BURSA MALAYSIA

RISE TOGETHER



Corporate Governance Guide

4th Edition

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Acknowledgement

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BURSA MALAYSIA

Executive Summary

Corporate Governance:
Rise Together

4th Edition

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Executive Summary

Preamble

The theme "Rise Together" is manifested through a two-pronged approach;

Regulators:

Corporate governance in Malaysia is innovative and adaptative, featuring principles and recommended practices that define high standards of governance and promote economic efficiency, sustainable growth and financial stability.

Listed issuers:

A mutually understood governance philosophy is established and imbued throughout listed issuers and the spirit of good governance principles are reflected in the behaviour and decisions.

The **Practices** of the **Malaysian Code on Corporate Governance ("MCCG")** are relied on to shape organisational systems, processes and procedures. Therefore, it is essential that there is clarity by all parties – namely shareholders, the government, regulatory, boards, employees, the general public – on the credo of corporate governance, and the need for such values to permeate throughout companies; moving from agreement to commitment.

Against the backdrop of a rapidly evolving corporate environment, companies need to innovate and also adopt higher order practices and principles. For instance, there is increasing demands for companies to shift their agenda from one that is solely focused on economic value add to one that also considers the environmental and social value add, a.k.a. the "triple bottom line". This in turn calls for regulators to set the tone and pave the path for listed issuers towards sustainability.

Recent global crises combined with complex pressures and demands from stakeholders have sent companies back to the drawing board to rethink and redefine priorities. Boards are now expected to possess capabilities and readiness to formulate a more structured approach to stakeholder attention, harness greater linkages between business and society, devise more comprehensive approaches to compensation, undertake more deliberative decision-making, and focus more attention to board composition and diversity[1].

In light of such transformations, a range of reform measures has been put in place in the recent years, to strengthen the corporate governance ecosystem as a whole. These include revisions to the **MCCG** in April 2021, the introduction of the Securities Commission Malaysia's **Guidelines on the Conduct of Directors of Listed Corporations and their Subsidiaries**, and the **Guidance Note and FAQs on the Conduct of General Meetings for Listed Issuers**, and the introduction of **section 17A** of the Malaysian Anti-Corruption Commission Act along with the **Ministerial Guidelines**, summarised as the "**TRUST Principles**".

[1] Paine, L 2020, *COVID-19 is Rewriting the Rules of Corporate Governance*, Harvard Business Review

In tandem with these developments, this **Corporate Governance Guide ("Guide") by Bursa Malaysia Berhad ("Bursa")** seeks to enrich the reimagining of corporate Malaysia's DNA by deep diving into the responsibilities and composition of the board and board committees, in terms of leadership and effectiveness, audit and risk management, as well as corporate reporting and stakeholder engagement. As such, this Guide neatly complements the existing corporate governance precept by delving into the principles of corporate governance and providing a practical guide to listed issuers to promote the embedding of the corporate governance credo into the development functioning and growth of their business akin to genetic instructions in all living organisms. Despite the complexities against which this latest edition of the Guide is formulated, it takes on a simpler, yet not simplistic, approach to articulate the practical aspects of reimagining the DNA of corporate Malaysia.

As a prelude to the Guide, this Executive Summary serves to provide an overview that articulates the context of the Guide. This Executive Summary is set out over two sections. **Section I** provides an overview on the content of the Guide. **Section II** serves to shed light on the corporate governance disclosure regime in Malaysia.

SECTION I About the Guide

Understanding the Guide

Bursa has updated the 3rd Edition Guide, to deliver this 4th Edition Guide that companies, particularly listed issuers, can effortlessly draw upon for reference on practical application and thoughtful direction related to corporate governance.

Bursa Corporate Governance Guide 2009 (1st edition)

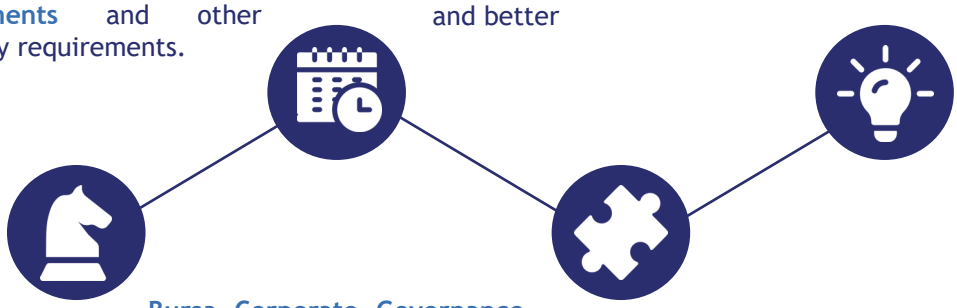
The Guide was based on the Principles and Best Practices of the MCCG 2007, Bursa Securities Listing Requirements and other regulatory requirements.

Bursa Corporate Governance Guide 2013 (2nd edition)

The Guide was updated to reflect the Principles and Recommendations of the MCCG 2012 as well as other amendments to regulatory requirements.

Bursa Corporate Governance Guide 2017 (3rd edition)

The Guide is premised on the MCCG, whilst drawing perspectives from a wide range of authoritative promulgations and better



Bursa Corporate Governance Guide 2021 (4th edition)

The Guide was revised to reflect the Principles and Recommendations of the MCCG 2021 as well as other developments emanating from the regulatory space and revered practices.

This latest version of the Guide, which supersedes its earlier editions, continues to reinforce the "CARE" approach (i.e. C – Comprehend; A – Apply and Re – Report), which underpins the MCCG. Notwithstanding, there are updates and new considerations to the CARE approach.

The **CARE** concept urges companies to give effect to the spirit behind the practices whilst appreciating the significance of the principles in supporting long-term value creation. The salient features of the **MCCG** are summarised below:

The **Comprehend, Apply and Report** approach – CARE

The shift from comply or explain to **apply or explain an alternative**

Greater focus and clarity on the **Intended Outcomes** for each Practice

Guidance to assist companies in applying the Practices

Identify exemplary practices which support companies in moving towards greater excellence – **Step Ups**

Equipped with **3 Principles, 43 Practices** and **5 Step Ups**, the **MCCG** calls upon companies to view corporate governance disclosures as an opportunity to demonstrate to stakeholders that they have a holistic and an effective corporate governance system which governs their processes, people and practices in their achievement of corporate excellence.

These content elements are solely for the purpose of providing guidance only and should not be rigidly adopted by companies in isolation of their circumstances. The Guide does not attempt to establish a model or pattern for the optimum conduct of companies and **should not be regarded as a "silver bullet" for good corporate governance.**

What is the objective of the Guide?

Premised on the objective of bringing about cultural an behavioural change, this Guide serves to provide insights into best practices of corporate governance including how such practices can be applied and internalised in substance rather than in form, so as to help business in building sustainable value.

How to use the Guide?

This guide should be read together with the MCCG.

In addition, this guide has, amongst others, made references to Bursa Securities Listing Requirements, Capital Markets and Services Act 2007 ("CMSA"), Bank Negara Malaysia's Policy Document on Corporate Governance and other relevant regulatory provisions. The enumerations cited in this Guide may not be a verbatim extract from the relevant source documents and as such, users should refer to the source documents for greater details on the references made.

What are the caveats that should be acknowledged in using the Guide?

This Guide is not:

- a "one-stop" solution to all corporate governance needs.
- an expression of opinion by any enforcement agency or regulator.
- exhaustive to cover all the various possible scenarios concerning corporate governance.

Who should use the Guide?

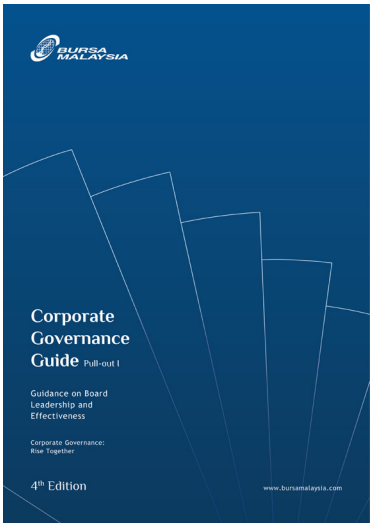
Whilst this Guide is primarily targeted at listed issuers and their related corporations, non-listed companies including state-owned enterprises, small and medium enterprises (SMEs) and licensed intermidiaries are encouraged to draw perspectives from this Guide.

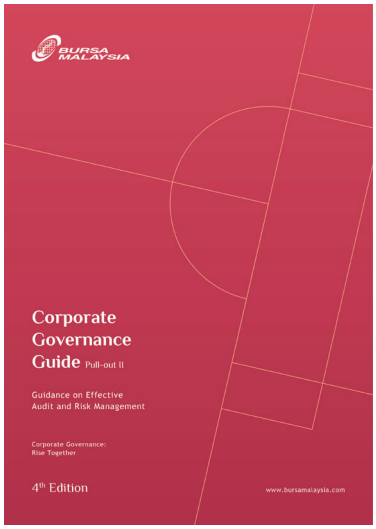
The Guide particularly seeks to help directors to understand their duties towards the company and its stakeholders. It also seeks to guide the broader cross-section of players in the corporate governance ecosystem (particularly, management, gatekeepers and other custodians of corporate governance) to perform their responsibilities and drive the conduct companies.

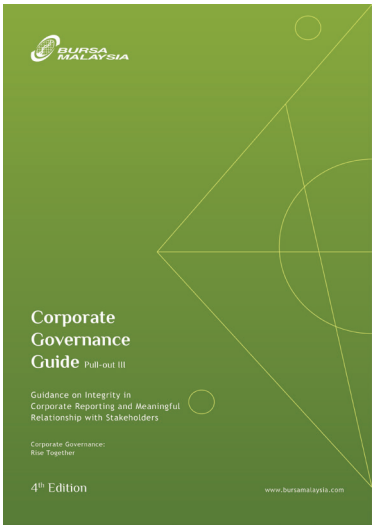
Furthermore, it serves as a measure for stakeholders to hold boards accountable to commitments related to good corporate governance and seek explanations if they are not met.

Structure of the Guide

The Guide has been developed based on a thematic approach to provide readers with a focused view of the **MCCG**, beginning with the board and its responsibilities before addressing audit and risk management and then closing off with corporate reporting and relationship with stakeholders. The Guide is divided into **three individual Pull-outs** which correspond to the respective **Principles of MCCG**. Each **Pull-out** comprises write-ups on the **Practices** and **Step Ups** of **MCCG**.







Principle A: Board Leadership and Effectiveness

Pull-out I → **Board Responsibilities** → **Board Composition** → **Remuneration**

A number of write-ups delve on how a board should be constituted and what it should look like, ensuring sufficient diversity and independence. It should be noted that constituting a board is merely the first step in building a successful company, as much also depends on how the board discharges its responsibilities on an ongoing basis, particularly with regards to setting the tone from the top on ethical conduct and managing a company's sustainability risks and opportunities. The board cannot thrive in isolation; and for it to function successfully, a good support system should be put in place including the provision of timely and accurate information as well as counsel from the company secretary. The board, board committees, and individual directors should be evaluated, to facilitate improvement to their effectiveness. In order for directors to be incentivised to contribute to the long-term success of the company, it is also essential to ensure that the board's and senior management's remuneration packages are well-structured, transparent and clearly linked to the strategic objectives of the company, measured against financial and non-financial key performance indicators.

*Note: References to board composition in this Guide does include alternate director in accordance with **Section 196(4) of Companies Act 2016**.*

Principle B: Effective Audit and Risk Management



It should be noted that independence and financial literacy are the cornerstones of a well-functioning audit committee. The ability of its members to exercise their judgments in an informed and impartial manner is important for the fulfilment of the audit committee's mandate. The write-ups also recognise that successful companies integrate effective governance structures and processes with performance-focused risk management and internal control at every level of the company and across all operations. There is also a focus on greater disclosures on the company's risk management and internal control framework as well as the conduct of the internal audit function to stakeholders.

Principle C: Integrity in Corporate Reporting and Meaningful Relationship with Stakeholders



The key to better relationship with stakeholders is firstly to recognise that stakeholders have a legitimate right in knowing how the company is faring, followed by ongoing efforts to keep open that channel of engagement with stakeholders. A trustworthy relationship can be maintained through a system of corporate reporting that is not only accurate, but also balanced, meaningful and timely. Providing stakeholders with a comprehensive and closely-knitted picture of the company's business will allow them to better appreciate the company's objectives and the quality of its management. As general meetings are important platforms for directors and senior management to engage shareholders to facilitate greater understanding of the company's affairs, the write-ups also explain how companies can undertake proactive measures to bring about greater participation of shareholders at general meetings, by leveraging technology.

Each Pull-out of the Guide is structured in the following manner, and the diagram following captures the Guide in one page:

(a) **Introduction**: A lead-in that articulates and introduces the concepts and key areas which are covered in the Pull-out.

(b) **Write-ups to the Practices and Step Ups of MCCG**: Narrative on the reasoning, guidance for companies to internalise and apply the **Practices** and **Step Ups** of **MCCG** as well as regional/ international developments (features contained are explained below).

(c) **Appendices**: Sample policies and instruments that are designed for the utility and further customisation of companies based on their circumstances and nuances.

The Guide in one page

Legend: New Practices | Updated Practices | Clustered Write-ups

Pull-out I

Write-up to Practice 1.1
The roles and responsibilities of the board are addressed.

Write-up to Practices 1.2, 1.3 and 1.4
The responsibilities, leadership, and independence of the chairman are discussed.

Write-up to Practice 1.5
The roles and responsibilities of the company secretary are explored.

Write-up to Practice 1.6
The importance of information flow as the "lifeblood" of the board.

Write-up to Practice 2.1
The establishment and implementation of a board charter.

Write-up to Practices 3.1 and 3.2
(Overarching theme: Ethics) The innerworkings of a code of conduct and ethics and whistleblowing policies are examined.

Write-up to Practices 4.1, 4.2, 4.3, 4.4 and Step Up 4.5
(Overarching theme: ESG) Board and Management's leadership on ESG matters.

Write-up to Practice 5.1
Periodic board composition 'refreshment" is covered.

Write-up to Practice 5.2
Independence of directors is explored.

Write-up to Practice 5.3 and Step Up 5.4
Tenure limit of independent directors is discussed.

Write-up to Practice 5.5
Appointment of board directors and senior management based on, objective criteria, merit and diversity, is elaborated.

Write-up to Practices 5.6 and 5.7
Discussion is provided on the sourcing of directors and senior management, and disclosure on the appointment and reappointment of directors.

Write-up to Practice 5.8
Commentary is provided on the chairmanship of the nominating committee.

Write-up to Practices 5.9 and 5.10
The importance of diversity markers in boards and management team is explored.

Write-up to Practice 6.1
The assessment of board, board committees, individual directors as well as the attendant disclosures is covered.

Write-up to Practices 7.1 and 7.2
Remuneration policies and procedures and committee set-up are examined.

Write-up to Practices 8.1, 8.2 and Step Up 8.3
Disclosure considerations of directors and senior management's remuneration are detailed.

Pull-out II

Write-up to Practice 9.1
The chairmanship of the audit committee is covered.

Write-up to Practices 9.2 and 9.3
Commentary is provided on new cooling-off period and policies and procedures to assess suitability of the external auditor.

Write-up to Step Up 9.4 and Practice 9.5
Considerations relating to independence and the financial literacy of the audit committee members are covered.

Write-up to Practices 10.1 and 10.2
The establishment of an effective risk management and internal control framework and the attendant disclosures are explored.

Write-up to Step Up 10.3
Coverage is provided on the establishment of a risk management committee.

Write-up to Practices 11.1 and 11.2
The effective functioning of the internal audit function and the attendant disclosures are examined.

Pull-out III

Write-up to Practice 12.1
The implementation of effective, transparent, and regular communication with stakeholders is discussed.

Write-up to Practice 12.2
Considerations relating to integrated reporting are detailed.

Write-up to Practice 13.1
Coverage is provided on the timely dissemination of notice to annual general meeting.

Write-up to Practice 13.2
Commentary is provided on the attendance of directors during general meetings.

Write-up to Practices 13.3, 13.4, and 13.5
The increased deployment of technology in general meetings and the democratisation of shareholders during AGMs are discussed.

Write-up to Practice 13.6
The implementation of minutes circulation of general meeting within 30 days is covered.

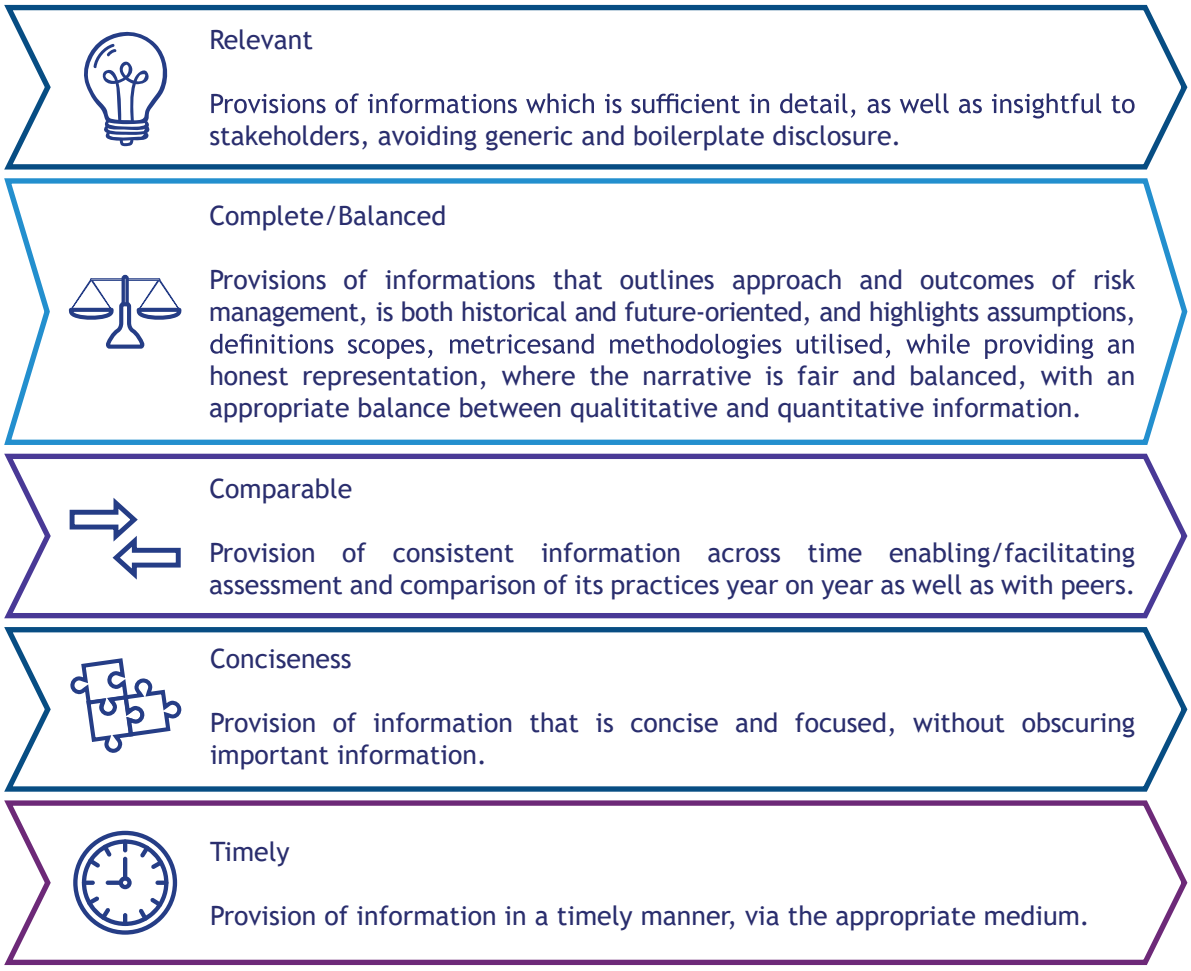
A number of key features showcased in the write-ups to the **Practices** and **Step Ups** are as follows:

Symbol	Feature	Description
WHY?	**Case for change**	The reasoning and value proposition for each **Practice** and **Step Up** are laid out for companies to appreciate the drivers of good corporate governance. This is particularly pertinent for **Practices** and **Step Ups** which amongst others, contain new concepts and notions which may not be well understood.
HOW?	**The practice in substance**	Key considerations relating to the internalisation and application of the **Practices** and **Step Ups** are explored.
WHERE?	**Regional/ International perspectives**	A section on regional/international perspectives is provided for users to be apprised on corporate governance practices in selected jurisdictions (as at the date of the publication of this Guide). The enumerations outlined are only for information purpose. They did not take into account the context and application of the corporate governance practices as well as the legal frameworks in these jurisdictions which may differ from the Malaysian perspectives.
	**Further reflection**	Insights into selected **Practices** and **Step Ups**, are highlighted. How misconceptions or lack of understanding can prevent meaningful application of corporate governance practices, are also discussed.
	**Case studies**	Analyses of prominent cases and their corporate governance implications are expounded.
	**Illustrative disclosures**	Sample disclosures are provided to assist companies in their reporting and communication to stakeholders.

SECTION II Corporate governance disclosures

Attributes of quality disclosures

In providing reliable and meaningful disclosures on corporate governance, listed issuers should be guided by the following which provide guidance on the desired qualitative characteristics of such reporting.



Disclosure requirements on MCCG: CG Overview Statement and CG Report

It should be noted that the **MCCG** took effect immediately upon its update and listed issuers are required to report on the application of the **MCCG** as outlined in Bursa Malaysia Securities Berhad Listing Requirements (**"Bursa Securities Listing Requirements"**)[2], with effect from the **financial year ending on or after 31 December 2021**.

2 Bursa Securities Listing Requirements collectively refer to the **Main Market Listing Requirements** and the **ACE Market Listing Requirements**. Where reference is made to a particular **paragraph of Practice Note** of the **Main Market Listing Requirements**, the corresponding **Rule or Guidance Note** of the **ACE Market Listing Requirements** also applies accordingly.

Disclosure requirements on the **MCCG** are captured below:

Disclosure of corporate governance related information

Paragraph 15.25 of Bursa Securities Listing Requirements

(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.

Note: This is referred to as the "CG Overview Statement".

(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.

Note: This is referred to as the "CG Report".

(3) A listed issuer which is a closed-end fund, business trust or REIT is only required to comply with subparagraph (1).

CG Overview Statement

Paragraph 3.1A, Practice Note 9 of Bursa Securities Listing Requirements

In making the **CG Overview Statement**, a listed issuer must provide a summary of its corporate governance practices during the financial year with reference to the **3 Principles**, which are:

(a) board leadership and effectiveness;

(b) effective audit and risk management; and

(c) integrity in corporate reporting and meaningful relationship with stakeholders.

Paragraph 3.1B, Practice Note 9 of Bursa Securities Listing Requirements

A listed issuer should highlight its **key focus areas** and **future priorities** in relation to its corporate governance practices through the **CG Overview Statement**.

CG Report

Paragraph 3.2, Practice Note 9 of Bursa Securities Listing Requirements

A listed issuer must provide specific disclosures on its application of each **Practice** in the **CG Report**. The listed issuer must ensure that the CG Report provides a fair and meaningful disclosure of the company's corporate governance practice.

Paragraph 3.2A, Practice Note 9 of Bursa Securities Listing Requirements

In disclosing the application of each Practice in the CG Report, a listed issuer must provide meaningful explanation on how it has applied the Practice. If the listed issuer has departed from a Practice, it must –

(a) provide an explanation for the departure; and

(b) disclose the **alternative practice** it has adopted and how such alternative practice achieves the Intended Outcome as set out in the MCCG (**"Intended Outcome"**).

Paragraph 3.2B, Practice Note 9 of Bursa Securities Listing Requirements

In explaining the departure from a Practice as required under paragraph 3.2A(a) above, a listed issuer must not merely state it has complied with the requirements under the Listing Requirements as the reason for the departure. The listed issuer must still provide an explanation for the departure and disclose the alternative practice and how the alternative practice achieves the Intended Outcome as required under **paragraph 3.2A(b)** above.

Note: Refer to the box below for insights into the "apply or explain an alternative" disclosure approach.

Paragraph 3.2C, Practice Note 9 of Bursa Securities Listing Requirements

In addition to the information in **paragraph 3.2A** above, a listed issuer defined as a Large Company[3] under the MCCG (**"Large Company"**) must also disclose the following if it departs from a Practice:

(a) the actions which it has taken or intends to take; and

(a) the timeframe required,

to achieve application of the Practice.

Note: Where Large Companies have departed from practices, they are required to identify and disclose a reasonable timeframe for the adoption of practices, for which a timeframe of three years or less is considered as reasonable. More details on the "apply or explain an alternative" disclosure approach is outlined below.

Paragraph 3.3, Practice Note 9 of Bursa Securities Listing Requirements

In making the disclosures in the CG Report, a listed issuer must carefully consider and be closely guided by the Guidance set out in the **MCCG** ("Guidance").

[3] Large Companies are companies on the FTSE Bursa Malaysia Top 100 Index; or companies with market capitalization of RM2 billion and above, at the start of the companies' financial year.

Paragraph 3.4, Practice Note 9 of Bursa Securities Listing Requirements

A listed issuer must also ensure that the CG Report covers the practices for the whole financial year. If a practice had been in place for only part of the financial year, the listed issuer must state so and the period during which it had been in place.

"Apply or explain an alternative" disclosure approach

The **MCCG** adopts a novel approach of "apply or explain an alternative" to move away from a "box-ticking" approach and promote more meaningful application of corporate governance practices and disclosures. Under this approach, listed issuers must explain how they have applied the practices identified and where there is a departure; there must be clear and meaningful disclosure on why the practice was not applied and how the alternative practice achieves the **Intended Outcome**. The **Intended Outcome** is meant to provide listed issuers with the line of sight and intention of the practices. A reasonable timeline to apply a practice from which the listed issuer has departed from is three years or less.

In order for the "apply or explain an alternative" approach to work and be sustainable, listed issuers need to demonstrate genuine commitment to good governance and give proper consideration to the explanations. Stakeholders on the other hand, should engage listed issuers and scrutinise the disclosures made by them so as to ascertain if the explanations provide a meaningful representation of the listed issuers' corporate governance practices. Communication by listed issuers on plans to adapt and improve corporate governance practices can serve to assure stakeholders that the business is being run for the long-term and in the interests of the stakeholders. Simply put, when there is a mutually reinforcing effort between listed issuers and stakeholders, particularly shareholders, the "apply or explain an alternative" model can be an effective tool in driving continuous improvement on corporate governance practices and disclosures.

It is worth highlighting that whilst the Guide is not a regulatory document by itself, in providing disclosures on the adherence to **MCCG**, **Bursa Securities Listing Requirements** encourages listed issuers to refer to this Guide.

Additional considerations

Paragraph 3.7(a), Practice Note 9 of Bursa Securities Listing Requirements

In making the **CG Overview Statement** and the **CG Report**, a listed issuer must also consider the following:

Ensure that the CG Overview Statement and the CG Report -

i. contain adequate information to enable an informed assessment by shareholders and potential investors of its corporate governance practices; and

ii. align with the spirit and **Intended Outcome** of the **MCCG**.

For this purpose, a listed issuer should refer to the **Corporate Governance Guide** issued by the Exchange.

In drafting its CG Overview Statement, listed issuers can be guided by the following template:

1) Introduction

- Provide insight into the listed issuers corporate governance, i.e. summary of initiatives undertaken during the year
- List weblink to the Corporate Governance Report and other reports which should be read in tandem, i.e. Statement on Risk Management and Internal Control, report by individual board committees, and Sustainability Report

2) Corporate Governance Approach

- Outline listed issuers approach to corporate governance for the year
- Describe the linkage between the listed issuers approach corporate governance and its objectives/strategic business plans
- Capture listed issuers governance structure

3) Summary of Corporate Governance Practices

- Identify Practices from which the listed issuer has departed from, and summarise the explanation
- Summarise the listed issuer's application of corporate governance Practices under the respective umbrellas of Principle A, B, and C of the **MCCG**

4) Focus Areas

- Provide insightful details into the three areas of corporate governance focus by the listed issuers in the year

5) Corporate Governance Priorities

- Provide insights into the short term (1-2 years) plans and long term (3-5 years) plans of the listed issuer vis-à-vis its intentions to enhance governance practices and processes

Note: Listed issuers can provide details on the individual directors' board and board committee meeting attendance; breakdown on board composition by gender. age, nationality, and tenure; list of professional development programmes attended by individual directors; remuneration framework for non-executive directors and executive directors.



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BURSA MALAYSIA

Corporate Governance Guide Pull-out I

Guidance on Board Leadership and Effectiveness

Corporate Governance:
Rise Together

4th Edition

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Contents

Introduction 1
Background 1
Section I : Board leadership 2
Section II : Board dynamics 12
Section III : Sustainable leadership 15
Section IV : Nominating committee 17
Section V : Remuneration committee 21

Practices and Step Ups 23
Board responsibilities
Practice 1.1 24
Practices 1.2, 1.3 and 1.4 39
Practice 1.5 51
Practice 1.6 62
Practice 2.1 73
Practices 3.1 and 3.2 83
Practices 4.1, 4.2, 4.3, 4.4, and Step Up 4.5 101

Board composition
Practice 5.1 145
Practice 5.2 158
Practice 5.3 and Step Up 5.4 165
Practice 5.5 178
Practices 5.6 and 5.7 187
Practice 5.8 199
Practices 5.9 and 5.10 205
Practice 6.1 217

Remuneration
Practices 7.1 and 7.2 238
Practices 8.1, 8.2 and Step Up 8.3 256

Appendices 264
Appendix I : Whistleblowing Policy 265
Appendix II : Board Evaluation Questionnaire relating to ESG or sustainability 271
Appendix III : Individual Directors' Report Card 274
Appendix IV : Board and Board Committee Evaluation Form 276
Appendix V : Directors'/ Key Officers' Evaluation Form 291
Appendix VI : Audit Committee Evaluation Form 299
Appendix VII : Audit Committee Members' Self and Peer Evaluation Form 310
Appendix VIII : Board Skills Matrix 313

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 ("MCCG")** 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 have to fill.

An effective board does not place itself in a comfortable setting and it does not remain static. A dynamic board 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 another 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 other stakeholders as well. Given increased attention by stakeholders on sustainability or Environmental, Social and Governance ("ESG") risks and opportunities, boards need to increase their focus on ESG stewardship.

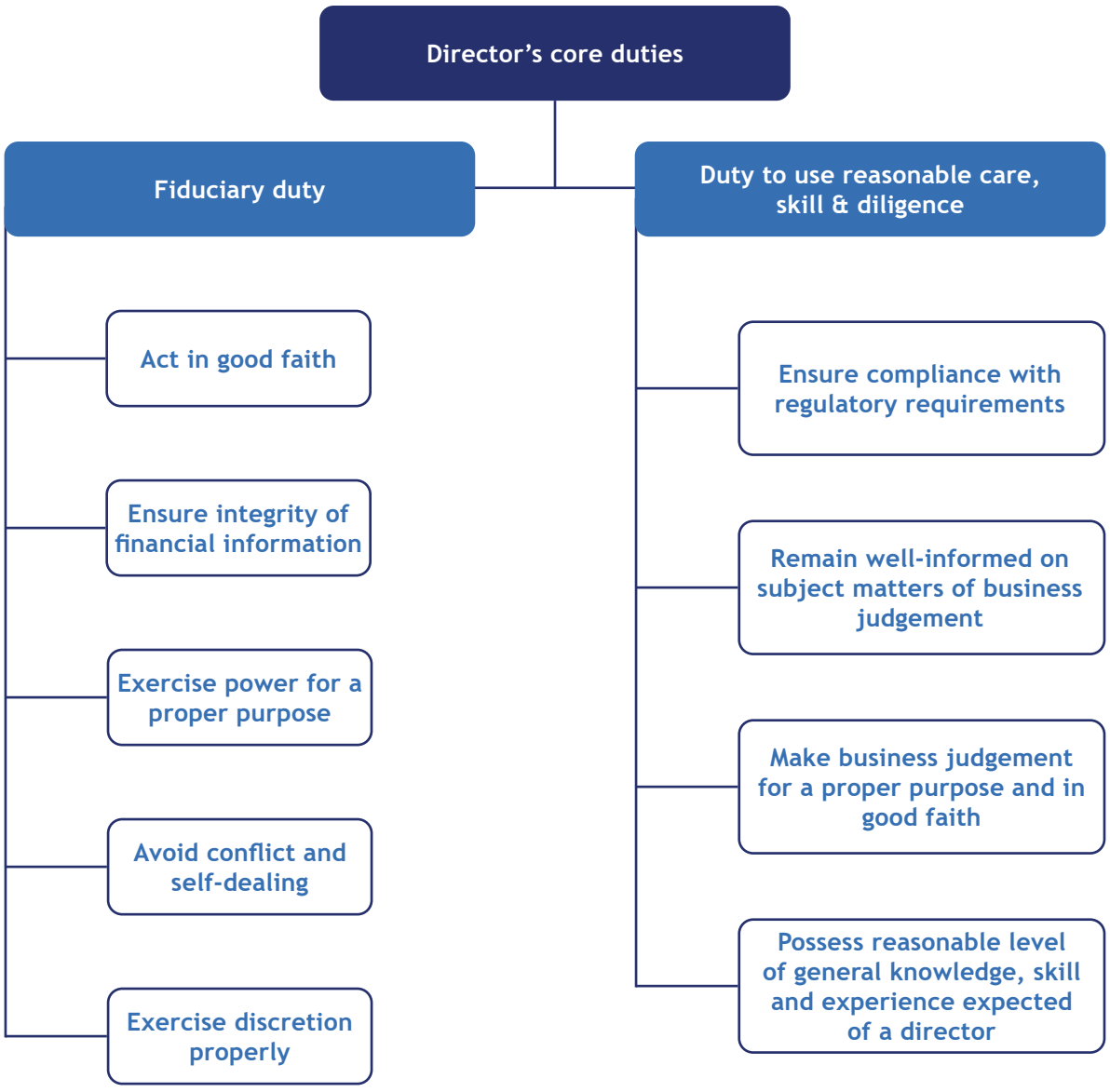
This Introduction is set out over four sections. **Section I** addresses board leadership whilst **Section II** examines board dynamics. **Section III** explores the new dimensions of sustainability leadership. **Section IV** sheds light on the nominating committee and lastly, **Section V** discusses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

SECTION I Board leadership

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.

the board are covered in detail in the write-up to **Practice 1.1**.

Directors of a company, both executive or non-executive, have an obligation to exercise unfettered judgment, in good faith with due care and skill. A director must be aware of the legal parameters that define his or her duties in law. The diagram below illustrates the core duties of a director.



The primary responsibilities and key duties of the board in this regard are well contained within the **Companies Act 2016** as shown below.

Section 211 (1) and (2) of Companies Act 2016 – Functions of Board

(1) The business affairs of a 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 and affairs of the company subject to any modification, exception or limitation contained in this Act or in the constitution of the company.

Section 213 (1), (2) and (3) 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 to a fine not exceeding three million ringgit or both.

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

There is growing expectation on the roles and responsibilities of directors to go beyond the holding company. In Securities Commission Malaysia's **Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries**, the aspect of group governance and the subsequent establishment for a framework of "effective chain of oversight" over the companies' subsidiaries (where applicable) are outlined below:

Chapter 5 of the Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries

Group Governance

5.01;
A listed corporation and its directors must ensure there is an adequate group wide framework for co-operation and communication between the listed corporation and its subsidiaries to enable it to discharge its responsibilities including oversight of group financial and non-financial performance, business strategy and priorities, risk management including material sustainability risks, and corporate governance policies and practices.

5.02;
A listed corporation and its directors must establish and ensure the group wide framework on corporate governance include a code of conduct and ethics, policies and procedures on anti-corruption, whistle blowing, managing conflict of interest, managing material sustainability risks, and board diversity including gender diversity.

5.03;
A subsidiary of a listed corporation and its directors must provide the listed corporation with any information requested by the listed corporation to enable the board of the listed corporation to oversee the performance of its subsidiaries effectively, including assessing non-financial performance of the group.

Board's role in setting strategy

In terms of strategy, the **MCCG** calls upon boards to devote the necessary time and effort to set the company's strategy, as opposed to merely endorsing it. It is illuminating to note that in high-performing companies, board members typically "roll up their sleeves" in governing and setting the strategic direction of the company. For example, the board of Verizon engages with senior leaders in robust discussions about strategic goals and challenges them to execute on the strategic plan, address emerging challenges and disruptions, and promote innovation[1]. In addition to an annual strategy retreat, substantial time is allocated on the strategic review agenda for each regular Verizon board meeting. During these reviews, the Board engages with senior management regarding the competitive landscape, operational objectives and challenges and regulatory developments. In response to the global pandemic, the Verizon board held additional strategy sessions to frame Verizon's "post-pandemic" strategies and outlook.

As alluded to in the example given above, besides setting the strategic direction of the company, the board must also 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, needs or circumstances of the company) and in the midst of rapidly changing environments and market conditions, at regular 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.

Apart from attempts 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 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;
- scheduling "break-out" sessions to allow the board to critique the current strategy; and
- monitoring closely the execution of established strategies.

[1] Verizon, 2021 Proxy Statement.

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.

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.

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

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

detail in the write-up to **Practice 3.2**.

Companies should take heed of the **T.R.U.S.T** principles under the MACC's **Guidelines on Adequate Procedures** which can help organisations to operationalise their respective anti-corruption

MCCG Practice 1.3
The positions of Chairman and Chief Executive Officer ("CEO") are held by different individuals.

Practice 1.2 of MCCG sets out the role of the chairman and further, **Practice 1.3 of MCCG** calls 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

Serves an audience of fellow directors. Runs the board efficiently and in an effective manner. Collectively with the board, the chairman holds the management team accountable towards meeting strategic objectives (covered in detail in the write-up to **Practice 1.2**).

The CEO

Serves an audience of management team and employees. Contributes to strategy and runs the company to meet its objectives. The CEO is accountable to the board.

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.

MCCG Practice 1.3
The positions of Chairman and Chief Executive Officer ("CEO") are held by different individuals.

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

MCCG Practice 1.5
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.

duties. In this regard, as outlined in the write-up to **Practice 1.5**, the company secretary is slowly but surely transforming from being just an administrator and facilitator of board proceedings into an advisor on corporate governance. This desired transformation is also depicted in the latest Corporate Governance Guide for Company Secretaries and Governance Professionals of Listed Issuer released by the Malaysian Institute of Chartered Secretaries and Administrators in December 2020. 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 1.6 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 a one-page document that overly summarises 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

MCCG Practice 1.6
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.

covered in detail in the write-up to **Practice 1.6**.

Professional development and continuous education for directors

It is important for every director to keep abreast of his or her responsibilities as a board member vis-à-vis the listed issuer. 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 better 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[2], 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, organisational and management structure outline, succession planning of senior management.

[2] 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.

MCCG Practice 6.1
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, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations.

are covered in detail in the write-up to **Practice 6.1**.

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

- participating in seminars and workshops that highlight techniques to enhance shareholder value and methods to evaluate 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 allows for the gaining of insights on customers and competitors; and
- visiting company's operations sites to gain insightful perspectives of matters concerning the staff, factory, department or plantation (as the case may be). The value of site visits in "getting to the heart of company culture" where directors can see operations for themselves[3].

Regulatory requirements concerning directors' training are outlined below:

Paragraph 15.08 of Bursa Securities 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;

[3] *Getting to the heart of company culture*, 2019. Australian Institute of Company Directors.

(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: Paragraph 2.2(b)(i) of Practice Note 5 of Bursa Securities Listing Requirements [in respect of paragraph 15.08 (1)], also provides, amongst others that 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 Securities Listing Requirements**);
- 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.

