
CHAPTER 15 CORPORATE GOVERNANCE**PART A – GENERAL****15.01 Introduction**

This Chapter sets out the requirements that must be complied with by a listed ~~company~~ corporation and its directors with regard to corporate governance.

PART B – DIRECTORS**15.02 Composition of the board of directors**

- (1) A listed ~~company~~ corporation must ensure that at least 2 directors or 1/3rd of the board of directors of a listed ~~company~~ corporation, whichever is the higher, are independent directors.
- (2) If the number of directors of the listed ~~company~~ corporation is not 3 or a multiple of 3, then the number nearest 1/3rd ~~shall~~ must be used.
- (3) In the event of any vacancy in the board of directors, resulting in the non-compliance with sub-Rule (1) above, a listed ~~company~~ corporation must fill the vacancy within 3 months.

15.03 Undertaking and letter by directors

- (1) A person who is appointed as a director of a listed ~~company~~ corporation, must give to the Exchange immediately after his appointment and in any event not later than 14 days ~~thereafter that~~, an undertaking in the form of ~~Appendix 3C~~ as may be prescribed by the Exchange in respect of that listed ~~company~~ corporation.

[Cross reference: Annexure GN15-C of Guidance Note 15]

- (2) A person who is appointed as an independent director must give to the Exchange immediately after his appointment and in any event not later than 14 days ~~thereafter that~~, a letter in the form of ~~Appendix 3D~~ as may be prescribed by the Exchange.

[Cross-reference: Annexure GN15-D of Guidance Note 15]

15.04 Rights of directors

Unless otherwise provided by or subject to any applicable laws or these Requirements, a listed ~~company~~ corporation 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 ~~company~~ corporation 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 ~~company~~ corporation;
- (b) obtaining full and unrestricted access to the advice and services of the company secretary; and
- (c) obtaining independent professional or other advice.

15.05 Qualification, vacation of office and removal of directors

- (1) A listed ~~company~~corporation must ensure that no person is appointed or allowed to act as a director of the ~~company~~corporation or be involved whether directly or indirectly in the management of the ~~company~~corporation, including acting in an advisory capacity in relation to the ~~company~~corporation, if he:-
- (a) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence in connection with the promotion, formation or management of a ~~company~~corporation;
 - (b) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence, involving fraud or dishonesty or where the conviction involved a finding that he acted fraudulently or dishonestly; or
 - (c) has been convicted by a court of law of an offence under the securities laws or the Companies Act 1965,

within a period of 5 years from the date of conviction or if sentenced to imprisonment, from the date of release from prison, as the case may be.
- (2) For the purpose of sub-Rule (1) above, “**securities laws**” means the CMSA, the Securities Industry (Central Depositories) Act 1991 and the Securities Commission Act 1993.
- (3) The office of a director ~~shall~~will become vacant if the director:-
- (a) becomes of unsound mind;
 - (b) becomes bankrupt;
 - (c) is absent from more than 50% of the total board of directors’ meetings held during a financial year; or
 - (d) is convicted by a court of law, whether within Malaysia or elsewhere, in relation to the offences set out in sub-Rules (1)(a), (b) or (c) above.
- (4) For purposes of sub-Rule (3)(c) above, if a director is appointed after the commencement of a financial year, then only the remaining board of directors’ meetings held after his appointment will be taken into account.
- (5) Where a director is removed from office, the listed ~~company~~corporation must forward to the Exchange a copy of any written representations made by the director in question at the same time as copies of such representations are sent to members of the listed ~~company~~corporation under section 128(3)(b) of the Companies Act 1965, unless copies of such representations need not be sent out by reason of the circumstances specified in section 128(4) of the Companies Act 1965.

15.06 Restriction on directorships

- (1) A director of an applicant or a listed ~~company~~corporation must not hold more than 25 directorships in companies, of which:-
- (a) the number of directorships in listed companies ~~shall~~must not be more than 10; and
 - (b) the number of directorships in companies other than listed companies ~~shall~~must not be more than 15.

- (2) For the purposes of this Rule, “**companies**” means companies incorporated under or corporations registered as foreign companies under the Companies Act 1965, regardless of whether such companies are public or private companies or whether they are listed companies or not.

[Cross reference: Guidance Note 9]

15.07 Method of computation

For the purposes of Rule 15.06, a director of an applicant or a listed company/corporation must comply with the method of calculation of number of directorships prescribed by the Exchange.

