boards to source for directors who are well-known to at least one of the existing board members.

It is also common to come across the same group of directors forming a chain of network by holding directorships within a pool of companies.

Directors who are elected in the aforementioned manner are also likely to have a sense of loyalty to the Large Shareholders or the directors who have nominated them. In such a setting, the beholden directors are likely to be rubber stamping proposals in the boardroom without duly probing the matters under discussion[2].

What could go wrong:

- The skills sets of the newly appointed directors do not meet the needs of the board.
- Inability of the board to draw fresh perspectives from the newly appointed directors due to the tendency of the said directors to conform to the views of the Large Shareholders or directors who have nominated them.

[1] *Board Member Nomination and Election* 2012, Organisation of Economic Co-operation and Development
[2] *Corporate Governance Better Policies for Board Nomination and Election in Asia* 2013, Organisation of Economic Co-operation and Development

In order to reduce instances of insular nomination methods, regulators are increasingly emphasising the importance of transparency and objectivity in directors' nomination and election process.

Paragraph 2.20A of Bursa's Listing Requirements

Every listed corporation, management company or trustee-manager must ensure that each of its directors, chief executive or chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, as the case may be, of the listed corporation, or the collective investment scheme.

Note: In order to enable directors to devote sufficient time to carry out their responsibilities, ***Paragraph 15.06 of Bursa's Listing Requirements*** *restricts a director of an applicant or a listed issuer from holding more than 5 directorships in listed issuers.*

Paragraph 15.08A(3)(b) of Bursa's Listing Requirements

The nominating committee should set out a statement in the annual report on the election process of directors and the criteria used by the nominating committee in the board selection process.

Directors and potential directors of financial institutions, meanwhile, are required to be assessed by the nominating committee on a list of criteria based on their fit and properness[3].

Fit and proper criteria for financial institutions:

Probity, personal integrity and reputation	Competence and capability	Financial integrity
Person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness.	Person must have the necessary skills, experience, ability and commitment to carry out the role.	Person must manage his debts or financial affairs prudently.

Source: Fit and Proper Guidelines by Bank Negara Malaysia

[3] **Standard 10.2 of Bank Negara Malaysia's Corporate Governance Policy Document**

HOW The practice in substance

A formal and transparent procedure should be established for sourcing and appointing new directors to the board, taking into account factors such as skills, experience, personal attributes and diversity required of directors, both collectively and individually.

Key considerations relating to the application of this Practice are discussed below:

What are the different approaches that the nominating committee can deploy in sourcing for board candidatures?

In exercising objectivity in the selection process, the nominating committee should seek to have access to a wide selection of candidates. Above and beyond referrals from directors, shareholders and management, this may include utilising the following sources:

- directors' registry (e.g. Institute of Corporate Directors Malaysia and NAM Institute for the Empowerment of Women);
- industry and professional associations (e.g. 30% Club);
- open advertisements (refer to the illustrative example on the following page); and
- independent search firms.

The nominating committee should clearly articulate the screening criteria to the relevant parties in order to maximise the effectiveness of the search conducted.

Dos

- ✓ Number of candidates recommended by the nominating committee to the board is greater than the available board seats.
- ✓ Providing shareholders with detailed background information[4] relevant to a decision on whether or not to elect or re-elect a director.
- ✓ Notice of general meetings seeking for shareholders resolution on the election of a director is accompanied with details in support for or against the nomination.

Don'ts

The following would render the application of this practice ineffective:

- × Not disclosing the specific sources used in the selection of directors.
- × Not establishing a formal and transparent procedure for the appointment of new directors to the board.

[4] Background information required under **Item 1, Appendix 8A of Bursa's Listing Requirements** include personal details (i.e. name, age, gender, nationality, qualification, designation and independence status); experience and occupation; directorships in other listed issuers and public companies; interests in the securities of the listed issuer and its subsidiaries; family relationship with any director and/or major shareholder of the listed issuer; any conflicts of interests; and list of convictions for offences within the last 5 five years (save for traffic offences) as well as particulars of any public sanction or penalty imposed by the relevant regulatory bodies during the financial year.

Illustrative example (Open advertisement)

Position: Board Member (Non-Executive Director)

Company background

Zotefoams PLC is a world leader in cellular materials technology. Using a unique manufacturing process with environmentally friendly nitrogen expansion, the company produces lightweight foams. Its technology gives rise to many potentially disruptive manufacturing solutions supplying a diverse range of clients including leaders in the aerospace, automotive, sports and leisure sectors. Zotefoams has a well-established global brand with subsidiaries and joint ventures in the US and Asia.

Specification:

As a Non-Executive Director of the Board, key responsibilities will include the following:

- Support the Chairman in ensuring that the Board provides effective direction for, and oversight of, the management of the Group and its compliance with its statutory and regulatory responsibilities.
- Provide input into the setting of the Group's strategic aims, the development of deliverable plans to achieve these objectives, and the assessment of the effectiveness of the delivery by the executive management of these plans.
- Help set the Group's values and standards and ensure that its obligations to its customers, shareholders, finance providers, regulators and others are understood and met.
- Attend and contribute to the effective running of meetings of other Board committees (e.g. Nomination, Remuneration) as required.
- Spend time with management as required providing input and advice on strategic and technology-related matters within the Non-Executive Director's own business experience and capabilities.
- Communicate effectively and build strong relationships with all key stakeholders.

Experience and skill sets:

- Recent experience as an Executive in an industrial business.
- Engineering or science based background.
- International operations and manufacturing.
- Selling internationally to multi sector business customers.
- Familiarity with components/materials businesses.
- Business for which intellectual property is highly significant.
- It would be beneficial for candidates to have some Board member experience of a Public Listed Company and as an Executive who have been involved in setting up manufacturing operations outside of the United Kingdom.

Illustrative example of open advertisement (Source: Website of Zotefoams PLC of United Kingdom August 2017).

How should the board inform stakeholders of their approach in selecting directors?

As mentioned above, **Paragraph 15.08(3)(b) of Bursa Listing Requirements** requires the nominating committee of the listed company to set out a statement in the annual report on the election process of directors and the criteria used by the nominating committee in the board selection process.

In addition, **Guidance to Practice 4.6 of MCCG** calls upon the nominating committee to disclose in its annual report how candidates were sourced including whether such candidates were recommended by parties affiliated with the company.

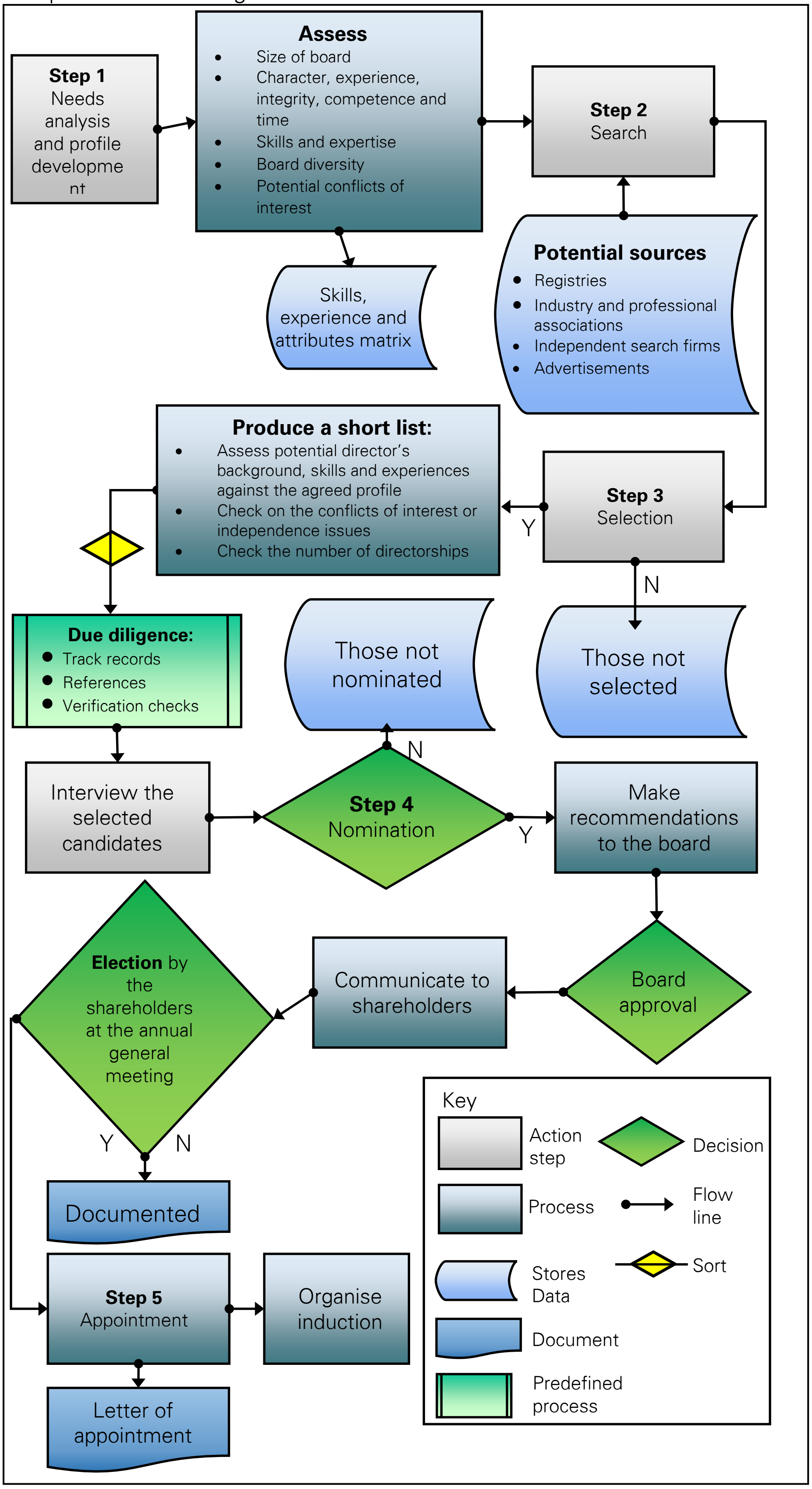
If the selection of candidates was solely based on recommendations made by existing board members, management or major shareholders, the nominating committee should explain why other sources were not used.

Hot-button issue

There are currently no overarching professional standards governing the operation of external search firms. In light of this, the rigour of the search process carried out by individual search firms may vary significantly.

It is therefore incumbent on the nominating committee to **assess the capabilities and independence** of the search firms in carrying out a robust and objective search process.

The process of electing new board members is illustrated below:



Flow chart depicting process of electing new board directors (Adapted from Best Practice Guidelines for the Appointment of Directors, Mauritius' Institute of Directors). The process flow should be documented alongside the Terms of Reference of the nominating committee and the selection criteria of candidates for directorships.

Where — Regional/international perspectives

United Kingdom has placed importance on the need for the boards to deploy a formal and transparent process for the selection of directors, including encouraging the use of external search consultancy or open advertising[5].

In addition, boards in United Kingdom are called upon to disclose in the Notice of General Meeting why they support the appointment or re-appointment of a particular candidate. A similar practice is also found in Australia.

Country	Provision
United Kingdom	The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role ***(Provision B.7.2)***.
Australia	A listed issuer should provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director. Information about a candidate standing for election or re-election as a director of a listed entity should amongst others include a statement by the board as to whether it supports the election or re-election of the candidate ***(Commentary under Recommendation 1.2)***.

Regional/ international perspectives

Boards in United Kingdom and Australia are urged to disclose the reasons they support the appointment or re-appointment of a director.

[5] **Provision B.2.4. of the United Kingdom's Code of Corporate Governance**

Chairmanship of the nominating committee

MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 4.7
The nominating committee is chaired by an independent director or the senior independent director.

Why **The case for change**

The nominating committee is a key gatekeeper in the process of recruiting directors, evaluating their performance and driving the continuous performance of the board.

In terms of balance of power, the board is often viewed as having three key actors – the first being the chairman, the second being executive management (led by the managing director), and thirdly the independent directors, whose figurehead is the senior independent director.

Thus, the following logic applies: If executive directors initiate strategic direction and run the business, and the chairman's role is turn the board into a cohesive unit, then the role of recruitment and bringing checks and balances would naturally fall upon the independent directors.

Evolution of the nominating committee:

MCCG 2000	MCCG 2007 and 2012	MCCG
MCCG 2000 formalises the role of the nominating committee. The non-executive membership nature of the committee is emphasised	The role of the nominating committee continues to be highlighted in **MCCG 2007** and **MCCG 2012**.	The composition of the nominating committee is reinforced. MCCG calls for the nominating committee to be chaired by an independent director or the senior independent director.

What could go wrong:

- Lack of oversight by the nominating committee on the chairman of the board and this would particularly be the case if the chairman of the nominating committee is the same as the chairman of the board.
- Preferential selection of candidates in sourcing and nomination of directors i.e directors are appointed based on existing prior relationships or recommendations and do not go through the nomination process.
- Inability of the independent directors to add any tangible value to the corporate governance practices of the company.

How The practice in substance

Bursa's Listing Requirements have reflected the composition of the nominating committee.

Paragraph 15.08A of Listing Requirements

A listed issuer must establish a nominating committee which comprises exclusively of non-executive directors, a majority of whom must be independent.

A review of annual reports across the top 100 public listed companies (by market capitalisation) as at 31 December 2016 revealed that 85 public listed companies have already appointed independent directors as the chairmen of the nominating committee.

As with other board committees of a financial institution, Bank Negara Malaysia requires the chairman of a financial institution's nominating committee to be an independent director and distinct from the chairman of the board[1].

The MCCG has consciously avoided naming only the senior independent director as the ideal chairman of the nominating committee, providing a degree of flexibility for companies.

The senior independent director is generally regarded as an ideal chairman of the nominating committee. However, there could be other circumstances that allow another independent director to act more effectively as the chairman of the nominating committee. For example, the senior independent director may regard being free of board committee duties as paramount to maintaining his neutrality and continuing to be an effective conduit for other independent directors to voice their concerns.

In another scenario, an independent director may be from a human resource background, and having gained experience and insights in recruitment, sociology and the dynamics of boardroom relationships, could contribute more effectively as the committee chairman.

Point for reflection

Appointing an independent director as chairman is only the first step towards effective nominating committee. It is just as vital for the chairman to discharge his duties in the manner envisaged.

Dos

- ✓ Assessing thoroughly the skillset requirement for the role as committee chairman and selecting the independent director most qualified to meet those expectations.
- ✓ Regularly considering if the individual remains suited for the chairman's role.

Don'ts

The following would render the application of this Practice ineffective:

- × Being accustomed to receiving and carrying out instructions from controlling shareholders or a dominant chairman.
- × view board nomination process as a compliance requirement and is done mechanically, without any proper assessment of the board candidacy

[1] **Standard 12.3 of Bank Negara Malaysia's Policy Document on Corporate Governance**

Key considerations relating to the application of this Practice are discussed below:

Should the nominating committee be chaired by an independent director or a senior independent director?

It is pertinent for the board to consider the merits and disadvantages of either the independent director or the senior independent director acting as the committee chairman, taking into account scenarios outlined above.

Notwithstanding the above, it should be noted that the value of a senior independent director as a chairman of the nominating committee often lies in leading the evaluation of the chairman of the board. Given that the senior independent director is commonly a confidant to the other directors, he or she would be well-placed to oversee the assessment of the board's chairman, taking into account a broad range of perspectives.

In addition to chairing the nominating committee, what are the other common functions undertaken by a senior independent director?

The duties that are customarily performed by a senior independent director are outlined below (taking into account **Guidance to Practices 2.1** and **4.7 of MCCG**):

- acts as a sounding board to the chairman (e.g. offer counsel to the chairman on matters such as board dynamics and concerns of stakeholders);
- serves as an intermediary for other directors when necessary (e.g. facilitate confidential discussions with directors who may have concerns which they believe have not been properly considered by the board or which they feel may not be appropriate to raise in open forum or with the chairman directly);
- acts as point of contact for shareholders and other stakeholders particularly on concerns which cannot be resolved through the normal channels of the chairman and/or chief executive officer;
- provides leadership support and advice to the board in the event the board is undergoing a period of stress (e.g. conflict between the chairman and chief executive officer or the strategy being followed by the chairman and/or executive officer is not supported by the board[1]);
- leads the succession planning and appointment of board members, including the future chairman and chief executive officer; and
- leads the annual review of board effectiveness, ensuring that the performance of each individual director is assessed objectively and holistically (i.e. the views of all the directors are obtained in an impartial manner).