[4] The qualification of directors and other key officers is stated in **paragraph 2.20A of Bursa Securities Listing Requirements** which is described in Footnote 6 of this Introduction.

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.

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.

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

Step 1 — Determine the board's authority, access to timely information, independent advice and company's management, board size and committees in accordance with the company's purpose, objectives and strategies.

Step 2 — Develop roles and responsibilities and identify core competencies and the mix of skills required for the board and its committees.

Step 3 — Establish a well-ordered process to elect and appoint board and board committee members.

Step 4 — Develop key performance indicators for directors.

Step 5 — Conduct annual assessment of the effectiveness and contribution of the board, its committees and individual directors.

Size and composition of the board

MCCG Practice 5.1
The Nomination Committee should ensure that the composition of the board is refreshed periodically. The tenure of each director should be reviewed by the Nomination Committee and annual re-election of a director should be contingent on satisfactory evaluation of the director's performance and contribution to the board.

Practice 5.1 of the MCCG places emphasis on the periodic refreshment of the board composition as well as the need to bring new skills and perspectives to the boardroom to ensure that the board is "future-ready".

Generally, the board comprises three distinct parties, namely, the chairman, the executive directors (usually led by the chief executive or managing director) and the non-executive directors (including the independent directors). **Practice 5.2 of MCCG** has called upon companies to have at least half of

MCCG Practice 5.2
At least half of the board comprises independent directors. For **Large Companies**, the board comprises a majority independent directors.

Independent directors

Independent directors can make significant contributions to a company's decision-making by bringing

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.

to promote greater independence and objectivity, **Practice 5.3 of MCCG** calls for the board to limit the tenure of independent directors to nine years, despite the mandatory 12-year tenure limit for independent directors. The said Practice further calls upon an independent director who continues to serve on the board after a period of nine years, to cease to be an independent director, and become a non-independent non-executive director. In addition to independence and objectivity, this Practice also promotes board refreshment. 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 ninth year, shareholders' approval is sought through a "two-tier" voting process in the following page.

MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

Step Up 5.4 of MCCG calls upon boards to have a policy to limit the tenure of their independent directors to nine years. Considerations relating to the tenure limit for independent directors are covered in detail in the write-up to **Practice 5.3 and Step Up 5.4**.

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.

MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

[5] As stated in **Guidance to Practice 5.3 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.

SECTION III Sustainability leadership

Sustainability or ESG leadership has risen to become a top corporate agenda. More and more

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

In the writeup to **Practice 4.1 - Step Up 4.5 of MCCG**, deeper conversations on what it means to be

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

The board together with management takes responsibility for the governance of sustainability

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

Strategic management of material sustainability matters should be driven by senior management.

discussed in detail in the write-up for **Practice 4.1**. This section lays the foundation for boards to orient themselves with what matters most for their company in terms of ESG oversight.

There needs to be a company-wide drive to effectively communicate the company's sustainability

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

officer, clarity on the role is discussed in detail in the write-up to **Step Up 4.5**.

SECTION IV Nominating committee

Establishing a nominating committee is essential to ensure that there is a 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 fostering healthy interactions among the directors with varied backgrounds, which 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 Securities Listing Requirements mandates the establishment of the nominating committee which must comprise exclusively of non-executive directors, a majority of whom must be independent.

Paragraph 15.08A of Bursa Securities 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 statement must include the application of the listed issuer's fit and proper policy in the nomination and election of its directors, how the requirements set out in **paragraph 2.20A**[6] 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[7];

   (b) the board nomination and election process of directors; and

   (c) the assessment undertaken by the nominating committee in respect of the performance of its board, committees and individual directors together with the criteria used for such assessment.

[6] **Paragraph 2.20A of Bursa Securities 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.

[7] Bursa Securities has vide its directive dated 22 July 2014 clarified that a listed issuer is required to disclose in its annual report issued on or after 2 January 2015, its diversity policy for its board of directors in terms of gender, age and ethnicity as part of the enhanced disclosure requirements to **paragraph 15.08A of Bursa Securities Listing Requirements**.

MCCG Practice 5.5
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.

Directors appointed should be able to devote the required time to serve the board effectively. The board should consider the existing board positions held by a director, including on boards of non-listed companies. Any appointment that may cast doubt on the integrity and governance of the company should be avoided.

Practice 5.5 have made it clear that there should be a formal, rigorous and transparent process for the appointment of directors (including reappointments) and senior management. The amendments to **Bursa Securities Listing Requirements** requiring a listed corporation to have a fit and proper policy (including addressing board quality and integrity) for the appointment and re-appointment of directors of the listed corporation and its subsidiaries will "tighten the screws" on directors' appointment. Three high-level considerations that underpin a fit and proper policy for directors of a listed corporation and its subsidiaries are categorised as follows:

(1) Character and integrity;

(2) Experience and competence; and

(3) Time and commitment.

A far-sighted and effective nominating committee will 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 controlling shareholders. The nominating committee and the board should devote sufficient time to review, deliberate and finalise the nomination and/or selection of directors. In a 2021 survey conducted by Spencer Stuart[8] of 77 nominating/governance committee chairs of the S&P 500, developing a boardroom succession strategy remains as one of the top priorities for nominating committees in the coming three years. Going further down the line, 75% of the chairs say that they start looking for a new director 12+ months before the retirement of a departing director. Closer to home, a study on Malaysian family business stated that only 23% of the companies surveyed say they have a robust, formalised and communicated succession plan[9]. 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.

[8] *Nominating / Governance Chair Survey 2021*. Spencer Stuart.
[9] *Family Business Survey 2018: The Malaysian Chapter*. PwC.

On a related note, it is important to understand and appreciate 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 the board's skills matrix, 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 governance practices and structures are explored and considered.

MCCG Practice 5.8
The Nominating Committee is chaired by an Independent Director or the Senior Independent Director.

MCCG Practice 6.1
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, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations.

board evaluation process are covered in detail in the write-up to **Practice 6.1**.

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, many notable studies out there, even ones that are Asia-focused, concluded that companies which embrace diversity have performed better than their peers[10].

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 pursuing its diversity agenda, the board should begin by assessing its current diversity levels and establishing a policy that demonstrates clear commitment to developing a corporate culture which embraces the different aspects of diversity. The board should also formulate targets and measures (for example, where relevant, by way of key performance indicators or initiatives/development programmes/career advancement plans) of the board, the CEO and other senior management personnel. These targets and measures should be annually assessed and the progress should be monitored.

[10] In a joint study by the International Finance Corporation (IFC) and the Economist Intelligence Unit (EIU) in 2017, the data analyses examined how female representation impacted the performances of more than 2,300 listed companies across China and six ASEAN countries, namely Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. Key findings show that a greater proportion of women in the boardroom and senior management boosts firm performance.

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.

MCCG Practice 5.6
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.

If the selection of candidates was based on recommendations made by existing directors, management or major shareholders, the Nominating Committee should explain why these source(s) suffice and other sources were not used.

In relation to sourcing of directors, **Practice 5.6 of MCCG** calls upon independent sources to identify suitably qualified candidates. As stated in **Guidance to Practice 5.6 of MCCG**, companies should disclose (in its Corporate Governance Report) 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 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 5.6**.

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

SECTION V Remuneration committee

Establishing a committee to assist the board in implementing a remuneration policy is important because it 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 7.2 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 important for the remuneration of directors and senior management to be determined appropriately and fairly. The United Kingdom was the first country to introduce 'say on pay' regulation in 2002, by providing shareholders with an advisory vote on the Directors' Remuneration Report. Reverberating from that, public spotlight on excessive remuneration, windfall pay-outs and the evolution of binding votes on directors' fees have been gaining increasing attention in recent years in relation to directors' remuneration. There must be a clear and reasonable basis to support the determination of remuneration for the board and senior management. 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).

Disclosure surrounding remuneration in the United States requires companies to disclose the median of the annual total compensation of all employees of the company (except the CEO), the annual total compensation of its CEO, and the ratios of those two amounts. Borrowing inspiration from such a practice, consideration may be given to the ratio between the directors and senior management's 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 directors' 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 as well as the establishment of remuneration committee are covered in detail in the write-up to **Practices 7.1 and 7.2** respectively.

MCCG Practice 7.1
The board has remuneration 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 remuneration policies and practices should appropriately reflect the different roles and responsibilities of non-executive directors and senior management. The policies and procedures are periodically reviewed and made available on the company's website.

MCCG Practice 7.2
The board has a Remuneration Committee to implement its remuneration policies and procedures including reviewing and recommending matters relating to the remuneration of board and

MCCG Practice 8.1
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 Step Up 8.3
Companies are encouraged to fully disclose the detailed remuneration of each member of senior management on a named basis.

Considerations on the disclosure of directors and senior management's remuneration are covered in detail in the write-up to **Practices 8.1 and 8.2** as well as **Step Up 8.3**.

Practices & 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-term sustainability. As the highest decision-making authority and as the public "face of the company", it is paramount for the board of directors to consist of capable, dedicated, ethical and dynamic individuals of high integrity.

The board of directors is appointed to play an integral role in terms of overseeing the strategic direction, plans and priorities of the company. A McKinsey survey covering approximately 1,100 directors globally found that whilst boards continue to spend most time on strategy, many directors still want to invest more of their time on this area – 27% of the board agenda consumes strategy whilst performance management yielded 20% as the second most important topic[1]. Strikingly, less than a quarter of directors have only a limited understanding (or none at all) of their company's strategy. When asked about potential business disruptions and emerging risks, such as digitisation and cybersecurity, surprisingly few directors say these topics have found their way onto the board agenda. This certainly makes for a sobering reading. Assuming such statistic represents a true cross-section of directors, then, how comfortable and confident can stakeholders be in the boards of their companies?

The landmark Federal Court decision on the Petra Perdana case[2] gives guidance on the division of powers between the shareholders and directors on managing the affairs of a company and sets out the test to be adopted in determining whether a director has acted in the best interest of the company. It was decided that when the directors are to act in the best interest of the company, the shareholders' resolution was the barometer to assess what is in the best interest of the company. In failing to comply with the restrictions in the shareholders' resolution, the directors had failed to act in the best interest of the company. The following write-up in the ensuing pages will further clarify the scope of directors' duties.

[1] Hint, Martin et al 2018, *A time for boards to act*, McKinsey.
[2] Division of Powers of Management between Shareholders and Directors. 2018. Skrine.

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

> **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.

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?

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

1. **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.

2. **Review, challenge and decide on management's proposals for the company, and monitor its implementation by management;**

   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. The chairman and chief executive officer should play a leading role in this through constant dialogue and periodic reviews of its Limits of Authority. In addition, the board must ensure that the goals and targets set for management are met and in line with the company's long-term objectives.

3. **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[3].

4. 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 and reporting procedures in assessing the performance of management. As such, directors should not be side-lined or blind-sided by any surprise moves that would majorly impact the company.

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

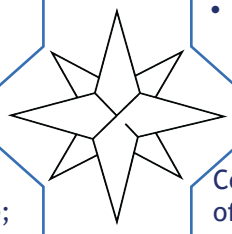
"Setting the North Star"

Financial performance and targets;

- earnings before interest, tax, depreciation and amortisation ("EBITDA");
- returns on asset;
- returns on equity; and
- earnings per share

Operational performance;

- productivity rate;
- time to market new products;
- reduction in carbon footprint;
- supply chain inventory;
- operational health & safety targets



Strategic performance including short, medium and long-term value;

- market share;
- market development;
- sustainability-related targets (i.e.energy efficiency, emissions targets, recognised ESG ratings.

Corporate and organisational culture of the company;

- outcome of cultural surveys and pulse checks;
- regulatory and supervisory findings pertaining to the company
- whistleblowing management

[3] Guidance can be drawn from **Bursa Malaysia Sustainability Reporting Guide** which aims to assist listed issuers in improving their sustainability-related disclosures and **Bursa Malaysia Sustainability Toolkits** which have been designed to provide more detailed guidance on some of the steps that listed issuers can take to embed sustainability into their organisations and meet their disclosure obligations.

MCCG Practice 10.2
The board should disclose the features of its risk management and internal control framework, and the adequacy and effectiveness of this framework.

are provided in the write-up to **Practices 10.1 and 10.2.**

6. 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 result in exposures and alter the risk profile of the company. Considerations in this regard are provided in the write-up to **Practices 10.1 and 10.2.**

7. Set the risk appetite and establish a sound framework to manage risk;

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, monitor and respond to risks factors. Detailed considerations on the framework of internal controls and risk management are provided in the write-up to **Practices 10.1 and 10.2.**

8. 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, together with the support of the nomination committee should ensure that there are established policies for the succession planning of the board. When putting a board 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. Hence it is highly recommended for the board and management to establish a formalised succession planning that lays down appropriate and clear succession models that are practicable (i.e. phased retirement plan, overlapping of incoming and outgoing director, emergency succession plan).

For instance, one of the most pressing succession is the chairman. The board should make a point of discussing chairman succession openly. There should be a clear line of sight at least 12 to 18 months ahead to ensure that the transition of leadership takes on a smooth handover. As best practice, the succession of chairman is typically led by a senior independent director, particularly if he/she is the chairman of the nomination committee[4].

[4] *Boardroom best practice: Succession planning.* 2017. Spencer Stuart

In the context of senior management succession planning, the board should ensure that candidates appointed to senior management positions are of high calibre and competence. The absence of succession planning can result in hasty promotion of individuals who may be unsuitable or not ready for the position. One of the most crucial succession would be the chief executive officer position. As remarked by Chairman Emeritus of McDonald's, Andrew McKenna, "CEO succession is THE number one job of the board"[5]. Beyond the CEO, it is now a market norm for boards to ensure that a successful senior management succession plan is in place for C-suite officers.

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, retention and communication strategy;
- earmarking critical positions and potential vacancies;
- identifying gaps and aligning the current and future competencies;
- identifying high calibre internal candidates;
- developing individual development plans for employees;
- developing and implementing coaching and mentoring programmes; and
- assisting with leadership transition and development, i.e. the right leader at the right time.

[5] *"Leadership in the Field" video interview series.* 2012. Russell Reynolds Associates.

9. Ensure that the company has in place procedures to enable effective communication with stakeholders;

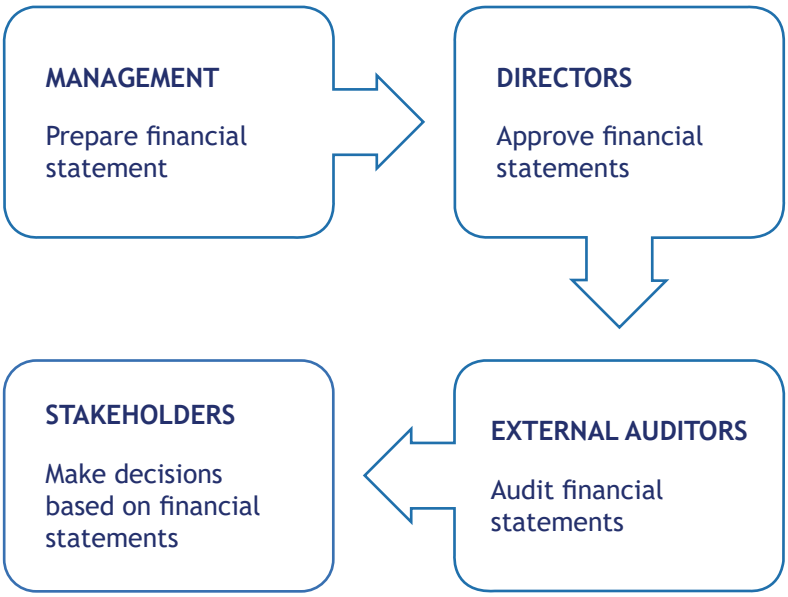
MCCG Practice 12.1
The board ensures there is effective, transparent and regular communication with its stakeholders.

are provided in the write-up to **Practice 12.1**.

10. Ensure that all its directors are able to understand financial statements and form a view on the information presented;

Directors can be instrumental in overseeing a company's financial reporting obligations. The board should ensure that its members are at least able to interpret the "headline numbers" such as revenue, earnings and profit to make an informed strategic decision. As echoed in the Directors Responsibilities for Financial Reporting Guide, "Directors do not need to be accounting experts"[6] (apart of audit committee members). However, they must at least possess financial literacy given that have ultimate responsibility for ensuring that statutory requirements in relation to financial reporting, such as filing with regulator bodies and providing financial information to investors / shareholders, are complied with.

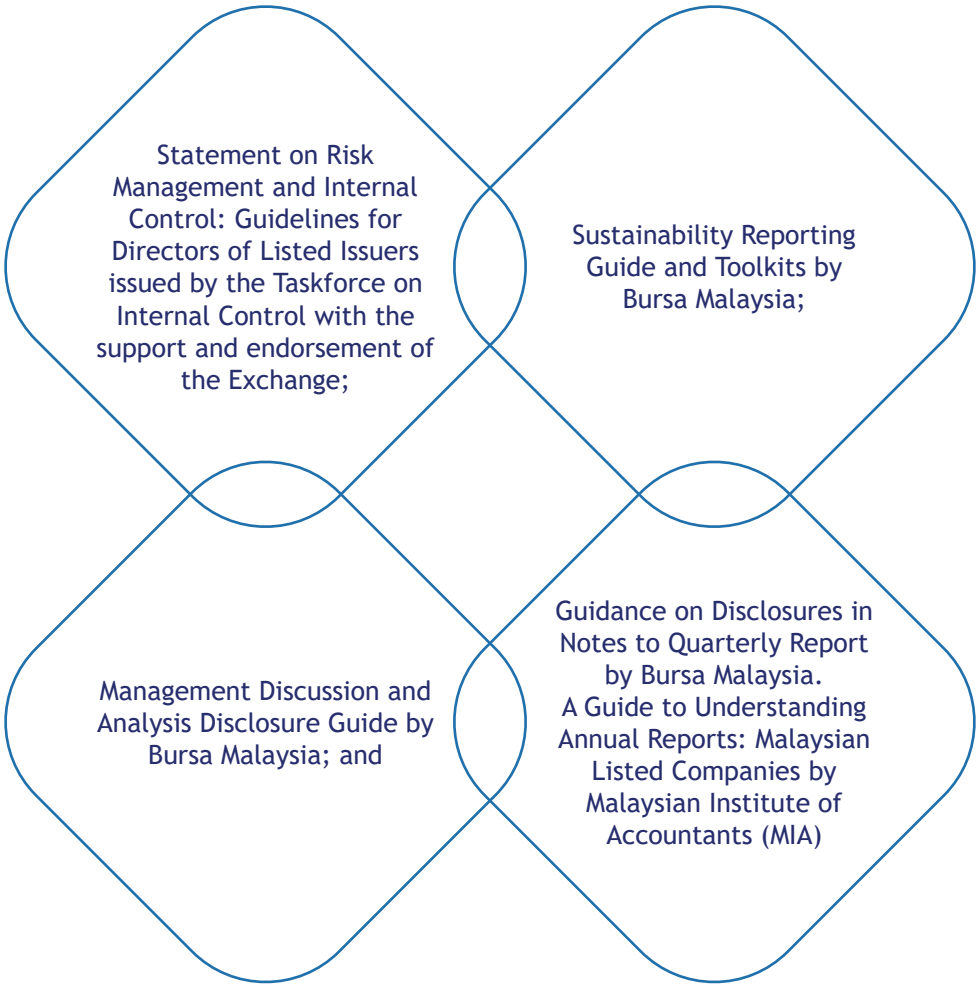
Directors also need to work hand in hand with other stakeholders to ensure that they deliver the core duties on financial reporting. As identified by the ACCA[7], there are four (4) key players in the financial reporting supply chain which are management, directors, external auditors and stakeholders. A diagram below is illustrated to convey the key responsibilities for each player;



[6] Directors Responsibilities for Financial Reporting: *WHAT YOU NEED TO KNOW*. 2017. Chartered Accountants Australia and New Zealand; Association of Chartered Certified Accountants (ACCA).
[7] Ibid

11. Ensure the integrity of the company's financial and non-financial reporting.

Every director should read the financial statements of the company and carefully consider whether the disclosures are consistent with the director's own knowledge of the company's affairs. 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. Guidance can be drawn from relevant documents such as:



For licensed financial institutions, Bank Negara Malaysia ("BNM") has outlined expectations for boards to have in place effective corporate governance arrangements consistent with the long-term viability of a financial institution. In instituting an appropriate "level of supervisory intensity", BNM's Policy Document on Corporate Governance summarises the overall board roles and responsibilities as follows

Standard 8.3 of BNM's Policy Document on Corporate Governance

The board has the overall responsibility for promoting the sustainable growth and financial soundness of a financial institution, and for ensuring reasonable standards of fair dealing, without undue influence from any party. This includes a consideration of the long-term implications of the board's decisions on the financial institution and its customers, officers and the general

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.

commonly known as board charter. Refer to the write-up to **Practice 2.1** for detailed considerations regarding the board charter.

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

setting the strategic direction;

monitoring the outcome of efforts to reach that direction;

setting the company's culture and outlining its values; and

meeting obligations to shareholders and stakeholders.

A 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 drive the outcome of a company's actions.



Therefore, the first step 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 a company, it is imperative that appropriate measures and processes are put in place to allow the directors and management to:

- create, review and assess strategic decisions of the company;
- understand what are the key drivers of company performance;
- ensure that the company's strategy is in line with the operations and external environment; and
- 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 needs 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 challenging it for the sake of showing who is right or what could have been done differently. Discussion on trivial matters, meandering ponderings and retrospection of an after-fact should be minimised[8].

- 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, reputational risks, ethics, e-commerce, digitisation 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[9]. 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, as well as timing of off-site strategy sessions[10]. Please refer to the diagram below *Further reflection: How to run a successful Off-site Strategy Session* to learn how companies can fully maximise their off-site strategy retreats;

Further reflection

Have it twice - leading companies conduct their strategic retreat biannually; once at the end of the year to fashion their strategies, another at mid-year point to review or monitor the strategic milestones;

Have it moderated - the impartial moderator can institute rules such as "compulsory dissenting opinon" whereby one robust counterproposal must be explicitly offered and considered;

Have it simulated - allow directors to pressure-test (i.e. stress-testing and simulations) management's ideas and probe key assumptions;

Have it curated - with detailed operational reviews, a market "primer", technological developments, and at least three key strategy topics which are handpicked for "blue sky sessions".

[8] *What Is and Isn't Micromanaging*, 2013, Strategy+business
[9] Frish B and Chandler L 2006. *Off-Sites That Work*, Harvard Business Review
[10] Bhagat C et.al 2013, *Tapping the strategic potential of boards*, McKinsey

- Group governance or the increased oversight of subsidiaries is taking a stronghold in terms of governance development and regulatory expectations. In Securities Commission Malaysia's **Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries**, the aspect of group governance and the subsequent establishment for a framework of "effective chain of oversight" is contained in Chapter 5 of the document (see the details below). One of the many forms of group engagements include visits to operational sites or key subsidiaries which would assist in deepening the board's understanding of the company, in particular for the non-executive directors. For example, multinational companies like General Electric Company, Wells Fargo & Company and Toronto-Dominion Bank boards insist on "strapping their boots" for on the ground field visits of key subsidiaries to gauge the actual operational culture of the company[11]. The involvement of directors by periodic "spot checking" is a useful way of ensuring the management is kept on its toes and provide oversight over its subsidiaries. In turn, how the main board governs its subsidiary boards is also crucial in dispensing its role in effective group governance oversight.

Chapter 5 of the Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries

Group Governance

5.01;

A listed corporation and its directors must ensure there is an adequate group wide framework for co-operation and communication between the listed corporation and its subsidiaries to enable it to discharge its responsibilities including oversight of group financial and non-financial performance, business strategy and priorities, risk management including material sustainability risks, and corporate governance policies and practices.

5.02;

A listed corporation and its directors must establish and ensure the group wide framework on corporate governance include a code of conduct and ethics, policies and procedures on anti-corruption, whistleblowing, managing conflict of interest, managing material sustainability risks, and board diversity including gender diversity.

5.03;

A subsidiary of a listed corporation and its directors must provide the listed corporation with any information requested by the listed corporation to enable the board of the listed corporation to oversee the performance of its subsidiaries effectively, including assessing non-financial performance of the group.

[11] Beatty, D. Field Visits by Directors. 2018. Harvard Law School Forum on Corporate Governance

- Boards should ensure that the information required to aid them in performing their duties is provided in a timely and orderly manner. Directors should allocate time to consider their information needs and the integrity of information by asking the following:
    - what information would they require to perform their roles effectively?
    - what measures should be put in place to ensure their information needs are met and the integrity of the information is intact?
    - when should the information be given to them?
    - in what form must the information be presented to the board?
- 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. 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.

  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;
    - social and environmental performance; and
    - product development and research;
    - cyber-security risks
    - country-risk assessment (for companies with a regional or global footprint)

The following case study on the demonstrates the importance for board members to scrutinise the information that has been presented to them.

Case Study: Transmile Group Berhad (Malaysia)[12](an update)

Background:	•	The landmark case involving Transmile Group Berhad ("Transmile") is coming to an end with the conviction of its group founder. Two Former Chief Executive Officer and Executive Director of Transmile, Gan Boon Aun (Gan BA) was convicted by the Sessions Court for furnishing a misleading statement to Bursa Malaysia in relation to Transmile's revenue as reported in the company's Quarterly Report on Unaudited Consolidated Results for the Financial Year ended 31 December 2006. Gan BA was sentenced to a fine of RM2.5 million (in default, 18 months imprisonment) and 1-day imprisonment.
Facts:	•	Transmile reported to the Exchange that its revenue was RM 338.4 million for the last quarter of 2006 and RM 989 million for the financial year ended 31 December 2006. Transmile had in fact suffered losses for financial year end 31 December 2006.
	•	A special audit further revealed that Transmile had actually suffered combined losses up to RM496 million for the years 2005 and 2006. In 2006, its losses were RM126.3 million instead of a profit of RM157.5 million and in 2005, its losses were RM369.6 million instead of a profit of RM84.4 million as reported.
	•	Back in 2017, two former independent directors (audit committee members) of the company were found to be guilty and a sentence of one year imprisonment and a fine of RM300,000 (in default six months imprisonment) were meted out against both individuals.
	•	In the aftermath of the incident, the company was classified as a Practice Note 17 company and its securities were subsequently delisted.
Lessons Drawn:	•	Directors are entrusted with duties and responsibilities to safeguard the interests of the company and that of its stakeholders. It is therefore clear that directors must carefully review the information that is presented to them prior to approval, with due regard to the information that they know about the company when undertaking that review. Directors are expected to ask questions of management with respect to issues that arise from their review of the documents.

[12] *Enforcement Actions* 2020, Annual Report 2020. Securities Commission Malaysia

WHERE? Regional/International perspectives

As in the case of Malaysia, the board's role in strategy and ethics has been addressed in corporate governance codes around the world.



Country	Provision(s)
Australia	Generally speaking, the board of a listed entity should be responsible under its charter for: • defining the entity's purpose and setting its strategic objectives; and • overseeing management in its implementation of the entity's strategic objectives, instilling of the entity's values and performance generally; ***(Commentary to Recommendation 1.1)***

Country	Provision(s)
Australia	The board should approve an entity's statement of values and charge the senior executive team with the responsibility of inculcating those values across the organisation. This includes ensuring that all employees receive appropriate training on the values and senior executives continually referencing and reinforcing those values in their interactions with staff (i.e. setting the "tone at the top") ***(Extract of commentary to Recommendation 3.1)***.
Singapore	The company is headed by an effective Board which is collectively responsible and works with Management for the long-term success of the company ***(Principle 1)***.
South Africa	The governing body's role is one of providing effective, responsible leadership, strategy and direction to the organisation, in an ethical and sustainable manner. It provides this leadership in order to guide the actions of the organisation with the aim of maximising value. The governing body also continually monitors and assesses the performance of the organisation against these strategic objectives. In doing so, the governing body should balance its role of promoting the performance of the organisation with that of maintaining prudent control over how this performance is achieved ***(Recommended Practice 1 of Principle 1)***.
United Kingdom	A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society ***(Principle A)***. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture ***(Principle B)***.

Leadership of 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.

MCCG Practice 1.3
The positions of Chairman and Chief Executive Officer ("CEO") are held by different individuals.

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

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 usually leads the non-executive directors.

The appointment of a capable chairman to lead the board is crucial for the creation of a good governance culture and fostering trust which supplement the board structure and formal governance regulations vis-à-vis embedding high standards of governance in a company[1].

As the head of the board, the chairman is responsible for marshalling the effective functioning of the board including the collective oversight of management.

Given the nature of the chairman's responsibilities, the separation in the roles of the chairman and CEO (who spearheads the business and day-to-day management of the company) would strengthen the board's role in exercising objective oversight over management, and alleviate conflicts which would otherwise 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 ("AGM") in United States that having a dual chairman and CEO is "like grading your own exam papers"[2].

[1] *Top Ten Steps to Improving Corporate Governance* 2021, Effective Governance
[2] Larcker, DF and Tayan, B 2016, *Chairman and CEO: The Controversy over Board Leadership Structure*, Stanford University

Premised on the need to promote accountability and facilitate division of responsibilities between the chairman and CEO, enumerations such as the **Practice 1.3 of MCCG** and **Standard 11.3 of Bank**

> **MCCG Practice 1.3**
> The positions of Chairman and Chief Executive Officer ("CEO") are held by different individuals.

absence from the audit committee, nomination committee or remuneration committee as espoused by **Practice 1.4 of MCCG**. Such a detachment would serve to avert instances of tilted

> **MCCG Practice 1.4**
> The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

or remuneration committee represents a position that is aligned with **Standard 12.4 of Bank Negara Malaysia's Policy Document on Corporate Governance** which restricts the chairman of the board from chairing any board committee[4].

[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] To promote robust and open deliberations by the board on matters referred by the board committees, the chairman of the board must not chair any of the board committees.

HOW? The practice in substance

The chairman's primary role is to lead the board and guide the CEO in devising and implementing the company's strategy and ensure the smooth functioning of the board in the interest of good corporate governance.

The power and authority that comes with the chairmanship position should be accompanied with adequate checks and balances throughout the governance structure of the company.

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 or her character, integrity, 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 the matters brought for deliberation is key to informed decision making and encourages the development of company and industry knowledge.

Be a stakeholder representative

The Chairman promotes clarity on stakeholders' expectations and plans, with regards to its implications on the company and strategy.

Activist and change coach Joan Garry coined an apt term for the chairman, namely, "thought partner" to the chief executive and the directors[5]. The theme behind this labelling 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.

Further reflection

Should a retiring CEO 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-argued 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.

In order to tap on the prized experience of the retiring CEO or managing director selected companies have taken the route of appointing the retiring CEO as an advisor or a co-opted member of an advisory board committee.

Additional considerations relating to the application of **Practices 1.2, 1.3 and 1.4 of MCCG** are

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.

MCCG Practice 1.3
The positions of Chairman and Chief Executive Officer ("CEO") are held by different individuals.

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

[5] Garry J 2017, *The Five Star Board Checklist*

There are no prescriptions that call 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. For example, in the instances of selected family owned or entrepreneur driven companies with the presence of an independent chairman, the executive directors have undertaken to assume the position of a deputy chairman. As a corollary, in cases whereby the board is led by a non-independent chairman and the board intends to appoint a deputy chairman, it would be advisable for the board to appoint an independent deputy chairman.

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 **Guidance to Practice 1.2 of 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.

Leads the board in the adoption and implementation of good corporate governance practices in the company:

- Spearheads collaboration between board and senior management to ensure the company operates in an ethical, transparent and sustainable manner.
- Ensures that a comprehensive and tailored (yet adaptable corporate governance plan is present with milestones and monitors outcomes to ensure effective implementation of good corporate governance practices.

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;

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, by ensuring that all strategic and critical issues are considered by the board.

Encourages active participation and allows 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 encourages 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.

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 alongside the managing director at shareholders' meetings and on other occasions where key or major actions are taken or statements are made in the name of the company.

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**[6].

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.

[6] As stated in **Standard 9.1 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the chairman must ensure that appropriate procedures are in place to govern the board's operation; ensure 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, and that directors receive the relevant information on a timely basis; encourage healthy discussion and ensure that dissenting views can be freely expressed and discussed; and lead efforts to address the board's developmental needs.

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.

MCCG Practice 5.2
At least half of the board comprises independent directors. For **Large Companies**, the board comprises a majority independent directors.

An inherent safeguard is built from the application to **Practice 5.2 of MCCG** which stipulates that "at least half of the board comprises independent directors. For Large Companies, the board comprises a majority independent directors". This allows for more effective oversight of management as well as to support objective and independent deliberation, review and decision-making.

In addition, companies may consider appointing a deputy independent chairman and/or 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 deputy independent chairman and/or senior independent director would particularly go a long way in fostering objectivity in instances whereby the chairman and the CEO are related.

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

Whilst **Practice 1.4 of MCCG** only explicitly restricts the board chairman from chairing the audit committee, nomination committee or remuneration committee, a "form over substance" view would suggest that the same position should be extended across any other board committees instituted by the company (e.g. risk committee, investment committee and tender committee). This Practice closely reflects **Standard 12.4 of Bank Negara Malaysia's Policy Document on Corporate Governance** which outlines that the chairman of the board must not chair any of the board committees. To iterate, the membership of the board chairman across any board committee could create a situation of self-review and these risks impairing his objectivity in boardroom deliberations on the observations and recommendations put forth by the board committees.

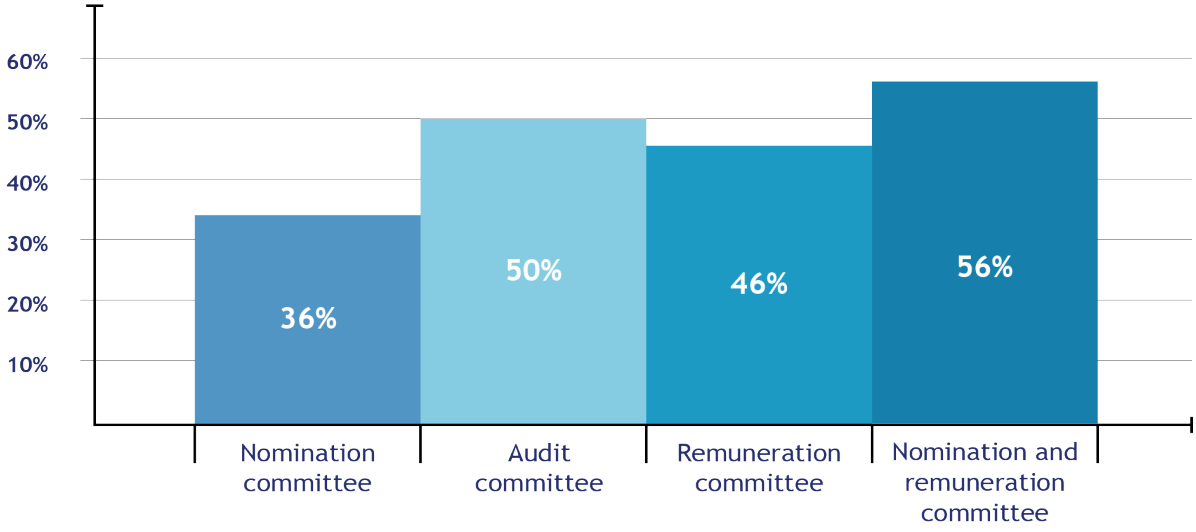
In the case of the board being led by an executive chairman, the individual would invariably be heading the management committee, thus, negating the detachment of the chairman from the said committee. In such instances, it would be advisable for the board to appoint an independent, deputy chairman.

Can the chairman of a subsidiary board (who is also a director of the listed holding company) be appointed as a member of a board committee at the listed holding company or group level?

There are no restrictions for the chairman of a subsidiary board (who is also a director of the listed holding company) to be appointed as a member of a board committee at the listed holding company or group level. However, the board of the listed holding company should seek to ensure that the said committee (as occupied by the chairman of the subsidiary) is not vested with approval authorities but rather operates to recommend matters for the approval of the board. Subsequently, if the chairman of the subsidiary board is an executive director, the said chairman should not be a member of the audit committee, nomination committee or remuneration committee

In light of the restriction of the board chairman to occupy board committees, what measures can be taken to fill the consequent vacancies at the board committee level?

At present, a sizeable number of companies have the presence of board chairmen across board committees. In fact, around 70% of the top 150 listed issuers (by market capitalisation as at 31st December 2020) in Malaysia have their board chairmen on board committees. The presence of board chairman across the different board committees amongst the top 150 listed issuers (by market companies) in Malaysia is shown below[7]:



Source: Data gathered from the annual reports of the top 150 listed issuers (by market capitalisation) in Malaysia as of June 2021

[7] Intelligence of KPMG Management & Risk Consulting Sdn Bhd

Companies should also apply **Practice 1.4 of MCCG** in a manner that reflects its intended outcome.

> **MCCG Practice 1.4**
> The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

Against this backdrop, companies should view the application of this practice (i.e. detachment of board chairman from board committees) as an opportunity to reassess the board and board committee configuration and promote renewal or recalibration. In other words, companies should commit to a continual cycle and regime of evaluation, development, renewal or re-evaluation vis a vis diversity considerations and changing needs of the external and internal environments over time[8].

For example, the company may consider co-opting individuals to specialised board committees (e.g. risk committee, investment committee, digital committee). These co-opted members can bring nuanced perspectives and specialised expertise that may not be present amongst the existing board members. The appointment of co-opted members should be formalised via a contract for service that clearly outlines their roles and responsibilities in relation to the specialised board committees.

Limiting the size of board committee would also be a valid consideration. This would also serve as a means to promote objectivity across board committees. By ensuring that the size of a board committee does not extend to a size that would be more than half of the board, the company can ensure that there is no premeditated consensus amongst board members when recommendations flow from the board committees to the board.

[8] Malaysian Board Practices Review 2020, Institute of Corporate Directors Malaysia, Russel Reynolds Associates and Bursa Malaysia

WHERE? Regional/International perspectives

As with Malaysia, the responsibilities of a chairman are well enumerated across other global jurisdictions



Country	Provision(s)
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)***. If the chair is not an independent director, a listed entity should consider the appointment of an independent director as the deputy chair or as the "senior independent director", who can fulfil the role whenever the chair is conflicted. Even where the chair is an independent director, having a deputy chair or senior independent director can also assist the board in reviewing the performance of the chair and in providing a separate channel of communication for security holders (especially where those communications concern the chair). ***(Extract of commentary to Recommendation 2.5)***.

