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

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

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

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

**15.03 Undertaking and letter by directors**

- (1) A person who is a director of a listed issuer at the time this paragraph comes into force or is appointed as a director of a listed issuer after that, must give to the Exchange immediately after this paragraph comes into force or his appointment, whichever is the later, and in any event not later than 14 days after that, an undertaking in the form as may be prescribed by the Exchange.

*[Cross reference: Annexure PN21-C of Practice Note 21; Annexures PN23-C & PN23-G of Practice Note 23]*

- (2) A person who is appointed as an independent director must give to the Exchange immediately after this paragraph comes into force or his appointment, whichever is the later, and in any event not later than 14 days after that, a letter in the form as may be prescribed by the Exchange.

*[Cross reference: Annexure PN21-D of Practice Note 21; Annexures PN23-D & PN23-H of Practice Note 23]*

**15.03A Provision of information by directors**

Where a listed issuer, management company or trustee-manager makes an enquiry with any one of its directors for the purpose of making a disclosure pursuant to these Requirements, such director must provide information promptly to the listed issuer, management company or trustee-manager that-

- (a) is clear, unambiguous and accurate;
- (b) does not contain any material omission; and
- (c) is not false or misleading.

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**15.04 Rights of directors**

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.

**15.05 Qualification, vacation of office and removal of directors**

(1) A listed issuer must ensure that no person is appointed or allowed to act as a director of the issuer or be involved whether directly or indirectly in the management of the issuer, including acting in an advisory capacity in relation to the issuer, 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 corporation;
- (b) has been convicted by a court of law, whether within Malaysia or elsewhere, of an offence, involving bribery, 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 corporations laws of the listed issuer's place of incorporation,

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) [Deleted]

(3) The office of a director will become vacant if the director -

- (a) falls within the circumstances set out in section 208 of the Companies Act;
- (b) [deleted];
- (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 subparagraphs (1)(a), (b) or (c) above.

(4) For the purposes of subparagraph (3)(c) above, if a director is appointed after the commencement of a financial year, then only the board of directors' meetings held after his appointment will be taken into account.

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- (5) Where a director is removed from office, the listed issuer 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 issuer under section 207(3)(b) of the Companies Act, unless copies of such representations need not be sent out by reason of the circumstances specified in section 207(5) of the Companies Act.

#### 15.06 Restriction on directorships in listed issuers

- (1) A director of an applicant or a listed issuer must not hold more than 5 directorships in listed issuers.
- (2) [Deleted]

#### 15.07 [Deleted]

#### 15.08 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.

*[Cross reference: Practice Note 5]*

### PART B(A) – NOMINATING COMMITTEE

#### 15.08A 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 statement must include how the requirements set out in paragraph 2.20A of these Requirements are met and contain the following information:

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- (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 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.

## **PART C – AUDIT COMMITTEE**

### **15.09 Composition of the audit committee**

- (1) A listed issuer must appoint an audit committee from amongst its directors which fulfils the following requirements:
  - (a) the audit committee must be composed of not 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 First 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 First Schedule of the Accountants Act 1967; or
    - (iii) fulfils such other requirements as prescribed or approved by the Exchange.
- (2) A listed issuer must ensure that no alternate director is appointed as a member of the audit committee.

*[Cross reference: Practice Note 13]*

### **15.10 Chairman of the audit committee**

The members of an audit committee must elect a chairman among 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, and such information must be made available on the listed issuer's website.

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**15.12 Functions of the audit committee**

Without limiting the generality of paragraph 15.11 above, a listed issuer must ensure an audit committee, amongst others, discharges the following functions:

- (1) review the following and report the same to the board of directors of the listed issuer:
  - (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 issuer to the external auditor;
  - (e) the adequacy of the scope, competency and resources of the internal audit function and that it has the necessary authority to carry out its work;
  - (f) the internal audit plan, processes, the results of the internal audit assessments, investigation undertaken and whether or not appropriate action is taken on the recommendations;
  - (g) the quarterly results and year-end financial statements, before the approval by the board of directors, focusing particularly on -
    - (i) changes in or implementation of major accounting policy changes;
    - (ii) 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
    - (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 issuer 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 issuer; and
  - (j) whether there is reason (supported by grounds) to believe that the listed issuer's external auditor is not suitable for re-appointment; and
- (2) recommend the nomination of a person or persons as external auditors.

**15.13 Attendance of other directors and employees**

A listed issuer 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;

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- (c) the voting and proceedings of such meetings;
  - (d) the keeping of minutes; and
  - (e) the custody, production and inspection of such minutes.