Selection of a senior independent director

There is a widespread misconception on the definition of senior independent directors amongst public listed companies which causes them to designate the longest-serving independent director on the board as the senior independent director.

Factors such as **leadership qualities, expertise and industry or board experience** should actually be considered by the board to determine the eligibility of a director as a senior independent director. This definition is a matter for the board to determine in view of its nuances. .

Some jurisdictions regard the term "senior" as a misnomer and have instead opted to designate such directors as a "lead independent director".

[1] *Guidance on Board Effectiveness* 2011, Financial Reporting Council (United Kingdom)

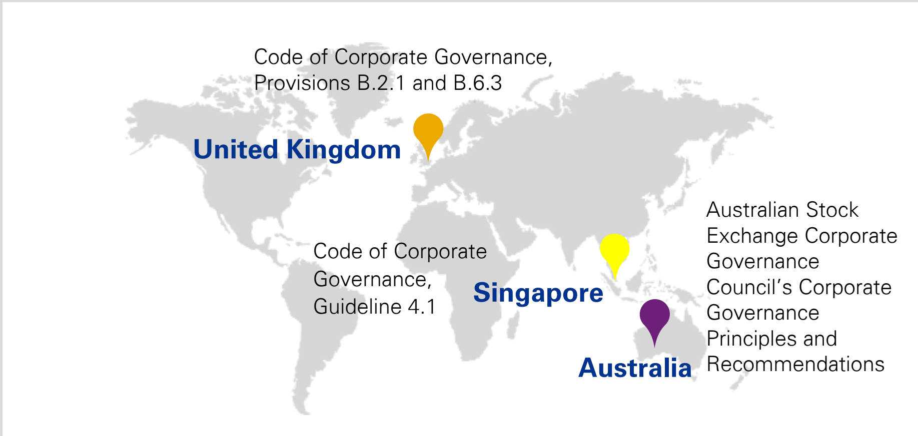
Why should a non-independent non-executive director not chair the nominating committee?

It is not uncommon for non-independent non-executive directors to be major shareholders, nominees of major shareholders or directors who have been long connected to the listed issuer. It is commonly observed that many non-independent non-executive directors, are referrals from major shareholders and for this reason a non-independent non-executive director who acts as the committee chairman may find himself relatively more conflicted compared to an independent director.

Where

Regional/international perspectives

A number of jurisdictions have already called for the nominating committee to be chaired by an independent director.



Country	Provision(s)
Singapore	The nominating committee should comprise at least three directors, the majority of whom, including the NC chairman, should be independent. The lead independent director, if any, should be a member of the NC ***(Guideline 4.1)***.
Australia	The board of a listed entity should: (a) have a nomination committee which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director. ***(Recommendation 2.1)***
United Kingdom	A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. ***(Provision B.2.1)***.

Regional/ international perspectives

Boards in public listed companies in jurisdictions such as Singapore, Australia and United Kingdom are called upon to establish a nominating committee which is chaired by an independent director.

Country	Provision(s)
	The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors ***(Provision B.6.3)***.

Evaluation for board, board committees and individual directors

MCCG Intended Outcome 5.0

Stakeholders are able to form an opinion on the overall effectiveness of the board and individual directors.

MCCG Practice 5.1
The board should undertake a formal and objective annual evaluation to determine the effectiveness of the board, its committees and each individual director. The board should disclose how the assessment was carried out and its outcome. For Large Companies, the board engages independent experts periodically to facilitate objective and candid board evaluations.

Why

The case for change

Board evaluation or the process of self-evaluation by the board, is an essential process for the board to examine itself to ensure that the board is operating efficiently and effectively. This evaluation process allows the board to address issues such as leadership, delegation of duties and responsibilities and reviews of existing processes within the board[1].

The evaluation of boards has become a norm worldwide ever since it was first introduced in the Cadbury Report 1992 (United Kingdom). Although it is considered an important process in ensuring the boards effectiveness, the stumbling block with the board assessment is that whilst many boards across the globe disclose that they have completed an evaluation, but very few have been able to provide details on how the evaluation process was conducted[2].

Besides being a mere good governance practice, performance evaluation is a useful tool that is used by the board to consider the accomplishments of individuals and the groups of individuals within the board. It also provides an avenue for revisiting what could have been done better, and incorporating lessons into future behaviour of the board. When done effectively, it could help the board improve their relationship with the management and stakeholders.

The most notable changes that can stem from an effective board evaluation are as follows:

- Improvement in ways the board engages with management on strategy;
- Better succession planning for chief executive officer's and outgoing directors;

What could go wrong:

- Pertinent issues concerning the board, board committees and directors are not detected and consequently, improvement opportunities are unidentified.
- Lack of linkage between the evaluation exercise and the professional development programme for directors.
- Stakeholders are unable to appreciate the bases for governance changes at the leadership level.

[1] Larker, D et. al 2017, *How Boards Should Evaluate Their Own Performance,* Harvard Business Review
[2] Behan, B 2017, *Engaging Directors on Board Composition, Board Evaluation & CEO*

- Improvement in how meetings are conducted and information is disseminated;
- Meeting agendas are revised and enhanced to improve the function of the board; and
- Roles of directors are better developed i.e. the role of the chairman is clearly defined[3].

It is important to acknowledge that the board, like any group within the company, must be evaluated just like its employees. In broad terms, evaluation for the board, board committees and individual directors revolves around these themes[4]:

How the board leads	How the board manages	How the board contributes
Examine how the directors were chosen, skills and experience the director brings to bear and the leadership style.	Evaluate the manner in which board meetings and boardroom activities are conducted including board dynamics; consider potential red flags such as "a board within a board[6]'.	Review the manner in which board members interact and participate as well as how decisions are made.

Given the importance of this process, it is no surprise to see that evaluation of the board, board committees and individual directors has continued to gain increasing traction over the recent years. The rationale behind this practice is that directors should not be excused from the process of review and improvement. Leading boards in fact have come to view the exercise in a positive light, i.e. as an opportunity to change the status quo.

However, it is no exaggeration to say that looking in the mirror is a much harder proposition than looking at someone else. Directors, in particular executive ones, are accustomed to evaluating their senior management, suppliers and the like, but when it comes to one's self, peers and the chairman, this becomes a much harder task.

Hot-button issue

It is not uncommon to find directors who have been on their boards for what seems like an eternity. Somewhat against conventional expectation, it is the non-executive directors who appear to be hanging onto their board seats.

Whilst not inferring that length of service has an inverse relationship with contribution and effectiveness, it would not be a surprise if one were to delve into the boards with such long serving directors and find that the evaluation process is deficient.

As such, it is important for the board to leverage on the evaluation exercise as a platform to surface areas of concerns and bring about constructive changes including in the area of succession planning.

[3] Behan, B 2017, *Engaging Directors on Board Composition, Board Evaluation & CEO Succession Planning*,
[4] Larcker, D et.al 2017, *How Boards Should Evaluate Their Own Performance*, Harvard Business Review
[5] "board within a board" means a dynamic when a subset of directors has an outside influence on board decisions.

Why evaluations do not always work out:

Self-rater bias	Back scratching	The status quo feel
The director has a view of himself that far exceeds what he would score if measured objectively ("**Dunning-Kruger effect**").	Directors rate each other favourably and the end result is a consistent curve with no real opportunities offered for improvement.	Despite signs of under-performance, there is resistance to change and in particular, outside assistance is rejected as such directors fear the evaluation results.

How The practice in substance

It is important for a board to ensure that its directors are capable and qualified to lead and contribute in a company's growth. An effective board evaluation would result in constructive changes to the dynamism of the board, which would most often involve changes to board composition (e.g. succession planning). In fact, some of the best boards with highly engaged directors have developed action plans consisting many different items, largely because their board evaluation process stimulated many good ideas.

The following are some key issues that have to be considered in executing board evaluation:

- Does the board include discussion on governance matters in their meetings or are they overlooked for other matters of importance?
- Does the board have sufficient time to review and assess material information to provide quality and professional review?
- Is the composition of the board in terms of skills, knowledge, and experience and business outlook well suited for the company?
- Are there open and constructive conversations when discussing issues during board meetings?
- Are the performance of the board committees during the year evaluated?
- What are the weakness and shortcomings of the board and how to improve them[6]?

Bursa's Listing Requirements have outlined provisions for listed issuers to assess their directors and ensure that they meet the requisite criteria. In order to improve the disclosure on how boards are assessed and for the process to be transparent, **Bursa's Listing Requirements** have put the onus of driving the evaluation process on the nominating committee.

[6] Forrest P, 2012, *The importance of evaluating the board,* Singapore Institute of Directors

Paragraph 2.20A of Bursa's Listing Requirements

Every listed corporation, management company or trustee-manager must ensure that each of its directors, chief executive or chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, as the case may be, of the listed corporation, or the collective investment scheme.

Paragraph 15.08A(3)(c) of Bursa's Listing Requirements

The listed issuer must provide, in its annual report, a statement about the activities of the nominating committee in the discharge of its duties for the financial year. Such statement must include how the requirements set out in paragraph 2.20A of these Requirements are met and contain the following information:

(3) the assessment undertaken by the nominating committee in respect of its board, committees and individual directors together with the criteria used for such assessment.

Likewise, the need to conduct an annual evaluation of the board, board committees and individual directors is encapsulated in ***Bank Negara Malaysia's Policy Document on Corporate Governance***[7]. Similar to **Practice 5.1 of MCCG**, the said document by Bank Negara Malaysia also calls for a periodic externally facilitated evaluation. The evaluation process is therefore a significant portion of the nominating committee's work, and adequate time should be budgeted for a meaningful outcome.

It is important to note that it is not uncommon for boards look to external advisors to facilitate the assessment process. Indeed, **Practice 5.1 of MCCG** calls for Large Companies to engage such parties on a periodic basis. Regardless of which party executes the process, the outcome is very much dependent on the directors' mind-set.

Point for reflection

Do evaluations work?

Box- ticking exercise

A director who views his board seat as a legal necessity would likewise regard the evaluation process as a chore to be dispensed with as quickly and painlessly as possible. This director's tendency is to give uniform ratings to all questions and pass on opportunities for comments and suggestions.

Outcome:

Missed opportunity to identify improvement considerations.

Carefully designed and thoughtfully responded board evaluation exercise

A director who understands that whilst performance may be good, the evaluation process supports the "we can be better" mentality. For example, an evaluation of the board's composition may lead to recruitment of a director who can cover the board's "blind spot" within an industry or market.

Outcome:

Input obtained for potential governance changes that could lead to enhancement in effectiveness of the board, board committees and individual directors.

[7] **Standard 13.1 and Guidance 13.2 of Bank Negara Malaysia's Policy Document on Corporate Governance**

The illustrative disclosure below provides an example of how a properly conducted evaluation process would benefit the company not just in its strategy formulation, but also in relation to the skill sets of the board members:

Illustrative disclosure

BP Plc UK, in their notice of annual general meeting for the financial year ending 2014, had provided under the notes to the resolution, how the evaluation process had helped the board in assessing their directors both individually and collectively.

Notes to resolutions 4-17

The nomination committee identifies, evaluates and recommends candidates for appointment or reappointment as directors and for appointment as company secretary.

The nomination committee keeps the mix of knowledge, skills and experience of the board under regular review (in consultation with the chairman's committee) and seeks to ensure an orderly succession of directors. The outside directorships and broader commitments of the non-executive directors (including time commitments) are also monitored by the nomination committee.

The membership of the board has been substantially refreshed over the previous three years which has resulted in no director now being scheduled to retire earlier than the 2016 AGM. In 2013 the committee reviewed the current skills of the board and those required by the board over the coming years as the company's strategy is implemented. The conclusion of the review was that whilst the current board's skills matched those presently required, in seeking future candidates there should be a greater focus on the business of BP, US government relations and, possibly, Russia. All of this was against the background of the board's clear aspirations on diversity and the work of the international advisory board in supporting the chairman and the chief executive on geo-political issues.

The nomination committee's reasons for the recommendations for the re-election of directors are set out in the notes on each director, as are descriptions of the directors' skills and the committees upon which they serve. The ages of the directors shown in the notes are correct as of 31 December 2013.

The chairman's committee led by Antony Burgmans, in consultation with the senior independent director, evaluated the chairman's performance during the year. In respect of each of the other non-executive directors, the board has fully considered whether each director is free from any relationship with the executive management of BP that could materially interfere with the exercise of his or her independent judgement. The board has taken the view that each of these non-executive directors is considered to be independent.

Antony Burgmans joined the board in February 2004 and by the time of the 2014 AGM will have served ten years as a director. In 2012, the board asked him to remain as a director until the 2016 AGM as it considered that his experience as the longest serving board member provides valuable insight, knowledge and continuity. The board has determined that he continues to meet the board's criteria for independence and will keep this under review.

Dos

Directors should –

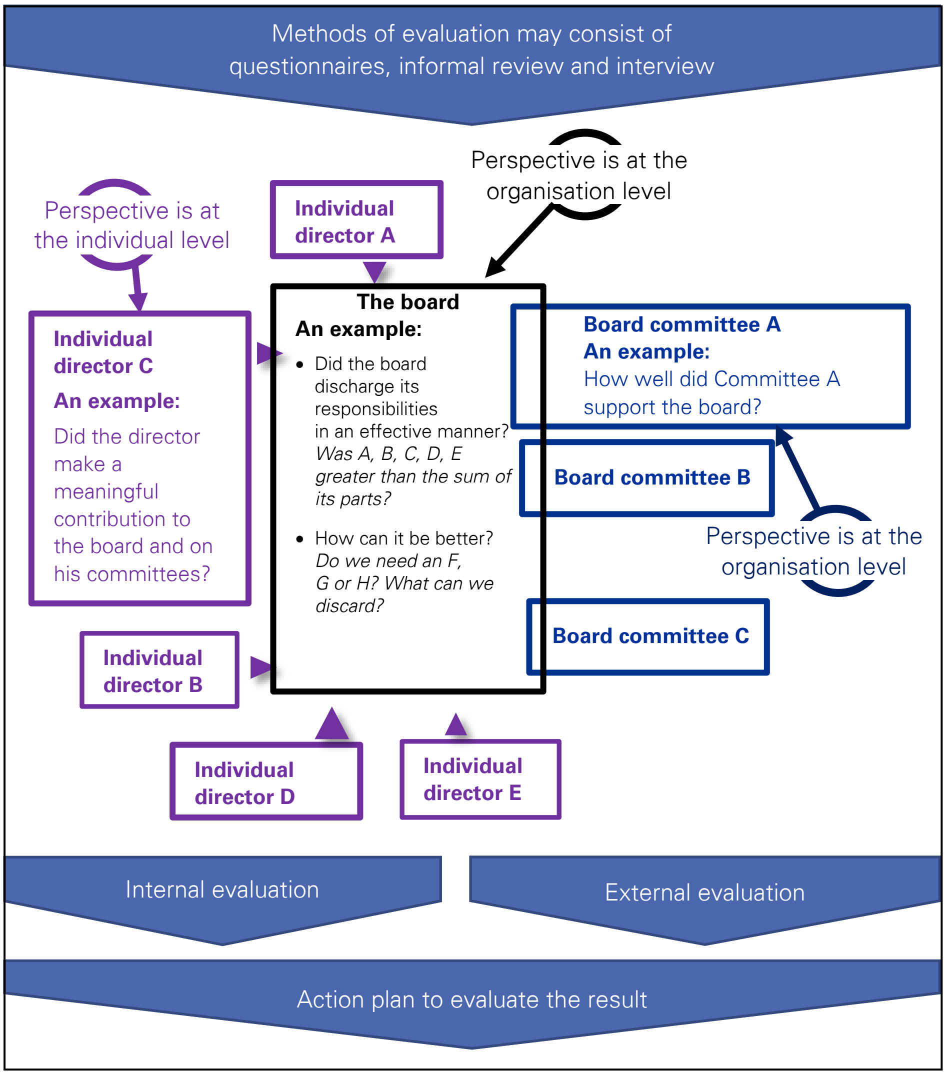
- ✓ in conducting their peer assessment, rate their peers based on their conduct and manner of their peer in discharging their duties, which includes the ability to ask probing questions.
- ✓ practice self-evaluation not self-serving evaluation.
- ✓ take the opportunity to provide constructive comments and suggestions.
- ✓ challenge conclusions offered by management or external advisors.