Country	Provision(s)
Singapore	The Chairman and the Chief Executive Officer ("CEO") are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making ***(Provision 3.1)***. The Board establishes and sets out in writing the division of responsibilities between the Chairman and the CEO ***(Provision 3.2)***.
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)***.
United Kingdom	The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information. ***(Principle F, Part 2)*** The chair should be independent on appointment when assessed against the circumstances set out in Provision 10. The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the board, major shareholders should be consulted ahead of appointment. The board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website. ***(Provision 9, Part 2)***

Country	Provision(s)
United Kingdom	The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director: • is or has been an employee of the company or group within the last five years; • has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company; • has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme; • has close family ties with any of the company's advisers, directors or senior employees; • holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; • represents a significant shareholder; or • has served on the board for more than nine years from the date of their first appointment. Where any of these or other relevant circumstances apply, and the board nonetheless considers that the non-executive director is independent, a clear explanation should be provided. ***(Provision 10, Part 2)***

Company Secretary

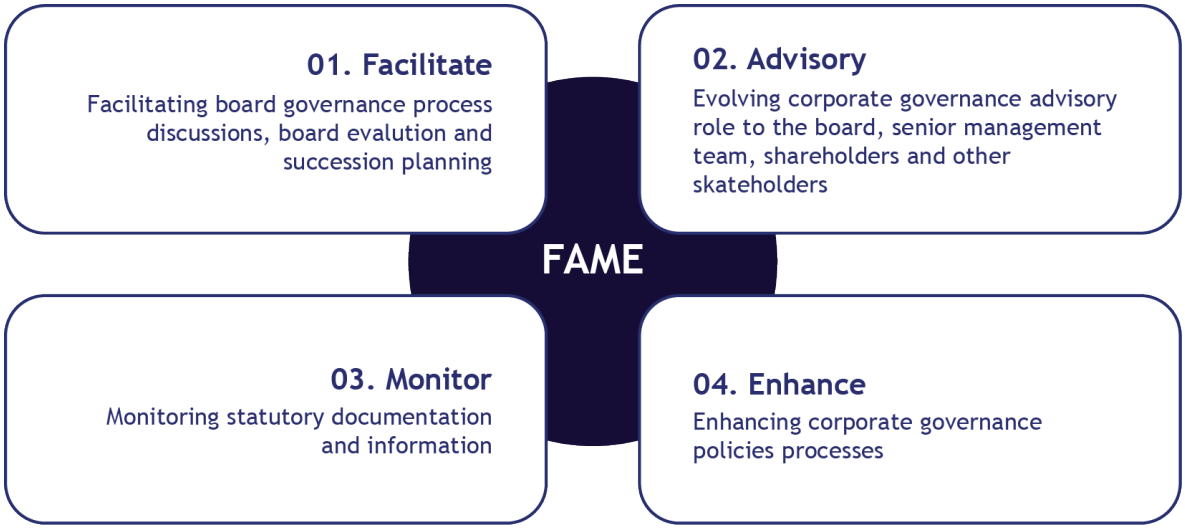
MCCG Intended Outcome 1.0
Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.5
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 and being perceived as "legalistic paper pushers" 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).

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 can be encapsulated by the moniker of "FAME" as outlined below[1]:



[1] *Corporate Governance Guide for Company Secretaries and Governance Professionals for Listed Issuers 2020*, Malaysian Institute of Chartered Secretaries & Administrators

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.

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 decisions made by the board 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. Similarly, **Standard 15.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** also encapsulates enumerations for financial institutions in this regard[2].

Further reflection

There is a growing trend in which the scope of governance and secretarial functions are increasingly included as part of a company's internal audit plan.

In India, under the revamped Companies Act 2013, practising company secretaries from July 2015 are mandatorily required to carry out secretarial audit of public companies and private companies with a paid-up capital that exceeds the specified threshold[3]. The secretarial auditor in India is allowed to make any qualifying remark in its report like the statutory external auditor. If any fraud was detected by practising company secretary, it will have to be reported either to the audit committee or the central government, depending on the quantum of the money involved.

[2] **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.
[3] **Section 204 of Companies Act 2013 (India)**

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 the **Companies Act 2016** as shown below.

Section 235(1), (2) and (3) 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) or 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.

Note: The above only represents an extract.

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 of Companies Act 2016

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
7. Advocates Association of Sarawak

Company secretaries are required to obtain a practicing certificate as issued by Companies Commission of Malaysia (in accordance to the **Companies (Practising Certificate For Secretaries) Regulation 2019** and followed by the Guidelines Relating To Practising Certificate For Secretaries Under Section 241 Of The Companies Act 2016), as follows:

- Application for registration to act as a secretary / Application for practicing certificate of secretary; and
- Application for renewal of practicing certificate of secretary.

[4] **Section 238 of the Companies Act 2016** states that the company secretary will be disqualified if he is an undischarged bankrupt; convicted of any offence referred to **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).

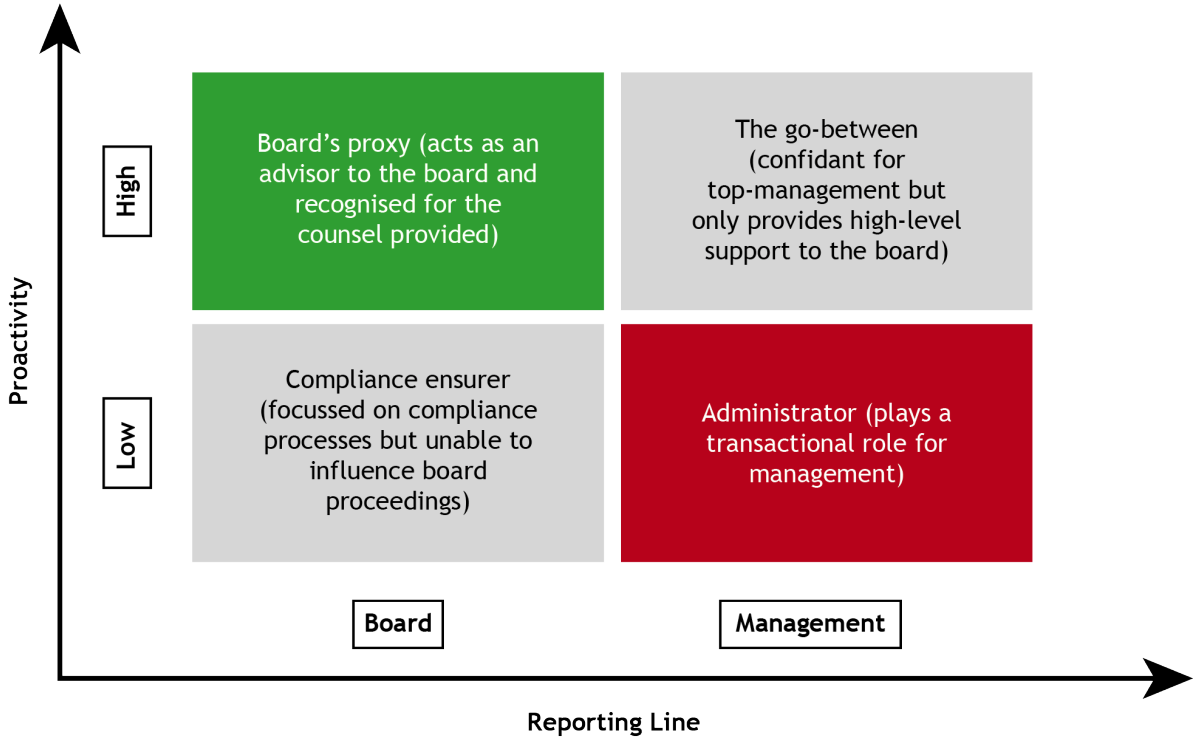
What are some of the key attributes of an effective company secretary?

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. 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;
- Harnesses input from all directors in agenda setting;
- Demonstrates good organisational and interpersonal skills to obtain and direct papers in a timely manner to the board;
- Continually follows up on matters arising;
- Puts in place a manual to guide the workflow of the secretarial function
- Is respectful, diplomatic, active listener and effective in communicating;
- Brings issues to the surface, especially those relating to reputational risk;
- Demonstrates familiarity with information technology applications, particularly in relation to virtual meeting platforms and document management systems
- Generates alternative solutions;
- Respects confidences and able to describes common concerns;
- Demonstrates appreciation for all parties and disagrees constructively; and
- Emphasises commercially-minded approaches

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

Essentially, a high-performing company secretary is one who acts as the "board proxy" or "eyes and ears" of the board[6].



[6] Adapated from Erismann, G, Steger, U & Salzmann, O 2018, *The Insiders View on Corporate Governance*, IMD

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. tabling the findings of Securities Commission Malaysia's Corporate Governance Monitor annually at the board meeting to deliberate and review the performance of the listed issuer compared to the levels reported in the Corporate Governance Monitor); and
- Ensure adherence to the board's and board committees' policies and procedures (e.g. advising directors to abstain from decision making in conflict of interest situations).
- Facilitate the orientation of new directors and assist in directors' training and development.

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 board of any possible violations of regulatory requirements.
- In situations where it is a complex matter that requires technical expertise, take heed from the compliance department or general counsel.

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 general meetings; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

Can the role of a 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[7]. 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 company 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. Companies secretaries owe their duties and responsibilities towards the board. In other words, company secretaries should report functionally to the board with only an administrative reporting line to the managing director or chief executive officer in the case of in-house company secretaries.

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[8]. Accordingly, company secretaries with appropriate standing and authority will be able to position issues sufficiently, and drive the board to 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[9]. 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.

[7] 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 authorizes anything to be done by a director and a secretary.

[8] *The Company Secretary as Polymath* 2016, International Finance Corporation

[9] **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 the terms of appointment or the constitution".

Can the role of a company secretary be outsourced?

As in the case of many countries including Malaysia, there are no legal prescriptions which restrict the role of a company secretary from being outsourced. In this regard, 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 given the annual cycle of work.

In the event that 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 how the external person fulfils his or her role as a company secretary including the presence of safeguards and control procedures within the outsourced secretarial services company to accept clients from the same industry[10].

The table below highlights some of the reasons for and against the outsourcing of company secretarial services[11]. These elements will bring different challenges and give rise to different approaches:

Reasons to outsource	Reasons not to outsource
Ensures all of statutory and regulatory requirements are met by a specialised and independent firm.	More in-depth knowledge and understanding of the corporate culture with stronger relationships with the board and senior management.
Reduces costs of employing a full-time person with a specific qualification.	Better response time to discuss corporate issues.
Equipped with greater exposure and experience from a bigger spectrum of clients, especially where dedicated secretarial knowledge management services team provide latest trends and updates.	Able to take on other responsibilities such as a governance professional as trained professionals in corporate governance.
Continuity of service as compared to an in-house secretary due to attrition	Can truly act as the "conscience of the company" and has no conflict if he or she does not do other work such as providing legal or accountancy services.

[10] *Corporate Governance Guide for Company Secretaries and Governance Professionals for Listed Issuers* 2020, Malaysian Institute of Chartered Secretaries & Administrators
[11] Modified from International Finance Corporation. (2016). The Corporate Secretary: The Governance Professional.

WHERE? Regional/International perspectives

Alongside Malaysia, selected jurisdictions such as United Kingdom, Singapore and Australia have enumerated provisions on the advisory role of the company secretary, particularly in relation to corporate governance.



Country	Provision(s)
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;

Country	Provision(s)
	• 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)***.
Singapore	Directors have separate and independent access to Management, the company secretary, and external advisers (where necessary) at the company's expense. The appointment and removal of the company secretary is a decision of the Board as a whole ***(Provision 1.7)***.
United Kingdom	The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently ***(Principle I, Part 2)***. All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board ***(Provision 16, Part 2)***.

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 1.6
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.

In a turn of events, the pandemic has forced boards to undergo rapid digital transformation. A global research has shown that prior to the pandemic, just 5% of board meetings were conducted virtually and during the pandemic, the number has jumped up to 95% with indication that after the pandemic, more than 50% of boards will pursue a hybrid meeting model[1]. In tandem with the development, the nature of information flow between board and management has also witnessed transformative changes.

Further 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. This shift has naturally driven the volume of information that is being presented to boards.

[1] Diana, WD & Farzan, S 2021, *Boards are Undergoing Their Own Digital Transformation*, Harvard Business Review

For example, in 2017, the United Kingdom's Institute of Chartered Secretaries and Administrators: The Governance Institute and Board Intelligence surveyed 80 governance professionals representing organisations of all sizes and sectors on board reporting and found a majority of the respondents asserting that board papers are currently too long. There was also a clear correlation between the average length of board packs and the size of the organisation with large organisations producing an average of 2,000 pages of information annually for board meetings[2]. It is therefore evident that board papers need to be focussed so as to pivot directors' attention to the issues under consideration. Flowing from this, some companies have sought to rejig the presentation of board papers for selected agenda items by making them concise and inductive (i.e. starts with key messages and underpinned by reasons and details) rather than deductive (i.e. problem statement is ensued with analysis, results and key messages).

Whilst companies seek to make the board papers more focussed, it should also be noted that the clarity of board papers must be preserved. In fact, board papers may serve as a reference for regulators or enforcement authorities during reviews or investigations. For example, following the bank governance debacle in Australia, the Australian Securities and Investment Commission established a regular onsite presence in major banks as well as conducted engagements with senior executives, interviews with staff and a review of key documents including board papers[3]. Specifically, board papers were reviewed to provide context as to the reasonings and premises in which directors approach their deliberations and decision makings.

Recognising the importance of sound and timely 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[4]

Paragraph 4 (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 proceedings at meetings of the Board are kept.

[2] *Challenges to Effective Board Reporting* 2017, the United Kingdom's Institute of Chartered Secretaries and Administrators: The Governance Institute
[3] *Corporate Governance Watch 2020: Future promise: Aligning governance and ESG in Asia*, Asian Corporate Governance Association
[4] 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".

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 Securities Listing Requirements.**

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 Securities Listing Requirements

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.

Provisions for financial institutions in this regard are encapsulated in **Standard 9.6**[5] (minutes of meeting) and **Standard 9.7**[6] (access to advice from third party experts) of **Bank Negara Malaysia's Policy Document on Corporate Governance.**

[5] As stated in **Standard 9.6 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the board must ensure that clear and accurate minutes of board meetings are maintained to record the decisions of the board, including the key deliberations, rationale for each decision made, and any significant concerns or dissenting views. The minutes must indicate whether any director abstained from voting or excused himself from deliberating on a particular matter.

[6] As stated in **Standard 9.7 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the financial institution must provide the board with access to advice from third party experts on any matter deliberated by the board as and when required, and the cost of such advice shall be borne by the financial institution.

HOW? The practice in substance

As stated in **Guidance to Practice 1.6 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, 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 committees, including whether any director abstained from voting or deliberating on a particular matter.

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

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 five meetings 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. Other board members should also be given the opportunity to provide input on topical agenda items that may be of interest to the board.

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.

A range of matters that should be periodically included in a board agenda is outlined as below.

Examples of agenda items (non-exhaustive):

- business planning and strategy formulation, including review;
- risk management including review of emerging business issues and resolution;
- budget, approval and monitoring, 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;
- 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.

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

The notice and agenda shall include the date, time and place of the meeting and the matters to be discussed.

Previous meeting minutes

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.

Board or board committee papers

The papers (executive summary, content and appendices) should address the core issues on which the board or board committee must deliberate. Board members should also be kept apprised of Board Committee through update reports from the said Committees during Board meetings.

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 presentations that are too short and contain 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 micromanages the company.

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

As stated in **Guidance to Practice 1.6 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. In order to ensure information and documents are disseminated in a timely and efficient manner, companies should leverage on technology to deliver documents to directors.

Information flow in group structures

The listed corporation (also known as the ultimate holding or parent company) 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 listed corporation 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 listed corporation to communicate its views whilst facilitating pertinent matters to be relayed to the board of listed corporation for direction and further action.

As stated in Securities Commission Malaysia’s **Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries**, the group governance framework should include clear policies and processes on the disclosure of information internally within the group, to ensure the appropriate flow of information, including reports from the subsidiaries to the listed corporation on their performance. The policies and processes should also address the handling of price sensitive information, particularly where any of the subsidiaries of the listed corporation is also listed and is subject to strict regulation.

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 made during 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. The minutes of the meeting proceedings should be prepared with, but not limited to, the following details[7]:

Suggested content of meeting minutes (non-exhaustive):

- the name of the company;
- the time (i.e. start and end time), date and place (or platform in the case of virtual meetings) at which the meeting was held;
- names of those present and in attendance, as well as any apologies (for absence or lateness);
- those who arrived (or virtually logged in) or left (or virtually logged off) 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 would represent a reasonable window between a board committee meeting and the board meeting?

As stated in **Guidance to Practice 1.6 of MCCG**, board committee meetings should be conducted separately from the board meetings to enable objective and independent discussions. In the case of the audit committee, the holding of a joint board committee and board meeting may result in the audit committee not meeting the quorum requirement of majority independent directors, as encapsulated in **paragraph 15.18 of Listing Requirements.**

In addition, the scheduling of back-to-back meetings between the board committee and board should be avoided and instead, a window of at least 2-3 days should be accorded. Consecutive board committee and board meetings may implore an unduly rushed situation for directors whereby board committee proposals escalated to the board may not be fully fleshed out due to the truncated window. At the same time, the scheduling of meetings between the board committee and board should not be too far apart that directors lose track of the key issues and deliberations.

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

Companies should therefore prepare in advance an annual tentative calendar for the scheduling of the board and board committee meetings (usually performed in the last quarter of the current financial year), and have clear policy measures to govern the scheduling and interplay of board meetings vis a vis that of board committees whilst taking into account the size and activities of the board and board committees.

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.

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
- summary of 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.

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.

In the context of board committee minutes, companies may undertake to make them accessible to non-members of the board committee. As increasingly observed during board meetings, it may be a better practice for the respective board committee chairmen to provide downloads of their board committee undertakings with a view of apprising all board members on the same.

Case study: Rozilawati binti Haji Basir v Nationwide Express Holdings Berhad & Ors [2020]

Background:	• Rozilawati, who was the former Managing Director of Nationwide Express Holding Berhad filed an action against her former employer to (i.e. Nationwide Express Holding Berhad) and its directors, to amongst others, challenge the validity of the board meeting and the accompanying directors' resolution of her termination.
Facts:	• A board meeting of Nationwide Express Holding Berhad was held on 30 May 2018 whereby a resolution was passed to terminate Rozilawati's services as the managing director of Nationwide Express Holding Berhad. • In challenging the validity of this meeting, Rozilawati amongst others contended that the notice of the board meeting notice did not encapsulate any particulars regarding the potential termination of her services. • The High Court dismissed Rozilawati's action and clarified that there was no legal requirement for a board meeting notice to contain the matters or particulars of the business to be transacted at the meeting unless expressly required in the relevant company's constitution. • Nonetheless, the High Court acknowledged that it is a best practice to provide advanced notice on the matters to be discussed at a board meeting. This is aligned with **paragraph 4, Third Schedule of the Companies Act 2016**, which provides that a board meeting notice shall, amongst others, include the matters to be discussed. • The presiding judge went on to state that whilst a company is at liberty to not adopt the said **Third Schedule of Companies Act 2016**, it nevertheless reflects the intent of the legislation that such practice should be the default provision in the event the Third Schedule is applied.
Lessons Drawn:	• Although the court recognised the occasional urgency of meetings and that it may not always be possible for an agenda to be prepared and circulated before such meetings, it was recommended for notices of board meetings to be informative to the extent practicable. • In instances whereby the **Third Schedule of the Companies 2016** is adopted or applied by default, companies should be cognisant that there is a requirement for the notice of the board meeting to include the matters to be discussed.

WHERE? Regional/International perspectives

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

For example, the Hong Kong Corporate Governance Code and Corporate Governance Report has 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)***.

Country	Provision(s)
	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 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 and regulatory landscape. Disruptive forces of technology, growing prominence of non-financial considerations (i.e. environmental, social and governance), and heightened regulatory expectations 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. The NACD Public Company Board Governance Survey[1] highlighted the increased proactive engagement by boards on strategy (i.e. oversight on strategy execution, as well as crafting and replacing obsolete strategies) which results in more interaction and closer ties with management.

In tandem with this escalating demand on boards, as well as their increased involvement and engagement, it is imperative for the board to clarify its responsibilities as well as that of the board committees, individual directors and management, to minimise blurring of lines between the roles of the board and management which also clearly delineates points of accountability. 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 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"[2].

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 governance structure, authority and terms of reference of the board, its committees and management.

[1] van der Oord, F 2020, *NACD Public Company Board Governance Survey*, Harvard Law School Forum on Corporate Governance
[2] *The CEO guide to boards* 2016, McKinsey Quarterly

HOW?

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.

Similar to **Practice 2.1 of MCCG**, **Standard 8.2 of Bank Negara Malaysia's Policy Document on Corporate Governance** states that the board must have a board charter that sets out the mandate, responsibilities and procedures of the board and the board committees, including the matters reserved for the board's decision.

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

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;
- details on conduct of meetings;
- 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.

Illustrative outline of board charter

Outline of board Charter:

- Introduction
- Role of the board, chairman and company secretary
- Board reserved powers and responsibilities
- Delegation to management
- Board composition, independence and conduct
- Committees
- Relationship with shareholders and stakeholders, including controlling shareholders and joint venture partners
- Procedures and conduct of virtual, physical and hybrid meetings
- Declaration of interests
- Access to information
- Access to independent professional advice
- Induction and training
- Review of board performance and charter

Salient features of the Charter:

- **Matters reserved** – identifies matters of strategic importance within the reserved powers of the board and responsibility for which has not been delegated to management.
- **Delegation** – outlines the management function delegated to the CEO.
- **Role profiles** – defines the roles of the board, chairman, individual directors, CEO, and where applicable, deputy chairman, senior independent director, nominee directors, and non-director members.
- **Board committees** – outlines the board committees, management committees and ad-hoc committees established, for which there are individual terms of references that are reviewed annually.
- **Assessment of Board performance** – undertakes annual assessment of board, board committees', individual directors', as well as company secretary's performance against the requirements of the charter.

Note: Where applicable and occasioned pursuant to the provisions of Companies Act 2016, the company should also reflect the aforementioned matters in its constitution.

Source: Adapted from Telstra Corporation Ltd Board Charter 2020 (Australia)

To iterate, a key purpose of the board charter is to outline the expectations on the part of the board members, and these include directors' fiduciary and oversight responsibilities in

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.

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

and other stakeholders are understood and met.

the **write-up to Practice 1.1**); and

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(1) of Companies Act 2016**, "the business and affairs of a company shall be managed by, or under the direction of the Board".

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[3].

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.

[3] **Section 216(2) of Companies Act 2016** states that 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. **Section 216(3) of Companies Act 2016** states that the directors are not responsible under subsection (2) if – (a) the directors believed on reasonable grounds at all times that the delegatee would exercise the power in conformity with the duties imposed on the directors under this Act and the constitution of the company, if any; and (b) the directors believed on reasonable grounds, in good faith and after making a proper inquiry, if the circumstances indicated the need for the inquiry, that the delegatee was reliable and competent in relation to the power delegated.

Further reflection

While the board may delegate some of its responsibilities or authority to a committee or management, it should not delegate matters to an extent that would significantly hinder or reduce the board's ability to discharge its functions.

This can be avoided by establishing well-defined terms of reference for each board committee that outlines[4]:

- what the committee's purpose is;
- what its powers are (if any);
- who its members will be;
- who its chair will be;
- how often it will meet;
- how it will report to the board; and
- how often it will be reviewed.

Additionally, the board could utilise a "delegation of authority" matrix to outline the responsibilities (i.e. propose, review, approve) of the varying roles (i.e. board, individual board committees, CEO) vis-à-vis a detailed list of tasks, where specifying decision-making in such a manner can actively support accountability.

Moreover, the identification of roles and responsibilities within senior management, also known as senior management regime, is gaining traction. It strengthens the individual accountability and corporate governance of companies by identifying senior management roles or functions, prescribing responsibilities amongst the respective senior management personnel, recording the of allocation of responsibilities (i.e. senior management function's statement of responsibilities), and revisiting their role profiles and job descriptions to reflect responsibilities, reporting lines and delegated authorities.

The growing prominence of the senior management regime is also reflected in Bank Negara Malaysia's Responsibility Mapping Exposure Draft; In recent years, the Bank has observed incidents where the span of control and influence at the senior management level has not been adequately translated into actions in practice, leading to heightened risks from inadequate oversight over the operations of the financial institution. This underscores the importance of ensuring responsibilities are clearly identified at the appropriate level of granularity and allocated to individuals at senior levels who have the competence, authority and accountability to effectively discharge them **(Paragraph 1.3).**

As an example, a large Nordic investment company undertakes an annual review and approval of work and role descriptions for the board and management. Here, annual discussions between the board and management followed by the formalisation of the roles of all parties is a productive exercise, where it is capable of diffusing tensions by clearly defining roles, and preventing the risks of misunderstandings, loss of trust and ineffectiveness[5].

[4] *Principle 2: Roles and responsibilities* 2019, Australian Institute of Company Directors
[5] *The Board Perspective: A Collection of McKinsey Insights Focusing on Boards of Directors* 2016, McKinsey

What are the key steps involved in developing and reviewing a board charter?

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

Collect Information

Document existing board policies, and practices, including "unwritten" practices that regulate corporate conduct.

Analyse Documentation

Analyse documentation to identify discrepancies between existing policies and practices, as well as areas where no formal policies exist.

Draft Charter

The board may provide guidance to the company secretary in formulating and drafting the board charter. Larger companies may consider engaging an external constultant to address complex governance matters.

Obtain Board Approval

All directors must participate in the review and approval process of the board charter. This ensures that directors are aware of their roles and responsibilites encapsulated within the charter.

Conduct Periodic Review

A periodic review is recommended to ensure that the charter reflects current needs and nuances of the company.

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

A case study which involves a company being accused of abdicating its responsibilities, through the veil of delegation to an independent party, is described below:

Case study: Facebook, Inc. (United States)

Background:	• Facebook, Inc.'s ("Facebook") governance structure comprises its board, management, and board committees. More recently, it established a body akin to a committee comprising solely co-opted members, the Oversight Board. • The Oversight Board was created to help the Facebook company answer some of the most difficult questions around freedom of expression online, namely what to take down, what to leave up, and why. It is not a simple extension of Facebook's existing content review process but is instead involved in principled and independent reviewing of a select number of highly emblematic cases to determine if decisions were made in accordance with Facebook's stated values and policies, including freedom of expression online. The Oversight Board was established amidst the rising spread of conspiracy theories, hate speech, and disinformation on Facebook's platform. • The composition of the Oversight Board is independent from Facebook and is funded by an independent trust and supported by an independent company that is separate from the Facebook company. The Oversight Board's decisions would be binding, overruling even those of Mark Zuckerberg, the company's founder and CEO[6].
Facts:	• On 6 January 2021, United States Capitol was attacked by supporters of then-President Donald Trump, when the United States' Senate and House of Representatives met to certify Joe Biden's victory in the November 2020 presidential election. • Facebook had suspended Trump's account for 24 hours on 6 January, and extended the suspension to 7 January, noting that it believes allowing Trump to use the platform during this period is too risky[7] due to his unfounded narrative of electoral fraud and persistent calls to action. • Facebook then extended the block indefinitely, and it referred the case to the Oversight Board to confirm on whether it correctly decided to prohibit Trump's access to posting content on Facebook for an indefinite amount of time[8].

[6] Klonick, K 2021, *Inside the Making of Facebook's Supreme Court*, The New Yorker
[7] Ingram, M 2021, *Facebook Ask its New Oversight Board to Rule on Banning Trump*, Colombia Journalism Review
[8] *Oversight Board Upholds Former President Trump's Suspension, Finds Facebook Failed to Impose Proper Penalty 2021*, Oversight Board

	•	The Oversight Board upheld the company's suspension of Trump's account on 7 January, but noted that it was not appropriate for Facebook to impose and indefinite suspension, and that in applying a vague, standardless penalty and then referring this case to the Board to resolve, Facebook had sought to avoid its responsibilities[9]. It was reported that the lack of transparency surrounding its content moderation, suggests that Facebook may acting with political or commercial considerations, seeing as it had previously not acted against Trump's problematic posts (when he was in power), such as those related to COVID-19 misinformation[10].
Lessons Drawn:	•	Demarcation of boundaries should be well-defined and clearly documented across all leadership positions including the board, board committees, management, as well as non-director positions, such as co-opted individuals or invitees. This is to prevent any incidents of poor delegation (which borders on abdication) that hinders or reduces responsible parties' abilities to discharge their functions in an accountable and transparent manner.

[9] *Oversight Board Upholds Former President Trump's Suspension, Finds Facebook Failed to Impose Proper Penalty* 2021, Oversight Board
[10] Cenite, M 2021, *Commentary: Donald Trump Once Again Plays a Favourite Role, The Victim of Big Tech*, CNA

WHERE? Regional/International perspectives

As in the case of Malaysia, many jurisdictions including United Kingdom, Singapore and Australia have called for clear demarcation of roles and responsibilities between board and management.



Country	Provision(s)
Australia	A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance ***(Principle 1)*** A listed entity should have and disclose a board charter setting out: (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)***

Country	Provision(s)
Singapore	The Board decides on matters that require its approval and clearly communicates this to Management in writing. Matters requiring board approval are disclosed in the company's annual report ***(Provision 1.3)***. Board committees, including Executive Committees (if any), are formed with clear written terms of reference setting out their compositions, authorities and duties, including reporting back to the Board. The names of the committee members, the terms of reference, any delegation of the Board's authority to make decisions, and a summary of each committee's activities, are disclosed in the company's annual report ***(Provision 1.4)***.
United Kingdom	The responsibilities of the chair, chief executive, senior independent director, board and committees should be clear, set out in writing, agreed by the board and made publicly available. The annual report should set out the number of meetings of the board and its committees, and the individual attendance by directors ***(Provision 14, Part 2)***.

Institution of an Ethical Culture

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 the 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.

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

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 with far reaching economic impact. In fact, according to a research by International Monetary Fund, curbing corruption could generate about $1 trillion in tax revenues annually across the world[1].

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"[2]. In other words, the problems originate from the ethical culture of the company.

[1] Mauro, P, Medas, P & Fournier, JM 2019, *The Cost of Corruption*, International Monetary Fund
[2] Dudley, C 2014, *Enhancing Financial Stability by Improving Culture in the Financial Services Industry,* Federal Reserve Bank of New York

Further 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.

To this end, periodic reflection on whether the culture continues to be relevant in a changing environment can help the company adapt its culture to ensure it continues to support the company's success. The board should assess and monitor culture for alignment with purpose and values. Monitoring culture will involve regular analysis and interpretation of evidence and information gathered from a range of sources. Drawing insights from multiple quantitative (e.g. turnover data, training data, employee survey data) and qualitative (e.g. exit interviews, board interaction with senior management and workforce) sources helps guard against forming views based on incomplete or limited information. The workforce represents a vital source of insight into the culture of the company[3].

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 the top, tune in the middle, and beat at the feet".

Tone at the top

Board members and senior management encourage employees across the company and business partners to behave ethically.

Tune in the middle

Front-line and mid-level managers turn principles into practice by actively engaging with employees in developing an ethical culture within the company.

Beat at the feet

The company rewards and promotes individuals in the company for their adherence to ethical values. Good behaviour is rewarded and negative behaviour is punished.

[3] *Guidance on Board Effectiveness* 2018, Financial Reporting Council

In shaping a corporate culture that is driven by candour, it is imperative to have an outlet for stakeholders 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. Reporting structures should shield employees from retaliation and discrimination for reporting on misconducts. In the absence of a well-designed whistleblowing framework for stakeholders to raise concerns about illegal or unethical activity that they are aware of through their dealings, companies risk falling into a vicious cycle whereby management and board are unaware of problems and resultantly, misconduct remains pervasive or not addressed. This could result in adverse reputational effects to the company despite complying with legal requirements.

In order to have an impact on behavioural outcomes and influence the way business is done, board as well as management need to demonstrate ethical leadership. It is incumbent on them to ensure that values need to be embedded at every level of the company and the focus on ethical culture has to be continuous. For example, in recognising that accountability for ethics needs to flow from the highest level of the company, the corporate liability provision was enacted in May 2018 (and operationalised in June 2020) to impute liability on the commercial organisation if any person associated with the commercial organisation commits a corrupt offence unless the directors and management can prove that they had put in place adequate procedures. There is also a deeming provision on the directors and management for the offence committed by a commercial organisation. The relevant provisions concerning corporate liability are outlined as follows:

Section 17A(1) of Malaysian Anti-Corruption Commission Act

A commercial organisation commits an offence if a person associated with the commercial organisation corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent to obtain or retain business for the commercial organisation or to obtain or retain an advantage in the conduct of business for the commercial organisation.

Section 17A(2) of Malaysian Anti-Corruption Commission Act

Any commercial organization who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.

Section 17A(3) of Malaysian Anti-Corruption Commission Act

Where an offence is committed by a commercial organization, a person –

(a) who is its director, controller, officer or partner; or

(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offense as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

Section 17A(4) of Malaysian Anti-Corruption Commission Act

If a commercial organisation is charged for the offence referred to in subsection (1), it is a defence for the commercial organisation to prove that the commercial organisation had in place adequate procedures to prevent persons associated with the commercial organisation from undertaking such conduct.

Section 17A(5) of Malaysian Anti-Corruption Commission Act

The Minister shall issue guidelines relating to the procedures mentioned in subsection (4)

In view of the corporate liability provision and being cognisant that sound anti-corruption measures are key to enhance the integrity and attractiveness of the capital market, Bursa Malaysia Securities Berhad encapsulated the following anti-corruption measures which are in addition to the statutory provisions under the Malaysian Anti-Corruption Commission Act 2009.

Paragraph 15.29(1) of Bursa Securities Listing Requirements

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

Paragraph 15.29(2) of Bursa Securities Listing Requirements

A listed issuer must also publish on its website -

(a) its policy on anti-corruption; and

(b) its policy and procedures on whistle-blowing

In addition, giving consideration to the need for a healthy ethical culture to permeate across the listed issuer and its subsidiaries, Securities Commission Malaysia vide **Paragraph 5.02 of Guidelines on Conduct of Directors for Listed Corporations and their Subsidiaries** requires listed corporation and its directors to establish and ensure the group wide framework on corporate governance which amongst others include a code of conduct and ethics, policies and procedures on anti-corruption, whistleblowing and managing conflict of interest.

In the context of licensed financial institutions, **Standard 18.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** (as with **Practice 3.1 of MCCG**) has emphasised the need

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.

[4] 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 addressing such breaches in a manner that upholds high standards of integrity.

HOW? The practice in substance

The board should therefore commit to ethical values and ensure the implementation of appropriate internal systems to support, promote and ensure ethical compliance.

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

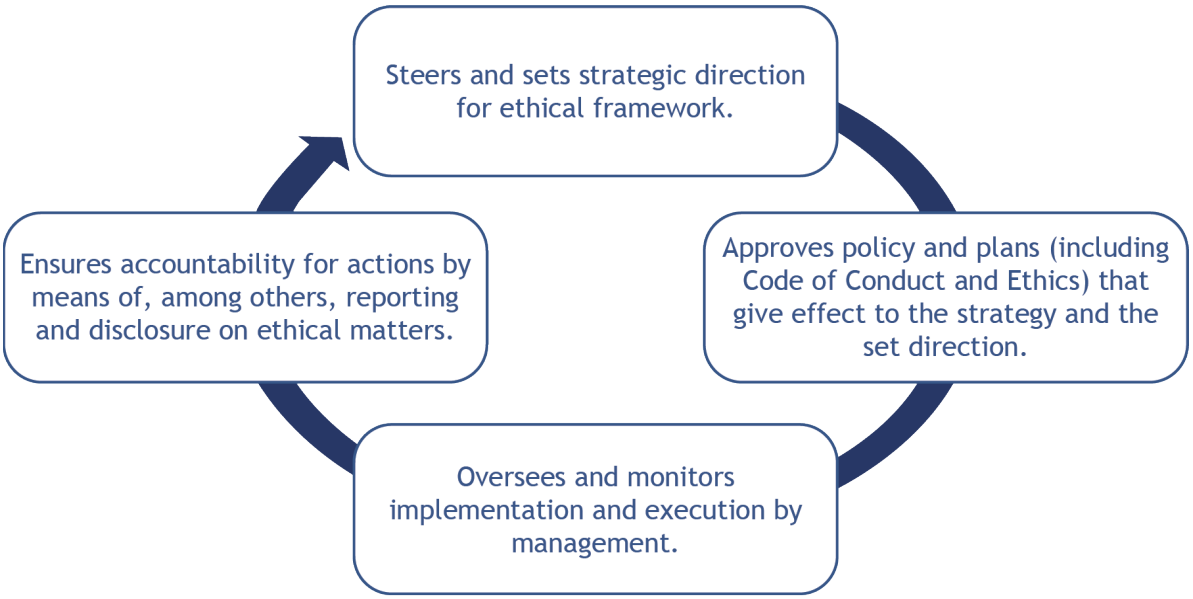
Key considerations relating to the application of **Practices 3.1 and 3.2 of MCCG** are outlined below:

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.

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

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



As illustrated in the previous page, 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.

Which board committee should exercise oversight on matters concerning ethical culture (including the aspect of whistleblowing)?

There are no one single rule or standard in terms of placing ethical culture as a responsibility for any board committee. Notwithstanding, it may be in the interest of the board to ensure matters concerning ethical culture are overseen in an integrated manner.

To this end, a growing number of companies are considering oversight modalities on ethics which transcend beyond the traditional remit of audit committee or risk committee. For example, selected companies are placing the said responsibility on the sustainability committee given the systemic nature of ethics and its nexus with environmental, social and governance considerations. In the instances of certain companies, a dedicated ethics or integrity committee have been established for honed oversight on ethical matters.

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[5]:

Clear purpose

The board and senior management should know why they want to develop a code and what benefits it entails.

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.

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

Understanding of predecessor codes

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.

Understanding of existing values and principles

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 behaviours of directors, management and employees.)*
- How to obtain buy-in for the company's Code of Conduct and Ethics?
- What are the measures which can 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.

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;
- anti-money laundering, anti-terrorism financing and proceeds of unlawful activities[6];
- confidential, proprietary information, record keeping and document retention;
- political participation, contribution and lobbying;
- holding directorships in other entities, outside employment and other activities;
- donation, sponsorship, gifts, entertainment, gratuities, favours and other items of value to/from stakeholders;
- health and safety
- marketing, sales, advertising, and promotions;
- trade sanctions;
- securities trading and insider information;
- personal conduct;
- harassment (sexual and other forms of discrimination); and
- employment practices and affirmative actions.

[6] The ***Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001*** and the accompanying guidelines issued by **Bank Negara Malaysia** provide for the offence of money laundering and terrorism financing and the measures to be undertaken for the prevention of money laundering and terrorism financing offences.

What are the key considerations that the board should take into account when assessing whether the whistleblowing policies and procedures in place are effective and adequate?

In assessing the adequacy and effectiveness of the 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[7]:

- 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 within 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?

[7] *Audit Committee Handbook 2017, KPMG*

- 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?

Note: 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 based on the subject matter of the whistleblowing report include (i.e. "designated persons"):

- 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;
- head of a dedicated department that handles investigations of misconduct or any other related matters and has a direct reporting line to independent directors; and
- designated person 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).

Where the whistleblowing report 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 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[8] to an enforcement agency[9] is accorded with certain protection subject to the provisions of the said Act as follows:

- 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]**; and
- Protection from detrimental action **[Section 7(1)(c) of Whistleblower Protection Act 2010]**; and for the purpose of **Section 7(1)(c)**, the protection shall be extended to any person related to or associated with the whistleblower.

Can the failure to whistleblow be regarded as an offence?

Inaction by way of a failure to report can be an offence if there are express statutory provisions which require such a conduct.

For example, **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 (i.e. inaction is an offence).

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. **Section 320(1) of Capital Market and Services Act 2007** reposes a positive obligation on external auditors to whistleblow to Securities Commission Malaysia if they professional opine 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. Likewise, **paragraph 15.06 of Bursa Securities Listing Requirements** states that "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".

In view of the operationalisation of corporate liability provision, what procedures must companies put in place to prevent employees and/or associated persons from undertaking corrupt practices in relation to its business activities?

Pursuant to **Section 17A(5) of the Malaysian Anti-Corruption Commission Act 2009**, the Minister has issued a document titled **"Guidelines on Adequate Procedures"**. The said Guidelines are designed to be principles-based and for general application by any commercial organisation of any size and industry.

[8] Revocation of whistleblower protection is set out in Section 11 of Whistleblower Protection Act 2010. Circumstances which would result in a revocation of whistleblower protection, amongst others, include frivolous and vexatious whistleblowing disclosures.
[9] Defined in accordance with Section 2 of Whistleblower Protection Act 2010, "enforcement agency" means, amongst others, any ministry, department, agency or other body set up by the Federal Government, State Government or local government; or a body established by a Federal law or State law, which is conferred with investigation and enforcement functions.