#### 15.15 Audit committee report

- (1) A listed issuer must ensure that its board of directors prepare an audit committee report at the end of each financial year that complies with subparagraphs (2) and (3) below.
- (2) The audit committee report must be clearly set out in the annual report of the listed issuer.
- (3) The audit committee report 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) [deleted]
  - (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 work of the audit committee in the discharge of its functions and duties for that financial year of the listed issuer and how it has met its responsibilities;
  - (e) a summary of the work of the internal audit function.

#### 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 issuer 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 issuer must ensure that wherever necessary and reasonable for the performance of its duties, an audit committee must, in accordance with a procedure to be determined by the board of directors and at the cost of the listed issuer -

- (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 issuer;
- (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 person(s) carrying out the internal audit function or activity or both, excluding the attendance of other directors and employees of the listed issuer, 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 paragraphs 15.09(1) and 15.10 above, a listed issuer must fill the vacancy within 3 months.

**15.20 Review of the audit committee**

The nominating committee of a listed issuer must review the term of office and performance of an audit committee and each of its members annually 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 auditor**

In appointing an external auditor, a listed issuer must consider, among others –

- (a) the adequacy of the experience and resources of the accounting firm;
- (b) the persons assigned to the audit;
- (c) the accounting firm's audit engagements;
- (d) the size and complexity of the listed issuer's group being audited; and
- (e) the number and experience of supervisory and professional staff assigned to the particular audit.

**15.22 Removal or resignation of external auditors**

Where external auditors are removed from office or give notice to the listed issuer of their desire to resign as external auditors of listed issuer, the listed issuer must forward to the Exchange a copy of any written representations or statement of circumstances connected with the resignation made by the external auditors at the same time as copies of such representations or statement of circumstances are submitted to the Registrar pursuant to section 284 of the Companies Act.

**15.23 Review of statements**

A listed issuer must ensure that the external auditors review a statement made by the board of directors of a listed issuer pursuant to subparagraph 15.26(b) below, with regard to the state of risk management and internal control of the listed issuer and report the results thereof to the board of directors of the listed issuer.

**15.24 Right to request for meeting**

Upon the request of the external auditor, the chairman of the audit committee 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.

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**PART E – CORPORATE GOVERNANCE DISCLOSURE****15.25 Disclosure of corporate governance related information**

- (1) A listed issuer must ensure that its board of directors provides an overview of the application of the Principles set out in the MCCG, in its annual report.
- (2) In addition, the listed issuer must disclose the application of each Practice set out in the MCCG during the financial year, to the Exchange in a prescribed format and announce the same together with the announcement of the annual report. The listed issuer must state in its annual report, the designated website link or address where such disclosure may be downloaded.
- (3) A listed issuer which is a closed-end fund, business trust or REIT is only required to comply with subparagraph (1).

*[Cross reference: Practice Note 9]*

**15.26 Additional statements by the board of directors**

A listed issuer 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 financial statements; and
- (b) a statement about the state of risk management and internal control of the listed issuer as a group.

*[Cross reference: Practice Note 9]*

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

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

**PART G – SPECIFIC REQUIREMENTS FOR A LISTED ISSUER OR SPECIAL PURPOSE ACQUISITION COMPANY INVOLVED IN MOG ACTIVITIES****15.28 Additional specific requirements**

A listed issuer falling within any one of the following categories must comply with the additional governance requirements as may be prescribed by the Exchange:

- (a) a listed issuer admitted as an MOG corporation under the SC's Equity Guidelines;
- (b) a SPAC intending to acquire MOG assets as defined by the Exchange as part of its qualifying acquisition; or

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- (c) a listed issuer whose MOG exploration or extraction activities represent 50% or more of the total assets, revenue, operating expenses or after-tax profit based on its latest published or announced audited financial statements or audited consolidated financial statements, as the case may be.

*[Cross reference: Practice Note 32]*

## **PART H – ANTI-CORRUPTION AND WHISTLE-BLOWING**

### **15.29 Anti-corruption and whistle-blowing**

- (1) A listed issuer and its board of directors must ensure that -
- (a) the following are established and maintained for the listed issuer and its subsidiaries ("**group**"):
    - (i) policies and procedures on anti-corruption that are, at a minimum, guided by the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the Malaysian Anti-Corruption Commission Act 2009; and
    - (ii) policies and procedures on whistle-blowing;
  - (b) the policies and procedures in subparagraph (a) above are reviewed periodically to assess their effectiveness, and in any event, at least once every 3 years; and
  - (c) corruption risk is included in its annual risk assessment of the group.
- (2) A listed issuer must also publish on its website –
- (a) its policy on anti-corruption; and
  - (b) its policy and procedures on whistle-blowing.

[ End of Chapter ]