Don'ts

The following would render the evaluation ineffective:

- × Directors rating each other favourably, assuming that the company's good performance is solely the result of the board performing. The company's results may be due to an effective management team shoring up a poorly performing board.
- × Directors providing generic comments or monotonous ratings in the self and peer assessment or merely box-ticking (e.g. providing a singular rating for the all the questions contained in the assessment form).

A flowchart which depicts the workflow and interplay between the board, board committees and the directors is shown below:



As noted in the flowchart, the most commonly used evaluation methods are **questionnaires**, **informal review** and an **interview**. These methods and the related processes are further explained in the ensuing paragraphs.

Questionnaires

Questionnaires are tailor made to the company's needs to ensure that questions posed are pertinent as the requirement of the boards differ within the industries. They are circulated on paper or online. The questions are pre-set and the director fills in the answers. There is minimal interaction and discussion involved in this process.

The results or summary of the evaluation is then shared with the chairman of the board or the nominating committee chairman.

Informal review

An informal review process involves the board evaluating its members on a more frequent and less formal basis. This results in a more immediate feedback to the board on their performance. The directors assess the performance of the group or individual directors immediately after meetings based on the presentations, contribution of the directors during the meeting, communication between the members and how they reached their decisions during the meeting.

This process allows the board to respond to the issues that could impair the board on a timely basis.

Interview process

A widely recognised method that provides a positive contribution towards the assessment process is using an interview process. A properly structured and executed interview process which includes one-to-one conversation with each board members could yield multiple comments and observations. The board members involved in the process tend to be more engaged in communicating then filling out forms and questionnaires. This leads to better results that allows the board to draw insights and formulate plans on recruitment and retention of directors.

It is also helpful to recognise that not all directors are expected to perform at the same level in order to merit a positive rating. For example, a director who has just joined the board would not be expected to exhibit the same familiarity as another director who has been serving for a longer period (e.g. five years). The key consideration is whether the new director has carried out his duties and discharged his responsibilities appropriately[8]?

Evaluations can be broadly grouped into two categories, internal and external evaluation.

Internal evaluation

Internal evaluation of the board is often undertaken by the nominating committee, board itself or facilitated by the company secretary. This process is normally conducted using questions that are either specifically tailor-made for the board or using available templates. Where the board conducts the evaluation, the process is usually led by the chairman of the board or the nominating committee chairman. For this process to be successful, the board must ensure the questions posed are aimed towards the betterment of the company as a whole.

In conducting an internal evaluation, the board should also consider drawing input from those who have a close nexus to proceedings and activities of the board (e.g. company secretary and senior management). This may help to yield findings which may not be surfaced from conventional methods.

External evaluation

An external evaluation is undertaken to provide objectivity that could at times, be lacking in carrying out the process. By enlisting a third party expert, the evaluation exercise will also benefit from a rigorous methodology and professional viewpoints As stated in **Guidance to Practice 5.1 of MCCG**, "a board evaluation which is periodically facilitated by a professional, experienced and independent party will lend greater objectivity to the assessment by providing an unbiased perspective on a director's performance and his ability to contribute effectively to the board".

Action plan

[8] Behan, B 2017, *Engaging Directors on Board Composition, Board Evaluation & CEO*

When an evaluation has been completed, the nominating committee or the external evaluator must devise an action plan and consider how the findings should best be communicated to the board in the interest of improving its effectiveness. There are a number of options, including whether:

(a) the original assessment should be presented to the directors or as a perspective to which the evaluator (internal or external) has contributed the context, judgment and recommendations, on a no-name basis;

(b) quotes and comments obtained from the respective directors who were evaluated should be used in specific contexts and appropriate anonymity should be maintained;

(c) recommendations and/or action plans for enhancements, based on the evaluation results are tabled to the board;

(d) concerns regarding individuals should be identified; and

(e) enable directors to have informal discussions on the evaluation process, i.e. structure, content, coverage, and to accord directors an avenue to voice their feedback.

The success of the evaluation process often depends on the board chairman. An effective board chairman will engage directors in an open and honest debate, and facilitate the identification of priorities, agreed actions, responsibilities and timeframes.

Investors and other stakeholders should request for the board to provide their action plan from the last evaluation to know how extensive was the actions taken by the board. This would show how well the board functions and how strong the evaluation process is within the board.

Key considerations relating to the application of this Practice are discussed below:

What criteria can be used to evaluate the board, board committee or individual director's performance?

Guidance on the assessment criteria which should be customised to the needs of the company, are outlined below:

Board or board committee performance:

- key responsibilities as noted in the charter and legal and regulatory requirements;
- board mix and composition (including independence and skill sets);
- culture and approach for risk governance;
- oversight of risk management systems and internal controls;
- agenda setting and meeting preparation;
- board dynamics and cohesiveness; and
- boardroom activities. i.e directors involvement in providing input on matters relating to the company's strategic or financial operations.

Individual directors' performance:

- meeting preparation and attendance;
- will and ability to critically challenge and ask the right questions;
- active participation by providing constructive views and sharing their experiences during meetings in contribution to the development of strategy;
- commit to serve the company with due diligence, integrity;
- commit time required to fulfil the role and perform their responsibilities effectively;
- technical knowledge on specific industry/company activities/process
- focus on creating shareholder value;
- understanding the company and industry in terms of risks and direction;
- willingness to listen and acknowledge other viewpoints;
- character and integrity in dealing with potential conflict of interest situations;
- ability to work with other directors and management; and
- confident to stand up for a point of view.

Sample evaluation forms for committees and individual directors are provided in **the following Appendices** of this Pull-Out:

- Appendix III: Board and board committees evaluation form
- Appendix IV: Directors'/key officers' evaluation form
- Appendix V: Audit committee evaluation form
- Appendix VI: Audit committee members' self evaluation and peer evaluation form

What should be disclosed for the evaluation of a board, board committee or individual director's performance?

As required by **Paragraph 15.08A(3) of Bursa's Listing Requirements**, disclosure of the activities of the nominating committee in the annual report should amongst others include the assessment undertaken by the nominating committee in respect of its board, committees and individual directors together with the criteria used for such assessment.

However, disclosure in this area has not kept pace with the requirements and expectations of stakeholders over the recent years. The "Analysis of Corporate Governance Disclosures in Annual Reports 2015-2016 by Bursa Malaysia" (analysis of 280 listed issuers) noted that although listed issuers disclosed that they conducted performance evaluations of their board, board committees and individual directors, only 56% disclosed the **criteria** for evaluation of individual directors, 40% disclosed criteria for evaluation of board committees and 65% disclosed criteria for evaluation of the board.

In addition to the aforementioned requirement, companies should also endeavour to provide detailed information on its evaluation exercise to keep stakeholders well informed by amongst others disclosing the factors taken into account in deciding on the method of evaluation and how the results of the assessment were utilised (e.g. training needs analysis of individual directors). Further, **Guidance to Practice 5.1 of MCCG** states the nominating committee of Large Companies should disclose the following information in its Annual Report:

- how the evaluation was conducted, the criteria used such as the assessment of fit and properness, contribution and performance, calibre and personality of directors;
- whether an independent expert was engaged, or was it internally facilitated;
- key strengths and/or weaknesses that were identified from the evaluation; and
- steps or enhancements proposed to be undertaken to mitigate or address the weaknesses identified.

In addition to the above, when an independent third party is used to carry out board evaluation, the board should disclose the identity of the third party.

The illustrative disclosure below provides an example of disclosure on an externally facilitated evaluation process carried out by Supergroup PLC in UK.:

Illustrative disclosure

As required by the Code, every third year the evaluation should be conducted by an external independent facilitator. This year's evaluation was conducted by **Lintstock Consultants ("Lintstock") who have no other connections with the Company**. The evaluation process involved Lintstock engaging with the Chairman and company secretary to agree on a tailored set of questions for completion by the directors, which was followed by a telephone interview by Lintstock where any issues were identified. The results were then analysed by Lintstock; discussed with the Chairman and the company secretary; tabled at a meeting of the relevant committee; and then presented to the Board at its meeting held on 24 March 2016. The anonymity of all respondents was ensured throughout the process to encourage an open and honest exchange of views.

The performance evaluation was positive with all responses indicating continued high or improved performance during the year. The performance of the executive directors during the year was monitored by the chief executive officer and the nominating committee.

The external evaluation in 2016 covered:

- the board's balance of skills and experience, independence and knowledge, and diversity including the gender of board members;
- how the board worked together; how effectively it used its time and the support it received;
- strategic and operational risk oversight, risk management and internal control; and
- key talent and succession planning.

Following the evaluation, the board agreed on a number of **actions** that will be monitored through the current year. These centred on the continual evolution of the composition of the board to complement the strength of the existing directors and enhance the international experience and skills, refinement of the agenda planning process to ensure focus on the key issues and opportunities, and extending the board's oversight of talent management within the business to the senior management tier. Subsequent to the evaluation, the Board's composition has been strengthened further through the addition of Steve Sunnucks and Beatrice Lafon as non-executive directors, who both add further retail and international experience to the board and have recent executive experience.

What are the advantages of an externally facilitated evaluation?

Apart from an inherent level of objectivity, external advisors can frequently pinpoint areas of weakness as the advisor would likely have accumulated a database of results from their experience conducting similar assessments for other boards/board committees. From their experience, the advisors can also share insights on what makes boards function well and what are the typical improvement areas for the boards within its industry to consider relating to the company's current evaluation process. Consequently, the advisors could suggest improvements to methodology.

This evaluation method also presents a more objective view as the evaluation would be conducted by a third-party and not a person connected to the company. This would enable the evaluator to notice matters that would have slipped under the radar by in-house evaluation.

How often should companies conduct an externally facilitated evaluation?

There are no numerical prescriptions provided on the frequency of an externally facilitated evaluation, as this will vary for each company based on its circumstances.

A review of annual reports across the top Malaysian 100 listed companies in December 2016 (by market capitalisation) which have conducted an externally facilitated evaluation revealed that the average frequency for such an exercise is **once every three years**. This trend appears to be consistent with that in foreign jurisdictions. The United Kingdom's Code of Corporate Governance, for example, calls upon FTSE 350 companies to enlist third party experts for its evaluation exercise once every three years[9].

What measures can the nominating committee or board undertake to enhance the effectiveness of the evaluation exercise?

In a series of interviews carried out by Stanford University in 2016 with close to 200 directors, the following recommendations were identified[10]:

- conduct a diagnostic where each director's input is solicited around a variety of critical topics: board effectiveness, committee effectiveness, current board composition, the forward-looking needs of the board;
- provide a detailed report of the findings. Include recommended actions based upon short, medium, and long-term timeframes; and
- identify a point person on the board accountable for managing the process and following through on its recommendations.

What are the symptoms of indicators of a poorly conducted evaluation exercise?

The following would be considered as a red-flag for the board, and in particular the nominating committee as they need to be wary of so as to overcome the barriers that can affect the evaluation process and their action plans:

- the evaluation method being used leans towards a box-ticking exercise;

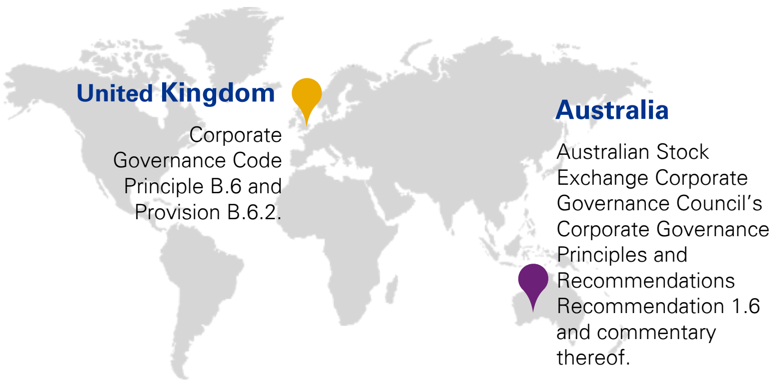
[9] **Provision B.6.2 of United Kingdom's Code of Corporate Governance**
[10] *Board of Directors Evaluation and Effectiveness* 2016, Rock Center for Corporate Governance at Stanford University and the Miles Group.

- the issue of behaviour and attitude is overlooked in the evaluation process;
- a lack of imperative on the need to change and improve the board;
- action plans are not part of the board's agenda once the evaluation process in completed; and
- directors who serve on several boards may be subject to evaluations many times a year, possibly reducing their enthusiasm for the process if evaluations are conducted annually.

Where **Regional/international perspectives**

Corporate governance provisions around the world, including those in Singapore, United Kingdom, Australia and South Africa have emphasised on the evaluation process as a key activity for the board.

As with the **MCCG**, the United Kingdom's Code of Corporate Governance calls upon FTSE 350 companies to enlist the services of an external facilitator in conducting the evaluation exercise. The Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations meanwhile makes a conscious effort to link the results of the evaluation process to improvements in governance experienced by the board.



Country	Provision(s)
United Kingdom	The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors ***(Principle B.6)***. Evaluation of the board of FTSE 350 companies should be externally facilitated at least every three years. The external facilitator should be identified in the annual report and a statement made as to whether they have any other connection with the company ***(Provision B.6.2)***.

Regional/ international perspectives

Boards of FTSE 350 companies in the United Kingdom are urged to conduct an externally facilitated evaluation once at least every three years.

The Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations meanwhile urges disclosure of any insights it has gained from the evaluation and any governance changes it has made as a result.

Country	Provision(s)
Australia	A listed entity should: (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and (b) disclose, in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process. When disclosing whether a performance evaluation has been undertaken the entity should, where appropriate, also disclose any insights it has gained from the evaluation and any governance changes it has made as a result ***(Recommendation 1.6 and commentary thereof)***.

Remuneration policy and procedures for directors and senior management

MCCG Intended Outcome 6.0

The level and composition of remuneration of directors and senior management take into account the company's desire to attract and retain the right talent in the board and senior management to drive the company's long-term objectives.

Remuneration policies and decisions are made through a transparent and independent process.

MCCG Practice 6.1
The board has in place policies and procedures to determine the remuneration of directors and senior management, which takes into account the demands, complexities and performance of the company as well as skills and experience required. The policies and procedures are periodically reviewed and made available on the company's website.

Why The case for change

The issue of directors' remuneration is often a contentious subject between the shareholders and the board, especially if the performance over past years appears unsatisfactory. Shareholders often question the board and seek clarification on any increase to the tabled resolution on remuneration to ascertain whether the remuneration paid is commensurate with the performance of the directors.

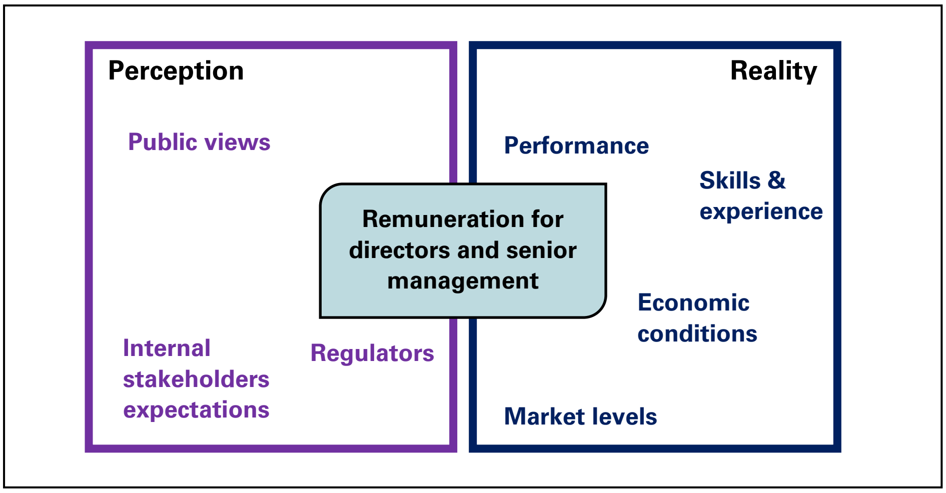
The need for fair and transparent remuneration policy and procedures is now more apparent than ever, acknowledging that the current business environment is becoming more complex with rising stakeholders expectations, globalisation, technological advances and innovation in business models – all of which necessitate remuneration packages to be aligned with the company's long-term business sustainability.