The institution of adequate procedures as encapsulated in the document is represented by the ensuing acrostic of "TRUST".

T **Top level commitment** – Establishing "tone from the top" with clear reporting lines of authority to the board on results of any audit as well as reviews of risk assessment, control measures and performance.

R **Risk assessment** – Corruption risk assessment should be undertaken with due consideration given to factors such as weaknesses in internal controls, nature of financial transactions, geographical footprint as well as use of intermediaries and third parties in the supply chain.

U **Undertake control measures** – Meting out due diligence, reporting channels (i.e. whistleblowing) and policies and procedures which amongst other cover anti-bribery or anti-corruption policy statement, conflicts of interests, gifts, hospitality, donation, sponsorship, facilitation payment, financial and non-financial controls including monitoring and documentation thereof.

S **Systematic review, monitoring and enforcement** – Conduct of reviews, continual evaluations and audit (i.e. internal audit and audits by independent, external parties) as well as disciplinary proceedings against recalcitrant employees.

T **Training and communication** – Conduct of training programmes in a variety of formats to create awareness on the company's anti-corruption position as well as communication in varied forms including through code of ethics and conduct, electronic and physical communique.

In addition, companies may draw guidance from the National Anti-Corruption Plan (issued on 29 January 2019) which outlines 115 initiatives across the priority areas of political governance, public procurement, law enforcement, public sector administration, legal and judicial as well as corporate governance. Whilst the initiatives in the NACP are primarily targeted towards statutory bodies, state owned enterprises and government established companies limited by guarantee, companies of all forms and sizes may apply the policy and procedures propounded in the NACP initiatives and internalise them based on company's nuances and the spirit of the TRUST acrostic as encapsulated in the **Guidelines on Adequate Procedures.**

As a progressive measure, companies may also opt to obtain certification in the form of *MS ISO 37001:Anti-Bribery Management System* which represents an internal control system for organisations to manage, handle, enforce, evaluate as well as to improve anti-corruption measures effectively.

Case study: Skansen Interiors Ltd (United Kingdom)[10]

Background:	• Before becoming dormant in 2014, Skansen Interiors Limited ("SIL") traded as a fit-out refurbishment contractor in the London area. SIL successfully won tenders from DTZ Debenham Tie Leung, a property company, for the refurbishment of two commercial units in London worth a combined £6 million. • The prosecution alleged that SIL's then managing director, Mr Stephen Banks, made two bribes totalling £10,000 to Mr Graham Deakin, a DTZ project manager, to win the tenders and also sought to make a third payment of £29,000, although this was never paid. These bribes were apparently intended to reward Mr Deakin for passing SIL bidding information during the tender process and seeking to influence the outcome by persuading colleagues to select SIL.
Facts:	• R v Skansen Interiors Ltd (February 2018) saw the UK's first contested prosecution of the corporate offence of failing to prevent bribery under section 7 of the Bribery Act 2010, with the defendant company asserting the adequate procedures defence. Although there was no judicial comment on what constitutes adequate procedures, the prosecution's submissions provided insight into how they may assess the defence going forward. • Notably, the failure to revamp compliance controls and to assign a designated employee to oversee the anti-bribery compliance, lack of communication and trainings to its staff on the company policies, and the failures to have a documented independent reporting channel to senior management. • To defend its case, SIL's arguments include sophisticated and substantial antibribery controls were unnecessary due to its small operation scale, it is a matter of common sense for its staffs not to bribe, contractual clauses providing for prohibition of bribery and occurrence of bribery as a ground for termination, and multiple approval levels for every transaction as part of its financial control system. • Despite the existence of policies and other internal controls to prevent bribery, SIL was convicted on the basis that such measures were inadequate. The submissions of the prosecution gave an insight into the basis of assessing the adequacy of the procedures and policies.

[10] *Section 17A MACC Act: What are the lessons learnt from foreign case studies?* 2020. Ganpartnership.

Lessons Drawn:	• A commercial organisation has to evidence that it has adequate procedures to prevent corrupt acts. Adequate procedures would entail a system demonstrating top level commitment, risk assessment, control measures, systematic review as well as training and communication. As for directors and management, they have to demonstrate that the corrupt act was committed without their consent and that they exercised due diligence to prevent the offence. • For the directors and management, they have to demonstrate that the corrupt act was committed without their consent and that they exercised due diligence to prevent the offence. • Specifically in the case of SIL is that the implementation of non-specific policies and normal accounting controls in SIL were regarded as inadequate procedure, irrespective of how small the business is.

WHERE? Regional/International perspectives

Alongside Malaysia, enumerations for companies to have a code of conduct and ethics as well as whistleblowing policies and procedures have been established in many countries including Australia, South Africa and Japan.



Country	Provision(s)
Australia	A listed entity should articulate and disclose it values ***(Recommendation 3.1)*** A listed entity should: (a) have and disclose a code of conduct for its directors, senior executives and employees; and (b) ensure that the board or a committee of the board is informed of any material breaches of that code ***(Recommendation 3.2)***. *A listed entity should have and disclose a whistleblower policy; and ensure that the board or a committee of the board is informed of any material incidents reported under that policy* ***(Recommendation 3.3)***.

Country	Provision(s)
South Africa	The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture ***(Principle 2)*** 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)*** 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)*** 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.

Country	Provision(s)
	(c) The use of protected disclosure or whistleblowing 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)***
Japan	The board should review regularly (or where appropriate) whether or not the code of conduct is being widely implemented. The review should focus on the substantive assessment of whether the company's corporate culture truly embraces the intent and spirit of the code of conduct, and not solely on the form of implementation and compliance. ***(Supplementary Principle 2.2.1)*** As a part of establishing a framework for whistleblowing, companies should establish a point of contact that is independent of the management (for example, a panel consisting of outside directors and outside kansayaku (i.e. "statutory auditors"). In addition, rules should be established to secure the confidentiality of the information provider and prohibit any disadvantageous treatment. ***(Supplementary Principle 2.5.1)***

Sustainability Leadership

MCCG Intended Outcome 4.0
The company addresses sustainability risks and opportunities in an integrated and strategic manner to support its long-term strategy and success.

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

The internalisation and application of the content "Why" and "How" should be read in tandem with the overarching content as outlined in latest editions of the Bursa Malaysia's Sustainability Reporting Guide and Governance and Sustainability Toolkit - Governance (where applicable).

Please scan the QR Code on the right to gain access to the BURSASUSTAIN to explore articles, guidelines and knowledge on corporate governance and sustainability.



Primer

Before we start on the "why" and "how" of the MCCG Practices 4.1 - 4.4 and Step Up 4.5, it is

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

In more recent years, the contribution of companies to sustainable development is usually described

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

meeting the ambitious targets of the SDGs." - from the way the businesses operate, how companies

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

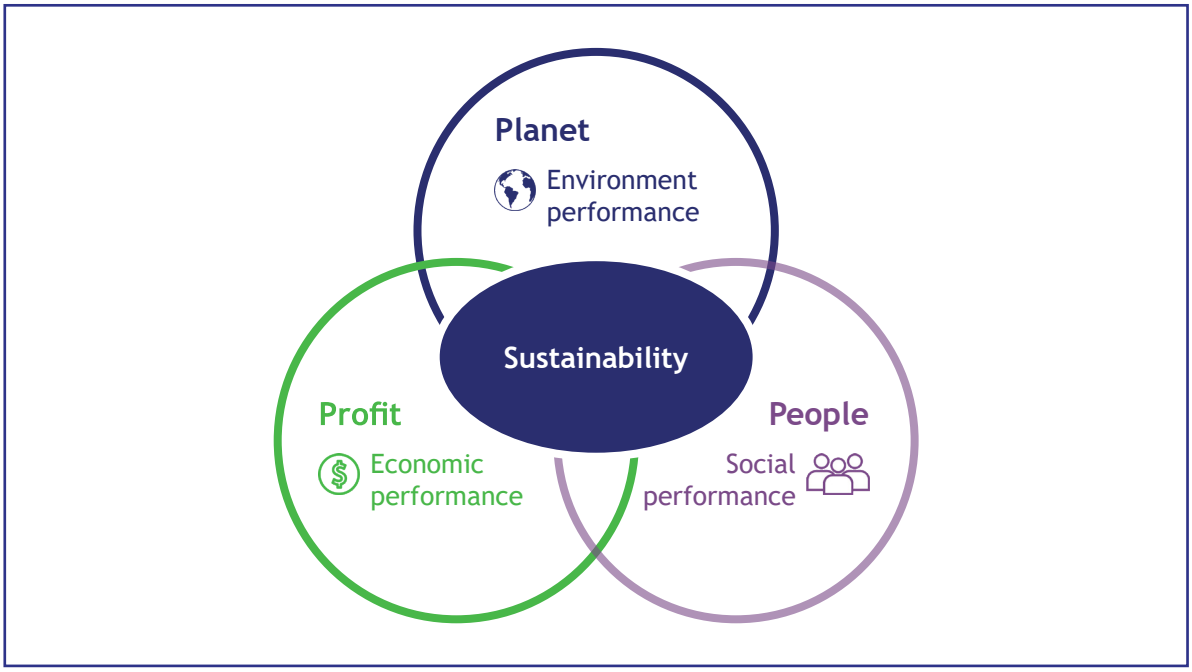
MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.



[1] Sustainability and ESG are often used interchangeably by organisations.
[2] Latest edition of the Bursa Malaysia's Sustainability Reporting Guide.
[3] Brundtland, G. *'Our Common Future', Report of the World Commission on Environment and Development*, 1987. UN.
[4] In September 2015, 193 countries agreed on 17 goals and 169 sub-goals at the United Nations General Assembly. Source: *The relevance of the Sustainable Development Goals (SDGs) for companies*, 2021. 17 Goals Magazine.
[5] *A Global Compact for Sustainable Development - Business and the SDGs: Acting Responsibly and Finding Opportunities, 2015. UN Global Compact.*
[6] *SDG Compass: The guide for business action on the SDGs, 2015. UN Global Compact.*

The rise of sustainability and ESG means companies are more accountable for their actions than ever before. On top of international conventions and treaties such as the Kyoto Protocol, Paris Agreement, Forced Labour Convention as well as local laws and regulations such as Employment Act 1955, spotlight is also put on how companies may lose their social license to operate. The term social license to operate was defined by Jim Cooney in 1997 within the mining industry context that goes *"a metaphor with the legal licenses needed by mining companies to begin their projects"* to notably define *"the level of tolerance, acceptance, or approval of an organization's activities by the stakeholders with the greatest concern about the activity."*[7] The relevant stakeholders are those (regardless of their number) with the ability to impact a project; they may include local residents, communities and opinion leaders, organised groups (e.g. political parties, activist groups, non-governmental organisations), and other state actors. This concept has since been gathering pace in wide-ranging industries and sectors such as agriculture, infrastructure, energy, and tourism. Fast-forward to today, maintaining a social licence for mining and infrastructure projects remains a major challenge as more recent examples demonstrate; from the Keystone Pipeline in the United States to the daily tribulations of Adani's Carmichael coal mine in Australia[8]. Closer to home, we see that there is more public attention and scrutiny involved for issues surrounding development plans and the degazettement of national reserves.

Flowing from the above, companies are expected to balance their business and profit interests with sustainability and ESG considerations. This balancing act can be underpinned by Elkington's "triple bottom line" ("TBL")[9]. In the simplest terms, the TBL agenda focuses corporations not just on the economic value that they add, but also on the environmental and social value that they add – or destroy. A "TBL" would therefore capture not just the financial bottom line (the financial profit or loss) but the social and environmental impacts of activity as well. The influence of TBL is far-reaching as companies all over the world have evolved so much in the way they operate, sustain business and report to their stakeholders. These bottom-line categories are often referred to as the three "P's": planet, people, and profit is illustrated below:



7 Cooney, J. 2017. *Reflections on the 20th anniversary of the term 'social licence'*, Journal of Energy & Natural Resources Law, 35:2, 197-200.
8 Maintaining the social licence to operate, 2018. Australian Institute of Company Directors.
9 Elkington, J. 1999. Cannibals With Forks : Triple Bottom Line of 21st Century Business.

While there are three categories that make up triple bottom line theory, it is important to remember each category is interconnected. When companies configure themselves through the TBL lens, they can be dedicated to not just be the "best in the world" but "best *for* the world"[10].

As companies adapt and embed sustainability-anchored concepts such that is outlined in this section, companies must also put a shift in the practical work in realising the ESG goals and objectives. Moving beyond theory, the next ensuing pages will describe the case for sustainability leadership and the steps of how companies can address sustainability risks and opportunities in an integrated and strategic manner to support its long-term strategy and success.

[10] Elkington, J. *25 Years Ago I Coined the Phrase "Triple Bottom Line." Here's Why It's Time to Rethink It*, 2018. Harvard Business Review.

WHY? The case for change

Sustainability or ESG is no longer a buzzword or a "nice to have" but a "must have". Embedding ESG risks to strategy and the overall enterprise risk management framework is now a growing corporate imperative. Companies that neglect the economic, environmental and social impact of sustainability do so at their own peril.

Addressing sustainability risks/capitalising on sustainability opportunities

The inaction of companies towards ESG risks can profoundly impact a company's business and operations. For instance, recent years saw Malaysian companies being denied access to certain markets following allegations of human rights violations in their supply chain. On the climate front, a 2021 modelling study conducted by Deloitte Economics Institute found that Asia Pacific economies may stand to lose a total of US$96 trillion in Gross Domestic Product (GDP) due to climate inaction by 2070 (which can be defined as the continuation of global emissions at current average rate[11]), which is almost equivalent to China's entire current economy for scale[12].

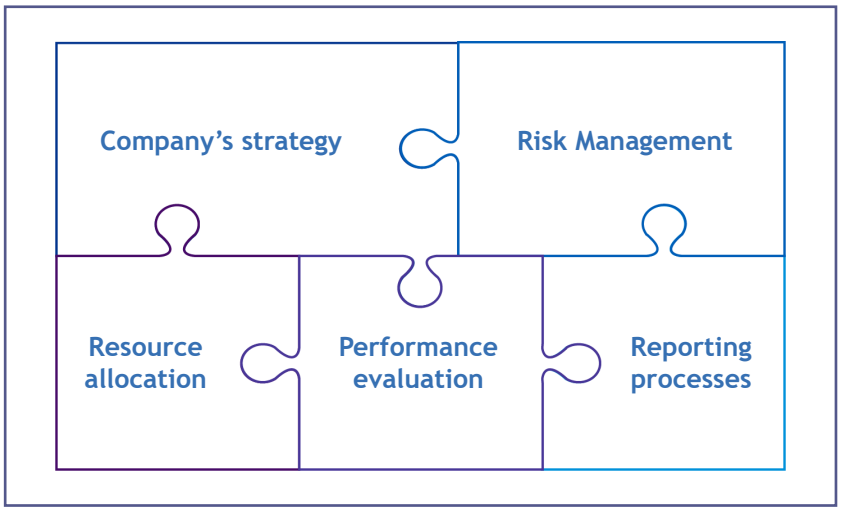
Some companies however have found opportunities in ESG and have found pathways into new business models and financial returns. Consider 3M Company, the multinational goods, technology and healthcare manufacturer which has long understood that being proactive about environmental risk can be a source of competitive advantage. The company has saved $2.2 billion since introducing its "pollution prevention pays" (3Ps) program, in 1975, preventing pollution up front by reformulating products, improving manufacturing processes, redesigning equipment, and recycling and reusing waste from production[13]. Another ESG champion is Patagonia Inc., the California-based outdoor gear and clothing company, who is known to "go against the grain" on profitability and excessive consumerism as its branding and marketing strategy (despite being a consumer company). Most famously in 2011, Patagonia launched a New York Times ad which featured a picture of one of Patagonia's highest grossing fleece jackets below the words: "Don't Buy This Jacket" with an explanatory on the chronic environmental effects of the fabric industry. As explained by Vincent Stanley, Patagonia's company philosopher, highlighting values and using environmental constraints as a source of innovation, the company has found profits and new ways of thinking[14].

Sustainability improves business resilience

Mounting evidence shows that sustainable companies deliver significant positive financial performance, and investors are beginning to value them more highly. In an article by the Harvard Business Review[15], Arabesque and University of Oxford reviewed the academic literature on sustainability and corporate performance and found that 90% of 200 studies analysed conclude that good ESG standards lower the cost of capital; 88% show that good ESG practices result in better operational performance; and 80% show that stock price performance is positively correlated with good sustainability practices. Companies that show leadership and governance in ESG and focusing on the long-term sustainability of its business has reaped the rewards of the capital market. It shows that companies can pursue the three elements of People, Planet and Profit at the same time and achieve business resilience and financial performance. There is a need for companies to have a deep change in how they do business. This is where integrated corporate governance comes into play.

[11] In this baseline scenario, the cost of inaction is built in. If global emissions continue to rise, global average warming of more than 3°C by the end of the century is highly likely. This is consistent with the findings and modelling captured by the seminal Assessment Reports conducted by the Intergovernmental Panel on Climate Change (IPCC), the leading United Nations body for assessing the science and impacts related to climate change.
[12] *Asia Pacific's turning point: How climate action can drive our economic future*. 2021. Deloitte Economics Institute
[13] *Five ways that ESG creates value*. 2019. McKinsey.
[14] *How Patagonia Learned to Act on Its Values*, 2021. Yale Insights.
[15] *The Comprehensive Business Case for Sustainability*, 2016. Harvard Business Review.

In a White Paper published by the World Economic Forum, corporate directors and executives are called upon to transcend the traditional segmentation of shareholder and stakeholder considerations - exemplified through the concepts of shareholder primacy and corporate responsibility - by integrating them[16]. In other words, it is no longer a shareholder-oriented but rather a stakeholder-oriented economy. What used to be a narrow and profit-driven pathway for companies is now broadened to include different stakeholders, more diversified interests and better holistic objectives overall. Integrated corporate governance takes a holistic view of shareholder and the wider stakeholder interests by systematically internalising ESG considerations into the company's strategy, resource allocation, risk management, performance evaluation as well as reporting policies and processes (see the *illustration of the five tenets below*)[17]. This shift to stakeholder-orientation is also reflected in evolving laws and corporate governance codes as well the best practices of leading companies that have been discussed so far.



Increasing investor focus on sustainability

Investors are now putting more pressure on companies and boards to relook into the sustainability and long-term viability of their businesses. On the local front, major institutional investors like Khazanah Nasional Berhad, Employees' Provident Fund and Retirement Fund (Incorporated) (KWAP) have become signatories to the United Nations' Principles of Responsible Investment (UNPRI). Likewise, one of the largest investment management companies in the world, BlackRock, is also transitioning into more ESG-anchored investing or sustainable investing[18].

Institutional investors have also been exercising their stewardship rights to push for better sustainability practices and reporting amongst corporates. The volume of shareholders' proposals on ESG is on the rise. At the end of the 2020 proxy season, it was observed that 90% of S&P 500 companies had published some kind of ESG report, up from 86% the prior year and 20% a decade ago[19]. Notable shareholder proposals in the United States 2020 Proxy season include that of Johnson & Johnson report on its opioid-related risks; a proposal that Comcast Corporation conduct an independent investigation into the risks of failing to report sexual harassment; and a repeat proposal that Google LLC improve its reporting of global gender and racial pay equity[20].

[16] *Integrated Corporate Governance: A Practical Guide to Stakeholder Capitalism for Boards of Directors.* 2020. World Economic Forum.
[17] Ibid.
[18] *BlackRock's Larry Fink: The New Conscience of Wall Street?* 2018. Barron's.
[19] ESG: Investors Increasingly Seek Accountability and Outcomes, 2021. Harvard Law School Forum on Corporate Governance
[20] *Room for Improvement: 2020 Proxy Voting Highlights.* Prentiss Smith & Company

In extreme circumstances, there have been cases of investors divesting away from companies/ portfolios with higher sustainability risks. Take for example the asset manager of the world's largest sovereign wealth fund, Norway's Norges Bank Investment Management, who recently divested from a string of fossil fuels companies[21].

Rise of activist investors

- Activist investors mobilise shareholders' rights to vote down on annual general meeting resolutions including reconfiguration of board compositions, directors' remuneration and re-election of directors.

Profiling your company on the FTSE4Good Bursa Malaysia Index

In the local context, the capital market is gradually ingraining ESG to the forefront. The FTSE4Good Bursa Malaysia Index ("F4GBM") which was launched in 2014 in collaboration with FTSE Russell, a leading global index provider, has since gained prominence amongst local stakeholders. From an initial pool of 24 companies qualifying into the index, as of December 2021, the number has grown to 80 companies. In July 2021, Bursa Malaysia expanded this index series, by launching the FTSE4Good Bursa Malaysia Shariah ("F4GBMS") index, a Shariah-complaint index that is aligned with sustainable investing principles.

These indices have been designed to identify Malaysian companies with recognised corporate responsibility practices, expanding the range of the benchmarks of the FTSE Bursa Malaysia Index Series for the Malaysian capital market. The constituents of the said indices range across various sectors of the market[22] and they comply with a variety of ESG criteria to meet the inclusion requirements.

[21] *Norway's $1tn wealth fund to divest from oil and gas exploration 2019*, The Guardian.
[22] The index is reviewed semi-annually in June and December. Source: *FTSE4Good Bursa Malaysia Index*, FTSE Russell Factsheet.

In order to provide a snapshot of the leading indicators of FTSE Russell's ESG Ratings (which is applicable to all of FTSE Russell's indexes including the F4GBM and F4GBMS), the illustration below is outlined[23]:

FTSE Russell ESG Ratings



The ESG Ratings and data model allows investors to understand a company's exposure to, and management of, ESG issues in multiple dimensions. The 3 Pillars (Environmental, Social and Governance) are classified into 14 ESG themes and underpinned by more than 300 detailed quantitative and qualitative indicators. The ESG Ratings take into account a company's ESG risk exposure, which is based on its line of business and the disclosed actions the company has taken to address and mitigate the pertinent risks.

[23] *ESG Ratings and data model*: Product overview. 2016. FTSE Russell.

HOW? The practice in substance

The subsequent write-ups aim to provide guidance on key areas which should be addressed as part of ESG oversight. Companies are encouraged to continue strengthening and improving on their ESG governance/oversight as they mature in their sustainability journey.

The summarised targeted areas for each Practice can be summarised as below:

Practice 4.1	Responsibility for oversight and strategic management of sustainability matters
Practice 4.2	Public disclosure as well as ongoing internal and external stakeholder engagement on the management of sustainability matters
Practice 4.3	Sustainability forms part and parcel of professional development and board skills matrix
Practice 4.4	Integration of sustainability in board and senior management performance evaluation and KPIs
Step Up 4.5	Identification of a designated management-level individual to strategically manage sustainability

Practice 4.1 of MCCG calls upon both the board and management to play the quintessential leading

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

Transitioning towards a low carbon economy, **Guidance to Practice 4.1 of MCCG** also explicitly encourages all listed companies to "evaluate their operations and set science-based emissions reductions target to support cleaner and sustainable growth".

Recognising the significance of ESG oversight on the long-term sustainability of financial institutions, **Standard 8.3(e) of Bank Negara Malaysia's Policy Document on Corporate Governance** mandated boards to promote sustainability through appropriate ESG considerations in the licensed financial institution's business strategies.

Key considerations relating to the application of **Practice 4.1 of MCCG** are discussed below:

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Strategic management of material sustainability matters should be driven by senior management.

sustainability statement/report for corporate reporting. Today, boards are expected to elevate ESG and sustainability-related issues to the boardroom agenda in a consistent manner. Board members must facilitate robust discussions of the company's vulnerability to ESG risks and integrate ESG discussions premised on risks and strategy. These ESG risks may include a plethora (non-exhaustively) of issues and opportunities such as climate change, human rights, anti-corruption and biodiversity. In this regard, it is imperative for the chairman to drive ESG agenda, with consultation from the chief executive officer and input from the other directors. This is to ensure that ESG is earmarked for the boardroom agenda. It must be made clear that discussions must go beyond approving the company's Sustainability Report and that board members are seen integral to the entirety of the company's sustainability journey which will be explored throughout this write-up.

Successful implementation lies in how the company integrates ESG into its overall business strategy, such that it builds onto the company's vision and contributes to business growth. Boards must also be aware of the risks and opportunities that lie ahead in embedding ESG into strategies. Some example scenarios of major strategic pivots and reviews in which boards have to consider are listed below:

- **Unlocking new business streams.** For example, banks entering into green financing and ESG bonds.
- **Venturing into new jurisdictions.** For example, companies need to consider the local anti-corruption, anti-bribery laws and procurement practices of the new country in which it seeks to operate in.
- **Resource scarcity.** For example, production-orientated companies that use large volumes of water (seen as a scarce resource) should consider the need to shift towards better water resources management, wastewater treatment systems and scaling up on water stewardship efforts.
- **Propping of new manufacturing capabilities and expanding workforce.** For example, setting up new factories in different geographical location with cognisance given on the local labour practices and human rights laws.
- **Leveraging on new technologies and unchartered territories.** For example, energy companies discovering new locations for solar or wind energy production and transitioning to renewable energy resources (not forgetting the social license to operate).
- **Expanding the supply chain value with new vendors and partners.** For example, companies need to be cognisant of the market regulations where suppliers are expected to manage post-consumer waste of their products.

Companies need to consider how to remodel strategy, transform business and measure impact against ESG. To re-model the company in this regard, there are three steps to pursue for boards to oversee[24]:

1. Reshape strategy

How do you define a corporate strategy that aims to deliver optimum value to stakeholders?

- Recalibrate market context, demand drivers and purpose definition
- Define business focus, strategic capabilities and competitive advantage
- Assess and prioritize stakeholder outcomes (risks, opportunities)
- Develop narrative on stakeholder value proposition
- Define measurable outcomes
- Develop capital allocation model and drive organizational alignment
- Appoint a designated person to strategically manage sustainability (*as espoused in **Step Up Practice 4.5***)

2.

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

How will you transform your business to successfully implement your strategy?

- Develop future scenarios and strategic planning across horizons
- Identify capability gaps across employees, consumers and supply chains
- Set strategic roadmap, define and prioritize actions and initiatives
- Drive the optimization of portfolio in alignment with stakeholder risks and opportunities
- Undertake valuation, modeling and economic impact measurement
- Adjust compensation and incentive structure to support strategy

[24] *Re-modelling strategies with ESG*, 2021. EY.

3. Demonstrate and measure impact

How will you measure, report and communicate success across stakeholders?

- Set improvements in company's governance structure, including evaluation of ESG effectiveness
- Develop metrics and reporting across key stakeholder outcomes
- Performance evaluations of board and senior management to include reviews of their performance in addressing company's material sustainability risks and opportunities
- Help determine the appropriate level of remuneration for directors and senior management, taking into consideration the company's performance in managing material sustainability risks and opportunities
- Conduct stakeholder engagement
- Communicate value delivered to the market

Some boards in Malaysia are already on the front foot in terms of embedding ESG into the boardroom agenda. For instance on the E (environment) spectrum, selected companies in the financial services sector have held simulation exercises to see the vulnerability of their "brick and mortar" branches due to rising sea levels in targeted high-flood-risk locations. This very much informed, validated and assured the boards and senior management of these companies to accelerate its digitisation strategies. Whereas on the S (social) side, some companies have conducted human rights assessments of their workers' welfare and labour practices by either instituting specialised board committees or commissioning an independent, third party assessment.

What are the sustainability matters that can impact a company?

As part of doing business, companies are exposed to several sustainability risks and opportunities. It is critical to note that sustainability matters which are material to companies operating in one sector may not be applicable to other sectors. For instance, industries which deal with foreign labour will have heightened exposure to forced labour issues while those that deal with data would have higher cybersecurity risks. The list below provides an illustration of common material matters under the umbrella of "environmental (E), social (S) and governance (G)"[25];

Environmental (E)	Social (S)	Governance (G)
An organisation's impact on living and non-living natural systems, including land, air, water and ecosystems.	The impacts an organisation has on the social systems within which it operates.	The set of rules or principles defining rights, responsibilities and expectations between different stakeholders in the governance of corporations.
Material matters; • Climate change • Water management • Pollution and waste • Biodiversity	Material matters; • Labour welfare • Health and safety • Product liability • Land rights • Diversity • Forced labour	Material matters; • Shareholder rights • "Poison pill" • Board diversity • Corruption and fraud • Remuneration • Cybersecurity • Tax governance

[25] Adapted from the *Global Reporting Initiative (GRI) Standards* and Committee of Sponsoring Organizations of the Treadway Commission (COSO) *Enterprise risk management—Applying enterprise risk management to environmental, social and governance-related risks.*

Environmental (E)	Social (S)	Governance (G)
Example guidance documents (non-exhaustive); • Climate Change and Principle-based Taxonomy Guidance Document by BNM • Task Force on Climate-Related Financial Disclosures (TCFD) • IUCN Red List	Example guidance documents (non-exhaustive); • International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work • Guidelines on occupational safety and health management systems by Department of Occupational Safety and Health (under Ministry of Human Resources) • Various guidelines published by the Ministry of Domestic Trade and Consumer Affairs on consumer protection.	Example guidance documents (non-exhaustive); • Risk Management in Technology (RMiT) by BNM • Guidelines on Adequate Procedures (Pursuant to Subsection (5) of Section 17A Under the Malaysian Anti-Corruption Commission Act 2009) by the Prime Minister's Department • Corruption Perceptions Index by Transparency International • Tax Governance Guide by Malaysian Institute of Accountants and The Malaysian Institute of Certified Public Accountants

How can companies determine the materiality of their sustainability risks (and opportunities)?

As explained, not all sustainability matters will be material to a company. Hence, it is important to firstly identify which sustainability matters are important to the company. To assess this, Bursa Malaysia's Sustainability Reporting Framework[26] requires the assessment of sustainability risks and opportunities from two perspectives:

(a) reflect the listed issuer's significant economic, environmental and social impacts; or

(b) substantively influence the assessments and decisions of stakeholders.

[26] Latest edition of the Sustainability Reporting Guide, Bursa Malaysia Berhad

Listed issuers must be stand guided by the following **Bursa Securities Listing Requirements:**

Paragraph 6.2 (c), Practice Note 9 of Bursa Securities Listing Requirements

(c) material sustainability matters and –

(i) how they are identified;

(ii) why they are important to the listed issuer; and

(iii) how they are managed including details on –

(aa) policies to manage these sustainability matters;

(bb) measures or actions taken to deal with these sustainability matters; and

(cc) indicators relevant to these sustainability matters which demonstrate how the listed issuer has performed in managing these sustainability matters.

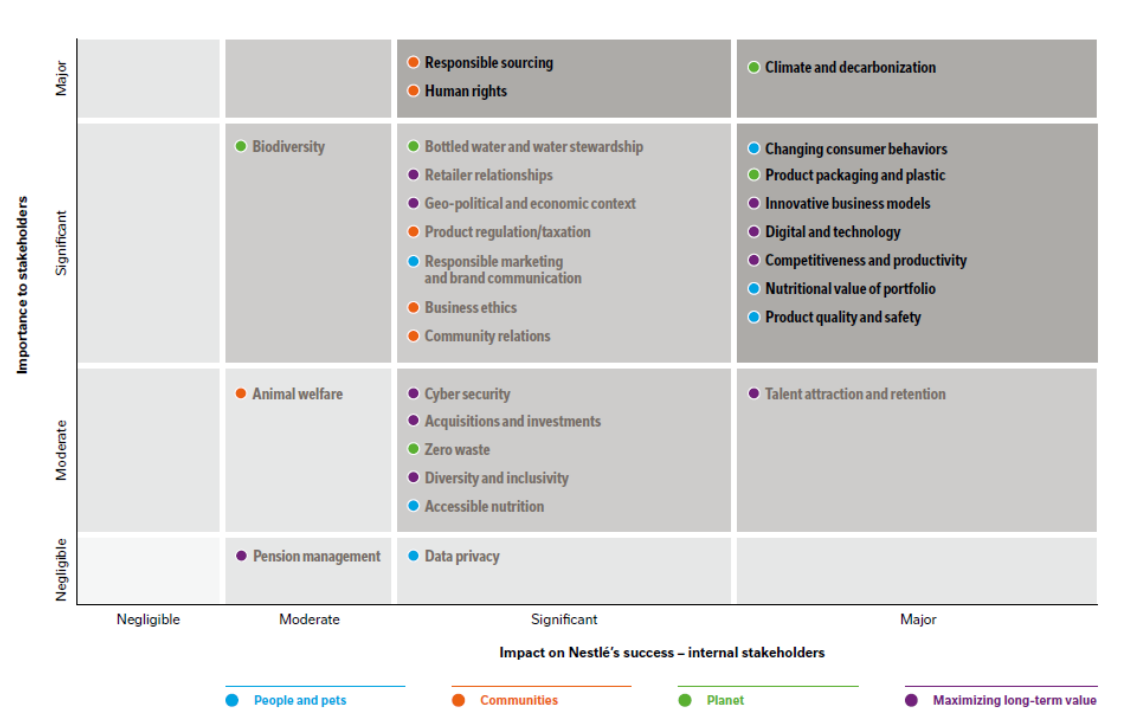
The application of a materiality assessment is explained in Bursa Malaysia's Sustainability Toolkit: Materiality[27]:

"In applying materiality (*summarised and illustrated in the figure below*), organisations should understand that there is flexibility in terms of how far they seek to develop their materiality process (depending on their size, capacity, strategic direction, etc.). Even so, it is important to ensure that the materiality process undertaken is sufficiently robust/ comprehensive (in terms of identifying material sustainability matters) to achieve its intended objectives. Organisations can choose to conduct a comprehensive materiality assessment periodically or look to limit their assessment or perhaps choose to conduct a full materiality assessment every two years. (*These options are further explained in Phase 5: Process Review of the Toolkit*). Notwithstanding this, it is expected that organisations will choose to move towards a more comprehensive materiality assessment over time."

Simply put, sustainability matters are considered material if they result in significant economic, environmental or social impacts to the company or are important to the stakeholders of the company.

As a case in point, Nestlé S.A. conducts a materiality assessment every two years to identify the economic, social and environmental issues that are of top priority to the company's external stakeholders. In 2020, Nestlé S.A strengthened the materiality process as they embarked on to fully integrated the assessment with Nestlé's Enterprise Risk Management process. The following illustrative disclosure sets out an example of a materiality matrix[28];

[27] Latest edition of the Sustainability Toolkit: Materiality, Bursa Malaysia Berhad
[28] *Creating Shared Value and Sustainability Report 2020* Appendix. 2020. Nestlé S.A.



Excerpt from Nestlé's Creating Shared Value and Sustainability Report 2020 Appendix on the interconnectedness of its identified ESG risks:

"The final results were plotted on a materiality matrix with their position relative to the degree of stakeholder interest and potential business impact. Although these are the material issues facing our business, they should not be viewed in isolation. They are increasingly interconnected and can often impact each other. That is why we are moving more toward an integrated, holistic approach to managing sustainability."

Boards should play a proactive oversight role in the company's materiality processes. The board's role on oversight on materiality of risks and how it should be addressed across integrated business strategy, can be articulated in the illustration below:

Areas to cover	Board's role
1. Determining what is "material": Identification and prioritisation of sustainability matters	The board should subject the materiality assessment exercise to a robust review prior to endorsing the company's materiality matrix.
2. Management of prioritised/material sustainability matters: • Development of long-term sustainability strategies • Developing policies, processes and initiatives to address key sustainability risks and opportunities • Measurement of tracking progress via establishment of key performance indicators (KPIs) • Establishing remuneration-based targets to drive improvements • Managing the established material risks	The board assesses robustness of management's sustainability strategies and holds themselves as well as senior management accountable via remuneration-based ESG targets.
3. Annual publication of the company's Sustainability Statement/Sustainability Report	The board reviews and approves sustainability statements/report. Boards are encouraged to seek assurance on sustainability information/disclosures provided therein.

Throughout the sustainability journey, boards should be mindful of the performance of the senior management in managing ESG risks and opportunities. Board members should be able to track and evaluate the relevant KPIs and the company's sustainability targets. When there are legitimate signs where senior management has failed to embed ESG into the day-today operations (i.e. not reaching minimum ESG KPIs, governance lapses or depreciating stakeholder confidence), boards should relook into the governance and organisational design of the company's ESG oversight and management[29]. This includes clarifying reporting lines, reworking the organisational structure, empowering management and crystallising decision-making authorities.

[29] Organizing for sustainability success: Where, and how, leaders can start, 2021. McKinsey.

Depending on the governance structure of the organisation, the Board may establish a dedicated board committee for ESG oversight which is often referred to as a Sustainability Committee. The Sustainability Committee will be responsible for monitoring the implementation of sustainability-related policies, measures and actions in achieving the organisation's sustainability milestones and goals. However, even if oversight is delegated to a board committee, ultimate responsibility lies with the board.

For example, Nike Inc established a Corporate Responsibility, Sustainability and Governance Committee ("CRSGC") to steer the companies' ESG goals and objective and provide support to the main board. The CRSGC receives regular presentations from senior executives to discuss how sustainability and business strategies can be aligned and reports to the board at large on how the company's sustainability strategy can be integrated within major business decisions[30]. In fact in the CRSGC Charter, one of the key responsibilities is to review and evaluate social, political and environmental impact, trends and issues in connection with Nike's business activities and make recommendations to the board regarding those trends and issues[31]. Sufficient airtime with the board members and established avenues for reporting is important in ESG oversight. An increasing number of companies are also establishing dedicated departments to manage the overall sustainability governance of the company.

Practice 4.2 of MCCG focuses on the effective communication of sustainability goals and strategies

> **MCCG Practice 4.2**
> The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

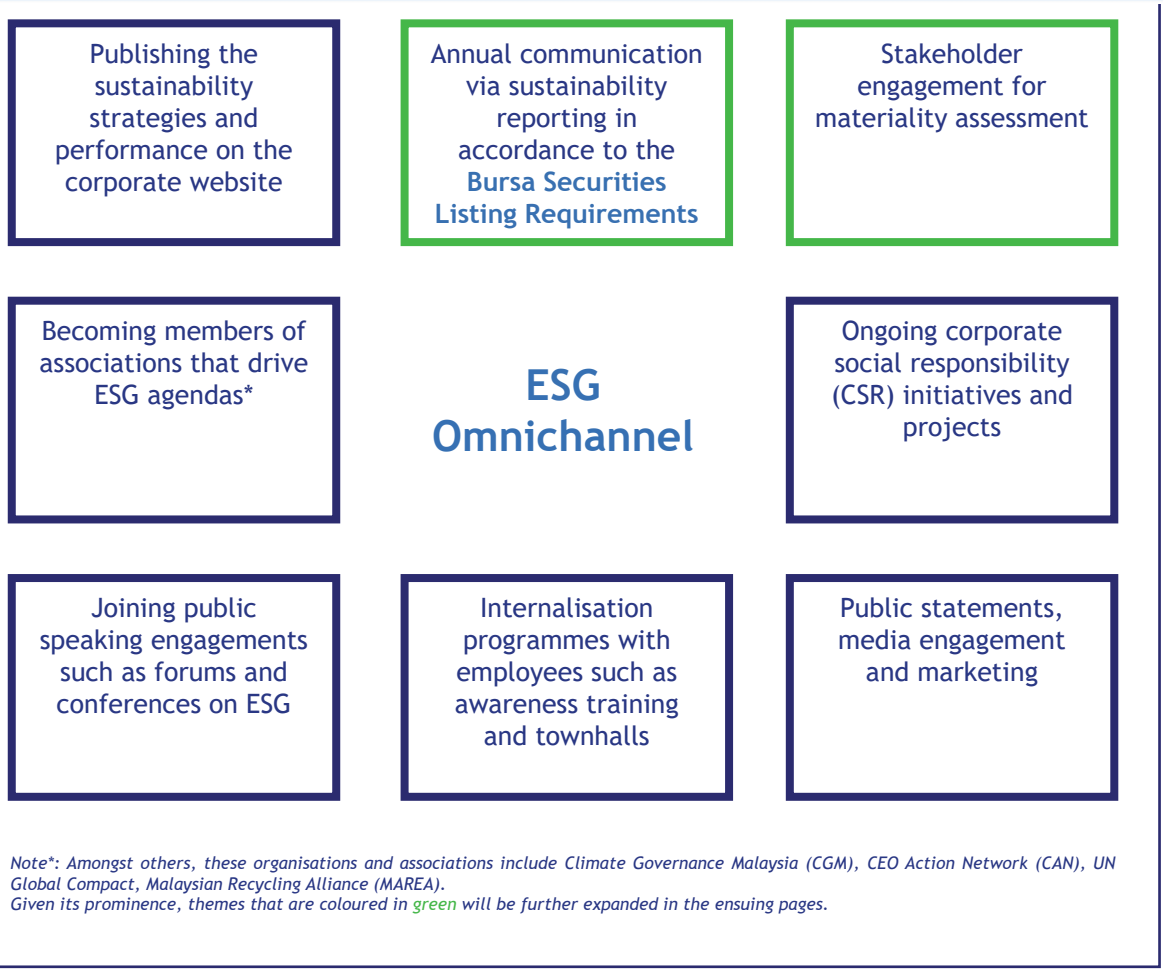
company's approach to sustainability ('what we do and why we do it') will keep them engaged on sustainability issues and support actions on sustainability across the company.