[Cross reference: Guidance Note 9]

15.08 Directors’ training

- (1) A director of a listed company/corporation 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 companies/corporations as important to enable the directors to effectively discharge their duties. In this respect, the board of directors of a listed company/corporation 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. The board of directors must disclose in the annual report of the listed company/corporation whether its directors have attended training for the financial year. Where any of its directors have not attended any training during the financial year, the board of directors must state the reasons thereof for the non-attendance in the annual report for each director.

[Cross reference: Guidance Note 10]

PART C – AUDIT COMMITTEE

15.09 Composition of the audit committee

- (1) A listed company/corporation must appoint an audit committee from amongst its directors which fulfils the following requirements:-
- (a) the audit committee must be composed of no fewer than 3 members;
 - (b) all the audit committee members must be non-executive directors, with a majority of them being independent directors; and
 - (c) at least one member of the audit committee:-
 - (i) must be a member of the Malaysian Institute of Accountants; or
 - (ii) if he is not a member of the Malaysian Institute of Accountants, he must have at least 3 years’ working experience and:-
 - (aa) he must have passed the examinations specified in Part I of the 1st Schedule of the Accountants Act 1967; or
 - (bb) he must be a member of one of the associations of accountants specified in Part II of the 1st Schedule of the Accountants Act 1967; or

(iii) fulfils such other requirements as prescribed or approved by the Exchange.

(2) A listed company/corporation must ensure that no alternate director is appointed as a member of the audit committee.

[Cross reference: Guidance Note 9]

15.10 Chairman of the audit committee

The members of an audit committee ~~shall~~ must elect a chairman ~~from among their number who shall be themselves who is~~ an independent director.

15.11 Written terms of reference

An audit committee must have written terms of reference which deal with its authority and duties.

15.12 Functions of the audit committee

Without limiting the generality of Rule 15.11 above, a listed company/corporation must ensure an audit committee ~~shall~~ must, amongst others, discharge the following functions:-

- (1) review the following and report the same to the board of directors of the listed company/corporation:-
 - (a) with the external auditor, the audit plan;
 - (b) with the external auditor, his evaluation of the system of internal controls;
 - (c) with the external auditor, his audit report;
 - (d) the assistance given by the employees of the listed company/corporation to the external auditor;
 - (e) the adequacy of the scope, functions, competency and resources of the internal audit functions and that it has the necessary authority to carry out its work;
 - (f) the internal audit programme, processes, the results of the internal audit programme, processes or investigation undertaken and whether or not appropriate action is taken on the recommendations of the internal audit function;
 - (g) the quarterly results and year end financial statements, ~~prior to~~ before the approval by the board of directors, focusing particularly on:-
 - (i) changes in or implementation of major accounting policy changes;
 - (ii) significant and unusual events; and
 - (iii) compliance with accounting standards and other legal requirements;
 - (h) any related party transaction and conflict of interests situation that may arise within the listed company/corporation or group including any transaction, procedure or course of conduct that raises questions of management integrity;
 - (i) any letter of resignation from the external auditors of the listed company/corporation; and
 - (j) whether there is reason (supported by grounds) to believe that the listed company's/corporation's external auditor is not suitable for re-appointment; and

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- (2) recommend the nomination of a person or persons as external auditors.

15.13 Attendance of other directors and employees

A listed company/corporation must ensure that other directors and employees attend any particular audit committee meeting only at the audit committee's invitation, specific to the relevant meeting.

15.14 Procedure of audit committee

An audit committee may regulate its own procedure, in particular:-

- (a) the calling of meetings;
- (b) the notice to be given of such meetings;
- (c) the voting and proceedings of such meetings;
- (d) the keeping of minutes; and
- (~~fe~~) the custody, production and inspection of such minutes.

15.15 Audit committee report

- (1) A listed company/corporation must ensure that its board of directors prepare an audit committee report at the end of each financial year that complies with sub-Rules (2) and (3) below.
- (2) The audit committee report must be clearly set out in the annual report of the listed company/corporation.
- (3) The audit committee report ~~shall~~must include the following:-
 - (a) the composition of the audit committee, including the name, designation (indicating the chairman) and directorship of the members (indicating whether the directors are independent or otherwise);
 - (b) the terms of reference of the audit committee;
 - (c) the number of audit committee meetings held during the financial year and details of attendance of each audit committee member;
 - (d) a summary of the activities of the audit committee in the discharge of its functions and duties for that financial year of the listed company/corporation; and
 - (e) a summary of the activities of the internal audit function or activity.