In order to ensure that their investments are well managed, shareholders are demanding companies to be led by directors and executives of good calibre. To this end, remuneration plays a vital role in attracting and retaining highly skilled directors and executives. In attempting to hire and retain talent, it is important to understand that the complexity of remuneration is without doubt increasing with the ever growing forms of remuneration (cash, benefits, shares, etc.) and structure (short, medium or long term).

What could go wrong:

- Remuneration packages lead to imprudent risk taking and "toxic behaviour" by directors and senior management personnel (e.g. venturing into new and risky business lines without appropriate due diligence in anticipation of unusually high profits).
- Lack of alignment between objectives of the directors and senior management vis-à-vis the company's goals.
- Objectivity of independent directors is compromised due to misaligned incentives (e.g. excessive payment via share schemes to independent directors).
- Failure of the company to attract and retain talent particularly at the leadership level.

The factors to be taken into account in today's remuneration policy and procedures for companies is shown below:



A study carried out by the Institute of Directors (IOD) on shareholders in United Kingdom (2015) revealed that pay for big business leaders is the biggest threat to public trust in business. In the survey, shareholders opined that remuneration of directors has grown disproportionately large and has become largely divorced from performance. It would not be a surprise if such concerns are amplified for companies operating in less competitive industries.

In a free market economy, it is almost inconceivable to think that companies need to defer to some form of legislation or restriction when it comes to attracting and remunerating the "best and brightest". However, as the King IV Report on Corporate Governance in South Africa, so clearly argued, companies do have to earn the right to operate from the community in which it resides, and part of the effort invariably involves the structuring of an appropriate remuneration scheme.

The MCCG has called upon listed issuers to make known their remuneration levels for directors and senior management in detail. **Bursa's Listing Requirements**[1], likewise, also require detailed disclosure of directors' remuneration on a named basis. With the Companies Act (both the superseded 1965 and the current 2016) long requiring disclosure, albeit not in such detail called upon by the MCCG or **Bursa's Listing Requirements**, remuneration levels will no longer be hidden from view. As remuneration become plainly visible, the next question naturally asked by stakeholders will be the link between the company's performance and the remuneration of its directors and senior management.

Hot-button issue

Concern is often raised by shareholders when remuneration for directors and senior management increases and remuneration for general staff remains the same or decreases.

Such a clash of directions have no doubt fanned popular anger and some countries have even gone to the extent of attempting to regulate pay ratios, although without success.

For example, Switzerland in 2013 held a referendum in relation to whether legislation should limit executive pay to 12 times that of lowest within any particular company. The referendum was defeated.

It is therefore important for companies to ensure that remuneration packages of directors and senior packages are structured based on strong fundamentals (e.g. linked to the company's objectives) and they do not diminish shareholders' returns or the confidence of public in the business.

[1] **Item 11, Part A, Appendix 9C of Bursa's Listing Requirements** - as per the proposed amendments contained in Bursa's Public Consultation (Paper 1/2017).

How The practice in substance

Bursa's Listing Requirements themselves do not address the remuneration policy in great detail, but have provided some conditions on how remuneration should be structured, for executive and non-executive directors.

> **Paragraph 7.23 of Bursa's Listing Requirements**
>
> Fees payable to non-executive directors shall be by a fixed sum, and not by a commission on or percentage of profits or turnover. Salaries payable to executive directors may not include a commission on or percentage of turnover.

> **Paragraph 7.24 of Bursa's Listing Requirements -** Annual shareholder approval for directors' fees and benefits
>
> The fees of directors and any benefits payable to directors shall be subject to annual shareholder approval at a general meeting[2].

The **Companies Act 2016** meanwhile mandates the approval of selected remuneration components (i.e. directors' fees and benefits) by shareholders annually at the annual general meeting.

> **Section 230(1) of the Companies Act 2016 – Approvals for fees of directors**
>
> The fees of the directors, and any benefits payable to the directors including any compensation for loss of employment of a director or former director:
>
> (a) of a public company; or
>
> (b) of a listed company and its subsidiaries, shall be approved at a general meeting.
>
> **Section 340(1) of the Companies Act 2016 – Annual General Meeting**
>
> Every public company shall hold an annual general meeting in every calendar year in addition to any other meetings held during that period, to transact the following:
>
> (a) the appointment and the fixing of the fee of directors.

In order to ensure financial institutions are well governed and transparent , Bank Negara Malaysia has outlined guiding principles for remuneration paid to directors as primarily outlined in **Standards 19.2 and 19.4 of Bank Negara Malaysia's Policy Document on Corporate Governance**.

[2] As per the proposed amendments contained in Bursa's Public Consultation (Paper 1/2017). The said provision should be contained in a company's constitution.

It is important to appreciate that none of the aforementioned regulatory requirements intend to suppress directors' and executive remuneration. The nation's economy depends greatly on the drive, motivation and entrepreneurial spirit of its business community, and fair and appropriate remuneration would only help to sustain this direction.

What is pertinent in relation to this Practice is that companies can articulate the design of their remuneration policies and procedures, and explain satisfactorily the drivers that had influenced its design.

Some considerations with regards to such policy and procedures are provided below:

The rationale	The inputs	The implementation
There must be a clear goal for the policies and procedures and the rationale behind each element can be explained to, and understood by stakeholders.	Inputs include skills set and experience requirements, company's position and performance, market rates, and stakeholder expectations.	The remuneration committee has played its role. The scheme is implemented fairly, consistently and comprehensively.

Remuneration policies and procedures should be designed in such a way that it supports the strategies and long-term vision of the company. They should be structured to provide incentives for directors and senior management to pursue the long-term growth objectives of the company. The main challenge faced by most remuneration committees in this regard is in relation to the process of develop remuneration policies and procedures which takes into consideration the best practices, market benchmarks as well as the views of stakeholders. The following diagram illustrates the steps that can be considered by the remuneration committee in drawing up remuneration policies and procedures.

Dos

- ✓ Ensuring that the remuneration policy and procedures are also in line with the risk strategy and corporate values of the company.
- ✓ Drawing input from those in charge of internal control and risk management functions to ensure that risk exposures and risk outcomes are adequately considered in the design of remuneration policies and procedures.

Don'ts

The following would render the application of this practice ineffective:

- × Intimating that certain directors or groups of individuals are exempt from the company's remuneration scheme.
- × Being deliberately vague on how executive directors' remuneration is determined.
- × Deliberately remunerating all directors with a fixed sum which does not commensurate with the workload and responsibilities of the directors.

The growth of a company depends on the ability to attract and retain people of the quality required by the board on a long term basis:-

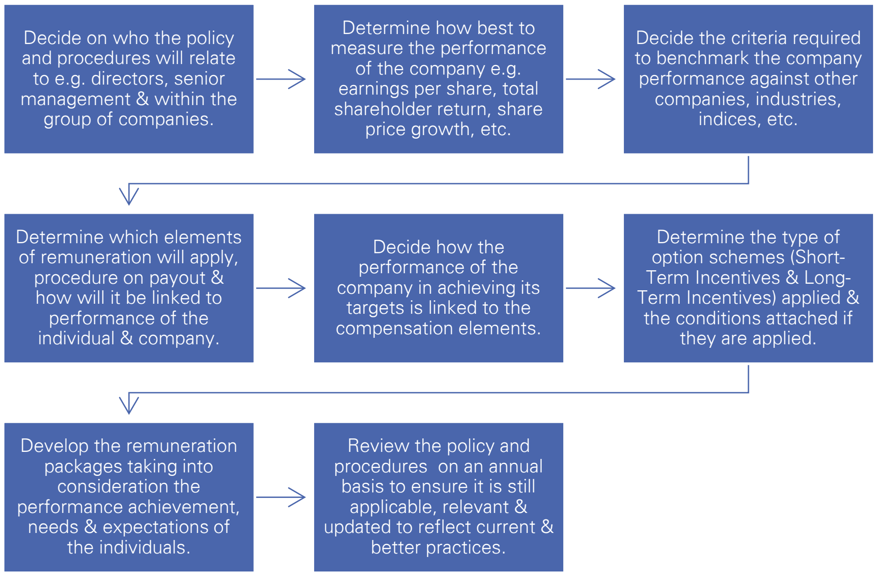


Diagram illustrating the general process of determining remuneration policies and procedures

The figure below provides an example of the process undertaken by BP PLC (United Kingdom) in determining the company's remuneration policies and procedures for 2016:

1 Assess performance	2 Review outcomes with board committees	3 Align with employees	4 Apply discretion
• Checked performance against safety and value measures. • Reviewed the measures against targets set.	• Sought views from audit and safety, ethics and environmental assurance committees to ensure a thorough review of performance.	• Considered outcomes in relation to BP's group leaders and the broader comparator group of United States and United Kingdom employees in professional and managerial roles.	• Used judgement to reflect the broader market environment and outcomes for shareholders.

Diagram illustrating the process flow of designing remuneration policies and procedures. Source: BP PLC (United Kingdom) Annual Report 2016.

One of the remuneration committee's key tasks is to develop and agree on the remuneration policies and procedures with the board, including the fee structure and level of remuneration for executive directors of the board and senior management. The board should determine who makes up senior management and if any other group of employees should be covered by the remuneration policy and procedures.

Point for reflection

Well-considered remuneration policy and procedures not only accommodate directors and senior management, but will also cater for certain interest groups within the company's ecosystem, (e.g. gatekeepers).

Gatekeepers

Gatekeepers refer to the group of individuals who act in a risk management and internal controls capacity, for example internal auditors. Remuneration of gatekeepers should be independent of the business lines or functions that they have a responsibility over.

Key considerations relating to the application of this Practice are discussed below:

How should remuneration policy and procedures be determined?

The board should consider the need for the remuneration to be commensurate with the level of responsibility of its directors and senior management. There should be appropriate incentives to attract talent as well as nurture and retain high calibre directors and senior management, whilst taking into account the interests of other stakeholders, including shareholders and employees. In addition, the remuneration policy and procedures should also be aligned with the business strategy and long-term objectives of the company.

It is perhaps useful to consider the elements that can be incorporated in a remuneration policy, particularly for directors and senior management:

Suggestions for the content of a remuneration policy (non-exhaustive):

- Scope of coverage to clarify who is covered by the remuneration policy (i.e. directors, senior management and other group of employees deemed necessary by the remuneration committee and board).
- Link between the remuneration policy and business strategy (i.e. what the current remuneration strategy is, what the overall business strategy entails and whether the remuneration strategy support the business strategy).
- Criteria for determining pay levels (e.g. market benchmarks, level of responsibility, individual's experience, expertise and performance as well as the company's performance).
- Components of remuneration packages (e.g. fixed components covering fees or salary and variable components such as short term and long term incentives).
- Nature of commitments that would entail in the event of early termination of directors and senior management (e.g. severance payment).
- Description of the ways in which current and future risks are taken into account in the remuneration packages and how the company seeks to adjust remuneration to consider long-term performance (e.g. deferred remuneration that is vesting upon performance conditions, clawback provisions or downward revaluation of remuneration awards in the event of the untoward).
- An outline of the procedures for ensuring executive incentives are subjected to stress testing and modelling to ensure their appropriateness under different performance outcomes.
- A protocol for assessing the integrity of remuneration proposals submitted by management and external advisors.

Remuneration packages for executive directors and senior management should involve a balance between fixed and performance-linked (variable) elements. The relative weighing of fixed and variable remuneration for target performance varies with level of responsibility, complexity of the role and typical market practice.

The executive remuneration should be set at a competitive level for similar roles within comparable markets to recruit and retain high quality executive directors and senior management. Individual pay levels should reflect the performance of the individual, skills and experience as well as responsibility undertaken. It is the remuneration committee's duty when recommending incentive schemes to ensure that the linkage between pay and performance is robust.

A summary of the main components of the typical remuneration package of executive directors and senior management as well as their key objectives is set-out below:

Base salary and benefits

- consists of base salary and benefits
- payment for performing the day job
- recognises status and responsibilities
- provides basic benefits, including retirement funding, vehicle and/ or housing allowances, etc
- severance arrangements

Short term incentives

- creates a performance culture
- supports short-term operational objectives
- rewards achievement of financial and short-term personal targets

Long term incentives retention

- long-term focus
- purports to align executives to shareholders
- retains key talents
- addresses skills shortages

As for non-executive directors, the remuneration should take into account fee levels and trends for similar positions in the market and time commitment required from the director (estimated number of days per year). Such package should take into consideration any additional responsibilities undertaken such as a director acting as board chairman, chairman of a board committee or as the senior independent director.

Non-executive directors are normally remunerated by way of fees and other benefits payable (in the form of cash and by a fixed sum) that are approved by shareholders on an annual basis.

In determining the fees for non-executive directors, the following approaches have been commonly identified:

Fee approach	Details
Fixed fees	A simplistic approach that sees an all inclusive lump sum fee being paid to directors. Chairpersons typically receive a fixed fee irrespective of the committees they serve on, or the additional responsibilities that they assume.
Fixed board fee plus set fees for either chairperson or member of a committee	This is the most common approach used to determine non-executive fees.
Fixed fees for each category of meeting, based on a pre-arranged agenda for the ensuing year	The determination of fees is based on an aggregated fee per meeting.
Fixed fees for each category of meeting, with the provision that there is no payment for non-attendance	The determination of fees based on an aggregated fee per meeting, with a condition that attendance is pre-requisite for payment.

The following illustrative disclosure outline examples of the components in the remuneration packages of executive directors and non-executive directors.

Illustrative disclosure

Executive directors' remuneration consists of the following components:

The total reward framework has three components and, in aggregate, is benchmarked against relevant financial services competitors:

- Fixed remuneration – takes into account the size and complexity of the role, individual responsibilities, experience, skills and disclosed market-related pay levels in the financial services industry;
- Short-term incentives ("STI") – are determined based on an STI target set using similar principles to those used for fixed remuneration, and on individual, divisional and Group performance objectives for the year. Performance is measured against risk-adjusted financial targets and non-financial targets that support the Group's strategy; and
- Long-term incentives ("LTI") – are designed to align the remuneration of executives to the long-term performance of the Group and the interests of shareholders. The amount of the award takes into account market benchmarks, individual performance over time, succession potential and key skills.

<table>
<tr><th>Fixed remuneration (34%)</th><th colspan="3">At risk remuneration (variable reward) (66%)</th></tr>
<tr><td rowspan="3">Comprises:
• cash salary;
• salary sacrificed items (items such as cars, electronic devices and other personal expenses; and
• employer superannuation contributions in line with statutory obligations</td><td colspan="2">Short-term incentive (STI) (34%)</td><td>Long-term incentive (LTI) (32%)</td></tr>
<tr><td colspan="2">Maximum opportunity = 150% of Target STI</td><td rowspan="2">Comprises performance share rights which vest over a four-year period if performance hurdles are achieved.</td></tr>
<tr><td>Cash STI

50% of Total STI</td><td>Deferred STI

Restricted shares or share rights

50% of Total STI</td></tr>
</table>

Non-executive directors' remuneration consists of the following components:

Remuneration component	Paid as	Detail
Base fee	Cash	This fee is for service on the Westpac Banking Corporation board. The base fee for the chairman covers all responsibilities, including all board committees.
Committee fees	Cash	Additional fees are paid to other non-executive directors for chairing or participating in board committees.
Employer superannuation contributions	Superannuation	Reflects statutory superannuation contributions which are capped at the superannuation maximum contributions base as prescribed under the Superannuation Guarantee legislation.
Subsidiary board and advisory board fees	Cash	Fees are for service on subsidiary boards and advisory boards. These fees are paid by the relevant subsidiary.

Illustrative disclosure on the remuneration components of executive directors and non-executive directors. Source: Westpac Group (Australia) Annual Report 2016

Can Independent Directors be paid via variable components of remuneration (e.g. share-based payments)?

Whilst there is one school of thought which posits that variable components such as share-based payments can potentially align the interest of the directors with that of the company, proponents of good corporate governance have postulated that such payments may compromise the objectivity of directors and lead to imprudent risk taking by the said directors.