External stakeholders should also remain informed through the appropriate means such as engagements and company disclosures. In preparing for the latter, the board and senior management should consider, among others, the information which stakeholders require to assess the company's sustainability risks and opportunities, and ensure the information are disclosed, focusing on substance and not merely form. This includes how close (or far) is the company from achieving its targets, and actions the company has or will take to address any gaps.

[30] *Running the Risk: How Corporate Boards Can Oversee Environmental, Social and Governance (ESG) Issues*, 2019. Ceres.
[31] *Board committee charter: Corporate Responsibility & Sustainability Committee*, 2019. Nike Inc.

The focus of **Practice 4.2** relies on the effective communication to both internal and external.

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.



Note: Amongst others, these organisations and associations include Climate Governance Malaysia (CGM), CEO Action Network (CAN), UN Global Compact, Malaysian Recycling Alliance (MAREA).*
Given its prominence, themes that are coloured in green will be further expanded in the ensuing pages.

Key considerations relating to the application of **Practice 4.2 of MCCG** are discussed below:

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

In terms of public disclosure, **paragraph 9.45(2) and paragraph 29, Part A of Appendix 9C of the Bursa Securities Listing Requirements** provide that a listed issuer must include in its annual report, a narrative statement of the listed issuer's management of material economic, environmental and social risks and opportunities ("**Sustainability Statement**").

It is within the board's duty to ensure that the contents of the Sustainability Statement are guided by quality, transparency and timeliness. **Part (III) - Sustainability of the Practice Note 9** has outlined the expectations for companies to disclose their economic, environmental and social risks and opportunities, as follows

Paragraph 6.1, Practice Note 9 of Bursa Securities Listing Requirements

All listed issuers should ensure that the Sustainability Statement contains information that is balanced, comparable and meaningful by referring to the Sustainability Reporting Guide issued by the Exchange. In identifying the material economic, environmental and social risks and opportunities, the listed issuer should consider the themes set out in the Sustainability Reporting Guide.

Paragraph 6.2, Practice Note 9 of Bursa Securities Listing Requirements

In making the Sustainability Statement, a listed issuer must include disclosures on the following:

(a) the governance structure in place to manage the economic, environmental and social risks and opportunities ("**sustainability matters**");

(b) the scope of the Sustainability Statement and basis for the scope;

(c) material sustainability matters and –

  (i) how they are identified;

  (ii) why they are important to the listed issuer; and

  (iii) how they are managed including details on –

    (aa) policies to manage these sustainability matters;

    (bb) measures or actions taken to deal with these sustainability matters; and

    (cc) indicators relevant to these sustainability matters which demonstrate how the listed issuer has performed in managing these sustainability matters.

Note: The above only represents an extract. Detailed provisions are contained in Practice Note 9.

To provide an illustrative disclosure of the elements mentioned above, please refer to the extracted pages of Unilever's 2020 Annual Report in the ensuing two pages[32]. Unilever as a multinational consumer goods giant has been consistent in delivering quality and meaningful ESG disclosure. In 2019, Unilever actually broke the record for ESG evaluation scores which is awarded by ratings agency S&P Global[33]. Some reporting strategies used by Unilever which boards and senior management may adopt include:

- Embed sustainability reporting in the main Annual Report itself;
- Set clear scope and boundaries for sustainability reporting ("who are the audiences?" "what is the board's role? What are the roles of the board committees?");
- Proactively engage independent assurance to its ESG data and disclosures;
- Provide historical performance data to ensure that stakeholders can appreciate the sustainability journey; and
- Institute a strong sustainability reporting and data hub.

[32] Unilever Annual Report and Accounts 2020.
[33] McGrath, J. *Unilever sets record with ESG score*. 2019. ESG Clarity.

Our performance

We measure our success by tracking both non-financial and financial key performance indicators.

Non-financial performance

	Target	2020	2019	2018
Improving health & wellbeing				
Health & hygiene Target: By 2020 we will help more than a billion people to improve their health and hygiene. This will help reduce the incidence of life-threatening diseases like diarrhoea [a]	1 billion	On ground reach: 625 million TV reach: 715 million	On ground reach: 615 million TV reach: 710 million	On ground reach: 570 million TV reach: 670 million
Nutrition Target: By 2020 we will double (i.e. up to 60%) the proportion of our portfolio that meets the Highest Nutritional Standards, based on globally recognised dietary guidelines	60%	61% †	56% ◊	48%
Reducing environmental impact				
Greenhouse gases Target: Halve the greenhouse gas impact of our products across the lifecycle (from the sourcing of the raw materials to the greenhouse gas emissions linked to people using our products) by 2030 (greenhouse gas impact per consumer use; 2010 baseline) [c][d]	(50%)	(10%)	(8%) [b] ◊	(3%) [b]
Target: By 2020 CO 2emissions from energy from our factories will be at or below 2008 levels (≤145.92) despite significantly higher volumes (reduction in CO energy in kg per tonne of production since 2008)*	2from ≤145.92	36.94 †	50.76 ◊	70.46 Δ
Water Target: Halve the water associated with the consumer use of our products by 2020 (water impact per consumer use; 2010 baseline) [c]	(50%)	0%	1% ◊	(2%)
Target: By 2020 water abstraction by our global factory network will be at or below 2008 levels (≤2.97) despite significantly higher volumes (reduction in water abstraction in m^3 per tonne of production since 2008)*	≤2.97	1.52 †	1.58 ◊	1.67 Δ
Waste Target: Halve the waste associated with the disposal of our products by 2020 (waste impact per consumer use; 2010 baseline) [c]	(50%)	(34%) †	(32%)	(31%)
Target: By 2020 total waste sent for disposal will be at or below 2008 levels (≤7.91) despite significantly higher volumes (reduction in total waste in kg per tonne of production since 2008)*	≤7.91	0.34 †	0.30 ◊	0.23 [e]
Sustainable sourcing Target: By 2020 we will source 100% of our agricultural raw materials sustainably (% of tonnes purchased)	100%	67%	62% ◊	56%
Enhancing livelihoods				
Fairness in the workplace Target: By 2020 we will advance human rights across our operations and extended supply chain, by:				
• Sourcing 100% of procurement spend from suppliers meeting the mandatory requirements of the Responsible Sourcing Policy (% of spend of suppliers mee ting the Policy)	100%	83% †	70%	61% Δ
• Reducing workplace injuries and accidents by 50%, from 2.10 accidents per 1 million hours worked in 2008 (reduction in To tal Recordable Frequency Rate of workplace accidents per million hours worked since 2008)*	1.05	0.63 †	0.76 [f] ◊	0.69 Δ
Opportunities for women Target: By 2020 we will empower 5 million women, by:				
• Promoting safety for women in communities where we operate (number of women) • Enhancing access to training and skills (number of women) • Expanding opportunities in our value chain (number of women)	5 million	2.63 million [g] †	2.34 million	1.85 million Δ
• Building a gender-balanced organisation with a focus on management (% of managers that are women)*	50%	50% †	51%	49% Δ
Inclusive business Target: By 2020 we will have a positive impact on the lives of 5.5 million people by:				
• Enabling 5 million small-scale retailers to access initiatives aiming to improve their income (number of small-scale retailers since 2015)	5 million	1.83 million [g] †	1.81 million ◊	1.73 million
• Enabling 500,000 smallholder farmers to access initiatives aiming to improve their agricultural pr a ctices (number of smallholder farmers since 2011)	0.50 million	0.83 million [g] †	0.79 million ◊	0.75 million

Page 34; Our Performance: Non-financial performance

Note: This is good example of reporting non-financial performance of the company. There is clear historical data, final targets, and non-financial indicators. The accompanying footnotes (not shown in the above) also have clear definitions and indications of which data is externally assured by a third-party.

Corporate Governance Guide | Pull-out I

Guidance on Board Leadership and Effectiveness

Sustainability deep-dives continued

Understanding financial impact: scenario analysis

Scenario analysis helps us to understand the potential impact of climate change on our business in 2030 to inform our strategy and financial planning. We used two types of scenario analysis:

1. Modelling the potential financial impact o f average global temperature increases of 2°C and 4°C on our business in 2030.
2. Deep-dive analysis of the potential f inancial impact of climate change on three of our key agricultural commodities: so y, black tea and palm oil.

We plan to extend our scenario analysis to assess the impact of 1.5°C temperature increases to reflect the latest science and our commitment to limit global temperature increases, to well below 2°C and ideally no more than 1.5°C above pre-industrial levels.

1. Modelling the potential financial impact of 2°C and 4°C temperature increases on our business

We have made a high-level assessment of the impact of 2°C and 4°C temperature increases due to climate change by 2100. Carried out in 2017, the assessment focused on the material impacts on our business in the year 2030. The modelling assumed that our business activities are the same as they are today. The scenarios were based on existing internal and external data.

While we understand that policy risk and physical impact can happen simultaneously, we made the following simplifying assumptions:

- In the 2°C scenario, we assumed that in the period to 2030 society acts rapidly to limit greenhouse gas emissions and puts in place measures to restrain deforestation and discourage emissions (for example implementing carbon pricing at $75-$100 per tonne, taken from the International Energy Agency's 450 scenario). We have assumed that there will be no significant impact to our business from the physical ramifications of climate change by 2030 – i.e. from greater scarcity of water or increased impact of severe weather events. The scenario assesses the impact on our business from regulatory changes.
- In the 4°C scenario, we assumed climate policy is less ambitious and emissions remain high so the physical manifestations of climate change are increasingly apparent by 2030. Given this we have not included impacts from regulatory restrictions but focus on those resulting from the physical impacts.

We identified the material impacts on Unilever's business arising from each of these scenarios based on existing internal and external data. The impacts were assessed without considering any actions that Unilever might take to mitigate or adapt to the adverse impacts or to introduce new products which might offer new sources of revenue as consumers adjust to the new circumstances.

The main elements of the 2°C scenario are as follows:

- Carbon pricing is introduced in key countries and hence there are increases in both manufacturing costs and the costs of raw materials such as dairy ingredients and the metals used in packaging.
- Zero net deforestation requirements are introduced and a shift to sustainable agriculture e.g. Climate Smart Agriculture, puts pressure on agricultural production, raising the price of certain raw materials.

The main impacts of the 4°C scenario are as follows:

- Chronic and acute water stress reduces agricultural productivity in some regions, raising prices of raw materials.
- Increased frequency of extreme weather (storms and floods) causes increased incidence of disruption to our manufacturing and distribution networks.
- Temperature increase and extreme weather events reduce economic activity, GDP growth and hence sales levels fall.

Our analysis shows that, without action, both scenarios present financial risks to Unilever by 2030, predominantly due to increased costs. However, while there are financial risks which would need to be managed, we would not have to materially change our business model. The most significant impacts of both scenarios are on our supply chain where costs of raw materials and packaging rise, due to carbon pricing and rapid shift to sustainable agriculture in a 2°C scenario and due to chronic water stress and extreme weather in a 4°C scenario. The impacts on sales and our own manufacturing operations in the scenarios tested are relatively small.

Scenario: Potential impact of a 2°C temperature increase by 2100 (transition impacts)

Scenario drivers	Potential financial impact in 2030 if no actions to mitigate risks are taken
Increased costs due to carbon pricing.	Turnover: Not material Expenditure: Estimated increase of €0.8bn
Increased raw material costs from zero net deforestation policies and a shift to sustainable agriculture.	Turnover: Not material Expenditure: Estimated increase of €0.9bn

Scenario: Potential impact of a 4°C temperature increase by 2100 (phy sical impacts)

Scenario drivers	Potential financial impact in 2030 if no actions to mitigate risks are taken
Chronic and acute water stress reduces agricultural productivity in some regions, raising prices of raw materials.	Turnover: Not material Expenditure: Estimated increase of €2.7bn
Increased frequency of extreme weather (storms and floods) causes increased incidence of disruption to our manufacturing and distribution networks.	Turnover: Estimated reduction of €0.4bn Expenditure: Not material
Temperature increase and extreme weather events reduce economic activity, GDP growth and hence sales levels fall.	Turnover: Estimated reduction of €2.1bn Expenditure: Not material

Page 52; Sustainability deep-dives continued: understanding financial impact: scenario analysis

***Note:** This is good example of reporting the impact analysis from carbon emissions on the company's businesses. In the latter pages on this "sustainability deep-dives", Unilever also explored on how key raw materials such as palm oil, soybean oil, black tea and plastic have impacted and inform their businesses and strategies.*

Further reflection

The following are the international standards, frameworks and best practices which are globally recognised for sustainability reporting;

- GRI Standards, Global Reporting Initiatives (Updated 2021);
- Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) (2017)
- International Reporting <IR> Framework, International Integrated Reporting Council (IIRC) (2021)
- Carbon Disclosure Project (CDP)
- Climate Disclosures Standards Board (CDSB) (annually revised)
- Sustainability Accounting Standards Board (SASB) Standards (2018)
- Sustainable Development Goals (SDGs), the United Nations (2016)
- International Sustainability Standards Board, International Financial Reporting Standards (IFRS) Foundation (slated to be released in second half of 2022).

Directors should watch this space with regards to the development of a comprehensive global baseline of sustainability disclosure standards to meet investors' information needs that is being spearheaded by the International Sustainability Standards Board.

Why is stakeholder engagement for materiality assessment important in the overall ESG communication?

Stakeholder engagement for materiality assessment does not only inform the stakeholders what is material to the company but ultimately involves key stakeholders in the process itself. It forms the basis in which companies engage identified stakeholders to analyse, map-out and prioritise sustainability strategies and targets based on stakeholder expectations.

A broad and inclusive materiality process, including stakeholder engagement can deliver valuable benefits, such as[34]:

- Ensuring business strategy takes account of significant social and environmental topics and the management of sustainability issues is embedded in wider business processes;
- Identifying trends on the horizon, such as water scarcity or changing weather patterns, that could significantly impact your company's ability to create value in the long-term;
- Enabling different functions of the business to be ready to take advantage of opportunities to develop new products or services and stay ahead of competitors;

[34] *The essentials of materiality assessment*, 2014. KPMG.

- Prioritising your organization's resources for the sustainability issues that matter most to your business and stakeholders, so you can focus time and money on the most important topics, and on collecting relevant data;
- Highlighting areas where you need to manage and monitor issues that are important but not currently addressed;
- Identifying the areas of Interest to the most important stakeholders, enabling you to report concise information that gives a meaningful picture of progress to those that need it; and
- Helping to identify where the company is creating, or reducing, value for society.

Without input from key stakeholder groups, any approach to sustainability will be limited by an organisation's self-interest and inward focus[35]. The Business for Social Responsibility has developed a five-step approach to show how corporations can initiate and sustain stakeholder engagement:



[35] *Five-Step Approach to Stakeholder Engagement*, 2019. Business for Social Responsibility.

How can an effective communications strategy bolster the company's standing in ESG?

Going beyond annual corporate reporting, companies should pursue an effective ESG communications campaign strategy by disclosing their sustainability strategies and targets through other mediums such as corporate websites, media and internal communications. Consistency, authenticity and clear messaging in the companies' ESG goals and transparency in data and practices are one of the many ways in which companies must adopt in communicating the ESG journey[36]. Having one clear-sighted ESG goal is the simplest launchpad to communicating the companies ESG aspirations to the external public and internal stakeholders ("what we do and why we do it"). Here in Malaysia, there are already several leading companies who have pledged clear sustainability commitments (e.g. net zero emissions by 2050, ending of coal financing) and publicly endorsed it through various media platforms[37].

Lego System A/S, or better known as the Lego Group (Lego), a Danish toy production company represents a success story in how a company embedded ESG in their communications, branding and marketing strategies[38]. Over the past decade, Lego managed to rebuilt its image towards a more purposeful and sustainable brand by reshaping its value chain (i.e. by chucking plastic usage and using more environmental materials for its iconic bricks), realigning its partnerships (i.e. ditching key partnerships with oil & gas companies and working more closely with organisations like the World Wide Fund for Nature (WWF)) and reimagined its stakeholder map. On the last point, given that Lego reaches close to 100 million children in 140 countries, Lego interestingly considers children to be their "No.1 stakeholder". To bring this mission to life, Lego launched Build the Change, a global initiative which was inspired in part by the hundreds of letters the company receives from children excited to share their ideas, many of which involve environmental and animal welfare.

[36] *ESG: 8 Tips for Effective Communication*, 2021. Alpha FMC.
[37] *MYClimateAction Case Studies: Thriving in a Net Zero Economy: A Guide for Malaysian Businesses for Positive Climate Actions*, 2021. Global Compact Network Malaysia
[38] Mainwaring, S. How Lego Rebuilt Itself As A Purposeful And Sustainable Brand, 2016. Forbes.

What is the board's role in communicating its sustainability purpose?

The board can play an integral role in communicating the companies' goals and strategies. The sustainability goals and strategies of a company would not be achieved without the full conviction and participation of its employees. This is why it is important for the board and management to

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

A compelling corporate purpose and clear ESG commitments are essential to the longevity of **Practice 4.2.** The board can help glue this together through the following actions, as illustrated below:

Five actions that can help boards further a company's purpose and ESG Journey[39];

B	O	A	R	D
Build an authentic purpose narrative with management, engaging stakeholders proactively on the company's strengths, vulnerabilities	Own purpose in board practices; board composition should demonstrate diversity and ESG competence; include purpose and ESG issues regularly on the board agenda	Assess purpose commitments ensuring management sets clear, measurable goals, actions, and accountability at all levels of the organisation	Reinforce purpose lens in core board decisions, boards can use purpose to pressure test decisions and trade-offs in company strategy, investments, risk and performance management, HR and culture, governance, and external reporting	Drive organizational accountability for purpose through management evaluations and reporting the ESG metrics to executive compensation and celebrate purpose successes

[39] *The board's role in embedding corporate purpose: Five actions directors can take today.* 2020. McKinsey.

Why is there a need to assure the company's sustainability data and disclosure?

The board and management should consider internal or external assurance of their sustainability information to enhance the credibility of information disclosed. Sustainability assurance is a growing norm for corporate disclosure. In a large-scale study conducted by the International Federation of Accountants (IFAC) of 1400 companies (largest by market capitalisation) across 22 jurisdictions, the IFAC found that 51% of the companies provided some level of assurance to its sustainability information[40].

Below is the definition and practice comparison of internal and external assurance:

Internal assurance	External assurance
Internal assurance generally relies on the accountability of the governance body of the organisation through the internal audit function. For example, the internal audit function can provide assurance on whether data (quantitative and qualitative) being reported is accurate, relevant, complete, and timely. This is particularly important as regulatory oversight increases. Furthermore, the internal audit function can review the consistency of sustainability reporting with the formal financial disclosure filings. Whilst sustainability reporting provides non-financial data, any information that conflicts with formal financial disclosures will raise a red flag with regulators and investors[41].	On a higher pedestal, external assurance enables an independent opinion to be provided in relation to the sustainability disclosures and information through a third-party assurance process. Hence, boards and management are encouraged to engage independent professionals to conduct assurance activities and obtain an independent opinion with respect to the quality (e.g. accuracy, completeness) of sustainability information disclosed.

[40] *The State of Play in Sustainability Assurance: Benchmarking Global Practice.* 2021. International Federation of Accountants (IFAC).
[41] *White Paper: Internal audit's role in ESG reporting.* 2021. The Institute of Internal Auditors.

An example disclosure on the innerworkings and scope of work of a third-party assurance on sustainability information, as produced by German automotive giant, Daimler AG, is extracted below:

Assurance Report of the Independent Auditor (KPMG AG) regarding Sustainability Information of Daimler AG:

"To the legal representatives of Daimler AG, Stuttgart

We have performed an independent assurance engagement on selected qualitative and quantitative sustainability disclosures in the Sustainability Report 2020 (further "Report") for the business year from January 1 to December 31, 2020 of Daimler AG, Stuttgart (further "Company" or "Daimler"). For the selected qualitative and quantitative sustainability disclosures CO2 emissions (scope 1, scope 2 and scope 3), energy consumption, waste, water withdrawal and the information on corporate citizenship as well as the qualitative disclosures in the appendix „How we calculate and document our CO2 emissions" (further "sustainability disclosures") a limited assurance engagement was performed……

Within the scope of our engagement, we performed amongst others the following procedures when conducting the limited assurance:

- An evaluation of the process for determining material aspects and respective boundaries, including results of Daimler's stakeholder engagement.
- A risk analysis, including a media search, to identify relevant sustainability aspects for Daimler in the reporting period.
- Interviewing management at corporate level responsible for sustainability performance goal setting and monitoring process.
- Evaluation of the design and implementation of the systems and processes for the collection, processing and control of the data on sustainability performance indicators, including the consolidation of the data.
- Interviews with relevant staff at corporate level responsible for providing the data, carrying out internal control procedures and consolidating the data.
- Analytical evaluation of data and trends of quantitative information which are reported by all sites on group level.
- Evaluating internal and external documentation to determine whether selected qualitative claims and quantitative indicators on sustainability performance are supported by sufficient evidence.
- Assessment of local data collection and reporting processes and reliability of reported data via sampling survey in Vitoria (Spain), Gaggenau and Rastatt (both Germany).

Conclusion

Based on the procedures performed and the evidence obtained for the limited assurance, nothing has come to our attention that causes us to believe that the selected qualitative and quantitative sustainability disclosures CO2 emissions (scope 1, scope 2 and scope 3), energy consumption, waste, water withdrawal and the information on corporate citizenship as well as the qualitative disclosures in the appendix……."

Note: These are selected excerpts only.
Source: Adapted from Daimler Sustainability Report 2020.

Practice 4.3 of MCCG highlights the importance for board members to have the sufficient

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

on sustainability, as well as evaluate the sustainability risks and opportunities, and make informed decisions on the matter. To ensure the board is equipped and ready to execute its role, the board should identify its professional development needs concerning sustainability and ensure these are addressed. The board should also consider whether a change in its composition or of its skills matrix is required to strengthen board leadership and oversight of sustainability issues.

Key considerations relating to the application of **Practice 4.3 of MCCG** are discussed below:

How can the board stay attuned to ESG and future-proof itself?

Directors are expected to have adequate understanding and discourse with management in addressing ESG risks. In other words, a future-ready director is one that is ESG competent. Directors are not expected to turn into ESG experts but adequate ESG competence is crucial to address ESG risks. In a keynote address by Commissioner and Acting Chairman of the U.S. Securities & Exchange Commission (SEC), Allisson Lee quoted that "you cannot direct the wind, but you can adjust your sails" in describing the journey for directors in ESG oversight[42]. Hence, companies should consider ways to enhance the ESG competency in their boards. On this front, the Securities Commission Malaysia has identified ESG Fitness of boards as one of the key priorities in their newly revised Corporate Governance Stragtegic Priorities 2021-2023[43]. A new onboarding programme focusing on sustainability, the Leading for Impact Programme (LIP) will be introduced for directors of listed companies.

Hence, directors should reflect on their ESG competency and reflect this to their individual development programme by engaging the company secretary. The company secretary should then develop tailor-made trainings and professional development programs for directors across the board (i.e. Training Needs Analyses). A good start would be to look at the material matters that are impacting their boards – and start by familiarising themselves with those that are material to their companies. Hence, directors are encouraged diversify their topic of interest to more sustainability-driven agendas (e.g. climate risks, supply chain, circular economy, labour rights, renewable energy and etc).

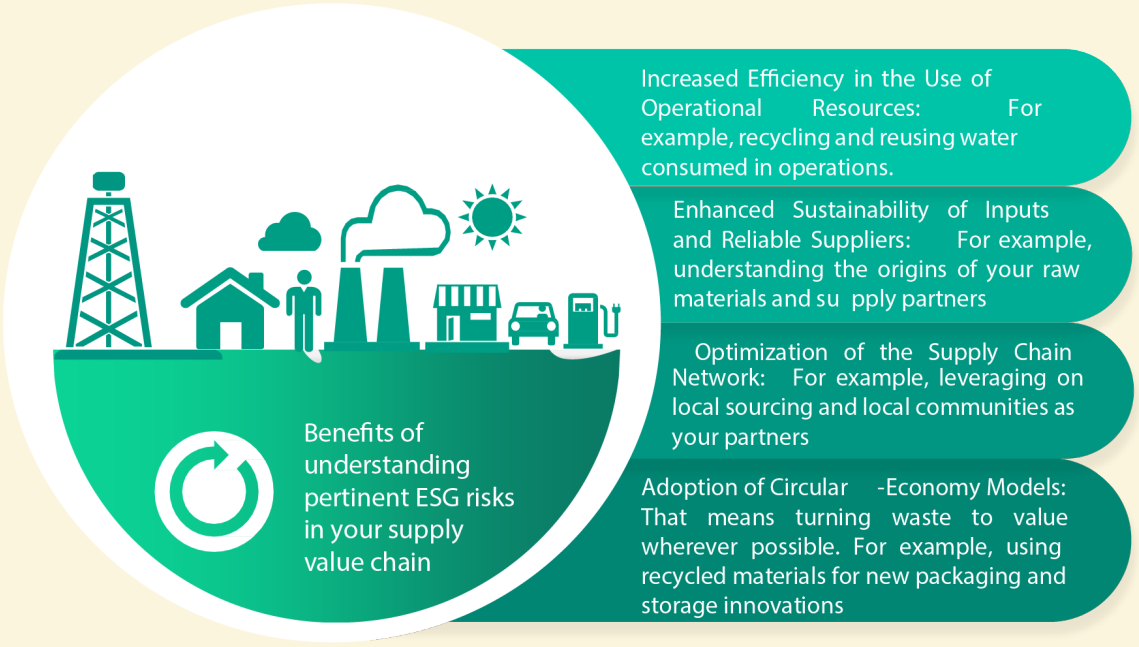
[42] *Speech; Climate, ESG, and the Board of Directors: "You Cannot Direct the Wind, But You Can Adjust Your Sails"*, 2021. Securities & Exchange Commission
[43] *Corporate Governance Strategic Priorities 2021-2023*. 2021. Securities Commission Malaysia.

Boards can also pursue the support of external ESG experts and advisors to bolster their ESG competency. For example, selected companies have established an independent committee or advisory panel which primarily comprises co-opted experts to offer guidance and recommendations on sustainable business practices. In order to ensure the flow of information and continuity between the advisory committee and the main board, it is commonplace to have a board member as a representative on the said committee or panel.

It is incumbent on the nomination committee to address what should the future board skills matrix look like for the company. A forward-looking nomination committee would integrate ESG considerations into their nominating processes such as training criteria and ESG experience in order to recruit directors that will bring ESG expertise to the board. American giant Dow Chemical Company, one of the largest chemical and plastics manufacturer in the world, "took the bull by the horns" and disassembled its nomination process to address its board composition with respect to its material ESG exposure. The board of Dow Chemical fast-tracked the appointments three board members with relevant "E" credentials who are leaders in climate, environmental and international sustainability governing bodies[44].

Companies should also consider the wider impacts and effects of the companies' value chain. Boards can discharge its oversight role more effectively when they know the lines of the business or in other words knowing "from-farm-to-table". In evaluating the companies' value chain, it is no longer only on the question about reducing costs. The following illustration below highlights the host of ESG considerations in reflecting on a companies' value chain:

Further reflection



Source: Adapted from Your Supply Chain Needs a Sustainability Strategy. July 2020. Boston Consulting Group

[44] Whelan T. Boards Are Obstructing ESG — at Their Own Peril. January 2021. Harvard Business Review.

How can the board stay attuned to climate-related risks and opportunities?

The *Framework Convention on Climate Change (UNFCCC)*, in its Article 1, defines climate change as: "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."[45]. The UNFCCC thus makes a distinction between climate change attributable to human activities altering the atmospheric composition and climate variability attributable to natural causes. Global temperatures have increased significantly in the past half century and extreme weather events, such as extreme cold and heat waves, droughts and floods, as well as natural disasters are becoming more frequent and severe. These unpredictable and uncontrollable changing weather patterns have taken a toll on livelihoods, societies and economies. It must also made clear that climate change does not spare anyone: it affects low-income countries, but also advanced economies.

To better understand climate change within a business context, companies can consider the financial impact of climate change. Besides the physical impact of climate change towards businesses (a simple example would be the financial cost to rebuild a factory that is devastated by a massive flooding), companies need to also keep in mind the cost of transitioning to a lower-carbon economy. The International Energy Agency forecasts that the expected transition to a lower-carbon economy is estimated to require around $1 trillion of investments a year for the foreseeable future, generating new investment opportunities[46]. Closer to home, consider the European Union's Carbon Border Adjustment Mechanism ("CBAM") which is set to operationalise in 2025 and expected to affect Malaysian exporters[47].

To help identify the information needed by investors, lenders, and insurance underwriters to appropriately assess and price climate-related risks and opportunities, the Financial Stability Board established an industry-led task force: the Task Force on Climate-related Financial Disclosures ("TCFD") in 2017[48].

Boards can stand guided by the TCFD's 4 pillars on climate that is; Governance, Strategy, Risk Management and Metrics and Target.

Figure 2
Core Elements of Recommended Climate-Related Financial Disclosures



Governance
The organization's governance around climate-related risks and opportunities

Strategy
The actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning

Risk Management
The processes used by the organization to identify, assess, and manage climate-related risks

Metrics and Targets
The metrics and targets used to assess and manage relevant climate-related risks and opportunities

[45] *Glossary Chapter 15*, 2018. The Intergovernmental Panel on Climate Change.
[46] *World Energy Outlook Special Briefing for COP21* 2015. International Energy Agency
[47] Imran, A. EU's carbon border tax will affect Malaysian exporters, 16 September 2021. The Sun.
[48] Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), 2017

Climate change can also have the potential to be disruptive towards companies' business models and strategies. On the upside, because of their potential scope and scale, climate change can present vast business opportunities that boards should understand and integrate into conversations on business strategy.

Climate risks and opportunities also are often described or linked to being a transitional risk. While the physical risks from climate change have been discussed for many years, transition risks are a relatively new category. Transitioning to a lower-carbon economy can entail extensive policy, legal, technology and market changes to address mitigation and adaptation requirements related to climate change. Depending on the nature, speed, and focus of these changes, transition risks may pose varying levels of financial and reputational risk to companies[49]. The key to overseeing transition risks for the board is to recognise what kind of transitions are your organisation facing, acting upon it and acting on it early.

An example of a company addressing climate risk as an opportunity is the Coca Cola Company and its efforts if water management[50]. Driven by its decade-long ethical charge for "Water Leadership", Coca Cola set a pioneering goal to replenish the water that it uses for its drinking beverage and production. Besides that, Coca Cola has set (an achieved) ambitious targets in water efficiency and treatment of wastewater in its production processes. As of 2020, Coca Cola estimated that over 13.5 milion people have been provided access to safe drinking water, sanitation and hygiene since 2010[51].

As the links between climate change and business are becoming increasingly evident and inextricable, the importance of effective climate governance has also grown in tandem. A good starting point is the World Economic Forum's Climate Governance Guiding Principles and Questions for corporate boards[52]. Outlined as the 1st core principle, directors must understand that "given that the board is accountable to shareholders for the long-term health of the organization it governs, the board should also be responsible to shareholders for overseeing effective management of climate-related risks and opportunities".

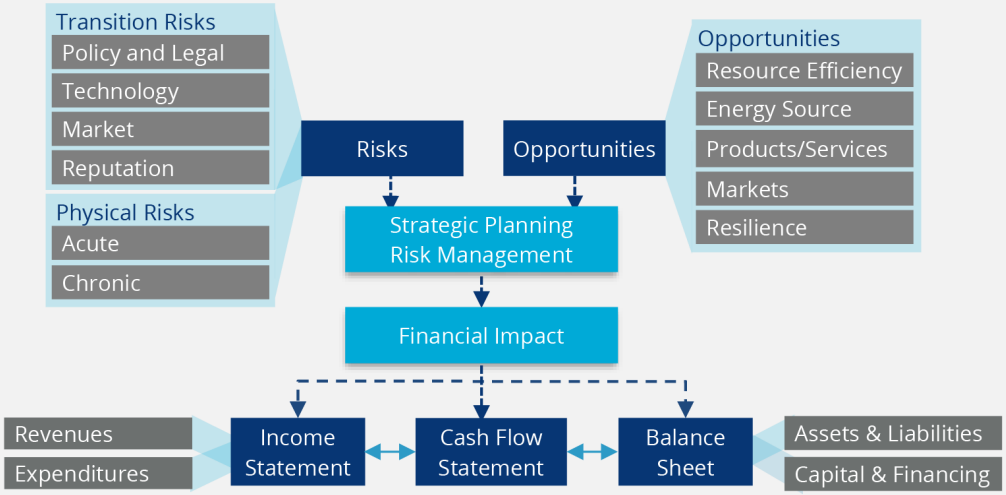
[49] *The concept of risk in the IPCC Sixth Assessment Report* 2020. Intergovernmental Panel on Climate Change.
[50] *Case study: How Coca-Cola is promoting the sustainability of local water sources everywhere it operates*, 2020. SustainCase.
[51] *2020 Business & Environmental, Social and Governance Report*, The Coca-Cola Company.
[52] *How to Set Up Effective Climate Governance on Corporate Boards: Guiding principles and questions*. 2019. World Economic Forum.

Boards and management should take heed on the findings, recommendations and frameworks enclosed in the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations report in terms of climate-related disclosure[53]. Below is an example excerpt of the TCFD Report:

Fundamentally, the financial impacts of climate-related issues on an organization are driven by the specific climate-related risks and opportunities to which the organization is exposed and its strategic and risk management decisions on managing those risks (i.e., mitigate, transfer, accept, or control) and seizing those opportunities.

Figure 1

Climate-Related Risks, Opportunities, and Financial Impact



Practice 4.4 of MCCG highlights the need for performance evaluations of the board and senior

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

the board and/or senior management. Outcomes from the evaluations and next steps should also be shared with the company's shareholders.

[53] Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). 2017.

Key considerations relating to the application of **Practice 4.4 of MCCG** are discussed below:

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

In which the annual board effectiveness evaluation can assess includes the following[54]:

- presence of a business strategy underpinned by ESG;
- robustness of ESG agendas, deliberations and discussions;
- board skills matrix on ESG competency;
- frequency of discussions on ESG risks and opportunities; and
- monitoring sustainability targets and goals.

How can ESG be embedded into performance evaluation of the senior management?

There are two distinct areas in which companies can address the above:

1) Measurement and reporting of sustainability key performance indicators (KPIs)

2) Tying sustainability performance evaluations to executive remuneration.

Measurement and reporting of ESG-based KPIs are important as it monitors the progress of senior management towards attaining the companies ESG goals and objectives as well as being a mechanism to promote accountability. As the saying goes "if you can't measure it, you can't manage it". The following are some practices to be considered in the planning of KPI setting[55]:

- With reference to the companies' materiality result, companies should determine the specific KPIs (e.g. use of electricity, water, carbon emissions, diversity in workforce, workplace incidents) selected for target setting. Setting targets for the most material topics helps companies better utilise their limited resources more effectively than setting targets that are irrelevant or insignificant to the company and stakeholders.
- Depending on the company's ambitions for ESG development, a time frame should be established when setting a target, be it short-term, middle-term or long-term.
- Short-term targets can be set for initiatives that are regarded as low-hanging fruit or quick wins. They can also serve as the interim milestones of a longer-term target.

[54] See **Practice 4.1 – 4.5 (Appendix I)** for sample board evaluation questionnaires on ESG
[55] *Integrating ESG into your business*, 2020. KPMG.

- Setting a target requires a company to carefully examine the attainability of the targets which should be weighed against the company's ambitions and goals.
- The progress of target implementation and the performance of the KPIs should be closely monitored from time to time. Rectification may be needed if the progress falls short of expectation.
- Effective communication about the goals and target progress with key stakeholders such as employees is essential, as this enables them to be engaged in the implementation process, and to feel they are part of the change that the company aspires to make.

In terms of reporting, the scope of ESG KPIs and indicators should be carefully benchmarked to ensure comparability and commonality. For instance, if it is an industry norm for companies in the construction industry to report on work-related deaths/injury rates, then all construction companies should follow suit. Similarly, if industry leaders in the fast-moving consumer goods sector are consistently reporting on KPIs on packaging materials and sources of raw materials, smaller or medium-size peers should adopt the same incrementally.

However, the decision on which sustainability performance indicators should be linked to remuneration, and the ambition of the targets set for these sustainability performance indicators are at the discretion of the company. Executive remuneration and performance metrics constitute one of the major elements of corporate governance dialogue between institutional shareholders and investee companies. It is generally accepted that the role of executive pay arrangements should be to incentivise superior performance. However, remuneration packages should be structured in such a way as to optimise financial results and promote sustainable behaviour without generating or exacerbating systemic risks that might undermine investors' long-term interests.

As ESG issues can influence business resilience, it is crucial that the boards consistently discuss and monitor the selection, design and verification of comprehensive ESG metrics, goals and related achievements to be linked to the senior management regime's performance and incentive plans. As a starting point guidance, companies should seek to define the appropriate and relevant ESG metrics themselves through gap assessments and stakeholder engagement. As companies mature, they are encouraged to increase the ambition of their sustainability targets.

The case study below demonstrates how Intel Corporation developed their ESG balanced scorecard and pioneered the movement for ESG-based performance evaluation and compensation plans since 2005.

Case study: Intel Corporation (Intel) (United States)[56],[57]

Background:	• Since the early 2005, Intel has started linking its bonuses to ESG metrics, including its bonuses. The company's annual incentive programs are comprised of three elements: (i) financial performance; (ii) financial performance relative to peers; and (iii) operational goals, which encompass approximately 300-line items. • The company first began to tie compensation to sustainability as specific line items that fell under employees' operational goals. • Line items include factors such as the company's carbon-footprint and cost savings from recycling, which are included as one of five categories which operational goals are subsequently scored on. These ESG goals amalgamate to approximate 20-25 per cent of operational goals, which are applicable to every employee in the organization.
Facts:	• Intel has had some **initial challenges in defining appropriate metrics** due to the highly subjective nature of many ESG metrics and the highly formulaic approach to its compensation model. For example, it states that some metrics are easily quantifiable, (such as savings realized through recycling efforts) while others may be more challenging to quantify (such as employee satisfaction or morale). • Intel was also **wary of setting ESG goals relative to peers** early into its sustainability journey, as many sustainability practices are still in their nascent forms and relative positions can be hard to measure or may be completely irrelevant or inaccurate. • Starting 2005 and retransformed in the 2008, the company has since been a pioneer in linking performance and reward to ESG indicators.