15.16 Reporting of breaches to the Exchange

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

15.17 Rights of the audit committee

A listed company/corporation must ensure that wherever necessary and reasonable for the performance of its duties, an audit committee ~~shall~~must, in accordance with a procedure to be determined by the board of directors and at the cost of the listed company/corporation:-

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- (a) have authority to investigate any matter within its terms of reference;
 - (b) have the resources which are required to perform its duties;
 - (c) have full and unrestricted access to any information pertaining to the listed ~~company~~corporation;
 - (d) have direct communication channels with the external auditors and person(s) carrying out the internal audit function or activity;
 - (e) be able to obtain independent professional or other advice; and
 - (f) be able to convene meetings with the external auditors, the internal auditors or both, excluding the attendance of other directors and employees of the listed ~~company~~corporation, whenever deemed necessary.

15.18 Quorum of an audit committee

In order to form a quorum in respect of a meeting of an audit committee, the majority of members present must be independent directors.

15.19 Retirement and resignation

In the event of any vacancy in an audit committee resulting in the non-compliance of ~~sub~~-Rule 15.09(1) above, a listed ~~company~~corporation must fill the vacancy within 3 months.

15.20 Review of the audit committee

The board of directors of a listed ~~company~~corporation must review the term of office and performance of an audit committee and each of its members at least once every 3 years to determine whether such audit committee and members have carried out their duties in accordance with their terms of reference.

PART D - AUDITORS

15.21 External auditors

A listed ~~company~~corporation must appoint a suitable accounting firm to act as its external auditors, and amongst others, the factors to be considered for the appointment are the adequacy of the experience and resources of the firm and the persons assigned to the audit.

15.22 Removal or resignation of external auditors

Where external auditors are removed from office or give notice to the listed ~~company~~corporation of their desire to resign as external auditors of the listed ~~company~~corporation, the listed ~~company~~corporation must forward to the Exchange a copy of any written representations or written explanations of the resignation made by the external auditors at the same time as copies of such representations or explanations are submitted to the Registrar of the Companies pursuant to section 172A of the Companies Act 1965.

15.23 Review of statements

A listed ~~company~~corporation must ensure that the external auditors review a statement made by the board of directors of a listed ~~company~~corporation pursuant to ~~sub~~-Rule 15.26(b) below, with regard to the state of internal control of the listed ~~company~~corporation and report the results thereof to the board of directors of the listed ~~company~~corporation.

15.24 Right to request for meeting

Upon the request of the external auditor, the chairman of the audit committee ~~shall~~must convene a meeting of the committee to consider any matter the external auditor believes should be brought to the attention of the directors or shareholders.

PART E – CORPORATE GOVERNANCE DISCLOSURE**15.25 Disclosure pursuant to the Code**

A listed ~~company~~corporation must ensure that its board of directors makes the following statements in relation to its compliance with the Malaysian Code on Corporate Governance in its annual report:-

- (a) a narrative statement of how the listed ~~company~~corporation has applied the principles set out in Part 1 of the Malaysian Code on Corporate Governance to their particular circumstances; and
- (b) a statement on the extent of compliance with the Best Practices in Corporate Governance set out in Part 2 of the Malaysian Code on Corporate Governance which statement ~~shall~~must specifically identify and give reasons for any areas of non-compliance with Part 2 and the alternatives to the Best Practices adopted by the listed ~~company~~corporation, if any.

[Cross reference: Guidance Note 11]

15.26 Additional statements by the board of directors

A listed ~~company~~corporation must ensure that its board of directors makes the following additional statements in its annual report:-

- (a) a statement explaining the board of directors' responsibility for preparing the annual audited ~~accounts~~financial statements; and
- (b) a statement about the state of internal control of the listed ~~company~~corporation as a group.

[Cross reference: Guidance Note 11]

PART F – INTERNAL AUDIT**15.27 Internal audit**

- (1) A listed ~~company~~corporation must establish an internal audit function which is independent of the activities it audits.
- (2) A listed ~~company~~corporation must ensure its internal audit function reports directly to the audit committee.

[End of Chapter.]