In this regard, companies should be guided by the overarching principle that the remuneration and incentives for independent directors at all times should not conflict with their obligation to bring objectivity and independent judgment on matters discussed at board meetings.

It should be noted that in accordance with **Paragraph 1.01** and **Practice Note 13 of Bursa Malaysia's Listing Requirements**, a person is not considered an independent director if the person is a major shareholder of a listed issuer. This requirement means that an independent director in a listed issuer cannot be remunerated via shares or stock options to an extent that it would result in the said director being a major shareholder (i.e. 10% of the total voting shares of the listed issuer or 5% of the total voting shares in the case where such person would be the largest shareholder).

In addition, as mentioned above, fees payable to non-executive directors shall be by a fixed sum, and not by a commission on or percentage of profits or turnover.

Should the remuneration committee use an outside advisor to provide input on remuneration policies and procedures?

It is probably fair to say that the remuneration committee has the weight of the entire company's expectations upon it. In considering the remuneration policy and procedures, the committee may enlist the help of an advisor, although it should keep the following in mind:

- The committee retains the responsibility over the advisor's work;
- The advisor would naturally want his/her recommendations to be accepted, for reasons of payment of fees and for credibility. The advisor in this regard is inherently susceptible to influences from quarters who intend to leverage on the advisor's presence to lend credence to claims for higher wages; and
- The committee members should refrain from "chasing the market", thus creating unrealistic upward pressure on wages.

Where — Regional/international perspectives

Many advanced jurisdictions call upon listed companies to put in place fair and transparent remuneration policy and procedures as well as to disclose them.

Country	Provision(s)
Singapore	There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors ***(Principle 7)***. The RC should review and recommend to the Board a general framework of remuneration for the Board and key management personnel ***(Guidelines 7.2)***.
Australia	A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders ***(Principle 8)***.
United Kingdom	Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied ***(Principle D1)***. There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors ***(Principle D2)***. Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role ***(Provision D.1.3)***.
South Africa	The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic and positive outcomes in the short, medium and long term ***(Principle 14)***.

Regional/ international perspectives

Australia remains as one of the few countries that have introduced a mechanism that can enable shareholders to "evict" the board over remuneration matters.

Popularly known as the "two-strikes" rule, listed companies under this rule are required to table their remuneration report for approval of shareholders.

If 25% or more of the votes are cast against the report for two consecutive years, shareholders would be entitled to vote on a separate resolution and decide if directors need to vacate their office and stand for re-election.

During the 2017 AGM season, around 9% of the Australian Stock Exchange ("ASX") 200 companies had received a "first strike"[3].

[3] *Two strikes rule* 2017, Morningstar

Remuneration committee

MCCG Intended Outcome 6.0

The level and composition of remuneration of directors and senior management take into account the company's desire to attract and retain the right talent in the board and senior management to drive the company's long-term objectives.

Remuneration policies and decisions are made through a transparent and independent process.

MCCG Practice 6.2
The board has a remuneration committee to implement its policies and procedures on remuneration including reviewing and recommending matters relating to the remuneration of board and senior management. The committee has written terms of reference which deals with its authority and duties and these terms are disclosed on the company's website.

What could go wrong:

- Involvement or influence of major shareholder in setting nominee directors' remuneration.
- Lack of oversight in the design and implementation of directors and senior management's remuneration framework.
- Absence of a transparent process in recommending the remuneration of directors and senior management.
- Lack of responsiveness to stakeholders' concerns on remuneration matters.
- Involvement of executive directors in deciding their own remuneration.

Why

The case for change

Compared to its sister board committees, the remuneration committee is often regarded as a singular purpose committee (i.e. its function is only in respect of remuneration for directors and senior management). Whilst this may be true, to view the remuneration committee of having less of a responsibility compared to other committees is to diminish its standing within the board ecosystem.

It would be fair to say that remuneration is one, if not a main motivator, of the effort that directors and employees alike put into the running of a company. **Therefore, the remuneration committee may "only" have a sole agenda but what it decides upon has an intrinsic bearing on the morale of the company's workforce and thus, its financial performance**.

The logic behind the remuneration committee is for a group of individuals, familiar with the company but also responsive to views of shareholders (and the wider stakeholder group), to be accountable in the determination of executive remuneration, but with no personal financial interest in the decisions thereof[1].

Oliver Williamson, in his now widely-referenced book[2], wryly commented that in the absence of a remuneration committee, "directors would 'appear to write their own contracts with one hand and sign them with the other'".

Consequently, it has become common for boards of listed issuers, as well as not-for-profit and non-governmental organisations, to constitute a committee tasked with reviewing the remuneration framework, policy and procedures. Typically, the coverage is for directors and senior management, but some committees choose to cover the entire company.

[1] Greenbury, R 1995, *Directors' Remuneration*
[2] Williamson, OE 1985, *The Economic Institutions of Capitalism*, New York: Free Press.

The real challenge for this Practice is less about constituting a remuneration committee, it is more of whether the committee has a real say over the company's remuneration affairs. Frequently, the committee functions only as a rubber stamp to gloss over remuneration already determined by the controlling shareholders and/or executive management.

HOW The practice in substance

Bursa's Listing Requirements do not prescribe a remuneration committee, but aspects of directors' remuneration has been enumerated. An example is outlined below:

Paragraph 7.23 of Bursa's Listing Requirements
Fees payable to non-executive directors shall be by a fixed sum, and not by a commission on or percentage of profits or turnover. Salaries payable to executive directors may not include a commission on or percentage of turnover.

Meanwhile, Bank Negara Malaysia via its **Policy Document on Corporate Governance** has mandated the establishment of a remuneration committee for financial institutions, whilst allowing them to combine the nominating committee and remuneration committee[3].

It is important to note that meetings of the remuneration committee are typically planned well in advance to coincide with the review process over remuneration. The committee's review results and recommendations thereof are then tabled to the board for approval.

Anecdotally, the remuneration committees of well-regarded multinational companies operating in Malaysia have featured the following:

- The committee is chaired by an independent director;
- It reviews and recommends remuneration scheme for directors that stretches over a few years, whilst annually reviewing remuneration for the wider employee group;
- The committee is cognisant that remuneration for certain groups may need to be looked at with due regard to specific consideration (e.g. remuneration of internal auditors should be determined by the audit committee so as not to impair the objectivity); and
- Separate sessions are held with the nominating committee as a formal forum to gather insights on the performance of directors and senior management with a view of integrating these considerations in recommending the remuneration of directors and senior management.

Dos

✓ Nominate an independent chairman to lead the committee

✓ Spend adequate time to fully comprehend the complexities of remuneration scheme (e.g. clawback and vesting provisions)

✓ Avoid overlapping advisors – in some companies, it was observed that the management team had engaged consultants whereas the committee had their own advisors. Although this could be beneficial to the company, it could also lead the committee to an impasse if conflicting reports are received.

✓ Conduct periodic review of the remuneration structure and policy to ensure retention of key personnel.

Don'ts

The following would render the application of this practice ineffective:

× Overriding the work of the remuneration committee (e.g. bonuses are paid out before the committee has met).

[3] **Standard 12.1** and **Guidance 12.2 of Bank Negara Malaysia's Policy Document on Corporate Governance**

Facets of well-run remuneration committees:

Objective	Principled	Counselled
The committee members exercise objectivity and are not conflicted in determining remuneration.	The committee has adopted a framework that is based on sound principles (e.g. **Principles for Sound Compensation Practices and Implementation Standards by the Financial Stability Board**).	Professional assistance is sought when required and to lend objectivity to the committee's review.

Point for reflection

Remuneration whilst a great motivating factor for employees, should not be viewed in isolation. Often, dissatisfaction with remuneration is a symptom of a wider malaise, and the remuneration committee may sometimes find it useful to consider wider issues on culture, ethics and strategic direction. This is where interaction with the nominating committee can be useful.

Key considerations relating to the application of this Practice are discussed below:

What are the key responsibilities of a board remuneration committee?

A remuneration committee should have a charter or terms of reference that clearly sets out its role and provides it with all the necessary powers to perform that role. Some of the suggested responsibility areas that can be considered when outlining the terms of reference of a board remuneration committee are as follows:

- support the board in actively overseeing the design and operation of the company's remuneration system;
- review and recommend to the board on the remuneration of non-executive directors, particularly on whether the remuneration remains appropriate to each director's contribution, taking into account the level of expertise, commitment and responsibilities undertaken;
- review and recommend to the board on the total individual remuneration package for executive directors and senior management personnel including, where appropriate, bonuses, incentive payments within the terms of the agreed remuneration policy and based on individual performance;
- oversee the qualitative and quantitative disclosures of remuneration made in the annual report and notice to general meetings; and
- provide clarification to shareholders during general meetings on matters pertaining to remuneration of directors and senior management as well as the overall remuneration framework of the company.

Hot-button issue

A few years ago, a company listed on the New York Stock Exchange gained wide publicity – perhaps not the type coveted – when its chairman received a US$100 million "severance" pay. The "severance" event, written in his contract, was in relation to him relinquishing his position as chief executive officer (he however remained as board chairman).

The amount of payment made clearly raises questions on the considerations that were taken into account in formulating his remuneration package. It also highlights the need for remuneration committee to be more vigilant of such clauses (i.e. severance payment) in the contracts of directors and senior management.

An illustrative disclosure on the terms of reference of a remuneration committee that serves to assist the board in developing and administrating a fair and transparent remuneration procedure for directors, senior management and other key personnel is provided below:

Illustrative disclosure

Terms of reference of the remuneration committee:

a) to review and make recommendations to the Board in relation to the Westpac Group Remuneration Policy (Group Remuneration Policy) and to assess the Group Remuneration Policy's effectiveness and its compliance with Prudential Standards;

b) to review and make recommendations to the Board in relation to the individual remuneration levels of the Chief Executive Officer (CEO), Non-executive Directors, Group Executives, other executives who report directly to the CEO, other persons whose activities in the Committee's opinion affect the financial soundness of Westpac, any person specified by Australian Prudential Regulatory Authority, and any other person the Board determines;

c) to review and make recommendations to the Board in relation to the remuneration structures for each category of persons covered by the Group Remuneration Policy;

d) to review and make recommendations to the Board on corporate goals and objectives relevant to the remuneration of the CEO, and the performance of the CEO in light of these objectives;

e) to review and make recommendations to the Board on short-term incentive (STI) and long-term incentive (LTI) plans and outcomes for Westpac's Group Executives;

f) to review and make recommendations to the Board in relation to approving any and all equity based plans (Equity Plans);

g) to oversee general remuneration practices across the Westpac Group; and
to oversee the enterprise-wide program of work known as the "Workforce Revolution" (i.e. high-performance workforce and culture).

Source: Westpac Banking Corporation Ltd's website 2017

It is also important for the board to ensure that the committee comprises board members who will not benefit personally from their decisions (i.e. individuals concerned must abstain from discussing their own remuneration) and who will give due regard to the interest of shareholders and other stakeholders.

Can the remuneration committee be combined with the nominating committee?

Some listed issuers choose to combine the nominating and remuneration committees (calling them as such). Indeed, a cursory review of the top ten largest companies on Bursa Malaysia based on market capitalisation indicates that seven listed issuers have combined the committees[4].

Given the increased workload of a combined committee, the ability of the committee to accord due attention on the matters discussed and time commitment of the members would need to be considered accordingly in

[4] Of the ten largest listed issuers on Bursa Malaysia, by market capitalisation as at 31 December 2016, seven issuers have combined their nominating and remuneration committee. This includes a financial services group (the combining of such committees is permitted by Bank Negara Malaysia).

deciding as to whether a stand-alone remuneration committee should be established.

How should the remuneration committee be composed?

As stated in the **Guidance to Practice 6.2 of MCCG**, in order to foster objectivity in the deliberations and decision making of the remuneration committee, it is essential to ensure that the committee consist of only non-executive directors with a majority of them being independent directors. At all times, it is important to ensure that executive directors are not involved in deciding their own remuneration.

Executive directors may, however, be invited to participate in selected meetings of the remuneration committee to provide insights, particularly on considerations relating to the performance of the company. The committee may also draw advice and enlist the professional services of experts, if necessary.

The size of the remuneration committee may differ depending upon the requirement of the company and the extent of responsibilities delegated to the committee. The objective is to allow the committee to function efficiently and for all members with appropriate levels of experience and knowledge to participate. Companies may also a have a policy of rotating its remuneration committee members whilst taking into account the need to weigh a member's experience and knowledge against the risk of complacency.

How often should the remuneration committee meet?

The frequency of meetings for a remuneration committee is not prescribed. This should be driven by the needs of the committee, in line with the complexities involved in determining the remuneration packages of directors and senior management.

More frequent meetings may be called as the need arises, especially when there are major changes to the composition of executive directors and/or changes to the corporate structure of the company or its group.

A review of annual reports across the top 50 Malaysian public listed companies (by market capitalisation) in 2016 revealed that remuneration committees averaged 4 meetings a year.

What are some of the common challenges that are faced by the remuneration committee?

Examples of commonly faced challenges in this regard include:

- Recommending the remuneration of directors whose appointments are made outside the purview of the nominating committee, i.e. directors appointed by major shareholders or the government;
- Presence of dominant directors or Large Shareholders who could influence the committee decisions; and
- Small boards may find it difficult to rotate members of remuneration committee to bring in fresh perspectives.

Where — Regional/international perspectives

In many jurisdictions, it is considered as a good practice for remuneration policy and contracts for board members and key executives to be overseen by a special committee of the board comprising either wholly or a majority of independent directors.

Country	Provision(s)
Singapore	The Board should establish a remuneration committee ("RC") with written terms of reference which clearly set out its authority and duties. The RC should comprise at least three directors, the majority of whom, including the RC chairman, should be independent. All of the members of the RC should be non-executive directors ***(Guidelines 7.1)***.
Australia	The board of a listed entity should: (a) have a remuneration committee which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director. ***(Recommendation 8.1)***
United Kingdom	The board should establish a remuneration committee of at least three, or in the case of smaller companies[5], two independent non-executive directors. In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board ***(Provision D.2.1).***

Regional/ international perspectives

The enumeration to establish a remuneration committee is well-established. Boards of public listed companies in Singapore and Australia are called upon to establish a remuneration committee which comprises a majority of independent directors, with the chairman of the committee being independent.

As for United Kingdom, boards of listed companies are called upon to establish a remuneration committee of at least three, or in the case of smaller companies two, independent directors.

[5] A "smaller company" in this context refers to one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

Disclosure of remuneration

MCCG Intended Outcome 7.0

Stakeholders are able to assess whether the remuneration of directors and senior management is commensurate with their individual performance, taking into consideration the company's performance.

MCCG Practice 7.1
There is detailed disclosure on named basis for the remuneration of individual directors. The remuneration breakdown of individual directors includes fees, salary, bonus, benefits in-kind and other emoluments.

MCCG Practice 7.2
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.

MCCG Practice 7.3 (*Step Up*)
Companies are encouraged to fully disclose the detailed remuneration of each member of senior management on a named basis.

Why The case for change

Directors' remuneration has often attracted fascination (or controversy) and public attention due to the somewhat opaque manner in which remuneration is determined and disclosed. In a world where transparency is being valued more and more, clarity in directors' remuneration has become the "new normal".

But, why include senior management? The reasoning is that behind every successful company is a great management team (and vice-versa), and stakeholders should be able to determine if the senior management team is being adequately compensated (or whether they are being paid excessively or their pay is commensurate with their performance). It is important to assure shareholders that key management personnel are also paid with the long-term view of the company's performance. Incentivised remuneration which includes stock options redeemable in different years is one of the common methods used to reward senior management over time.

By making transparent the compensation of the senior management team, it can also help make a meaningful comparison between teams in the same industry and across other industries. Companies can ensure their senior managements personnel are paid well within the industry norms and prevent them from being lured away by competitors. More pertinently, the enhanced transparency will encourage a culture whereby executive remuneration is anchored to appropriate and defensible bases.

What could go wrong:

Disclosures are inaccurate, vague, irreconcilable or simply downright confusing. Some of the items below would also constitute a breach of the listing requirements.