[56] *Adapted from Integrating ESG issues into executive pay.* 2012. Principles for Responsible Investments.
[57] *Corporate Responsibility Report 2020-2021.* Intel Corporation

Facts:	• Intel's 2020 **bonus included environmental-related metrics** aligned to its 2030 goals focused on climate and water, including: conserving more than 5 billion gallons of water in our operations, restoring more than 1 billion gallons of water to our local watersheds, and increasing use of renewable energy to 75% globally. For FY2020, Intel exceeded each of the targets, conserving 7.1 billion gallons and restoring 1.3 billion gallons of water, and reaching 82% renewable energy use globally. • In early 2021, Intel also **integrated sustainability metrics into their financing activities** for the first time. Intel entered into a $5 billion, five-year variable-rate revolving credit facility which, if drawn, is expected to be used for general corporate purposes. • The foundations of these practices were underpinned by Intel's "RISE 2030" strategy in order to create a more **responsible, inclusive, and sustainable world, enabled** through technology and collective actions.
Lessons Drawn:	• ESG-linked performance metric and compensation planning should be carefully planned and calculated. • The best framework is your own, tailor-made framework. Intel purposely designed and developed its ESG performance metrics from scratch and took ownership to define its own ESG performance evaluation indicators.

Step Up 4.5 of MCCG advocates boards of Large Companies to identify a designated person within

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

monitoring its efforts.

Key considerations relating to the application of **Step up 4.5 of MCCG** are discussed below:

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

have hired more CSOs in 2020 than the previous three years combined[58]. The mandate for a CSO is ever-evolving due to the inherent nature of ESG management. The typical job scope of a CSO can be summarised as follows[59]:

CSO job description:

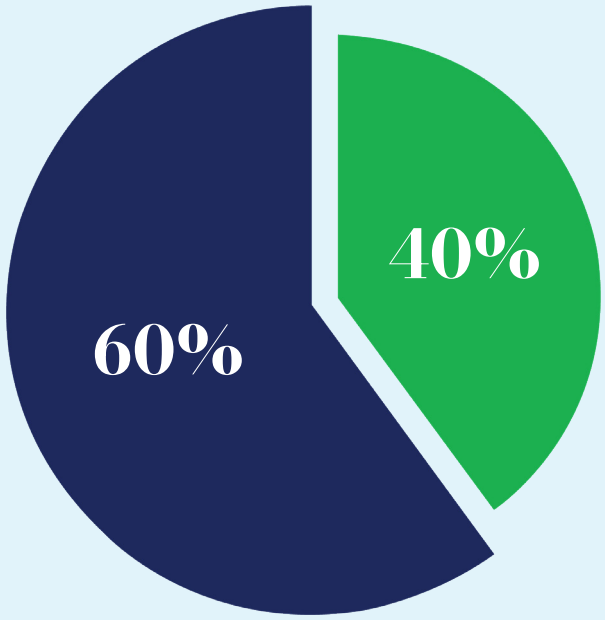
- Establish and drive ESG governance structures to ensure the proper consideration of risks are considered in the wider enterprise risk management framework;
- Help the organisation realign its corporate strategy with ESG considerations;
- Key support to the chief executive officer in delivering the company's sustainability goals and objective and the monitoring of it;
- Key advisor and point-of-contact for the board of the directors in terms of ESG knowledge and insight;
- Contributing to governance bodies across their organisations— chairing ESG sub-committees, participating in taskforces and helping to shape the agenda on risk, audit, compensation and major specialised committees;
- Manage external stakeholder engagement with regards to expectations of ESG issues;
- Lead internal stakeholder (i.e. employees) communication strategies in setting the tone on ESG culture and commitment.
- Coordinate the company's sustainability reporting and public disclosures of any ESG communiqué.

[58] In 2020 alone, 31 companies hired their first CSO in 2020. The field has grown by more than 228%, from just 29 CSOs in 2011 to 95 in 2021. Source: *The Chief Sustainability Officer: 10 Years Later The rise of ESG in the C-suite*. 2021. Weinreb Group.
[59] *The future of the Chief Sustainability Officer: Sense-maker in chief*. February 2021. Deloitte.

Given the heightened holisticness of sustainability's job scope and portfolio, it must be acknowledged that sustainability is a wide-ranging matter that covers several interlinking aspects such as operations, human resources, strategy, risk and finance. Hence, in larger entities with more complex structures or more diversified business streams, there is a need for a dedicated person, backed by a solid management team, to spearhead the integration of sustainability in an organisation. Making room for a dedicated C-Suite level officer on sustainability also sends a strong positive signal to stakeholders that the company is serious on ESG. That is why finding a CSO can be a difficult challenge as the role demands a number of high-level skills, technical knowledge and interpersonal soft skills. Due to the nature of the job, a competent CSO would preferably be a changemaker who can drive "whole-of-organisation" changes coupled with superb stakeholder management experience[60].

It must be stressed that the institution of a CSO is premised upon a best fit basis. However, given the evolving landscape of ESG and the plethora of issues to tackle, it is best that a dedicated management level person be appointed to manage sustainability matters. An analysis of the CSO (or equivalent) position for the top 50 listed issuers by market capitalisation (as of 31 March 2021) found that only 40% (20 out of 50) have enlisted a dedicated CSO. Some inferences and other observations are outlined below:

CSO POSITION WITHIN TOP 50 PLCS



- Where there is no CSO, the company assigns the chief executive officer or managing director to lead the charge on ESG;
- For big conglomerates with different business segments, some CSOs work from a group-level basis;
- Malaysian-arm of multinational companies rely on the global chief sustainability officer to steer group-wide ESG strategies and aspirations.

Note: Data and analysis as at 31 March 2021.
Note: "or equivalent" here means a senior executive officer that is in charge with managing sustainability-related matters. This can sometimes be referred to as, amongst others, head of sustainability, a corporate social responsibility head, sustainability director, group sustainability chief etc.

60 *The time for a Chief Sustainability Officer is now,* 2021. HRDirector.

How companies should operationalise sustainability governance and oversight?

There should be clear and adequate structures and processes in place for sustainability governance. Sustainability governance is defined as "the structure an organisation has in place to ensure accountability, oversight and review in the identification and management of sustainability matters, i.e. who is responsible for the organisation's sustainability performance and disclosures"[61]. This means that there clearly defined scope of powers, line of reporting and governing bodies established to create a line of accountability for ESG. For small to mid-cap companies, proportionality should be applied to the extent to which resources, manpower and board accountability are accorded in its sustainability governance.

Depending on the governance structure of the organisation, the Board may establish a dedicated board committee for ESG oversight which is to be referred as a Sustainability Committee. The Sustainability Committee will be responsible for monitoring the implementation of sustainability-related policies, measures and actions in achieving the organisation's sustainability milestones and goals. Alternatively, it is becoming increasingly common for ESG oversight is to be delegated to an existing board committee (e.g. the Risk Committee) as additional responsibility. In such instances, the board must take cognisance of the designated Committee's overall workload as well as inherent nature (e.g. some may argue that a risk committee would be more inclined to focus on ESG risks and less on unfolding opportunities). However, even if oversight is delegated to a board committee, ultimate responsibility still lies with the board.

As mentioned in the earlier paragraphs, the desired state for an organisation is the natural integration of ESG risks and considerations in the business strategies. This would mean that the board as a whole, other governing board committees and the senior management regime would intrinsically consider sustainability matters in making their decision-making. As companies mature in their sustainability practices, their sustainability governance structure and processes will likely evolve in tandem.

(Note: please refer to the latest edition of the Sustainability Toolkit - Governance to delve further into the operationalisation of sustainability governance and other alternative options to ESG management)

[61] Latest edition of the *Sustainability Toolkit - Governance* . Bursa Malaysia

WHERE? Regional/International perspectives

As in the case of Malaysia, many jurisdictions including Japan, Australia, United Kingdom and France have called for the intensification of board oversight on ESG in their respective CG Codes.



Country	Provision(s)
Australia	A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework ***(Principle 7)***. A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks ***(Recommendation 7.4)***.
France	The Board should ensure that the shareholders and investors receive relevant information that is balanced and keeps them fully cognisant of the strategy, the development model, the consideration of non-financial aspects that are of significance to the corporation as well as its long-term outlook ***(Provision 4.3)***.

Country	Provision(s)
Japan	Companies should take appropriate measures to address sustainability issues, including social and environmental matters ***(Principle 2.3 Sustainability Issues, Including Social and Environmental Matters)***.
United Kingdom	The board should carry out a robust assessment of the company's emerging and principal risks. The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated ***(Provision 28, Part 4)***.

Renewal of Board Composition

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.1
The Nomination Committee should ensure that the composition of the board is refreshed periodically. The tenure of each director should be reviewed by the Nomination Committee and annual re-election of a director should be contingent on satisfactory evaluation of the director's performance and contribution to the board.

WHY? The case for change

The fast-paced changes in business environments calls for new skills and fresh perspectives, capable of questioning the status quo, which is necessary for embracing innovation amidst increasing disruption led by the technological advancements. For instance, the old business model of taxis – riddled with complex booking and payment process as well as limited supply – was thrown on its head with the arrival of disruptors such as Uber, Lyft, Didi, and Grab.

Longer director tenure, board entrenchment, and the interplay of those characteristics with director independence can also be addressed by board refreshment. According to studies, there is a positive correlation between board turnover and company performance[1], and shareholders see directors' succession plan and a regular board refreshment process as becoming increasingly important to ensure that the board has "the necessary skills and expertise"[2].

Recognising its value, the **Companies Act 2016, Bursa Securities Listing Requirements and Bank Negara Malaysia's Policy Document on Corporate Governance** advocate for board renewal as shown below.

[1] *Succession Planning for the Board-Taking a More Strategic Approach* 2015, Spencer Stuart
[2] *Annual Corporate Governance Review* 2015, Georgeson

Section 205(3) of Companies Act 2016

The directors shall retire as follows:

(a) at the first annual general meeting of a public company, all directors shall retire from office at the conclusion of the meeting; and

(b) at the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not three of a multiple of three, then the number nearest to one-third, shall retire from officer at the conclusion of the meeting.

Paragraph 7.26 of Bursa Securities Listing Requirements

Election of directors

(1) An election of directors shall take place each year.

(2) All directors shall retire from office once at least in each 3 years, but shall be eligible for re-election.

Note: Standard 10.6 of Bank Negara Malaysia's Policy Document on Corporate Governance outlines that "the board must establish and regularly review succession plans for the board to promote board renewal and address any vacancies."

HOW? The practice in substance

Practice 5.1 of MCCG calls for the periodic refreshment of the board with the review of a director's

MCCG Practice 5.1
The Nomination Committee should ensure that the composition of the board is refreshed periodically. The tenure of each director should be reviewed by the Nomination Committee and annual re-election of a director should be contingent on satisfactory evaluation of the director's performance and contribution to the board.

- Is the board functioning optimally for current needs of the company?
- Have there been changes to the company's business?
- Is the board driving the company to adapt to transformations at the rate of demand?
- Is the board driving future-oriented strategy and performance or reviewing and relying on past performance?
- As a whole, is the board complete and appropriate in terms of expertise, experience and perspective?

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

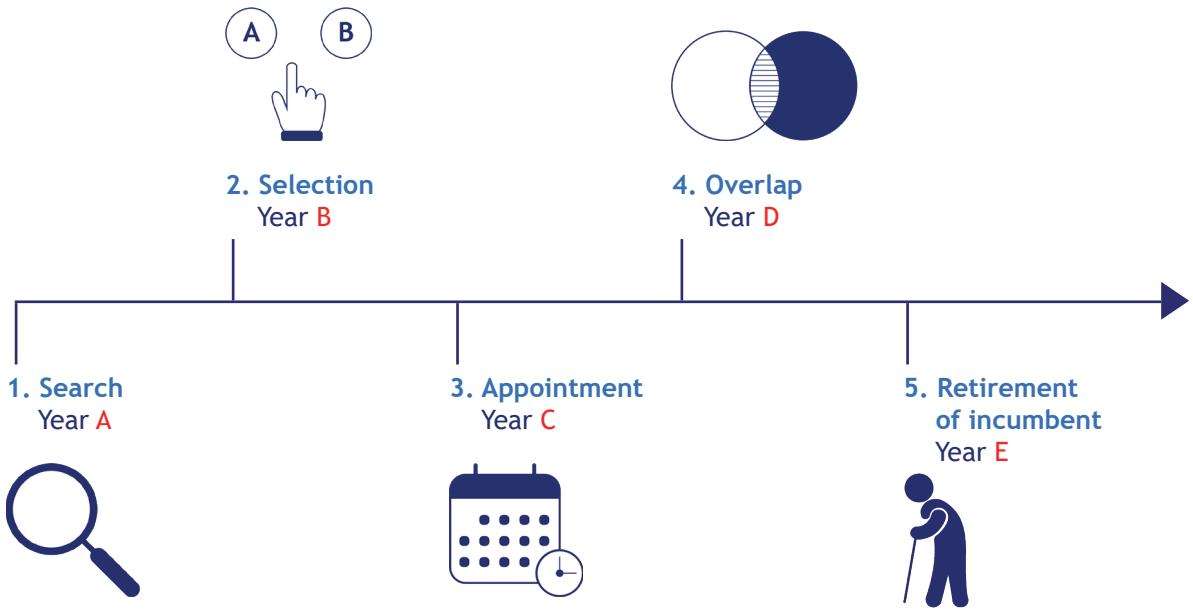
What steps should the nominating committee undertake for a seamless and strategic renewal of the company's board?

The periodic refreshment of the board entails a well-thought and clearly defined succession plan, that ensures the company's leadership is equipped with the right skills and experience to steer it through contemporary challenges and opportunities, towards its long-term strategy and goals. Education management consultant and policy development expert, Mmanti Umoh noted that "without the right succession planning put to play in human resources, we build for the future without a future"[3].

The nominating committee should devise a succession plan model with a multi-year view that takes into consideration the overall aggregate tenure of the board and the individual directors' tenures. Accordingly, the succession plan model should earmark non-executive directors with specific retirement years and should set clear expectations to the director on their tenure. The United Kingdom's Financial Reporting Council's Guidance on Board Effectiveness notes that discussions on tenure at the time of appointment will help to inform and manage long-term succession strategy[4].

[3] *Human Resources - As Individuals as Your Business* 2021, CorD Magazine
[4] There are risks of becoming too reliant on the skills of one individual. Discussions on tenure at the time of appointment will help to inform and manage the long-term succession strategy. The needs of the company and the board will change over time, so it is wise to manage expectations and encourage non-executive directors to be flexible about term lengths and extensions. It is also a good idea to discuss board refreshment and succession with shareholders *(paragraph 98)*.

Refreshment would necessitate the exit of an incumbent to be supplemented with entry of a new director. Here, it is important to ensure sufficient overlap in the tenure of the outgoing and incoming director, to facilitate a smooth transition, which is likened to "the handover of control between two pilots of a plane. There is no room for ambiguity at this moment"[5]. The nominating committee should utilise a tenure-time horizon, as shown in the graphic below, to outline its plan for the search, selection, appointment, of the incoming director prior to the retirement of the incumbent.



It is crucial for the company to etch its board renewal plan in a policy document. This enables the company to outline its commitment to the orderly process through which leadership will be refreshed, and it formalises and professionalises the process of identifying and filling gaps. Betsy Atkins, a corporate veteran, highlights that a standardised annual process "establishes expectations on term limits from the beginning, ensures recruitment of new members is not a shotgun affair, and takes the personal element out of rotating members off the board"[6].

Illustrative outline of board renewal policy

Outline of board renewal policy:

- **Purpose** – outlines the purpose as ensuring a vibrant, efficient, and effective board with an appropriate balance.
- **Status of policy** – highlights that the policy will be reviewed at least once every three years.
- **Application** – lists the companies within the group for which the policy applies to.

6 *Seven Critical Elements of a Board Refreshment Plan* 2017, Nasdaq

- **Board renewal policy** – captures the salient features of the board renewal (i.e. election, re-election, annual performance review, board skills matrix, review of composition and size, tenure limit).
- **Board appointment process** – highlights the search and selection process for new directors.
- **Subsidiary boards** – highlights the need for renewal at subsidiary boards and outlines the principles which apply to the appointment of non-executive directors to subsidiary boards.
- **Renewal monitoring** – notes that board renewal will be monitored and considered as part of the board, board committees, and individual directors' performance evaluation.

Source: ClearView Board Renewal Policy 2021 (Australia)

Plans and processes surrounding the renewal of subsidiary boards should also be considered by the

MCCG Practice 5.2
At least half of the board comprises independent directors. For **Large Companies**, the board comprises a majority independent directors.

Practice 5.2 for detailed considerations with regards to independent directors.

Further reflection

Succession planning in founder-led and family-controlled companies is often regarded as a taboo topic that's swept under the carpet and has the potential to fester into some of the biggest challenges the company faces.

As a result, refreshment at the board level, often in pivotal leadership roles, such as the chairman role, is neglected despite the fast-paced transformations around the company.

Simultaneously, there is also the issue of finding the "right" successor. Many of the head honchos of founder-led or family-controlled companies play an active role in identifying their heir, which is problematic. The late managing director of Darrell Lea Chocolates, Jason Lea, pointed out that when searching for his replacement he mistakenly tried to choose someone like himself[7].

To ensure hiccup-free succession, the nominating committee should incorporate the following pointers into its board refreshment plans.

- **Advanced planning:** Discussions and considerations on succession planning, including informal dialogue to commence with, should be undertaken very much in advance. The nominating committee should deliberate on how much more in advance these discussions are to be held relative to those for an outside director.

[7] *When It's No Longer All in the Family* 2021, Australian Institute of Company Directors

- **Board observers:** Individuals being groomed as successors could be invited as board observers, as part of succession planning and talent development. The nominating committee should endeavour to define, articulate and enforce the role of board observers, with input from the board, as an audience may stifle open discussions in the boardroom.

- **Founder-led to founder-inspired:** A continuing role, such as an honorary position, may be carved out for founders, heirs, and their likes, to harness the positive contributions stemming from the wealth of their experience. The nominating committee should outline the ambit of any such role to ensure that it is not in contradiction with the spirit of **MCCG's Practice 5.1.**

MCCG Practice 5.1
The Nomination Committee should ensure that the composition of the board is refreshed periodically. The tenure of each director should be reviewed by the Nomination Committee and annual re-election of a director should be contingent on satisfactory evaluation of the director's performance and contribution to the board.

- **Outcome of the board effectiveness evaluation:**

  The performance evaluation of the board, board committees and individual directors should be robust and driven by the clear objective of assessing directors' performance and contribution, and evaluating the need to bring new skills and perspectives to the boardroom, as outlined in **Guidance to Practice 5.1**. Consideration should also be paid to the practices and behaviour of directors, in relation to the company's Code of Conduct and Ethics. **Appendix II** of this **Pull-out** outlines a sample Individual Directors Report Card which may be utilised to capture the results of the board effectiveness evaluation exercise.

- **Competency gap of the board:**

  The nominating committee should devise a board competency matrix which reflects the current and anticipated needs of the board, in terms of its ability to discharge their governance responsibilities and to address the evolving needs of the company. The competency matrix should comprise both technical and core competencies, where the former refers to expertise relevant to the specific work carried out, and the latter refers to capabilities that are vital across all roles, and are rooted in planning for the future, achieving results, building relationships.

- **Diversity requirements:**

  Consideration should be paid to the diversity requirements of the board with regards to gender, age, tenure, cultural diversity, and diversity of international expertise where the company has operations in foreign jurisdictions particularly. A Harvard Business Review article highlights that the impact of board diversity can't be fully realised if the board focuses on a single component of diversity while neglecting the all others[8]. The nominating committee could include an extension on diversity indicators to the board competency matrix.

[8] Creary, S, McDonnell, M-H, Ghai, S & Scruggs, J 2019, *When and why diversity improves your board's performance*, Harvard Business Revie

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.

5.3 of MCCG limits the tenure of independent directors to 9 years.

Commitment of the director:

MCCG Practice 5.5
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.

Directors appointed should be able to devote the required time to serve the board effectively. The board should consider the existing board positions held by a director, including on boards of non-listed companies. Any appointment that may cast doubt on the integrity and governance of the company should be avoided.

Note: Refer to the write up to Practice 5.5 for more details on fit and proper considerations for directors, including time and commitment.

Paragraph 15.06 of Bursa Securities Listing Requirement

A director of an applicant or a listed issuer must not hold more than 5 directorships in listed issuers.

How should the nominating committee approach board committee rotation?

The advent of board refreshment has raised the need for board committee refreshment as well, where rotating directors off and on board committees promotes renewal and accountability. The selection process for board committees' chairmen and members should be conducted by the nominating committee, and the selection process for the nominating committee should be conducted by the board.

The substantive nature of the work carried out at the board committee level increasingly calls for subject matter expertise, making board committee refreshment not as simple a duty as replacing one director with another. For instance, **Paragraph 15.09(1) of Bursa Securities Listing Requirements** calls for at least one member of the Audit Committee to have specific accounting qualifications, and additional committees which a company may establish, such as those related to information technology and digital transformation, may also call for specialised skills and experience.

Additionally, rotation of board committee members and chairmen may interfere with the outworking of the committee in terms of the benefits of continuity and experience of service.

[9] Papadopoulos, K 2018, *Board Refreshment: Finding the Right Balance*, Harvard Law School Forum on Corporate Governance

Fundamental considerations for the nominating committee in ensuring smooth rotation of board committees' chairmen and members include:

- developing a skills matrix for each committee to guide rotation;
- planning rotation in advance to allow for cushion time for the outgoing board committee member to delegate and cascade their tasks to the incoming member;
- organising mentorship programmes between existing committee members and newer directors or any director not serving on a particular committee for knowledge sharing and development;
- coordinating refreshment in a manner that prevents the entire committee from being refreshed at once; and
- ensuring board committee refreshment is aligned with the individual members' tenure and planned retirement.

How can the nominating committee ensure that nominee directors complement the board's needs and good governance?

Nominee directors may be appointed to the board of a company by a particular shareholder or group of shareholders, creditors or financial institutions. The nominating committee should take cognisance of the key features, shown below, which would ensure that the nominee director is able to effectively complement the board configuration.

Qualification of directors: Nominee director candidates should be also be subjected to confirmation character, experience, integrity, competence and time, as outlined in **Paragraph 2.20A of Bursa Securities Listing Requirements.**

Potential to supplement gaps in board skill set and expertise: Candidates for the nominee directorship should be assessed based on a prior analysis of the skills and expertise needed by the board.

Ability to meet and/or enhance board diversity requirements: The profile of the candidates for nominee directorship should be assessed against the board's gender, age, tenure, cultural diversity and diversity of international expertise.

The nominating committee should formalise the company's requirements on the appointment of a nominee director in an internal policy document such as a succession plan policy or a stakeholder engagement and communication policy. This would facilitate consultation with nominators to ensure that the selection of nominee directors ultimately contributes to the continuity and growth of the company.

A case study of the scandal that had plagued Wells Fargo can be used to draw parallels to potential impacts of long tenures amongst the leadership of companies.

Case study: Wells Fargo (United States)

Background:	• In 2016, it was revealed that the financial services company, Wells Fargo, had placed immense pressure on employees to meet unrealistic sales goals which led them to sell customers additional fee-generating accounts, resulting in millions of fraudulent bank accounts and credit cards being opened by employees. • The retail banking division was headed by Carrie Tolstedt, where she had imposed crushing sales quotas that had prompted employees to open thousands of bogus accounts for existing customers. CEO, John Stumpf had nurtured and protect Tolstedt despite the divisions behaviour which posed enormous risk to the company.
Facts:	• In the aftermath, Wells Fargo's board had launched an investigation, and the resulting investigation report was criticised as an attempt to whitewash the directors' oversight in the scandal. While the report was scathing in terms of management's failure, there is evidence suggesting that board had been privy to early warning signs of the scandal but was lackadaisical in its response. The scandal shed light on the board's failure in its oversight duties. • Since 2002, at least, the audit and examination committee had received quarterly reports that detailed suspicious activity linked to sales, employee misconduct and related calls to ethics hotlines. Later in 2004, banking regulators had found that Wells Fargo had not adjusted compensation policies to discourage abusive sales practices and did not have adequate audit procedures in place, and Northstar Asset Management, had asked Wells Fargo's board to conduct a special executive compensation review. However, the board dismissed the request[10]. • Furthermore, the Office of the Comptroller of the Currency reported that as early as 2010 there were close to 700 cases of whistleblower complaints about the company's sales tactics, raising questions on the boards role in safeguarding the bank's integrity and reputation. Additional warning signs included an investigation by the times in December 2013, and a lawsuit filed by the Los Angeles City Attorney in 2015. • Furthermore, the chairman of the risk committee, Enrique Hernandez Jr. had taken a proactive stance to learn about the sales misdeeds, criticising Tolstedt who headed the retail branch network, and concluded that she had intentionally misled the board. However, he and the rest of the risk committee members didn't get much support from the rest of the board[11].

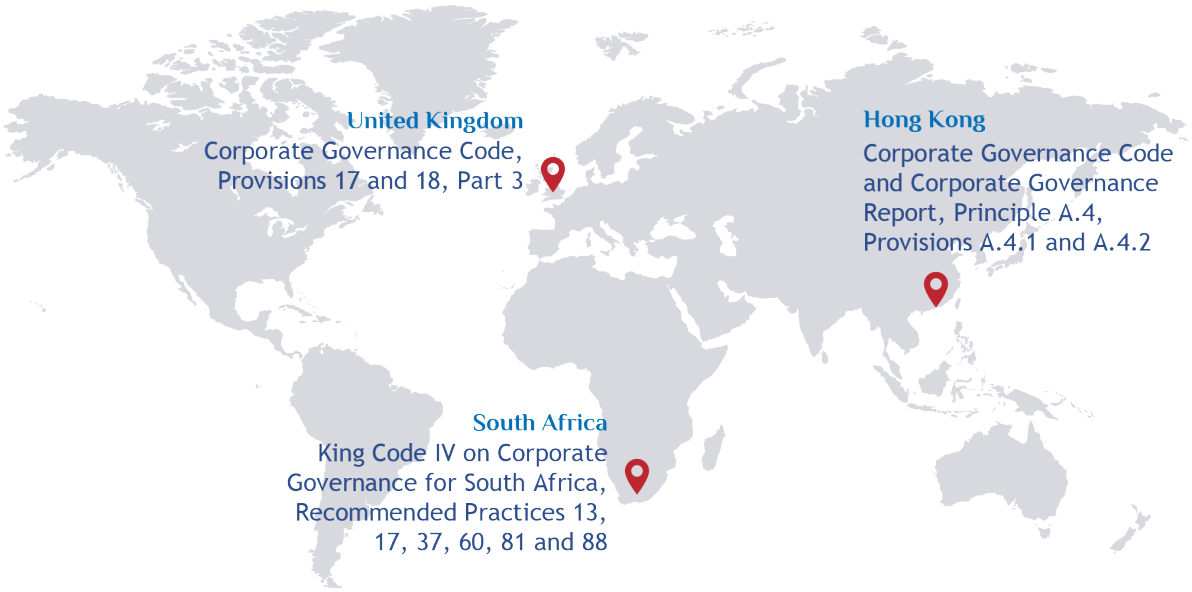
[10] Bloxham, E 2017, *Here's How Wells Fargo's Board of Directors Just Failed Customers*, Fortune
[11] Hiltzik, M 2017, *Column: Wells Fargo Scandal Report Details Board of Directors' Dereliction of Duty, but Gives them a Pass*, Los Angeles Times

	• Crucially, it was noted that at the outbreak of the scandal, the board's composition included directors who had served on the board since the 1990s, and the investigation report is argued to depict the board as "entirely supine"[12]. Additionally, it was found that Well Fargo's board exceeds the average tenure of S&P 500 boards by 14%[13]. • In 2017, the company announced several board refreshment actions. Three long-serving directors were retired at the end of 2017, three new directors were appointed to replace the outgoing directors (including the chairman), and the composition board committees were changed.
Lessons Drawn:	• The challenges of having long-tenured leaders extends beyond the potential impact on independence of directors, where it could also impact directors' oversight roles and monitoring functions. Board refreshment plays a significant role in its ability to counter a sense of complacency in directors' which can impede their performance and be detrimental to their oversight roles. • Board refreshments are simultaneously able to set the right tone from the top, through the appointment of directors who are able to lead the company in the direction that most effectively meets the challenges of evolving corporate environments, and transformations in stakeholders' needs, contributing to sustainable growth of the company.

[12] Ibid.
[13] Adlerman, A & Quistgaard, K, *Leadership Matters: What Boards Can Learn from The Wells Fargo Calamity,* Boardspan

WHERE? Regional/International perspectives

As in the case of Malaysia, many jurisdictions including Hong Kong, South Africa and United Kingdom have called for boards to be periodically refreshed.



Country	Provision(s)
Hong Kong	There should be a formal, considered and transparent procedure for the appointment of new directors. There should be plans in place for orderly succession for appointments. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director. ***(Principle A.4)*** Non-executive directors should be appointed for a specific term, subject to re-election. ***(Provision A.4.1)*** All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years. ***(Provision A.4.2)***

Country	Provision(s)
South Africa	The governing body should establish a succession plan for its membership which should include the identification, mentorship and development of future candidates. ***(Recommended Practice 13)*** Nomination for re-election of an incumbent of the governing body should be considered by the governing body on the basis of that member's performance, including attendance at meetings of the governing body and its committees. ***(Recommended Practices 17)*** The governing body should ensure there is succession planning in place for the position of chair. ***(Recommended Practice 37)*** The governing body should consider allocating the oversight of the following to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the organisation: (a) The process for nominating, electing and appointing members of the governing body. (b) Succession planning in respect of governing body members. (c) Evaluation of the performance of the governing body. ***(Recommended Practice 60)*** The governing body should satisfy itself that there is succession planning for the CEO position in place to provide continuity of executive leadership. Succession planning should be reviewed periodically, and should provide for both succession in emergency situations and succession over the longer term. ***(Recommended Practice 81)*** The governing body should satisfy itself that there is succession planning in place for executive management and other key positions to provide continuity of leadership. Succession planning should be reviewed periodically, and provide for both succession in emergency situations and succession over the longer term. ***(Recommended Practice 88)***

Country	Provision(s)
United Kingdom	The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor. ***(Provision 17, Part 3)*** All directors should be subject to annual re-election. The board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the company's long-term sustainable success. ***(Provision 18, Part 3)***

Presence of Independent Directors on the Board

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.2
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 running the business.

Whilst the roles of independent directors are well-defined, the growing number of corporate scandals suggest that independent directors are often impeded in standing up for their views, thus, affecting their ability to influence decision-making by the board. For instance, their scrutiny on key proposals and transactions may be obstructed, or there may be unfairly biased decision-making towards the interest of controlling shareholders, dominant directors or a member of the management team.

The underlying causes commonly hindering independent directors from acting independently in name and deed can be attributed to the following practical barriers[1]:

- **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.

[1] *Growth and Emerging Market Report* 2016, International Organisation of Securities Commission

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[2].

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

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 **Bursa Securities Listing Requirements.**

Paragraph 15.02(1)(a) and (2) of Bursa Securities Listing Requirements

Composition of the board of directors

(1) A listed issuer must ensure that at least -

(a) 2 directors or 1/3 of the board of directors of a listed issuer, whichever is the higher, are independent directors

(b) (b) 1 director of the listed issuer is a woman.

(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.

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

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. 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[3]. 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.

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

- Enlisting independent directors who are able to fulfil three key roles in leading the company, namely fiduciary, strategic and generative[4]. Many companies place a dominant emphasis on the fiduciary role, prioritising legal and regulatory compliance, financial sustainability and checks and balances on management, but boards should not compromise on the business imperative and long-term strategy of the company. Independent directors who possess a sound understanding of the nature of the company's business can serve as a valuable resource on strategic planning – concerning strategy and direction – and generative thought – emphasising innovation and creativity. Moreover, they are able to exercise intelligent reviews of transactions involving management, directors and controlling shareholders.

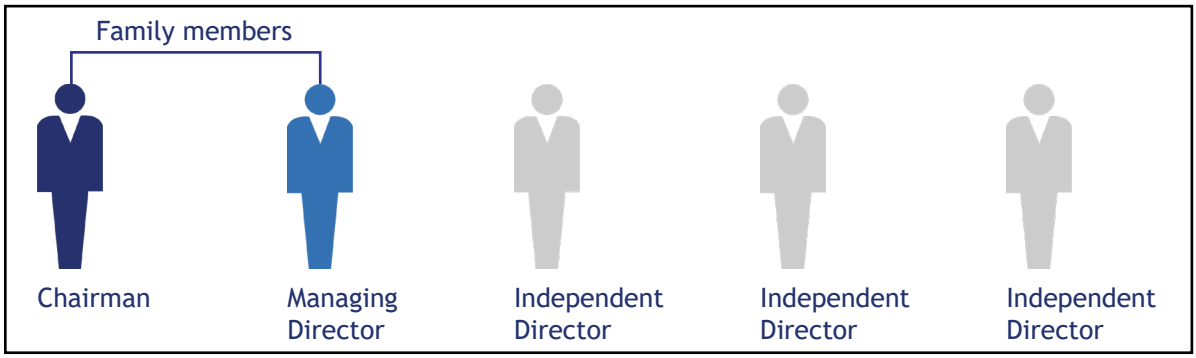
How do owner-managed companies with a small board size structure their composition of independent directors?

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 controlling shareholders.

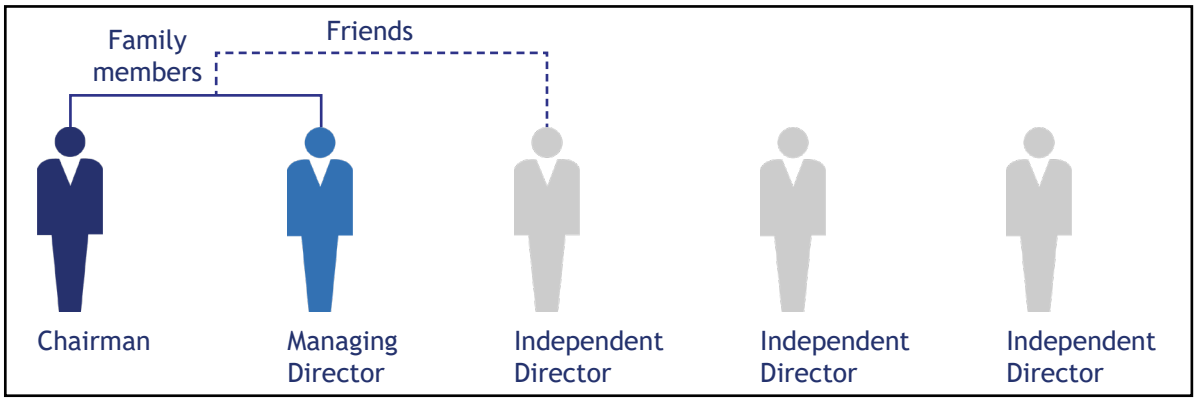
In such a situation, the need for a majority of independent directors becomes even more imperative to prevent deliberations and decision-making from being dominated by a select group of individuals, comprising family members.

[4] *Non-Executive Directors Bring Added Value* 2018, the Association of Chartered Certified Accountants

An example of a structure for a board size with five members and related chairman-managing director is outlined below:



An additional phenomenon found in owner-managed companies is the presence of ambiguous or subjective ties between the family members and independent directors, such as friends or individuals from the same circle as members of the family, as outlined below:



These ties are difficult to define relative to those of family members or business associates for which there are more formal evidences of the relationship. Often times, it is concealed under the veil of meritocracy and/or diversity, where the director is able to fill the gaps in skills and expertise not available on the board, and/or add to the board's diversity through their gender or age, for instance.

Thus, the assessment for independence of directorship candidates should be comprehensive to ensure informal ties between family members and independent directors do not go undetected.

Further reflection

Despite having a board that comprises majority independent directors, a company may continue to have executive directors on its boards, sometimes even multiple. The role of an executive director is typically taken up by the CEO, and other senior management personnel like the chief financial officer or the chief operating officer.

The value of executive directors includes their ability to inject operational and performance related realities to boardroom deliberations, and the presence of multiple executive directors on a board serve as a check on the CEO's communication to the board. Additionally, in a group structure, the presence of executive directors on the parent board could facilitate cooperation and communication between the parent company and the subsidiary as they are deeply exposed to the day-to-day functions of the company.

However, the presence of multiple executive directors on the board of a company could create tensions or disagreements between independent directors and executive directors, creating an "us vs. them" culture.

Circumstance which lead to such a culture include when executive directors take up a defensive stance during deliberations on strategy delivery, or in cases where executive directors are resistant towards strategic planning that challenges the status quo or pushes boundaries. Such situations not only lead to unhealthy boardroom dynamics, but also impede the functionality of the board and independent directors from carrying out their duties, as well as lead to declined productivity of boardroom deliberations.

An added concern from the presence of multiple executive directors, is the resultant unwieldly board size that is necessary to meet the requirements for a majority of the board to comprise independent directors.

Measures the board can undertake to alleviate the impediments outlined above include:

- Prioritising the requirements for independence and appropriate board size in determining the board composition, and work backwards to identify the available executive positions, if any.
- Inviting senior management personnel to present at board meetings or attend board dinners, instead of occupying board positions, during which the board can be availed to information on the company (and the group) which are necessary for the discharging of their responsibilities.
- Appointing a senior independent director (when the board consists of multiple executive directors) to represent the views of independent directors and lead communication with executive directors to ameliorate misunderstandings and boardroom tension.

WHERE? Regional/International perspectives

Similar to the case of Malaysia, there has been a move by global regulators (as noted in countries like, Australia, Sweden and United Kingdom) to prescribe a more even balance of independent and non-independent directors on the board.



Country	Provision(s)
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)***.
Sweden	No more than one elected member of the board may be a member of the executive management of the company or a subsidiary ***(Paragraph 4.3, Chapter 4)***.
United Kingdom	At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent ***(Provision 11, Part 2)***.

Tenure of Independent Directors

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

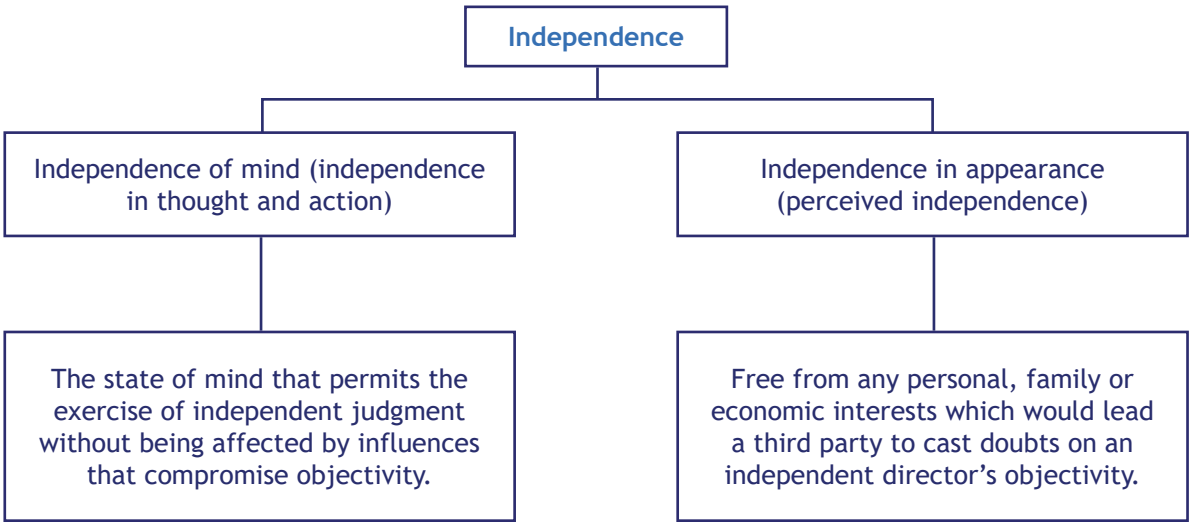
MCCG Practice 5.3
The tenure of an independent director does not exceed a term limit of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director.