Examples include the following:

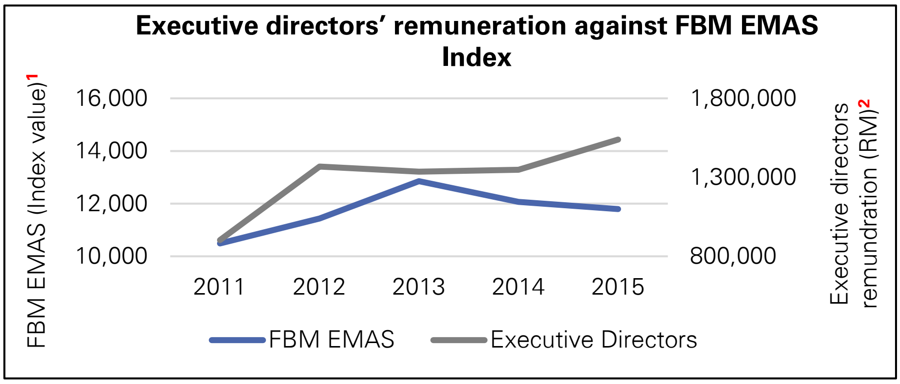
- Lumping the remuneration of executive and non-executive directors;
- Omitting remuneration of certain directors, e.g. those appointed during the year or who have retired;
- Disclosing remuneration received from the company (listed issuer) but not its subsidiaries; and
- Choosing not to disclose the nature of 'other emoluments'.

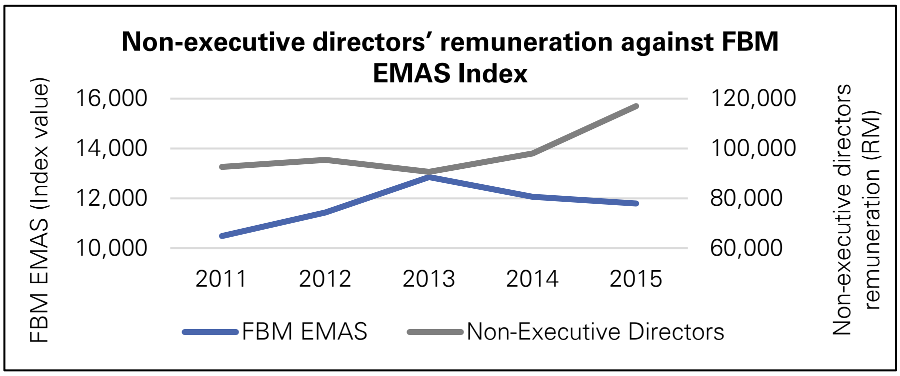
Point for reflection

Remuneration of directors and senior management have recently been under the "microscope" with a growing clamour for transparency. Incidences of high or excessive pay-outs have led to stakeholders increasingly questioning the legitimacy of company directors and senior management's level of pay, even more so when performance of the company is dipping and share price has remained flat or fallen. The disparity between the level of pay between those at the leadership level and an average employee's remuneration at the lower level in a company (commonly referred to as the **pay gap**) is another oft-cited contention.

This sentiment may be unfair, as external events over which the directors and senior management have limited control, may have caused the downswing in a company's performance and they too need to be compensated accordingly for their efforts. As such, regulatory reforms have tried to address their concerns by empowering stakeholders in various ways, such as by equipping them with detailed information, including the considerations involved in formulating the remuneration of directors and senior management.

On the domestic front, over the recent years, it has also been observed that directors and senior management's remuneration have been on a general upward trajectory despite the corresponding weaker performance in domestic capital market.





[1] *Bloomberg Markets 2011- 2015*
[2] *MSWG Corporate Governance Scorecard 2011- 2015,* Minority Shareholder Watchdog Group

Commonly-cited reasons for obscuring disclosure of directors' remuneration on an individual basis:

Security	No added value	Avoiding the spiral effect
Companies often cite privacy and security as reasons for not disclosing. However, it should be noted that the previous disclosure regime (in bands of RM 50,000)[3] already enable a good estimate of a director's remuneration. As such, the need for greater transparency clearly outweighs any security concerns.	A commonly used catch-all reason given by boards in the annual reports is that such disclosure does not add any value for the reader. Shareholders pay attention, now more than ever, to the level of remuneration the directors are paid. Shareholders have been known to vote against payment of director fees in instances where the performance of the company has been poor. It is also important for stakeholders to know that the senior management is adequately compensated in line with the company's long term ambitions.	Less cited is the desire to avoid a culture of benchmarking and thus, driving remuneration levels upwards (the "Lake Wobegon effect")[4]. This argument however, does not take into account of the fact that if the remuneration becomes transparent, benchmarking would be done easily, thus, providing a standard level of remuneration within industries, curbing executives from drawing remuneration which is excessively higher than the industry average.

Dos

- ✓ Being consistent in the categories of remuneration, to promote comparability across periods of time.
- ✓ Ensuring that the disclosure in the corporate governance statement or report matches that in the financial statements.
- ✓ If there is an appreciable increase, outline the grounds behind such increase.
- ✓ In the case of a nominee director, disclosing whether the director's remuneration is paid to the holding company or retained by the director.

Don'ts

The following would render the application of this practice ineffective:

- × Using an open-ended category, e.g. "above RM1 million".

[3] The Lake Wobegon effect is a term used to describe the natural human tendency to over-estimate one's capabilities), and has been linked to a spiral effect on levels of remuneration as the median remuneration is pushed increasingly higher.
[4] Disclosure of directors remuneration in bands of RM50,000 was required under the predecessor **Item 11, Part A, Appendix 9C of Bursa's Listing Requirements**.

How The practice in substance

Apart from the MCCG, the **Companies Act 2016** and **Bursa's Listing Requirements** have also enumerated prescriptions on disclosure of directors' remuneration.

Paragraph 2, Part 1, Fifth Schedule of Companies Act 2016 – contents of directors' report

The report shall state, in respect of the directors or past directors of the company, the amount of –

(a) fees and other benefits distinguished separately, paid to or receivable by them from the company or its subsidiary companies, inclusive of all fees, percentages, bonuses, commissions, compensation for loss of office, any contribution in respect of them under any pension or retirement benefit scheme and inclusive of commission paid or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company;

(b) by the way of a note or otherwise, the estimated money of any other benefits received or receivable by them otherwise than in cash from the company or from any of its subsidiary companies;

(c) the total of the amount paid or receivable by any third party in respect of the services provided to the company or any of its subsidiary companies by any director or past director of the company; and

(d) the total amount, if any, of any indemnity given to or insurance effected for any director, officer or auditor of the company.

Item 11, Part A, Appendix 9C of Bursa's Listing Requirements[5]

The contents of the annual report should include:

The remuneration of directors of the listed issuer (including the remuneration for services rendered to the listed issuer as a group) for the financial year on a named basis, stating the amount received or to be received from the listed issuer and on a group basis respectively. The disclosure must include the amount in each component of the remuneration (e.g. directors' fees, salaries, percentages, bonuses, commission, compensation for loss of office, benefits in kind based on an estimated money value) for each director.

[5] As per the proposed amendments contained in Bursa's Public Consultation (Paper 1/2017).

As for financial institutions, ***Paragraph 5, Appendix 4 of Bank Negara Malaysia's Policy Document on Corporate Governance*** requires disclosure of the total amount of remuneration awards for the chief executive officer and directors for the financial year, including a breakdown of fixed and variable remuneration; deferred and non-deferred remuneration; and the different forms of remuneration used (e.g. cash, shares and share–linked instruments).

All in all, it can be said that the disclosure prescription is straight-forward in practice (with information readily available internally), but as noted earlier, the barriers are not tangible; rather they are psychological hurdles that boards must overcome to truly claim that transparency is the order of the day.

The disclosure of remuneration on a named-basis may initially be uncomfortable, but once becomes widespread it will gradually be taken to be a business-as-usual disclosure and eventually form the "new normal". In the absence of detailed remuneration disclosure, it would be easier to perpetuate an information environment that is characterised by anomalies, thus, leading to distortion of the remuneration system. Succinctly put, transparency fosters confidence in investors by allowing them to understand the companies' basis and motivation behind their remuneration frameworks.

Key considerations relating to the application of this Practice are discussed below:

Are there fixed categories of remuneration to disclose?

The MCCG uses the terms "fees, salary, bonus, benefits in-kind and other emoluments". These are broadly speaking the main categories of remuneration. The classifications are however not cast in stone and the company can accommodate more categories as deemed appropriate (e.g. share-based payment.

An illustrative disclosure showing directors' remuneration on an individual and named basis with the different categories of remuneration is provided on the following page.

Effects of enhanced disclosure

Enhanced disclosure requirements have often been an "eye-opener" and have led to boards revisiting the remuneration policy, not only for the directors but for the management team and rank-and-file employees as well. The overall effect is to align the company's remuneration scheme (for both directors and employees) to a level that is reasonable with the market, where performance is linked and rewarded and where excessive pay-outs cannot be easily masked.

Illustrative disclosure

Remuneration of executive and non-executive directors of BP:

UK (£)	Director's fees	Salaries	Benefits*	Others**	Total
Year ended 31 December 2016					
Independent Non-executive Directors					
Mr. Carl-Henric Svanberg[a]	785,000	-	58,000	-	**843,000**
Mr. Nils Andersen[b]	23,000	-	6,000	-	**29,000**
Mr. Paul Anderson	165,000	-	32,000	-	**197,000**
Mr. Alan Boeckmann	168,000	-	17,000	-	**185,000**
Mr. Admiral Frank Bowman	162,000	-	14,000	-	**176,000**
Mr. Antony Burgmans[c]	47,000	-	21,000	-	**68,000**
Ms. Cynthia Carroll	140,000	-	28,000	-	**168,000**
Mr. Ian Davis	136,000	-	2,000	-	**138,000**
Professor Dame Ann Dowling[d]	150,000	-	2,000	-	**152,000**
Mr. Brendan Nelson	130,000	-	30,000	-	**160,000**
Ms. Phuthuman Nhleko[c]	48,000	-	3,000	-	**51,000**
Ms. Paula Rosput Reynolds[e]	140,000	-	17,000	-	**157,000**
Sir John Sawers	148,000	-	19,000	-	**167,000**
Mr. Andrew Shilston	190,000	-	5,000	-	**195,000**
Total	**2,432,000**	**2,166,000**	**378,000**	**10,808,000**	**15,784,000**

[a] Chairman of the Board.
[b] Appointed on 31 October 2016.
[c] Retired on 14 April 2016.
[d] In addition, Professor Dame Ann Dowling received £25,000 for chairing and being a member of the BP technology advisory council.
[e] The 2015 number has been restated to reflect tax treatment.
**Benefits for Non-executive Directors include travel and other expenses relating to the attendance at board and other meetings. Amounts disclosed have been grossed up using a tax rate of 45%, where relevant, as an estimation of tax due.*
***Comprises of annual bonuses, share-based payments, and pension scheme contribution, other benefits and inducement fees.*

UK (£)	Salaries	Benefits*	Bonuses	Share-based payments	Pension scheme contribution	Others**	Total
Year ended 31 December 2016							
Executive Director							
Mr. Bob Dudley	1,434,000	57,000	1,313,000	4,432,000	1,706,000	-	**8,942,000**
Dr. Brian Gilvary	732,000	67,000	669,000	2,433,000	256,000	-	**4,157,000**
Total	**2,166,000**	**124,000**	**1,982,000**	**6,865,000**	**1,962,000**	**-**	**13,099,000**

**Benefits for Executive Directors include car-related benefits, security assistance, insurance and medical benefits.*
***Comprises of director's fees, other benefits and inducement fees.*

Source: BP Group Annual Report and Form 20-F 2016 (United Kingdom)

Material risk takers

In addition to directors and senior management, there is also increased scrutiny on the remuneration of **material risk takers** in financial institutions.

A material risk taker refers to an officer who is not a member of senior management and who can materially commit/control significant amounts of the financial institution's resources or whose actions are likely to have a significant impact on its risk profile of the financial institution. Alternatively, material risk takers could also refer to those who are among the most highly remunerated officers within the financial institution

As stated in **Standard 19.3 of Bank Negara Malaysia's Policy Document on Corporate Governance,** the remuneration of directors, member of senior management and other material risk taker must be approved by the board annually. In providing information relating to the design and structure of the remuneration system (**Paragraph 4**, **Appendix 4** of the said **Policy Document**), a description should also be provided on the types of officers who are considered as material risk takers.

Who are members of the top five senior management team for which disclosure is propounded under Practice 7.2?

The top five senior management team members refers to the **five highest paid senior management** members in the company.

A member of the senior management team would generally refer to an individual who holds the highest level of management responsibility and decision-making authority within the company. As a rule of thumb, this would include the chief executive officer (who is not a director), other member of the C-suite or direct reports to the chief executive officer.

An illustrative disclosure showing the detailed remuneration of the top five members of the senior management team (on a named basis) is provided below:

Illustrative disclosure

Summary compensation table for the other top five key management and senior management for the financial year ended 31 March 2016:

Name		Fixed Remuneration	Variable Bonus	Provident Fund	Benefits	Total Cash & Benefits
Bill Chang CEO Group Enterprise	Earned	S$909,996	S$2,341,249	S$14,960	S$66,072	S$3,332,277
	Paid Out		S$1,698,580			S$2,689,608
Hui Weng Cheong COO, AIS	Earned	S$663,000	S$1,198,625	S$7,570	S$446,002	S$2,315,197
	Paid Out		S$1,080,922			S$2,197,494
Allen Lew CEO Consumer Australia	Earned	A$1,540,933	A$3,451,390	S$7,992	A$490,712	A$5,490,884
	Paid Out		A$3,366,356			A$5,405,851
Jeann Low Group Chief Corporate Officer	Earned	S$909,996	S$1,403,332	S$13,540	S$62,163	S$2,389,031
	Paid Out		S$1,327,711			S$2,313,410
Yuen Kwan Moon CEO Consumer Singapore	Earned	S$720,000	S$1,470,000	S$14,960	S$61,948	S$2,266,908
	Paid Out		S$1,093,265			S$1,890,173
Total	**Earned**	**S$4,771,756**	**S$9,926,931**	**S$59,022**	**S$1,135,759**	**S$15,893,468**
	Paid Out		**S$8,627,634**			**S$14,594,171**

Source: Singapore Telecommunications Ltd Annual Report 2016

Do companies have to provide disclosures on a company or group level?

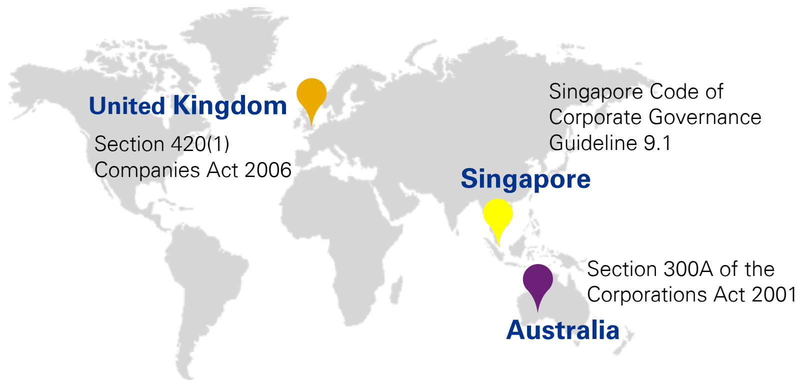
As enumerated in **Item 11, Part A, Appendix 9C** of Bursa's Listing Requirements (stated above), companies have to produce disclosures on **both levels**, namely, company and group.

To illustrate this further, in the event the directors do not receive any additional remuneration for services rendered in the subsidiaries (apart from that received at the company level), a statement to that effect should be reflected in the annual report of the company.

Where

Regional/international perspectives

Disclosure requirements for directors' remuneration (and to some extent, remuneration of the senior management team) have been well established in most developed and some developing jurisdictions.



Regional/ international perspectives
Remuneration disclosure requirements have been well established across advanced economies, as part of wider framework on director's compensation.

Country	Provision(s)
Singapore	The company should report to the shareholders each year on the remuneration of directors, the CEO and at least the top five key management personnel (who are not also directors or the CEO) of the company. The company should fully disclose the remuneration of each individual director and the CEO on a named basis ***(Guideline 9.1)***.
Australia	The directors' report for a financial year for a company must also include (in a separate and clearly identified section of the report): (a) discussion of board policy for determining, or in relation to, the nature and amount (or value, as appropriate) of remuneration of the key management personnel; (b) discussion of the relationship between such policy and the company's performance; and (c) the prescribed details in relation to the remuneration of each member of the key management personnel. ***(Section 300A)*** *Note: Only an extract of Section 300A is outlined above.* ***Section 9*** *of the* ***Corporations Act 2001*** *stipulates that "key management personnel" for an entity has the same meaning as in the accounting standards. The Australian Accounting Standards Board (AASB) defines key management personnel as "those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity"* ***(AASB 124 – Related Party Disclosures)***.

Country	Provision(s)
United Kingdom	The directors of a quoted company must prepare a directors' remuneration report for each financial year of the company ***(Section 420(1) augmented by Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008)***.

United Kingdom's Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

Part 3 - Annual Report of Remuneration

Paragraph 4
The directors' remuneration report must, for the relevant financial year, for each person who has served as a director of the company at any time during that year, set out in a table in the form set out in paragraph 5 ("the single total figure table") the information prescribed by paragraphs 6 and 7 below.

Paragraph 5
The form of the table required by paragraph 4 is –

Single Total Figure Table						
	a	b	c	d	e	Total
Director 1	xxx	xxx	xxx	xxx	xxx	xxx
Director 2	xxx	xxx	xxx	xxx	xxx	xxx

Paragraph 6
(1) In addition to the columns described in paragraph 7, columns –

(a) must be included to set out any other items in the nature of remuneration which are not set out in the columns headed "(a)" to "(e)"; and

(b) may be included if there are any sub-totals or other items which the directors consider necessary in order to assist the understanding of the table.

(2) Any additional columns must be inserted before the column marked "Total".

Paragraph 7
(1) the sums that are required to be set out in the columns are –

(a) in the column headed "a", the total amount of salary and fees;

(b) in the column headed " b", all taxable benefits;

(c) in the column headed "c", money or other assets received or receivable for the relevant financial year as a result of the achievement of performance measures and targets relating to a period ending in that financial year[6];

(d) in the column headed "d", money or other assets received or receivable for periods of more than one financial year where final vesting is determined as a result of the achievement of performance measures or targets relating to a period ending in the relevant financial year and is not subject to the achievement of performance measures or targets in a future financial year;

(e) in the column headed "e", all pension related benefits; and

(f) in the column headed "Total", the total amount of the sums set out in the previous columns.

Note: The above only represents an extract.

[6] Excluding those which result from awards made in a previous financial year and where final vesting is determined as a result of the achievement of performance measures or targets relating to a period ending in the relevant financial year or those receivable subject to the achievement of performance measures o targets in a future financial year.

Appendices

Appendix I: Whistleblowing policy

The following is an illustration of a Whistleblowing Policy. In ensuring effectiveness, this sample must be tailored in accordance to the company's needs and circumstances.

Objective of this Policy

All employees are encouraged to raise genuine concerns about possible improprieties in matters of financial reporting, compliance and other malpractices at the earliest opportunity, and in an appropriate way.

This Policy is designed to:

(a) promote and maintain high transparency and accountability in the workplace;

(b) promote good corporate governance practices in the workplace;

(c) ensure that employees can raise concerns without fear of reprisals and safeguard such person's confidentiality;

(d) protect a whistleblower from reprisal as consequence of making a disclosure;

(e) provide a transparent and confidential process for dealing with concerns;

(f) protect the long term reputation of the company;

(g) support the company's values; and

(h) maintain a healthy working culture and an efficient company.

This policy not only covers improprieties in matters of financial reporting, but also:

- negligence in carrying out work obligations;
- fraud;
- corruption, bribery or blackmail;
- criminal offences;
- failure to comply with a legal or regulatory obligation;
- miscarriage of justice;
- endangerment of an individual's health and safety; and
- concealment of any, or a combination, of the above.

Principles

The principles underpinning the Policy are as follows:

- internal procedures to facilitate necessary whistleblowing, in a timely and responsible manner, are in place and made known to all employees of the company;

- all disclosures will be treated fairly and properly, and addressed in an appropriate and timely manner;
- the company will not tolerate harassment or victimisation of anyone raising a genuine concern;
- the identity and personal information of the whistleblower will be protected and kept confidential, unless the individual agrees otherwise or unless otherwise required by law;
- the whistleblower and the alleged wrongdoer will be treated fairly. The whistleblower will be informed of the status of his disclosure and the alleged wrongdoer will be given an opportunity to respond to all allegations at an appropriate time (not necessarily at the start, or during, the investigation);
- personal information, including the identity, of the whistleblower and the alleged wrongdoer shall only be revealed on a 'need-to-know' basis;
- the company will ensure no one will be at risk of suffering some form of reprisal as a result of raising a concern even if the individual is mistaken. The company, however, does not extend this assurance to someone who maliciously raises a matter he knows is untrue; and
- any form of retaliation against individuals who have reported a wrongdoing or who have facilitated with the investigations is a breach of the principal obligation of all staff members to uphold the highest values and integrity.

Covered concerns

A disclosure relating to, but not limited to, either of the following concerns or wrongdoings by any person in the conduct of the business shall be reported:

a) corruption, bribery and fraud;

b) negligence in carrying out work obligations;

c) criminal offence or any breach of the laws of Malaysia;

d) acceptance of gifts/ favour beyond the threshold allowed by the company;

e) misuse and/or misappropriation of the company's funds or assets;

f) impropriety (including financial and operational, etc.) within the company;

g) gross mismanagement within the company (including serious potential breach to the interest of society and environment);

h) breach of code of ethics of the company, including sexual, physical or other abuse of human rights; and

i) act or omission which jeopardises the health and safety of the company's employees or the public.

Reporting procedure

If any employee believes reasonably and in good faith that malpractices exist in the workplace, the employee should report this immediately to the line manager. However, if for any reason the employee is reluctant to do so, then the employee should report the concerns to either the:

- appointed persons; or
- Senior Independent Director or the Chairman of the Audit Committee.

Employees concerned about speaking to another member of staff or who want seek advice how to raise a concern, can speak, in confidence, to an independent third party by calling the whistle-blowing hotline [hotline number]. The independent party will provide the employee with counselling advice. These concerns will be reported to the company without revealing the identity of the whistleblower.

If these channels have been followed and if employees still have unresolved concerns or if employees feel the matter is grave in nature that it cannot be discussed with any of the appointed persons above, they should contact the Senior Independent Director or the Chairman of the Audit Committee at [telephone number and e-mail], being the director identified in the company's annual report as one to whom concerns may be conveyed.

Employees who have raised concerns internally will be informed of who is handling the matter, how they can make contact with them and if there is any further assistance required.

Employees' identities will not be disclosed without prior consent. Where concerns cannot be resolved without revealing the identity of the employee raising the concern (i.e. if the evidence is required in court), a dialogue will be carried out with the employee concerned as to whether and how the matter can progress further.

Consequences of wrongdoing or wrongful disclosure

If the Person (i.e. the whistleblower) has, or is found to have:

- committed a wrongdoing;
- taken serious risks which would likely cause a wrongdoing to be committed;
- made a disclosure not in accordance with the requirements of this policy (for instance, dishonest, mischievous or malicious complaints); or
- participated or assisted in any process pursuant to this policy otherwise than in good faith.

The corrective actions to be taken against that Person will be determined by the Managing Director ("MD") or, if so delegated by the MD, the senior management, which may include, disciplinary measures, formal warning or reprimand, demotion, suspension or termination of employment or services or monetary or other forms of punishment.

Protection

The identity and personal information of the whistleblower will be protected and kept confidential, unless the whistleblower agrees otherwise or unless otherwise required by law.

The whistleblower will be protected from reprisal, including any form of harassment and victimisation, as a consequence of his disclosure.

The whistleblower will be protected under the **Whistleblower Protection Act 2010** if he or she makes a disclosure in good faith to an enforcement agency.

If a whistleblower reasonably believes that he or she is being subjected to reprisal, including harassment and victimisation, as a consequence of whistle-blowing, he may consult or report to the appointed persons:

[Insert list of officers and contacts]

Appendix II:
Board skills matrix form

This form, which is not exhaustive in nature, illustrates a board skills matrix which may be used as a general assessment of the composition, knowledge, skills and experience of the current board. This form may also be used for disclosure in the company's annual report as a summary within the directors' profile section.

This sample evaluation form may be customised, depending on the circumstances of the company.

For Section B to Section H, the board may decide to respond with either of the following options:

Option 1	4 Above average	3 Average	2 Below average	1 Poor
or				
Option 2	Yes Yes			No No

Skill sets	**I**	**II**	**III**	**IV**	**V**	**VI**	**Comments**
A. Composition							
Executive Director							
Non-Independent Non-Executive Director							
Independent Non-Executive Director							
Senior Independent Director							
Age							
Years of service in the company							
Gender							
B. Strategy and entrepreneurship							
Experience in developing corporate strategies for growth							
Operates or has relevant industry experience in operating businesses							
C. Legal and regulatory requirements							
Ability to understand, interpret and effectively apply legislative and regulatory changes (including pertinent laws of Malaysia, Bursa Malaysia's Listing Requirements and other legislations)							

Skill sets	I	II	III	IV	V	VI	Comments
Knowledge on legal, regulatory and business requirements in other countries/ regions in which the company operates							
D. Corporate governance, risk management and internal controls							
Working knowledge on duties and responsibilities of the board, board committees and directors							
Hands-on experience in the fields of governance, risk and controls							
E. Audit, accounting, financial reporting and taxation							
Understands financial statements, including ability to read, analyse and interpret financial statements							
Working knowledge on auditing (external and/ or internal auditing)							
Familiar with IFRS/ MFRS/ FRS and their implications to the company							
Working knowledge of the Malaysian tax regime and key provisions affecting the company							
F. Human capital							
Understands and is familiar with human resource legislation and issues							
Experience in the field of talent retention, capacity building, performance evaluation and skill set development (for directors, senior management and employees)							
G. Sales and marketing							
Experience in sales function, including promoting and marketing products/services							
Understands threats from competitors and how to address them							
H. Production and quality assurance							
Familiar with products and services of the company							
Understands quality issues of products/services							

Checked and compiled by:

Name:
Designation:

Appendix III:
Board and board committee evaluation form

This sample exhibit, which is not exhaustive, illustrates key questions which may be used to assist the process of evaluating the board and board committee.

This sample evaluation form may be customised, depending on the circumstances of the companies concerned.

The Evaluation Form provides ratings from one (1) to four (4), or 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

4 □	**3 □**	**2 □**	**1 □**
Yes, always	Yes, most of the time	Yes, but seldom	No
or			
4 □	**3 □**	**2 □**	**1 □**
Above average	Average	Below average	Poor
or			
Yes □			**No □**
Yes			No

Where any criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Section A: Board mix and composition

1. Does the board review the divisions of responsibilities to reflect changing business circumstances which the company may experience?

Yes □			**No □**
Comment:			

2. Have probable or potential areas of conflicts that may impair independence of the independent directors been resolved? Please state under the comments section on how the conflicts were resolved.

4 □	**3 □**	**2 □**	**1 □**
Comment:			

3. Does the board have the right blend of knowledge and experience to optimize performance and strategy?

4 □	**3 □**	**2 □**	**1 □**
Comment:			

4. Are the right matters for deliberation and decision being reserved for the board?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

5. Are roles and responsibilities of the board and individual directors clearly defined in the board charter?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

6. Does the board work functionally as a team through a mutually respectful and dynamic working relationship that foster trust and esteem?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

7. Do board deliberations bring value and improve the quality of management's decision-making?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

8. Does the board establish its own performance criteria for its directors (addressing attendance, preparedness, and participation with candor)?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

9. Are the directors re-nominated only if they satisfactorily perform based on the established criteria?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

10. Have all directors been complying with the company's independence policies or code of conduct/ ethics without any breaches?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

Section B: Quality of information and decision making

11. Is adequate information on important issues in relation to the company's business sufficiently provided before board meetings?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

12. Is adequate and sufficient information presented to facilitate decision-making on subject matter, i.e. is the information presented in a concise manner, highlighting key issues and risk areas with appropriate details for additional scrutiny, allowing directors to appreciate and assess agenda items of board meetings and to take effective decisions?

4 □	**3** □	**2** □	**1** □
Comment:			

13. Are board meetings carried out in an "open communication" setting with directors contributing in a timely and positive manner for each resolution of concerns?

4 □	**3** □	**2** □	**1** □
Comment:			

14. During the deliberation on matters where certain directors have conflict of interests, including related party transactions, do the directors concerned abstain from the deliberation and decision making?

Yes □			**No** □
Comment:			

15. Do all directors have adequate access to management and/or the Chairman?

4 □	**3** □	**2** □	**1** □
Comment:			

16. Is there an approved set of documented procedures or specific criteria used by the board, for directors to seek professional advice with the cost borne by the company?

Yes □			**No** □
Comment:			

17. Have board meeting minutes been prepared in a timely manner and reflect the decision making process of the board appropriately?

4 □	**3** □	**2** □	**1** □
Comment:			

18. Does the board have in place, a set of approved procedures for its members with regard to conflict resolution?

Yes □			**No** □
Comment:			

Section C: Boardroom activities

19. Do you believe that the board understands its role, authority and priorities?

Yes ◻			No ◻
Comment:			

20. Does the board effectively evaluate the company's values, mission, and strategic and business plans, and echo this consideration on key issues during the financial year under review?

4 ◻	3 ◻	2 ◻	1 ◻
Comment:			

21. Has the board identified a suitable performance framework, i.e. key performance indicators, to monitor executive and senior management's performance?

Yes ◻			No ◻
Comment:			

22. Has the board sufficiently identified and managed risks that may have a considerable impact on the company?

4 ◻	3 ◻	2 ◻	1 ◻
Comment:			

23. Has the board reviewed the company's system of internal control and considered its adequacy and integrity on a regular basis?

4 ◻	3 ◻	2 ◻	1 ◻
Comment:			

24. Does the board periodically review the allocation of powers between management and the board as delineated in the "Limits of Authority" (or its equivalent) and determine if these are consistent with the changing needs of the business?

4 ◻	3 ◻	2 ◻	1 ◻
Comment:			

25. Does the board oversee the development and implementation of a stakeholder communication policy for the company?

Yes ◻			No ◻
Comment:			

26. Does the board ensure that feedback received from stakeholders is considered by the company when making business decisions?

4 ◻	3 ◻	2 ◻	1 ◻
Comment:			

27. Has the board established a succession plan for the chairman/ executive directors and senior management and reviewed it from time to time?

4 □	3 □	2 □	1 □
Comment:			

28. With each director's nomination, does the board consider the mix of the director's characteristics, experience, diverse perspectives and skills that is most appropriate for the company?

4 □	3 □	2 □	1 □
Comment:			

29. Does the board address boardroom diversity and take steps to ensure that women candidates are sought as part of its recruitment process?

4 □	3 □	2 □	1 □
Comment:			

30. Does the board perform its responsibilities in setting and reviewing the remuneration of directors in order to attract and retain suitable directors for the effective functioning of the board?

Yes □			No □
Comment:			

31. Does the chairman oversee an effective decision -making process and ensure crucial alternatives are considered?

4 □	3 □	2 □	1 □
Comment:			

32. Does the chairman aim to ensure the board's workload is appropriately managed and, where suitable, allocated to established board committees with specific terms of reference approved by the board?

4 □	3 □	2 □	1 □
Comment:			

33. Have board members provided significant input and were board members devoting enough time in discussing the business strategy, financial performance and position, and annual business plan?

4 □	3 □	2 □	1 □
Comment:			

34. Does the board adopt guidelines addressing the competing time commitments that are faced when directors serve on multiple boards?