If the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

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.



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. The lack of independent critical mass in a board configuration may entail poor rigour of boardroom deliberations and instances where directors have a high tendency of to defend their previous actions (i.e. unresolved legacy issues).

Shareholders and major institutional investors also have views on the negative impact that long tenure may have on independent directors. Many share the view that long service as an independent director on a board create conflict of interest on the basis that extended tenure creates too close a relationship among longstanding board members, chief executive officer and indeed the management team. For instance, CalPERS would not vote in favour of a nominating committee member of the investee company who is subject to re-election if the board of the investee company has undergone a lack of board refreshment:

i. more than one-third of the directors with a tenure of more than 12 years; and

ii. less than one-third of the directors are appointed within the past 6 years[1].

On a similar note, the illustration below summarises the principles and voting guidelines of local institutional investors and other key stakeholders on independent directors:

KWSP EPF	Independence of a Director can be compromised at 12 years of service.
PNB Permodalan Nasional Berhad	Directors are advised to serve a maximum of 9 years on the same Board to encourage Boards to refresh its composition.
KHAZANAH NASIONAL	It is crucial that the board of directors is composed of experienced, qualified, and fit-for-purpose directors who are not conflicted and have the time and willingness to carry out their director duties.
KWAP	KWAP will vote AGAINST the re-election of Independent, Non-Executive Director who has served on the board for a cumulative term of twelve (12) years or more.

[1] Note: CalPERS or the California Public Employees' Retirement System is a government agency and retirement fund for the California state members and public institutions. It is the largest public pension fund in the United States. *Source: CalPERS Proxy Voting Guidelines. April 2021.*

Institutional investors should engage with the investee companies when there are concerns on the financial and operational performance, governance or risk management of their investee companies, with initial discussions carried out on a confidential basis. This includes re-election and tenure of directors.

Signatories include:

In this regard, the definition of an independent director is well enumerated in **paragraph 1.01 of Bursa Securities Listing Requirements** with a coverage that also entails the aspect of tenure.

Paragraph 1.01 of Bursa Securities 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) [deleted]

(b) is not, and has not been within the last 3 years, an officer of the applicant, listed issuer or any related corporation of such applicant, listed issuer or any related corporation of such applicant or listed issuer (each corporation is referred to as "said Corporation"). For this purpose, "officer" has the meaning given in section 2 of the Companies Act but excludes a director who has served as an independent director in any one or more of the said Corporations for a cumulative period of less than 12 years;

(c) is not a major shareholder of 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;

(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; or

(h) has not served as an independent director in any one or more of the said Corporations for a cumulative period of more than 12 years from the date of his first appointment as an independent director.

Provisions on how directors' independence may be impacted due to background, economic relationship, family relationship and tenure are applicable for financial institutions under **Standard 11.7 of Bank Negara Malaysia's Policy Document on Corporate Governance**.

Why is a quantitative tenure limit of nine years recommended under the MCCG?

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 seventh to eleventh year[2]. 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). The performance and objectivity of independent directors against tenure (i.e. traditional view) is illustrated in the ensuing page and is juxtaposed with the modern reinterpretation of an independent director.

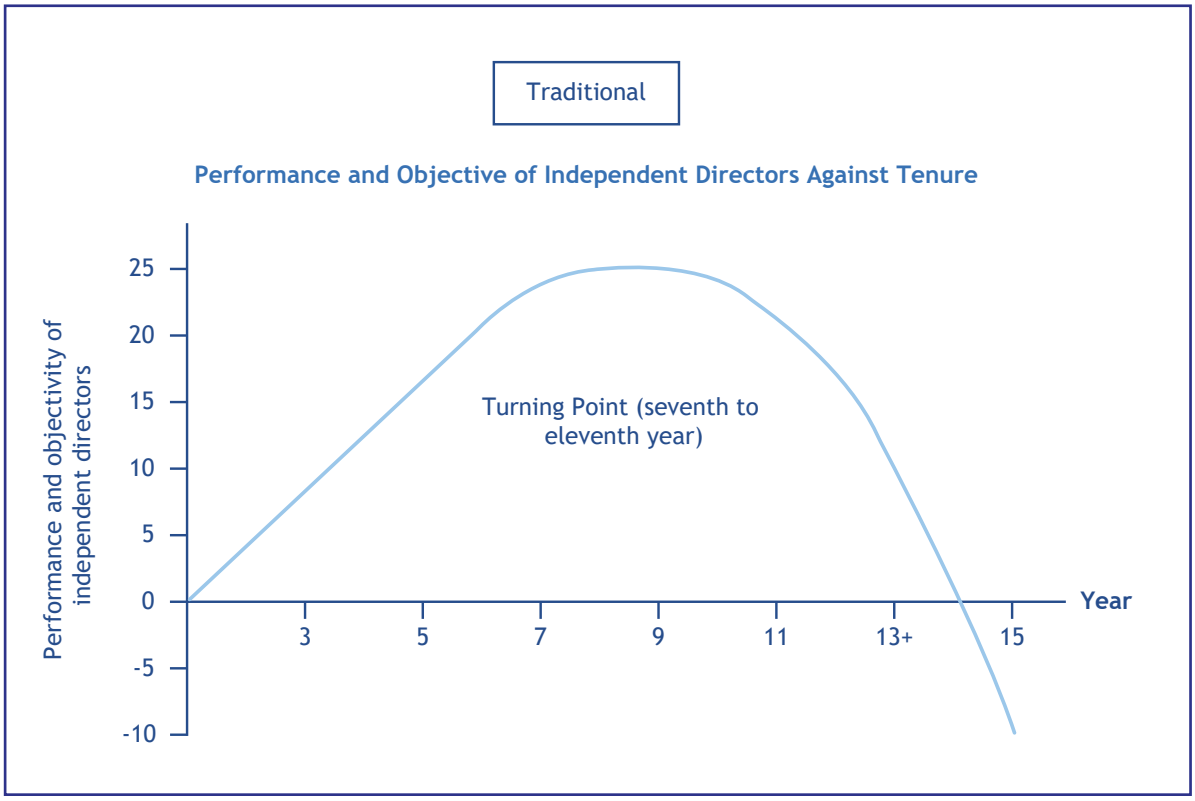
Given that long tenures of independent directors may potentially erode the board's objectivity, the board should consider utilising tenure limit as a mechanism to facilitate board renewal and thus, enhance the effectiveness of the board. As an exemplary practice, **Step Up 5.4 of MCCG** urges

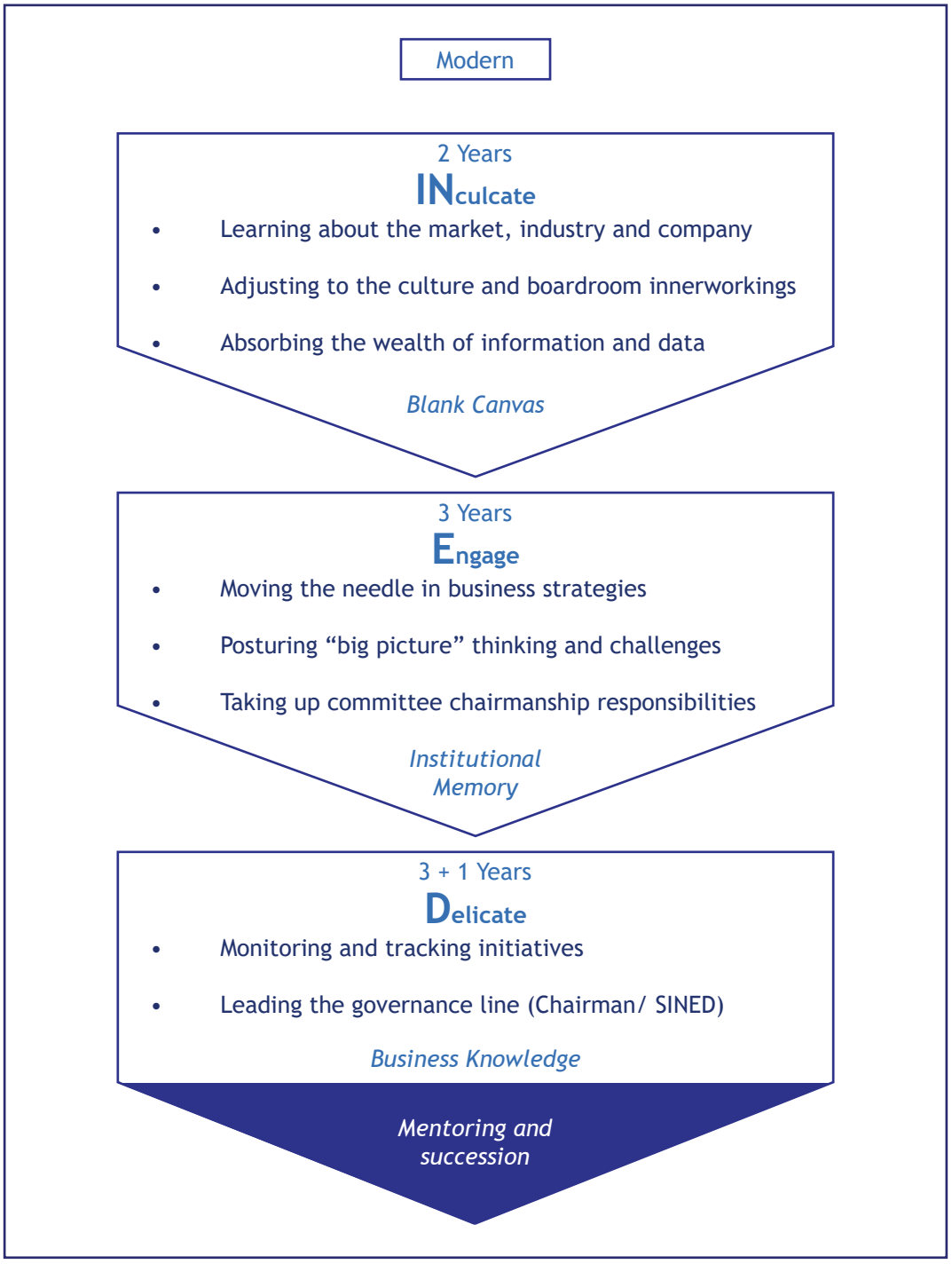
MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

Throughout the tenure of an independent director ("INED") in modern times, companies are beginning to recognise the complexity of the relationship between his/her performance and accumulated years in the boardroom. As commonly gathered by directors, performance or objectivity does not necessarily need to be equated to tenure. The journey for an INED can be broken down as stages of inculcating culture, deep engagement and delicate leadership. The last year of tenure should then be focused on mentoring and succession of a predecessor. This modern view on independent director is illustrated below and juxtaposed to the traditionalist view:

[2] Huang, S, 2013, *Zombie Boards: Board Tenure and Firm Performance, Essays on Corporate Finance*
[3] **Standard 11.9 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.

A more modern re-interpretation on the lifespan of an independent director recognises a more complex relationship between performance and accumulated years in the boardroom. As commonly gathered by directors, performance or objectivity does not necessarily need to be equated to tenure. The journey for an independent director (via the moniker INED) can be better imagined as stages of inculcating culture, deep engagement and delicate leadership. The last year of tenure should then be focussed on mentoring and succession of your predecessor. This new view on independent director (i.e. modern re-interpretation) is illustrated below and juxtaposed to the traditionalist view:



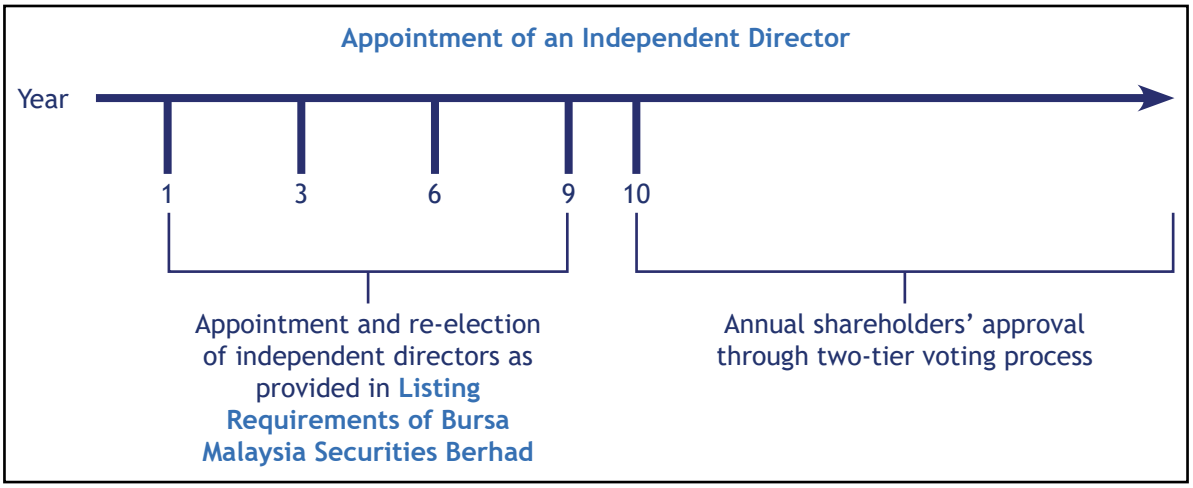

Modern
2 Years
INculcate
• Learning about the market, industry and company
• Adjusting to the culture and boardroom innerworkings
• Absorbing the wealth of information and data
Blank Canvas
3 Years
Engage
• Moving the needle in business strategies
• Posturing "big picture" thinking and challenges
• Taking up committee chairmanship responsibilities
Institutional Memory
3 + 1 Years
Delicate
• Monitoring and tracking initiatives
• Leading the governance line (Chairman/ SINED)
Business Knowledge
Mentoring and succession

HOW? The practice in substance

Recognising that all companies are not homogenous, **Practice 5.3 of MCCG** provides companies with

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.



To clarify further, the following would render the application of this **Practice 5.3 and Step Up 5.4**

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.

MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

Key considerations relating to the application of **Practice 5.3 and Step Up 5.4 of MCCG** are

MCCG Practice 5.3
The tenure of an independent director does not exceed a 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 provide justification and seek annual shareholders' approval through a two-tier voting process.

MCCG Step Up 5.4
The board has a policy which limits the tenure of its independent directors to nine years without further extension.

- is unafraid to express an unpopular stance on issues or express disagreement on matters and actively pursues them with the rest of the board and with the management team;
- 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; and
- ensures that any dissenting views and opinions are properly recorded and minuted.

What are the potential indicators of entrenchment amongst independent directors?

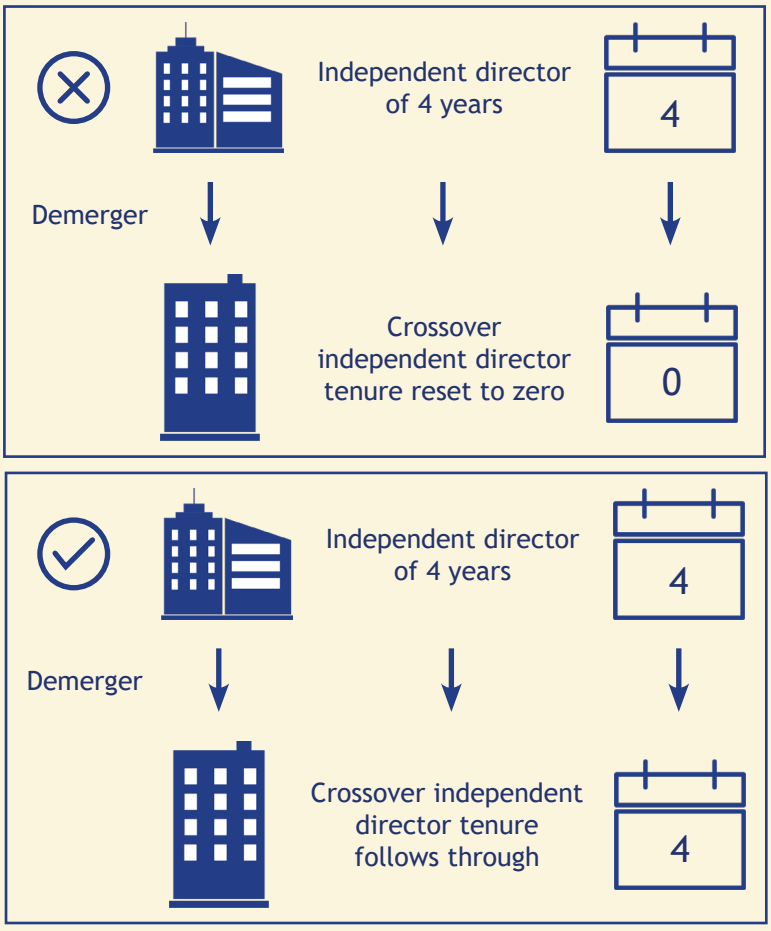
Some of the signs of entrenched independent directors include the following:

- failure to act independently because of strong personal ties that have developed over the years;
- tendency to defend decisions and policies that have been supported in the past, but now, are no longer relevant;
- having too close relationships with senior management personnel; and
- potential case of "zombie directors" (defined as directors who have served on a board for so many years that they lose energy and enthusiasm for the job and simply go through the motions in providing oversight for the company)[4].

[4] *Director Tenure: The Next Boardroom Battle*, 2015. Chapman and Cutler LLP.

Further reflection

"Tenure reboot" or resetting an independent director's tenure to zero years has somewhat slipped under the radar from a corporate governance standpoint. Tenure reset can stem from multiple scenarios of corporate development. One is when a company demerges from or merges with another company but retains the same set of independent directors by crossing them over to the board of the new entity. Another is when an independent director is elevated from a subsidiary board onto the board of the parent company. Example of the former scenario is depicted in the diagram below:



As a better practice, it is suggested that companies adopt a more holistic tenure policy approach rather than the "clean-slate approach" for any appointments or elevation of directors. In this regard, independent directors' tenure should be looked from an accumulative perspective (e.g. prior to the corporate exercise in the form of merger and demerger or the elevation of the independent director from the subsidiary board). This is in line with better practice and aligned to **Guidance to Practice 5.3 of MCCG** on tenure of independent directors which emphasises on the erosion of board's objectivity due to management familiarity.

How does the two tier-voting process operate?

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)[5] of the company votes; and



Tier 2: Shareholders other than Large Shareholder(s) votes.

The decision for the aforementioned resolution is determined based on the simple majority of vote for Tier 1 and a simple majority of vote for Tier 2. 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:

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

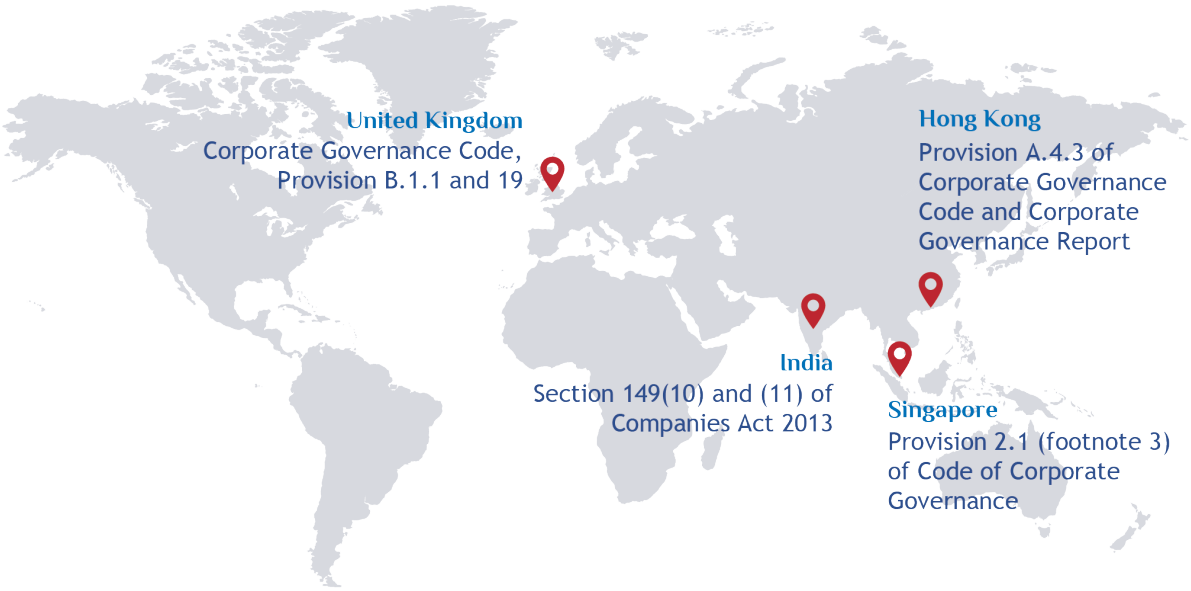
The Securities Commission observed that two-tier voting adoption has increased since its introduction. In 2020, 65% of resolutions to retain long serving independent directors used two-tier voting. Specifically, 312 resolutions were tabled by 225 listed companies to decide on the retention of long-serving independent directors, using the two-tier voting process[6]. Out of the 312 resolutions tabled using the two-tier voting process, 285 decided on the retention of independent directors with tenure of 13 years or more, whilst 27 resolutions decided on the retention of independent directors with tenure of less than 13 years.

[5] As stated in the **Guidance to Practice 5.3 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] *CG Monitor 2021*. Securities Commission Malaysia.

WHERE? Regional/International perspectives

Alongside Malaysia, 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:



Country	Tenure limit	Approach and provision
Hong Kong	9 years	Comply or explain Appointment beyond the ninth year should be subject to a separate resolution for the approval of shareholders. ***(Provision A.4.3 of Corporate Governance Code and Corporate Governance Report)***
India	10 years	Mandatory Director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Country	Tenure limit	Approach and provision
		Notwithstanding the above, 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. ***[Section 149(10) and (11) of Companies Act 2013]***
Singapore	9 years	Mandatory (d) A director will not be independent under any of the following circumstances: (i) if he is employed by the issuer or any of its related corporations for the current or any of the past three financial years; (ii) if he has an immediate family member who is employed or has been employed by the issuer or any of its related corporations for the past three financial years, and whose remuneration is determined by the remuneration committee of the issuer; or (iii) if he has been a director for an aggregate period of more than 9 years (whether before or after listing) and his continued appointment as an independent director has not been sought and approved in separate resolutions by (A) all shareholders; and (B) shareholders, excluding the directors and the chief executive officer of the issuer, and associates of such directors and chief executive officer. For the purpose of the resolution referred to in (B), the directors and the chief executive officer of the issuer, and their respective associates, must not accept appointment as proxies unless specific instructions as to voting are given. Such resolutions may remain in force until the earlier of the following:- (X) the retirement or resignation of the director; or (Y) the conclusion of the third annual general meeting of the issuer following the passing of the resolutions. *Note: To be operationalised in 1 January 2022.* ***[Paragraph 210 (5)(d) of the SGX Mainboard Listing Rules]***

Country	Tenure limit	Approach and provision
United Kingdom	9 years	Comply or explain *The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director:* • has served on the board for more than nine years from the date of their first appointment ***(Extract of Provision 10 of Corporate Governance Code)*** *The chair should not remain in post beyond nine years from the date of their first appointment to the board.* ***(Extract of Provision 19 of Corporate Governance Code)***

Appointment of Board Members and Senior Management Personnel

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.5
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.

Directors appointed should be able to devote the required time to serve the board effectively. The board should consider the existing board positions held by a director, including on boards of non-listed companies. Any appointment that may cast doubt on the integrity and governance of the company should be avoided.

WHY? The case for change

Appointing the right person with the right skills, experience and credibility to the leadership team is clearly imperative. The fault lines drawn on instances of corporate mismanagement and scandals can often be directed to the failings of individual board and senior management team members who have not had the values as well as required skills, experience and commitment to deal with challenges the business has faced. Likewise, 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". To this end, the former head of International Monetary Fund, Christine Lagarde once quipped that "if it had been Lehman Sisters rather than Lehman Brothers, the world might well look a lot different today"[1].

The importance of driving objective, meritorious and diversity-conscious appointments at the leadership level is further amplified by the dynamic marketplace whereby companies need to be steered in an agile, responsive and future-focused manner. In other words, in order to deliver the next cycle of high performance, the leadership team comprising board and senior management must now evolve to be more proactive.

In the local context, a recent study titled "Malaysian Board Practices Review 2020" by Institute of Corporate Directors Malaysia in collaboration with Russell Reynolds Associates and Bursa Malaysia Berhad revealed that the current state of sourcing practices creates opportunity to elevate and expand appointment practices of directors. The study also revealed gaps in board skills and knowledge call for greater and more effective adoption of skills with the top three skills that boards would like to supplement being outlined as follows[2]:

[1] *If it was Lehman Sisters, it would be a different world - Christine Lagarde* 2018, The Guardian
[2] *Malaysian Board Practices Review* 2020, Institute of Corporate Directors Malaysia, Russell Reynolds Associates and Bursa Malaysia Berhad

Top 3 skills boards would most like to supplement



Digital, social media, technology, and innovation



Environmental, social and governance



Human resource, culture and succession

As in the case of skill set gap, overboarding or excessive directorships by directors is increasingly becoming more of a concern given that expectations on time commitment have heightened to a large extent. Observance of large board size and common directorships across companies under the same stable of ownership serve as an indicator of overstretch on the part of selected directors. There have been instances whereby the director of a holding company and the accompanying listed issuer held directorships in a number of subsidiaries within the group, leading to multiple conflict of interest positions and impairment of time commitment.

Further reflection

Active politicians are often dissuaded to be on the boards of listed issuers in order to avoid the risk of politicians encountering conflict of interest situations between their role as directors of a commercial entity and obligations to their constituents. A person is considered politically active if he is a Member of Parliament, State Assemblyman or holds a position at the Supreme Council, or division level in a political party[3].

Similar premises also apply in the case of public officials whereby concerns have been raised that these individuals are enlisted to help listed issuers lobby for certain concessions with the government administration and facilitate application of permits and financial grants[4]. In the case of sitting public officials, one would argue that these individuals should focus their undivided attention on the day-to-day administration of the government instead of being grossly preoccupied in having to attend board meetings, board committee meetings or general meetings of listed issuers.

Flowing from this, the National Anti-Corruption Plan which was issued on 29 January 2019 laid out the following strategic reform initiatives:

- To introduce a policy on appointing politicians as Chairperson or members to the Board of Directors of Statutory Bodies, State-Owned Enterprises and Government Established Company Limited By Guarantee (CLBG) based strictly on academic and/or professional qualifications - *Strategic Initiative 1.3.3*
- To manage the involvement and appointment of Senior Government Officials as members of Board of Director and CEO in all State-Owned Enterprises as well as Statutory Bodies - *Strategic Initiative 2.1.2*

[3] *Parliamentary White Paper - Ministry of Economic Affairs* 2019
[4] Shanmugam, M 2021, *Alternative Views: Role of politicians and ex-civil servants on boards need closer scrutiny,* The Edge Malaysia

Given the non-negotiable importance of having a sound leadership team at the highest level of the company, Bursa Malaysia Securities Berhad have emphasised the need for appointments to the board and senior management team to be anchored on suitable parameters.

Paragraph 2.20A of Bursa Securities Listing Requirements

Qualification of directors and other key officers

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 Securities Listing Requirements restricts a director of an applicant or a listed issuer from holding more than 5 directorships in listed issuers.

Paragraph 15.01A of Bursa Securities Listing Requirements

Fit and proper policy

A listed issuer must –

(a) have a fit and proper policy for the appointment and re-election of directors of the listed issuer and its subsidiaries;

(b) ensure the policy addresses board quality and integrity and will aid the listed issuer to comply with **paragraph 2.20A** of these Requirements; and

(c) make available the policy on its website.

Paragraph 15.08A(3) of Bursa Securities 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 the application of the listed issuer's fit and proper policy in the nomination and election of its directors, how the requirements set out in paragraph 2.20A 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 process of directors; and

(c) the assessment undertaken by the nominating committee in respect of the performance of its board, committees and individual directors together with the criteria used for such assessment.

Likewise, as stated in **Appendix 1 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the nominating committee must support the board of a licensed financial institution by carrying out fit and proper assessment for directors, senior management and company secretary.

Fit and proper criteria for licensed financial institutions[5]:

Probity, personal integrity and reputation

Person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness.

Competence and capability

Person must have the necessary skills, ability, experience and commitment to carry out the role.

Financial integrity

Person must manage his or her debts or financial affairs prudently.

[5] Bank Negara Malaysia's Guidelines on Fit and Proper Criteria for Key Responsible Persons

HOW? The practice in substance

In championing for qualified appointments at the leadership level, boards should formalise and internalise clear parameters on the selection process of directors and senior management personnel. Simply put, boards should demonstrate clear commitment to developing a corporate culture that thrives on objectivity, transparency, meritocracy and diversity.

Key considerations relating to the application of **Practice 5.5** are discussed below:

MCCG Practice 5.5
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.

Directors appointed should be able to devote the required time to serve the board effectively. The board should consider the existing board positions held by a director, including on boards of non-listed companies. Any appointment that may cast doubt on the integrity and governance of the company should be avoided.



Considerations that underpin the overarching criteria are elucidated as follows:

Considerations that underpin a fit and proper policy for directors of a listed issuer and its subsidiaries

Character and integrity

(i) Probity

- is compliant with legal obligations, regulatory requirements and professional standards
- has not been obstructive, misleading or untruthful in dealings with regulatory bodies or a court

(ii) Personal integrity

- has not perpetrated or participated in any business practices which are deceitful, oppressive improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct
- service contract (i.e. in the capacity of management or director) had not been terminated in the past due to concerns on personal integrity
- has not abused other positions (i.e. political appointment) to facilitate government relations for the company in a manner that contravenes the principles of good governance

(iii) Financial integrity

- manages personal debts or financial affairs satisfactorily
- demonstrates ability to fulfil personal financial obligations as and when they fall due

(iv) Reputation

- is of good repute in the financial and business community
- has not been the subject of civil or criminal proceedings or enforcement action, in managing or governing an entity for the past 10 years
- has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management

<u>Experience and competence</u>

(i) Qualifications, training and skills

- possesses education qualification that is relevant to the skill set that the director is earmarked to bring to bear onto the boardroom (i.e. a match to the board skill set matrix)
- has a considerable understanding on the workings of a corporation
- possesses general management skills as well as understanding of corporate governance and sustainability issues
- keeps knowledge current based on continuous professional development
- possesses leadership capabilities and a high level of emotional intelligence

(ii) Relevant experience and expertise

- possesses relevant experience and expertise with due consideration given to past length of service, nature and size of business, responsibilities held, number of subordinates as well as reporting lines and delegated authorities

(iii) Relevant past performance or track record

- had a career of occupying a high level position in a comparable organisation, and was accountable for driving or leading the organisation's governance, business performance or operations.
- possesses commendable past performance record as gathered from the results of the board effectiveness evaluation

Time and commitment

(i) Ability to discharge role having regard to other commitments

- able to devote time as a board member, having factored other outside obligations including concurrent board positions held by the director across listed issuers and non-listed entities (including not-for-profit organisations).

(ii) Participation and contribution in the board or track record

- demonstrates willingness to participate actively in board activities
- demonstrates willingness to devote time and effort to understand the businesses and exemplifies readiness to participate in events outside the boardroom
- manifests passion in the vocation of a director
- exhibits ability to articulate views independently, objectively and constructively
- exhibits open mindedness to the views of others and ability to make considered judgment after hearing the views of others

Based on the high-level and baseline considerations outlined above (e.g. possesses relevant experience with due consideration given to past length of service), a listed issuer may customise the fit and proper policy further by providing prescriptions and specifications based on its specific circumstances, needs and requirements (e.g. specification on the minimum years of experience needed that a candidate must have at a senior level as a director, C-suite member, head of department to be considered for an appointment to the board).

These considerations should be assessed individually as well as collectively. In addition, the said considerations should be assessed by the nominating committee and board over a period of time with past behaviour of the individual being an indicator of future conduct. A listed issuer may undertake to assess the fitness and properness of directors through procedures such as due diligence and declarations. As a progressive measure, the listed issuer may expand the coverage of fit and proper policy beyond directors to also include key management personnel such as chief executive officer (who is a non-board member) and chief financial officer.

The publication of the fit and proper policy on the website seeks to provide stakeholders with easy accessibility that allows them to be better informed in the exercise of their rights. Whilst a listed issuer should disclose the customised considerations and expectations in their respective fit and proper policy, they are not expected to disclose sensitive or confidential information.

In addition, disclosure on the activities of the nominating committee during the reporting period must cover the application of the listed issuer's fit and proper policy. The statement made by the board as to whether it supports the appointment or re-election of the candidate for directorship and the accompanying reasons should also be anchored on fit and proper considerations (refer to **write-up to Practices 5.6 and 5.7)**

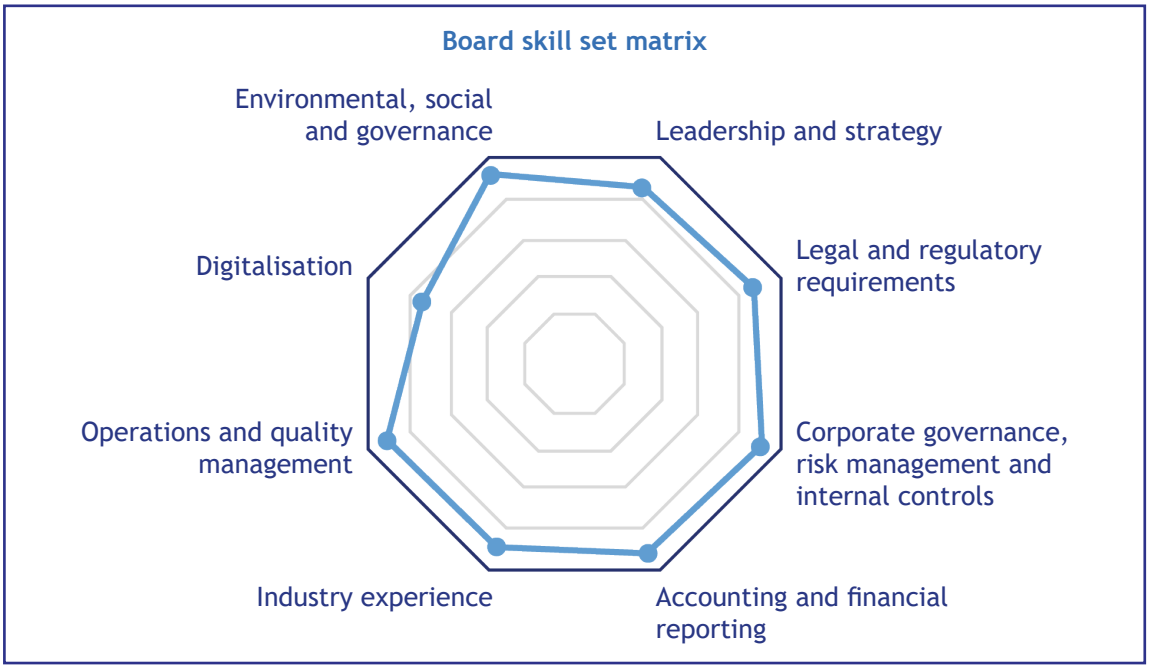
MCCG Practice 5.6
In identifying candidates for appointment of directors, the board does not solely rely on recommendations from existing board members, management or major shareholders. The board utilises independent sources to identify suitably qualified candidates.

If the selection of candidates was based on recommendations made by existing directors, management or major shareholders, the Nominating Committee should explain why these source(s) suffice and other sources were not used.

MCCG Practice 5.7
The board should ensure shareholders have the information they require to make an informed decision on the appointment and re-appointment of a director[1]. This includes details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the listed company as a whole. The board should also provide a statement as to whether it supports the appointment or re-appointment of the candidate and the reasons why.

to ensure alignment with the objective, strategic direction and emerging challenges faced by the company.

A hypothetical example of a generalised board skills matrix for a company based on is depicted below:
(Note: The difference between outermost vertices and the shaded inner vertices indicates existing gaps that the board is seeking to bridge)



WHERE? Regional/International perspectives

Similar to Malaysia, many countries including Australia, Singapore and United Kingdom have (via their respective codes of corporate governance) urged companies to ensure that appointments to the board and senior management level are driven in an objective, meritorious and diversity-conscious manner.



Country	Provision
Australia	A listed entity should have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership ***(Recommendation 2.2)***.
Singapore	The Board has a formal and transparent process for the appointment and reappointment of directors, taking into account the need for progressive renewal of the Board ***(Principle 4)***.
United Kingdom	Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths ***(Principle J)***.

Sourcing and Disclosure on the Appointment and Re-Appointment of Directors

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.6
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.

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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.

The Malaysian Board Practices Review 2020 highlights that personal network referrals remains the most common method of sourcing, at 74%, followed by nominations by major shareholders or parent companies, at 14%, and the use of independent sources stands at a mere 8%. Further, it was revealed that only 35% of the companies assessed considered the contacts and networks of the candidate during selection[2].

[1] Listed companies are required under the Listing Requirements to provide a statement accompanying notices of general meetings on details of individuals who are standing for election as directors. The information includes the name, age, gender, working experience and any conflict of interest as well as directorship in other companies.
[2] *Malaysian Board Practices Review 2020* 2021, Institute of Corporate Directors Malaysia

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[3]. 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 controlling 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[4]. As a corollary, directors whose appointments are weighed on suitability and adaptability are likely to manifest a more critical approach in deliberating on the matters under consideration.

In order to reduce instances of insular nomination methods, regulators are increasingly emphasising the importance of transparency and objectivity in directors' nomination, election and re-election processes. Greater disclosure on the underlying processes of the individuals up for election and re-election allows for greater scrutiny by stakeholders and analyst, which ultimately can nudge the board towards recruiting most suitable candidates to form a high-functioning and effective board[5].

[3] *Board Member Nomination and Election* 2012, Organisation for Economic Co-operation and Development
[4] *Corporate Governance Better Policies for Board Nomination and Election in Asia* 2013, Organisation for Economic Co-operation and Development
[5] Daum, J 2015, *Recruiting and Onboarding Directors*, SpencerStuart

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);
- industry and professional associations (e.g. 30% Club Malaysia);
- 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.

What should stakeholders be kept apprised on and how should boards approach disclosure?

Disclosure on the processes and the justification underlying the selection, nomination and appointment of directors has a dual functionality. One purpose it serves is to equip shareholders with sufficient information for decision-making that will serve their best interest. Next, it arms the board to defend its position, made with the best interest of the company and stakeholders in mind, in situations where critics may challenge the boards process and choices, arguing that the board is "greenwashing" or "purpose washing".

The necessary information which should be disclosed, in the relevant mediums are outlined below:

(1) Annual report

The nomination and election process of directors including the application of the listed issuer's fit and proper policy in the nomination and election of directors, as stipulated in **paragraph 15.08A(3)(b) of Bursa Securities Listing Requirements.**

Paragraph 2.20A of Bursa Securities Listing Requirements

Qualification of directors and other key officers

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, collective investment scheme or business trust.