4 □	3 □	2 □	1 □
Comment:			

35. Did board members devote enough time during the year to the affairs of the company?

4 □	**3** □	**2** □	**1** □
Comment:			

Performance evaluation sheet - board committees

		Rating				Remarks
1.	Does each committee have the right composition?	1	2	3	4	
	i) ____________________ committee	☐	☐	☐	☐	
	ii) ____________________ committee	☐	☐	☐	☐	
	iii) ____________________ committee	☐	☐	☐	☐	
	iv) ____________________ committee	☐	☐	☐	☐	
2.	Is the committee providing useful recommendations in assisting the board for better decision-making, and does it consequently maker board meetings more efficient and effective?	1	2	3	4	
	i) ____________________ committee	☐	☐	☐	☐	
	ii) ____________________ committee	☐	☐	☐	☐	
	iii) ____________________ committee	☐	☐	☐	☐	
	iv) ____________________ committee	☐	☐	☐	☐	
3.	Do the members of the committee have sufficient, recent and relevant expertise in fulfilling their role?					
	i) ____________________ committee:	1	2	3	4	
	Director A ______________	☐	☐	☐	☐	
	Director B ______________	☐	☐	☐	☐	
	Director C ______________	☐	☐	☐	☐	
	ii) ____________________ committee:	1	2	3	4	
	Director A ______________	☐	☐	☐	☐	
	Director B ______________	☐	☐	☐	☐	
	Director C ______________	☐	☐	☐	☐	
	iii) ____________________ committee:	1	2	3	4	
	Director A ______________	☐	☐	☐	☐	
	Director B ______________	☐	☐	☐	☐	
	Director C ______________	☐	☐	☐	☐	

		Rating				Remarks
		1	2	3	4	
	iv) ______________________ committee:					
	Director A ________________	☐	☐	☐	☐	
	Director B ________________	☐	☐	☐	☐	
	Director C________________	☐	☐	☐	☐	
4.	Are committee chairs properly discharging their responsibilities, deploying resources and expertise, and providing appropriate reporting and recommendations to the board?	1	2	3	4	
	i) ______________________ committee	☐	☐	☐	☐	
	ii) ______________________ committee	☐	☐	☐	☐	
	iii) ______________________ committee	☐	☐	☐	☐	
	iv) ______________________ committee	☐	☐	☐	☐	
5.	Are the appointments of board and committee chairman based on appropriate criteria? Are the responsibilities of the position, including the ability, experience and expected performance of the candidate properly considered?	1	2	3	4	
	i) ______________________ committee	☐	☐	☐	☐	
	ii) ______________________ committee	☐	☐	☐	☐	
	iii) ______________________ committee	☐	☐	☐	☐	
	iv) ______________________ committee	☐	☐	☐	☐	
6.	Are communications by the board committees of sufficient quality?	1	2	3	4	
	i) ______________________ committee	☐	☐	☐	☐	
	ii) ______________________ committee	☐	☐	☐	☐	
	iii) ______________________ committee	☐	☐	☐	☐	
	iv) ______________________ committee	☐	☐	☐	☐	

		Rating				Remarks
7.	Are the board committee meeting minutes well prepared and comprehensively documented?	1	2	3	4	
	i) ________________________ committee	☐	☐	☐	☐	
	ii) ________________________ committee	☐	☐	☐	☐	
	iii) ________________________ committee	☐	☐	☐	☐	
	iv) ________________________ committee	☐	☐	☐	☐	
8.	Is the board well informed on a timely basis regarding the committee's deliberations?	1	2	3	4	
	i) ________________________ committee	☐	☐	☐	☐	
	ii) ________________________ committee	☐	☐	☐	☐	
	iii) ________________________ committee	☐	☐	☐	☐	
	iv) ________________________ committee	☐	☐	☐	☐	

Checked and compiled by:

____
Name:
Designation:

Appendix IV:
Directors'/ key officers' evaluation form

This sample exhibit, which is not exhaustive, illustrates key questions which may be used to assist the process for the annual evaluation of board directors and key officers, where applicable, and/or evaluation prior to appointment and/or re-appointment.

This sample evaluation form may be customised, depending on the circumstances of the company.

The Evaluation Form provides ratings from one (1) to four (4), or 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

4 □	**3 □**	**2 □**	**1 □**
Yes, always	Yes, most of the time	Yes, but seldom	No
or			
4 □	**3 □**	**2 □**	**1 □**
Above average	Average	Below average	Poor
or			
Yes □			**No □**
Yes			No

Where any criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Name of director/ key officer:

____

Section A: Fit and Proper

1. Has not been questioned, of his/her honesty, integrity, professional conduct or business ethics/practices which are deceitful, oppressive or improper and investigated on complaints lodged

Yes □			**No □**
Comment:			

2. Has shown willingness to maintain effective internal control systems and risk management practices

Yes □			**No □**
Comment:			

3. Possesses relevant qualification, knowledge, experience and ability to understand the technical requirements, risk and management of the company's business

4 □	**3** □	**2** □	**1** □
Comment:			

Section B: Contribution and performance

4. Probes management to ensure management has taken, and suggests Management to take, into consideration the varying opportunities and risks whilst developing strategic plan (this plan may or may not be in writing as long as minutes of meeting provide a discussion of such strategy)

4 □	**3** □	**2** □	**1** □
Comment:			

5. Probes management when there are red flags/concerns which could, amongst others, indicate possible non-compliance of regulatory requirements.

4 □	**3** □	**2** □	**1** □
Comment:			

6. Provides logical honest opinions on issues presented and is not afraid of expressing disagreement on matters during the meeting, if any

4 □	**3** □	**2** □	**1** □
Comment:			

7. Receives feedback from board and/ or committee and incorporates feedback obtained into decision-making process in an objective manner

4 □	**3** □	**2** □	**1** □
Comment:			

8. Defends own stand through constructive deliberations at board and/ or committee meetings, where necessary

4 □	**3** □	**2** □	**1** □
Comment:			

9. Tackles conflicts and takes part in proposing solutions

4 □	**3** □	**2** □	**1** □
Comment:			

10. Offers practical and realistic advice to board and/ or committee discussions

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

11. Takes initiative to demand for additional information, where necessary

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

12. Tests quality of information and assumptions

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

13. Reviews and relates short-term concerns to long-term strategy

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

14. Contributes to risk management initiatives

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

15. Contributes personal knowledge and experience into the consideration and development of strategy

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

16. Facilitates objective-oriented decision- making process

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

17. Prioritises context of issues to be in line with objectives

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

18. Effectively and proactively follow up on areas of concern

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

19. Demonstrates willingness to devote time and effort to understand the company, its business and readiness to participate in events outside the boardroom such as site visits

4 □	3 □	2 □	1 □
Comment:			

Section C: Calibre and personality

20. Acts in good faith and with integrity

4 □	3 □	2 □	1 □
Comment:			

21. Attends meetings well prepared and adds value to board and/ or committee meetings

4 □	3 □	2 □	1 □
Comment:			

22. Works constructively with peers, the company secretary and senior management

4 □	3 □	2 □	1 □
Comment:			

23. Offers insight to matters presented with requisite knowledge and skills, and shares information

4 □	3 □	2 □	1 □
Comment:			

24. Encourages others to get things done, is decisive and action-oriented

4 □	3 □	2 □	1 □
Comment:			

25. Articulate in a non-confrontational and comprehensible manner

4 □	3 □	2 □	1 □
Comment:			

26. Understands individual roles and responsibilities and ensures contribution is contemporary with developments

4 □	**3** □	**2** □	**1** □
Comment:			

27. Behaviour engenders mutual trust and respect within the Board and other key officers

4 □	**3** □	**2** □	**1** □
Comment:			

28. Communicates effectively with shareholders

4 □	**3** □	**2** □	**1** □
Comment:			

29. Constructively challenges and contributes to the development of strategy

4 □	**3** □	**2** □	**1** □
Comment:			

30. Scrutinises the performance of management in meeting agreed goals and objectives and monitor reporting of performance

4 □	**3** □	**2** □	**1** □
Comment:			

31. Satisfies himself/herself that financial information is accurate and financial controls and systems of risk management are robust and defensible

4 □	**3** □	**2** □	**1** □
Comment:			

Checked and compiled by:

____

Name:

Appendix V:
Audit committee (AC) evaluation form

This sample exhibit, which is not exhaustive in nature, illustrates key questions which may be used to assist the process for the annual evaluation of audit committee.

Additional questions may need to be included, depending on the circumstances of the companies concerned. The Evaluation Form provides ratings from one (1) to four (4), or 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

4 □	3 □	2 □	1 □
Yes, always	Yes, most of the time	Yes, but seldom	No
or			
4 □	**3 □**	**2 □**	**1 □**
Above average	Average	Below average	Poor
or			
Yes □			**No □**
Yes			No

Where any criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Section A: Quality and composition

1. Are the AC's expectations clearly discussed with, and understood by management, auditors and other advisors?

Yes □			No □
Comment:			

2. Does the AC receive timely information in carrying out its responsibilities as set out under the Audit Committee Charter?

4 □	3 □	2 □	1 □
Comment:			

3. Does the AC chairman have adequate time scheduled to fulfil his responsibilities and knowledge of the relevant matters and is equipped with strong leadership skills?

Yes □			No □
Comment:			

4. Does the AC, together with the nominating committee, develop a succession plan for the AC members, including the AC chairman?

Yes ☐			No ☐
Comment:			

Section B: Skills and competencies

5. Is the AC's independence at a satisfactory level?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

6. Is the AC confident in dealing with any complex and difficult matters brought before it?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

7. How consistent and appropriate is the AC in probing and challenging of what is presented to it?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

8. If there has been any case where the AC is of the view that a matter reported to the board has not been satisfactorily resolved and resulting in a breach of the Listing Requirements, has the AC reported such matter to Bursa Securities? (N/A if no such occurrence)

Yes ☐			No ☐
Comment:			

Section C: Meeting administration and conduct

9. Does the AC regulate its own procedures (i.e. calling of meetings, notice to be given of such meetings, the voting and proceedings of such meetings, keeping of minutes, and custody, production and inspection of such minutes)?

Yes ☐			No ☐
Comment:			

10. Are quorums for AC meetings met by having a presence of majority independent directors?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

11. Are AC meetings run effectively, with adequate time spent on important or emerging issues?

4 □	3 □	2 □	1 □
Comment:			

12. Are AC members able to speak freely during AC meetings?

4 □	3 □	2 □	1 □
Comment:			

13. Is the agenda and associated information (e.g. meeting minutes, financial statements) distributed before AC meetings to allow its members adequate time to study and understand the information?

4 □	3 □	2 □	1 □
Comment:			

14. Does the AC Chairman support contribution on meeting agendas from board members, management, the external auditors and the internal auditors?

Yes □			No □
Comment:			

15. Does the AC hold sessions with key members of management (including operational managers), if necessary, to understand business risks?

4 □	3 □	2 □	1 □
Comment:			

16. Does the AC review and report to the board, the quarterly results and year-end financial statements, before approval by the board, focusing particularly on:

    i. Changes in or implementation of major accounting policy changes;

    ii. Going concern assumption and ability of the company;

    iii. Significant matters highlighted including financial reporting issues, significant judgments made by management, significant and unusual events or transactions, and how these matters are addressed; and

    iv. Compliance with applicable approved financial reporting standards and other legal requirements?

4 □	3 □	2 □	1 □
Comment:			

17. Does the AC receive both financial and non-financial information from management to assist in its review of quarterly results and year-end financial statements?

4 □	3 □	2 □	1 □
Comment:			

18. Does the AC have full and unrestricted access to any information pertaining to the company or its subsidiaries, wherever necessary and reasonable for the performance of its duties?

4 □	3 □	2 □	1 □
Comment:			

19. Does the AC appraise the external auditors, internal auditors and management on the experience and adequacy of the company's accounting and finance staff?

Yes □			No □
Comment:			

20. Does the AC review and make recommendations to the board on the appointment, re-appointment, and removal of external auditors?

Yes □			No □
Comment:			

21. Does the AC review the appointment, replacement or dismissal of the Head of the Internal Audit function, to ensure continued objectivity of internal audit function?

Yes □			No □
Comment:			

22. Does the AC review the level of fees payable for external audit services provided to ensure the quality of external audit is not compromised?

Yes □			No □
Comment:			

23. Does the AC regularly review the adequacy (including the scope, methodology, competency, resources and authority) and performance (including compliance with relevant standards and regulations, quality of internal audit and quality of report) of the internal audit function?

4 □	3 □	2 □	1 □
Comment:			

24. Does the AC review the internal audit plan, processes and results of internal audit assessments or investigation undertaken?

4 □	3 □	2 □	1 □
Comment:			

25. Where an accounting treatment is open to a different approach, does the AC consider the appropriateness of the associated accounting policies adopted by discussing with management and, where necessary, the external auditors, before decision is made?

4 □	3 □	2 □	1 □
Comment:			

26. Has the AC's established and approved policies governing the provision of non-audit services (by quantum and type) for which external auditors are specifically excluded?

4 □	3 □	2 □	1 □
Comment:			

27. Has the AC's established and approved policies governing the provision of non-audit services for which the external auditors can be engaged without referral to the AC?

4 □	3 □	2 □	1 □
Comment:			

28. Has the AC's established and approved policies governing the provision of non-audit services for which a case-by-case decision is necessary?

Yes □			No □
Comment:			

29. Does the AC keep the nature and extent of non-audit services provided by the external auditors under review?

Yes □			No □
Comment:			

30. Does the AC meet with the lead audit partner, and other members of the audit team if necessary, at least annually, without the presence of management, to discuss issues arising from the audit, evaluation of the systems of internal control, and any other matters that the auditor may wish to raise with the AC and vice versa?

Yes □			No □
Comment:			

31. Does the AC have private sessions with the internal audit and external audit that facilitates candid discussions of pertinent issues?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

32. Does the AC review the management letters and reports written by the external and internal auditors respectively and monitor the process to conclude that all important matters are resolved/addressed?

Yes ☐			No ☐
Comment:			

33. Does the AC review adjustments to the financial statements that resulted from the external audit?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

34. Does the AC supervise management takes action on recurring finding?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

35. Does the AC understand and approve the process used by management to identify and disclose related party transactions?

Yes ☐			No ☐
Comment:			

36. Does the AC review all related party transactions and conflict of interest situations that may arise within the Group, including any transaction, procedure or course of conduct that may raise questions of management integrity?

Yes ☐			No ☐
Comment:			

37. Does the AC review the validity, completeness and accuracy of disclosures in the financial statements, interim reports and related formal statements prepared?

Yes ☐			No ☐
Comment:			

38. Does the AC review the arrangements by which staff may raise concerns in confidence about possible improprieties in the company?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

39. Does the AC Chairman report to the full board after each meeting?

Yes □			**No** □
Comment:			

40. Where disagreements between the AC and board cannot be resolved, is adequate time set aside for discussion of the issue with a view of resolving the disagreement?

4 □	**3** □	**2** □	**1** □
Comment:			

Checked and complied by:

____

Position:

Designation:

Appendix VI:
Audit committee members' self and peer evaluation form

This sample exhibit, which is not exhaustive in nature, illustrates key questions which may be used to assist the process for the annual evaluation of audit committee members, and/or evaluation prior to appointment.

This sample evaluation form may be customised, depending on the peculiar circumstances of the companies concerned.

The Evaluation Form provides ratings from one (1) to four (4), or 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

4 □	**3 □**	**2 □**	**1 □**
Yes, always	Yes, most of the time	Yes, but seldom	No
	or		
4 □	**3 □**	**2 □**	**1 □**
Above average	Average	Below average	Poor
	or		
Yes □			**No □**
Yes			No

Where any criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Name of AC Member: ____

1. The AC Member exhibits trustworthiness, dynamic participation, integrity, capability to handle conflict constructively, sturdy interpersonal ability, and the enthusiasm to tackle problems proactively.

4 □	**3 □**	**2 □**	**1 □**
Comment:			

2. The AC Member has the appropriate experience to meet the objectives of the AC's Charter, including financial literacy.

4 □	**3 □**	**2 □**	**1 □**
Comment:			

3. Given the company's business and risk environment, assess the skills and experience of the AC Member to analyse and critically evaluate the information presented to the AC.

4 □	**3** □	**2** □	**1** □
Comment:			

4. Assess the AC Member's understanding of the company's significant financial and non-financial risks.

4 □	**3** □	**2** □	**1** □
Comment:			

5. How strong is the AC Member's understanding of the company's compliance processes?

4 □	**3** □	**2** □	**1** □
Comment:			

6. Evaluate the AC Member's understanding of financial and statutory reporting requirements.

4 □	**3** □	**2** □	**1** □
Comment:			

7. Evaluate the AC Member's understanding of the company's significant accounting policies, accounting estimates and financial reporting practices.

4 □	**3** □	**2** □	**1** □
Comment:			

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