Note: In order to enable directors to devote sufficient time to carry out their responsibilities, paragraph 15.06 of Bursa Securities 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 Securities 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 the application of the listed issuer's fit and proper policy in the nomination and election of directors, how the requirements set out in **paragraph 2.20A** of these Requirements are met and contain the following information:

(b) the board nomination and election process of directors

(2) Corporate Governance Report

- Methods used to source for directorship candidates.
- Explanation on sufficiency of sources and justification for not using other sources (when selecting candidates based on recommendations of existing directors, management or major shareholders).

(3) Notes accompanying the notice of general meeting

- Details of individuals standing for election as directors, as outlined in **Paragraph 1, Appendix 8A of Bursa Securities Listing Requirements.**

Paragraph 1, Appendix 8A of Bursa Securities Listing Requirements

Further details of individuals who are standing for election as directors (excluding directors standing for a re-election), namely the following:

(a) the name, age, gender, nationality, qualification, and whether the position is an executive or non-executive one and whether such director is an independent director;

(b) the working experience and occupation;

(c) any other directorships in public companies and listed issuers;

(d) the details of any interest in the securities of the listed issuer and its subsidiaries;

(e) the family relationship with any director and/or major shareholder of the listed issuer;

(f) any conflict of interest that they have with the listed issuer; and

(g) other than traffic offences, the list of convictions for offences within the past 5 years and particulars of any public sanction or penalty imposed by the relevant regulatory bodies during the financial year, if any; and

(h) a statement justifying the nomination of an individual as an independent director, and explaining why there is no other eligible candidate, if such individual had cumulatively served as an independent director of the listed issuer or any one or more of its related corporations for more than 12 years before and observed the requisite 3-year cooling off period.

- A statement by the board as to whether it supports the appointment or re-appointment of a candidate with its accompanying reasons. This statement should detail the application of the company's fit and proper policy as a factor in determining the board's decision to appoint or re-appoint a director.

- Companies are encouraged to provide shareholders with relevant information (examples of the information are as stated in Guidance to **Practice 5.7 of MCCG**)

MCCG Practice 5.7
The board should ensure shareholders have the information they require to make an informed decision on the appointment and re-appointment of a director[1]. This includes details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the listed company as a whole. The board should also provide a statement as to whether it supports the appointment or re-appointment of the candidate and the reasons why.

for directors who are up for re-election.

*Note: **Paragraph 7.15 of Bursa Securities Listing Requirements** requires notices convening meetings to be given to sharehold-ers at least 14 days before the meeting or at least 21 days before the meeting where any special resolution is to be proposed or where it is an annual general meeting.*

- Taking heed from **paragraph 1(f) of Appendix 8A of Bursa Securities Listing Requirements**, an assessment on conflict of interest of incumbent directors should be conducted by the board, together with the nominating committee, on an annual basis, and findings should be disclosed in the notes accompanying the notice of general meetings related to the re-appointment of a director.

Note: The conduct of the conflict of interest assessment should be undertaken on an annual basis, for all incumbent directors, regardless of whether they are subject to re-election at the annual general meeting.

Further reflection

The recent rise of shareholder activism at general meetings have seen boards and individual directors challenged, as shareholders hold them accountable for their inability to respond swiftly to the risks and opportunities stemming from the fast paced shifts in the business landscape, such as the increasing emphasis on environment, social and governance, and greater imperative for digitalisation and automation.

A pertinent indicator of boards commitment to impending change is who it chooses to sit amongst itself to best represent the needs of stakeholders as well as drive the performance of the company.

Activism seen in ExxonMobil's 2020 annual shareholder meeting, where an investor, unhappy with the company's financial performance and foot-dragging on climate strategy, won sufficient shareholder support to oust at least two directors[6], and BlackRock's votes against 255 directors for climate-related reason, in the year leading up to June 2020[7], are only a few – but very potent – examples.

The board should frame its strategy to address the pressures emanating from shareholders, taking into consideration the following pointers[8]:

- Engage with shareholders to build a robust understanding of their investment strategy as well as how the company's plans and goals dovetail with it and articulate the vital role of the skillset and expertise of existing and incoming directors.
- Assess vulnerabilities facing the company and pay heed to the accountability of incumbent directors and the role of incoming directors in creating and/or ameliorating said vulnerabilities.
- Utilise tabletop simulation to assess the needs and expectations of shareholders against the processes and decision-making involving the appointment and re-appointment of directors.

How should the board incorporate the views of other stakeholders?

While the voice of shareholders can be heard through voting at general meetings, the board should develop mechanisms to incorporate the voices of other stakeholders into its deliberations on the appointment and re-appointment of directors.

The advent of stakeholder capitalism involves the increasing proactivity of boards to assimilate the interests of stakeholders into decision-making, as boards realise the need for companies to be part of the broader social and environmental fabric, and the value it has on the long-term viability of businesses.

[6] Egan, M & Benveniste A 2021, *Activist Investor Ousts At Least Two Exxon Directors in Historic Win for Pro-Climate Campaign*, CNN
[7] Kishan, S 2021, *BlackRock Voted Against 255 Directors for Climate Issues*, Bloomberg
[8] Grossman R & Stronski N 2021, *Shareholder Activism in New Directions*, Skadden

A recent survey of over 400 corporate leaders highlights that 73% of boards expect boardroom deliberations to include the impact of their decisions on non-shareholder stakeholders (such as employees, customers, suppliers, local communities, regulators) at least on a quarterly basis, in the three years following the COVID-19 outbreak, while 42% except to discuss it at every meeting[9].

Below are some steps which should be undertaken in the nomination, appointment, and re-appointment processes to factor the views of stakeholders[10]:

Stakeholder Mapping

Senior management and the Nominating Committee should liaise to identify stakeholders which will be impacted and form a clear picture on the nature of impacts.

Stakeholders could include employees, the community in which the company has operations, and consumers, just to name a few.

Selection / Re-appointment

The Nominating Committee should incorporate the necessary considerations into its deliberations on directorship candidates and directors up for re-election, with a clear understanding of the positive and negative implications of a directors appointment or reappointment on stakeholders in question.

Nomination / Re-appointment

The Nominating Committee should inform the board on the effects of individual nominations and re-appointments on non-shareholder stakeholders.

For instance, if the area in which the company has a factory is facing environmental issues related to the company's operations, the company's appointment of a director with a background in waste management will positively impact the local community.

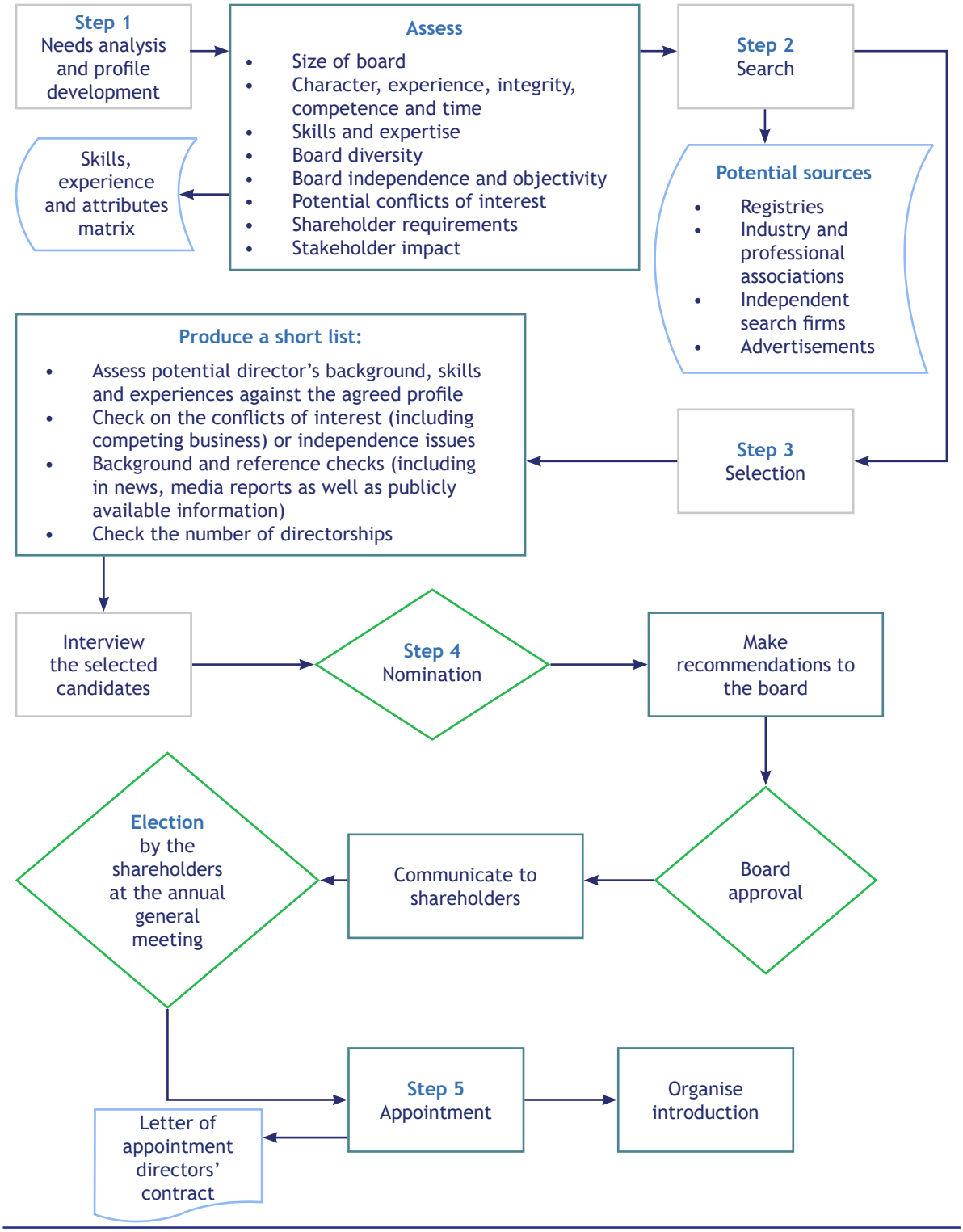
Appointment / Re-appointment

Information related the non-shareholder stakeholders should shape the boards decision-making on the appointment and re-appointment of directors.

[9] *2020: A Year in Review* 2021, Diligent Institute
[10] Anderson G, Bamform T & Moos K 2021, *Stakeholder Voices in the Boardroom*, SpenceStuart

In the appointment of a new director or filling casual vacancy, what are the steps that the board may undertake to appoint suitably qualified candidates?

The board may consider undertaking the following process as illustrated below.



WHERE? Regional/International perspectives

Similar to Malaysia, Australia, Hong Kong, South Africa and United Kingdom have placed an emphasis 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, and equipping shareholders with the information they require to make an informed decision on the appointment and re-appointment of a directors.



Country	Provision(s)
Australia	A listed entity should: • undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and • 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 ***(Recommendation 1.2)***.

Country	Provision(s)
Australia	The following information about a candidate standing for election or re-election as a director should be provided to security holders to enable them to make an informed decision on whether or not to elect or re-elect the candidate: • biographical details, including their relevant qualifications and experience and the skills they bring to the board; • details of any other material directorships currently held by the candidate; • in the case of a candidate standing for election as a director for the first time: ◦ confirmation that the entity has conducted appropriate checks into the candidate's background and experience; ◦ if those checks have revealed any information of concern, that information; ◦ details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party; and ◦ if the board considers that the candidate will, if elected, qualify as an independent director, a statement to that effect; • in the case of a candidate standing for re-election as a director: ◦ the term of office currently served by the director; and ◦ if the board considers the director to be an independent director, a statement to that effect; and a statement by the board as to whether it supports the election or re-election of the candidate and a summary of the reasons why ***(Extract of commentary to Recommendation 1.2)***.

Country	Provision(s)
Hong Kong	Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting: • the process used for identifying the individual and why the board believes the individual should be elected and the reasons why it considers the individual to be independent; • if the proposed independent non-executive director will be holding their seventh (or more) listed company directorship, why the board believes the individual would still be able to devote sufficient time to the board; • the perspectives, skills and experience that the individual can bring to the board; and • how the individual contributes to diversity of the board ***(Provision A.5.5)***.
South Africa	The processes for nomination, election and ultimately, the appointment of members to the governing body should be formal and transparent ***(Recommended Practice 15)***. Prior to the nomination for election, candidates' backgrounds should be independently investigated, and their qualifications should be independently verified ***(Recommended Practice 19)***. A brief professional profile of each candidate standing for election at the annual general meeting (AGM), including details of existing professional commitments, should accompany the notice of the AGM, together with a statement from the governing body confirming whether it supports the candidate's election or re-election ***(Recommended Practice 20)***.
United Kingdom	Open advertising and/or an external search consultancy should generally be used for the appointment of the chair and non-executive directors. If an external search consultancy is engaged it should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors ***(Provision 20, Part 3)***.

Country	Provision(s)
	The annual report should describe the work of the nomination committee, including: • the process used in relation to appointments, its approach to succession planning and how both support developing a diverse pipeline; • how the board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition; • the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and • the gender balance of those in the senior management and their direct reports ***(Provision 23, Part 3)***.

Chairmanship of the Nominating Committee

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.8
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.

As such, objectivity is integral to avoid entrenching unconscious bias or preferential dictates in the activities undertaken by nominating committee. It is no surprise that the aspect of independence in the composition of this committee is reinforced by **MCCG**, particularly for the chairman of the nominating committee.

This is because the effectiveness of the nominating committee to a large extent depends on the effectiveness of its chairman. In addition to leading the vetting of candidates, the chairman also has the responsibility of leading the assessment of the board, board committees and individual directors. Inevitably, the time will also come when directors will depart from the company and it is incumbent upon the chairman of the nominating committee to lead the necessary conversations around succession planning, particularly for the chairman of the board and chief executive officer.

HOW? The practice in substance

Bursa Securities Listing Requirements have reflected the composition of the nominating committee.

> **Paragraph 15.08A(1) of Bursa Securities Listing Requirements**
>
> **Nominating committee**
>
> 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 200 listed issuers (by market capitalisation) as at 31 December 2020 revealed that 141 listed issuers have already appointed independent directors as the chairmen of the nominating committees[1].

As with other board committees of a financial institution, **Standards 12.3 and 12.4 of Bank Negara Malaysia's Policy Document on Corporate Governance** also require the chairman of a financial institution's nominating committee to be an independent director and distinct from the chairman of the board.

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.

This is because whilst the senior independent director is generally regarded as an ideal chairman of the nominating committee, 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 nominating committee chairman.

Further reflection

Clarity in the roles of the chairman and senior independent director is important. Indeed, it can be very uncomfortable when the senior independent director gets a request from shareholders who call upon the chair to exit the role for a variety of reasons including governance considerations. Normally, the senior independent directors can be the catalyst for the chairman to exit provided the senior independent directors themselves are not a candidate for the top position. Likewise, when the company is in crisis, the senior independent director might be the best person to assume the chairman role.

[1] Review undertaken by KPMG Management & Risk Consulting Sdn Bhd in 2021

As some independent directors may exhibit a "naked ambition" for the chairman role, checks and balances are critical. These include declaration at the onset if the senior independent director is ruled out of the chairman selection or one who would be under consideration for the role. Whilst each situation needs to be taken on its own merits, it would certainly be helpful to plan the chairman and senior independent director's succession, particularly if the chairman and the senior independent director have joined the board at a similar time[2].

In the case of small sized boards or family-owned companies whereby there is no senior independent director on the board, the chairman of nominating committee chair plays an important role in acting as a mediator and sounding board to the chairman who may be an executive director. It is also key for the chairman of the nominating committee to initiate conversation surrounding the chairman of the board.

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?

This should be determined by the board after having considered the merits and disadvantages of either the independent director or senior independent director acting as the committee chairman based on, amongst others, the considerations as outlined in the preceding page.

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. Hence, in companies that have a senior independent director, it is commonplace for the senior independent director to be appointed as the chairman of the nominating committee.

What are the factors that should be taken into account in selecting a senior independent director?

There is a widespread misconception on the definition of senior independent directors amongst 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 in determining 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".

[2] Roscoe, A et al. 2020, *Defining the Role of the Senior Independent Director (SID) on Boards*, EgonZehnder

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 5.8 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 that 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[3]);
- 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).

Are senior independent directors accorded with additional remuneration apart from board fees, board committee fees as well as any accompanying meeting allowance and benefits in kind?

There are varying market practices in relation to the additional remuneration for senior independent directors with the common practices being as follows:

- No additional remuneration accorded for assuming the function of senior independent director; or
- There is no separate fee for the function of senior independent director but there is a healthy built-in premium in the chairmanship fee of nominating committee given that senior independent directors typically occupy this position; or
- There is a stand-alone fee for the function of senior independent director and the accordance of such is in recognition of the additional responsibilities assumed by the said individual.

[3] *Guidance on Board Effectiveness* 2011, Financial Reporting Council (United Kingdom)

WHERE? Regional/International perspectives

Similar to Malaysia, a number of jurisdictions has called for the nominating committee to be chaired by an independent director.



Country	Provision(s)
Singapore	The nominating committee comprises at least three directors, the majority of whom, including the nominating committee chairman are independent. The lead independent director, if any, is a member of the nominating committee ***(Provision 4.2)***.
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 ***(Extract of recommendation 2.1)***

Country	Provision(s)
United Kingdom	The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor ***(Provision 17, Part 3)***.

Gender Diversity in Boardroom and Senior Management

MCCG Intended Outcome 5.0
Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 5.9
The board comprises at least 30% women directors.

MCCG Practice 5.10
The board discloses in its annual report the company's policy on gender diversity for the board and senior management.

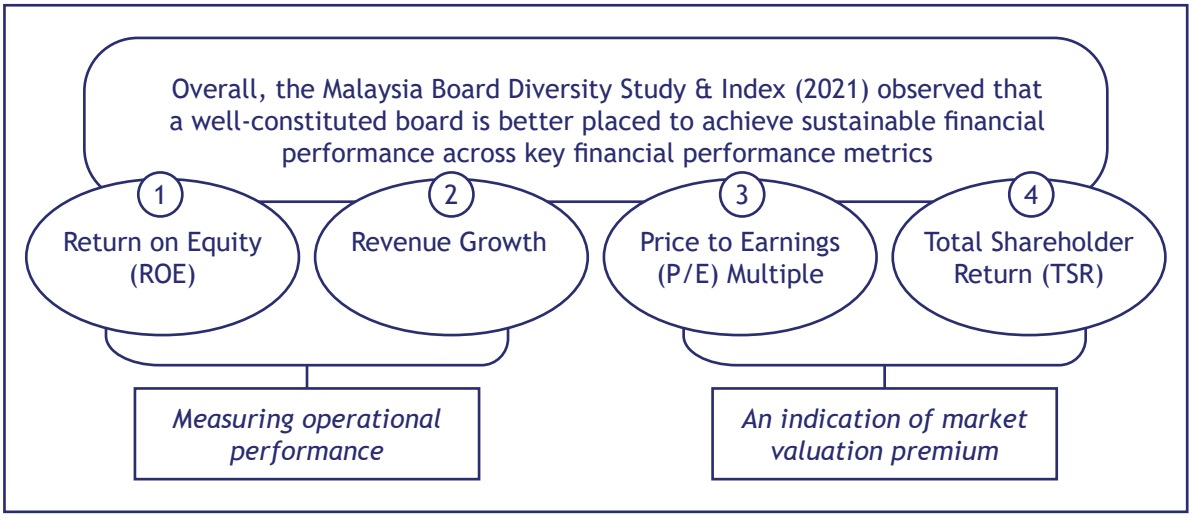
WHY? The case for change

The expectations on gender diversity have escalated due to emerging trends in governance and diversity, changing business and social landscape as well as the push from various stakeholders, including the government. In the Budget 2022 speech by the Minister of Finance[1], an announcement was made to require all listed issuers to have at least one woman director on board. The requirement is expected to take effect on 1 September 2022 for Large Companies and 1 June 2023 for other listed issuers.

In fact, the business case for board diversity is etching closer to a reality check. 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. In a recent study conducted by the Financial Reporting Council (FRC) on FTSE 350 companies[2], there is a positive correlation between companies with higher gender diverse boards and higher Earnings Before Interest, Tax, Depreciation, and Amortisation ("EBITDA") margin: the FTSE 350 companies that have at least one woman on their board on average have a three to five percentage points higher EBITDA margin over the next four years. Interestingly, the study also analysed the effect of a change in gender diversity on the probability of future shareholder dissent. The quantitative analyses showed that an increase in gender diversity of FTSE 350 boards in the period between 2014 and 2016 was associated with less strong opposition to resolutions put forward by the board between 2017 and 2019. This may reflect the more collaborative nature of gender-diverse boards and their tendency to engage with stakeholders better.

[1] *Ucapan Bajet 2022*. Ministry of Finance.
[2] *Board Diversity and Effectiveness in FTSE 350 Companies*. 2021. Financial Reporting Council (FRC).

The aforementioned observations echo through in the local context. In a collaborative study by the Institute of Corporate Directors Malaysia (ICDM) and Willis Towers Watson[3], it was gleaned that: at least one-third representation of women displayed stronger correlation to Return of Equity (up to 38%). Beyond gender, other diversity markers such as independence, tenure, ethnicity and global exposure were also factored. The overall finding of the study found that a well constituted board is better placed to achieve sustainable financial performance across key financial performance metrics (as illustrated below):



The push for gender diversity is also seeping into the senior management composition. Stakeholders are increasingly expecting more women in executive leadership roles and in positions of key decision-making. There has been a large body of evidence indicating that there is positive relationship between presentation of women in workforce and firm performance. For instance, knowledge intensive and high-technology sectors — which demand higher creativity and critical thinking that diversity in general may bring — seem to benefit significantly more from a higher share of women in senior management. In these sectors, the International Monetary Fund found that an additional woman on the board or in senior management in European companies is associated with about 30 basis points higher Return of Assets[4].

Notwithstanding, gender disparity for women in the path to leadership is seen to be a systemic issue. Within the broader social context, gender inequality in workplace and the corporate world can be attributed to a host of contributing factors such as culture and power structures. One of the persistent diagnosis can be referred to as the "broken rung"[5]. The broken rung of the corporate ladder for women is at the managerial level. As there are simply too few women at managerial positions, women candidateship for C-Suite positions are often a challenge in itself. This entry-level promotion is the stumbling block that stifles women to rise to senior-level positions. What companies need to realise is that this broken rung cycle has a long-term impact on talent pipeline, succession planning and diversity in talent.

[3] *Malaysia Board Diversity Study & Index*. 2021. Institute of Corporate Directors Malaysia (ICDM)
[4] *Gender Diversity in Senior Positions and Firm Performance: Evidence from Europe. 2016. IMF Working Paper.*
[5] *Women in Workplace*. 2020. Mckinsey, LeanIn.

Lastly, key stakeholders are piling on the pressure with regards to gender diversity in boards and senior management. It must be highlighted that institutional investors have established voting policies with regards to board diversity. For instance, the Employees Provident Fund will vote against the Re-appointment of the chairman of the nominating committee (or its equivalent) where there is no female director on the board at all[6].

On the regulatory front, the Securities Commission Malaysia continues to publicise companies and boards with no single female member[7]: a total of 252 (out of 934 listed issuers assessed) still have an all-male board.

[6] EPF Corporate Governance Principles and Voting Guidelines.2021. Employees Provident Fund.
[7] CG Monitor 2021. Securities Commission Malaysia.

HOW? The practice in substance

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

Guidance to Practice 5.9 espouses that companies that fail to meet the 30% target should disclose the action it has or will be taking to achieve 30% or more and the timeframe to achieve this. It also clarified that a reasonable timeframe is referred to be three years or less. The board should also review the participation of women in senior management to ensure there is a healthy talent pipeline.

Guidance to Practice 5.10 emphasised the quality of gender diversity policy for both board and senior management. In the spirit of substance over form, the guidance alerted on the excessive use of vague and aspirational language but instead stressed on the need for concrete action plans, numerical targets and mechanisms to track performance against established targets.

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 **Practices 5.9 and 5.10 of MCCG** are discussed below:

MCCG Practice 5.9
The board comprises at least 30% women directors.

The establishment of a clear and accountable diversity policy is essential to fostering an environment

MCCG Practice 5.10
The board discloses in its annual report the company's policy on gender diversity for the board and senior management.

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

- Link the policy to the organisation's statement of values;
- Articulate the corporate benefits of diversity in a competitive labour market and the importance of being able to attract, retain and motivate employees from the widest possible pool of available talent;
- Express the organisation's commitment to inclusion at all levels of the organisation, regardless of gender, marital or family status, sexual orientation, gender identity, age, disabilities, ethnicity, religious beliefs, cultural background, socio-economic background, perspective and experience;
- Emphasise that in order to have an inclusive workplace, discrimination, harassment, vilification and victimisation cannot and will not be tolerated;

[8] Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations 4th edition 2019.

- Commit to ensuring 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 guarding against any conscious or unconscious biases that might discriminate against certain candidates;
- Commit to designing and implementing programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions;
- Recognise that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities; and
- Provide opportunities for employees on extended parental leave to maintain their connection with the entity, for example, by offering them the option (without any obligation) to receive all-staff communications and to attend work functions and training programs.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.
- 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.

Adapted from the Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations 4th edition 2019

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

The mandatory disclosure requirements for listed on a diversity policy is laid out below:

Paragraph 15.08A(3)(a) of Bursa Securities 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**[9] 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;

*Note: Bursa Malaysia Securities Berhad has vide its directive dated 22 July 2014 clarified that a listed issuer is required to disclose in its annual reports issued on or after 2 January 2015, its diversity policy for its board of directors in terms of gender, age and ethnicity as part of the enhanced disclosure requirements to **paragraph 15.08A of Bursa Securities Listing Requirements**.*

[9] **Paragraph 2.20A of Bursa Securities 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.

Elements that should be contained in relation to disclosures on gender diversity are outlined in **Practices 5.9 and 5.10 of MCCG** as follows:

MCCG Practice 5.9
The board comprises at least 30% women directors.

MCCG Practice 5.10
The board discloses in its annual report the company's policy on gender diversity for the board and senior management.

MCCG Practice 5.9
The board comprises at least 30% women directors.

Illustrative disclosure (Marks and Spencer Group plc: Board Diversity Policy) Revised in April 2020[10]

Policy statement

Marks & Spencer recognises the importance and value of diversity, and the Board's role in driving diversity and inclusion across the organisation. We are committed to creating a culture which reflects the diverse communities we serve, and which provides equal opportunity and support for all to utilise their experiences and skills to contribute to the business.

We believe a key driver in delivering our organisational diversity commitments is through a Board which is diverse in gender, social and ethnic background, cognitive and personal strengths. The Chairman leads the Marks & Spencer Board diversity agenda and sets measurable objectives with the aim of continuously improving diversity generally, which ultimately leads to better debate and decisions.

Policy Objectives

- Maintain a level of at least 30% female directors on the M&S Group plc board over the short to medium term;
- Appoint at least one Director from an ethnic minority background to the Board by 2021;
- Assist the development of a pipeline of high-calibre candidates by encouraging a diverse range of senior individuals within the business to take on additional responsibilities and roles to gain valuable board experience (such as Non-Executive roles);
- Only engage executive search firms who have signed up to the voluntary Code of Conduct on both gender and ethnic diversity and best practice;
- Ensure Non-Executive Directors 'long lists' reflect the Board's diversity commitments in respect of gender and ethnicity, as set out in this policy;

[10] *Marks & Spencer Board Diversity Policy.* April 2020.

- Consider candidates for appointment as Non-Executive Directors from a wider pool including those with little or no previous FTSE board experience;
- Report annually against these objectives and other initiatives taking place within the Company which promote gender, social and ethnic diversity;
- Report annually on 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 makeup of the Company.

As required by the UK Corporate Governance Code, we will report annually on board diversity within the Corporate Governance section of the Marks and Spencer Group plc Annual Report.

How can the board, with the support of the nominating committee accelerate gender diversity uptake in senior management?

Principles of equality of opportunity and treatment, and non-discrimination in employment have been integrated into national objectives and legislation as well as international labour standards for decades now. Companies worldwide have progressively adopted these principles in the management of their human resources. The board can play a significant role in accelerating gender diversity through proper planning and human capital strategies.

According to the Grant Thornton International Business Report (IBR), women make up 33% of positions in senior management team within companies in Malaysia. Malaysia has seen positive gains of 10 percentage point from 2019 and is the highest since 2007. This is above the global percentage of 29%. According to the report also, the top three roles held by women in the businesses surveyed in Malaysia are Human Resource Directors (52%), Chief Financial Officers (29%) and Chief Operating Officers (28%)[11].

The company's gender diversity policies must have a well thought-out human capital strategy. To enhance the gender diversity of senior management in the company, the board and the nominating committee may integrate the following measures below[12]:

Suggestions for progressive human capital strategies to support gender diversity (non-exhaustive):

- in the short term, identify women within and beyond the company with the potential to take on senior management positions with accelerated training and personal mentoring;
- for the longer term, ensure women and men obtain operational and general management experience on a balanced basis;
- consult professional women's organisations, universities and other organisations with databases of qualified women to identify potential candidates;

[11] International Business Report (IBR). 2020. Grant Thornton.
[12] *Gender Diversity Journey: Company Good Practices*. 2017. International Labour Office.

- ensure policies are in place for flexible working arrangements to create work-family balance; and
- change corporate culture through training and communications from the highest level to combat gender stereotyping and emphasize the value added of gender equality for business objectives.

Adapted from the Gender Diversity Journey: Company Good Practices by the International Labour Office.

How can the board, with the support of the nominating committee, accelerate gender diversity uptake in terms of board configuration?

To help companies find qualified women board members, there are plenty of national and regional organisations which have developed databases of qualified women for companies to consult for vacant board positions. The nominating committee should leverage on these databases to widen the scour of new director appointments and widen the talent pool. For instance, the 30% Club Malaysia, a business group which campaigns for more female directors on company boards, is seen as an increasing important ally for companies to tap into a wider talent pool of women directors. To gauge the current state of play with regards to the plight of women directors in corporate Malaysia, please refer to the *"Further reflection"* section in the ensuing page.

More women directors need to take on leadership roles such as the chairmanship, senior independent directorate and board committee chairmanship. Having said that, the statistics pertaining to women leadership roles further solidify the call for women directors to be elevated to key positions in the boardroom. Only 11 out of the top 200 listed issuers (by market capitalisation) have instituted a woman as their chairperson[13]. By enrolling more women in key levers of the board's governance and elevating them in the highest decision-making authority, board diversity agendas and initiatives can be further amplified.

[13] Source: Analyses based on disclosures in respective annual reports or corporate governance reports of the top 200 listed issuers by market capitalisation stratification as at 31 March 2021.

Further reflection

Women in boardroom: long winding road

The overarching vision for 30% Club Malaysia chapter's is to: "To be the first country in ASEAN to have 30% of women on the Boards of all listed issuers".

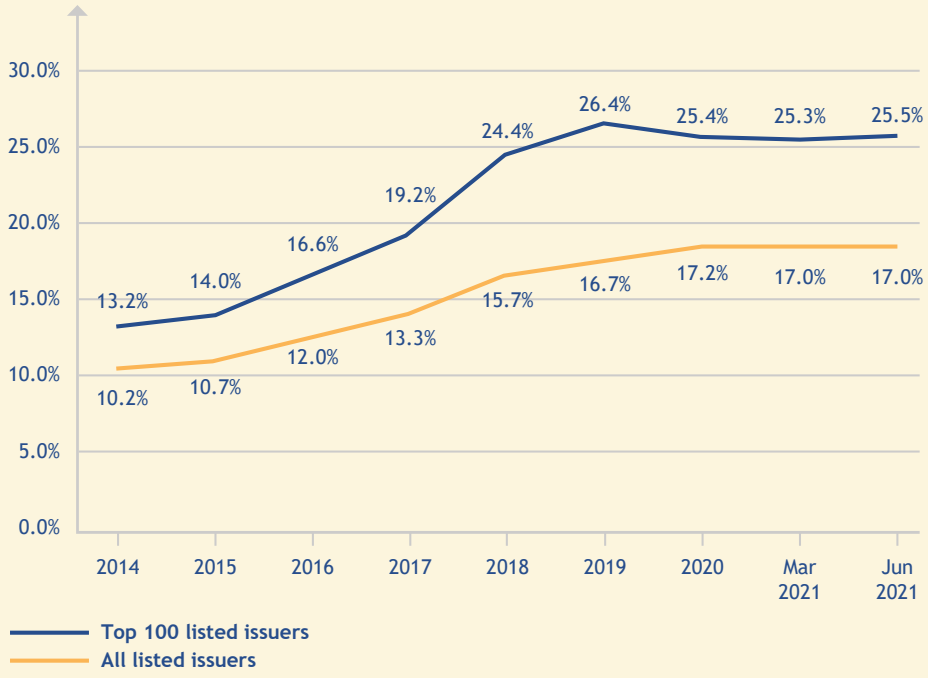
Among the top 100 listed issuers we currently stand at 25.5% representation (i.e. 38/100) while across all listed issuers, Malaysia stands at 17.7% (i.e. 162/934) (based on the number of women over total number of board seats available).

However, there are still a few top 100 listed issuers and 261 out of the overall 926 listed issuers that have ZERO female Board members *(data extracted as of 30 June 2021)*. In essence, although it is no longer exclusively a "boys' club", corporate Malaysia still have a long way to go.

The line chart below is plotted to showcase the extent to which women's participation in boardroom have risen over the past years:

- Data shows that there is a risk of progress plateauing. Since 2019 the percentage of board positions held by women have hovered around 17% overall and 25% for the top 100 listed companies.

Malaysia's Women on Boards as at 30 Jun 2021



Adapted from insights gathered from a webinar hosted by 30% Club Malaysia in collaboration with CPA Australia titled "A Woman's Journey to the Boardroom" and CG Monitor 2021.

WHERE? Regional/International perspectives

The clarion call for increased participation of women directors in boardroom and the establishment of gender diversity policies for the board and senior management are also prevalent in countries such as Australia, Italy, United Kingdom and France.



Country	Provision(s)
Australia	A listed entity should (a) have and disclose a diversity policy; (b) through its board or a committee of the board 30 set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally; and (c) disclose in relation to each reporting period: (1) the measurable objectives set for that period to achieve gender diversity; (2) the entity's progress towards achieving those objectives; and

Country	Provision(s)
	(3) either: (A) the respective proportions of men and women on the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes); or (B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act. **(Recommendation 1.5)**
Italy	The company defines the diversity criteria for the composition of the board of directors and the control body and identifies the most suitable tool for their implementation, taking into account its ownership structures. At least a third of the board of directors and the control body, where the latter is autonomous, is to be comprised of members of the less represented gender. Companies adopt measures to promote equal treatment and opportunities among genders within the entire organisation, monitoring their specific implementation. ***(Article 2: Composition of the corporate bodies; Recommendation 8)***
United Kingdom	The annual report should describe the work of the nomination committee, including: • the process used in relation to appointments, its approach to succession planning and how both support developing a diverse pipeline; • how the board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition; • the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and

Country	Provision(s)
	• the gender balance of those in the senior management and their direct reports. ***(Provision 23)***
France	At the proposal of the executive management, the Board shall determine gender diversity objectives for governing bodies. The executive management shall present measures for implementing the objectives to the Board, with an action plan and the time horizon within which these actions will be carried out. The executive management shall inform the Board each year of the results achieved. Corporate governance code of listed corporations ***(Provision 7.1)*** In the report on corporate governance, the Board shall describe the gender diversity policy applied to the governing bodies as well as the objectives of this policy, the implementation measures and the results achieved in the past financial year including, where applicable, the reasons why the objectives have not been achieved and the measures taken to remedy this ***(Provision 7.2)***

Evaluation for Board, Board Committees and Individual Directors

MCCG Intended Outcome 6.0
Stakeholders are able to form an opinion on the overall effectiveness of the board and individual directors.

MCCG Practice 6.1
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, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, 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 has become an increasingly important element of measuring and improving board performance in areas such as leadership, culture, delegation of duties, teamwork and decision making. Simultaneously, it creates value to board of directors, management, and stakeholders as it establishes a common focus on long-term orientation to a company's performance[1].

In broad terms, evaluation for the board, board committees and individual directors revolves around the themes outlined below[2]:

How the board leads
Examine how the directors were chosen, the skills and experience the director brings to bear and the leadership style.

How the board manages
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".

How the board contributes
Review the manner in which board members interact and participate as well as how decisions are made.

[1] O'Kelly III, J et al 2020, *Board and Director Assessments that Matter.* Russell Reynolds Associates
[2] *How Boards Should Evaluate Their Own Performance*, 2017.Harvard Business Review

Besides being a good governance practice, it is essential to ensure that the dynamics on the board is healthy. It enables boards to scrutinise and reflect on their current performance by incentivising them to acknowledge their strengths and weaknesses and act upon the findings. When done effectively, it would set the tone at the top help the board to improve their relationship with management and stakeholders. The most notable changes that can stem from an effective board evaluation are as follows[3]:

- sets performance tone and culture;
- identifying structural or systemic governance issues;
- establishes behaviours which are expected of all directors, management and employees;

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maximise their performance and to mitigate blind spots. The rationale behind **Practice 6.1 of MCCG** 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 improve 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.

Further, although it is considered an important process in ensuring the board's effectiveness, the stumbling block with board assessments is also in terms of its disclosure. Whilst many boards across the globe disclose that they have completed an evaluation, very few have been able to provide details on how the evaluation process was conducted[4].

[3] *Directors Forum No 4: Board Evaluation*, 2019. Mauritius Institute of Directors and PwC Ltd.
[4] Behan, B, *Engaging Directors on Board Composition*, Board Evaluation & CEO Succession Planning, 2017.

Also, as it still is market practice for boards to rely mostly on internal board evaluations, the following observations can be made:

Why evaluations do not always work out:

'Good-job' syndrome
The director has a view of himself or herself that far exceeds what he or she would score, if measured objectively ("**Dunning-Kruger effect**").

Back scratching
Directors rate each other favourably and the end result is a consistent curve with no real opportunities offered for improvement.

Failure to act
Despite signs of under-performance, in which the assessment isn't really going to be looked at, directors will not be compelled to take the assessment very seriously.

Hence, there is a general push for externally facilitated board evaluations which has also resonated with emerging leading practices and the demand for external objectivity in board evaluations. The clarity on timeframe in **Practice 6.1 of MCCG** also provides a clear reference point for Large

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[5] Boardroom Best Practices: Chapter 9 Measuring Performance, 2017. Spencer Stuart.

HOW? The practice in substance

Evaluations can be broadly grouped into two categories, internal and external evaluation, outlined in the following table below:

Internal evaluation	External evaluation
Internal evaluation of the board is often undertaken by the nominating committee, the 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 chairman of the nominating committee. 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 the proceedings and activities of the board (e.g. company secretary and senior management). This may help yield findings that may not have surfaced from conventional methods.	An external evaluation is undertaken to provide objectivity that could, at times, be lacking when carrying out the process internally. By carrying out the process internally it may become mechanical, while an external evaluator could bring in fresh perspectives and approaches[6]. Based on market response, the evaluation exercise will also benefit from a rigorous methodology and professional viewpoints, as it allows findings and recommendations to be based on unvarnished input. As stated in **Guidance to Practice 6.1 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". It must be made clear that engaging an independent reviewer does not transfer the responsibility to the reviewer nor does it provide assurance of the board's effectiveness. The board still holds the ultimate responsibility and accountability for the overall governance effectiveness within the company.

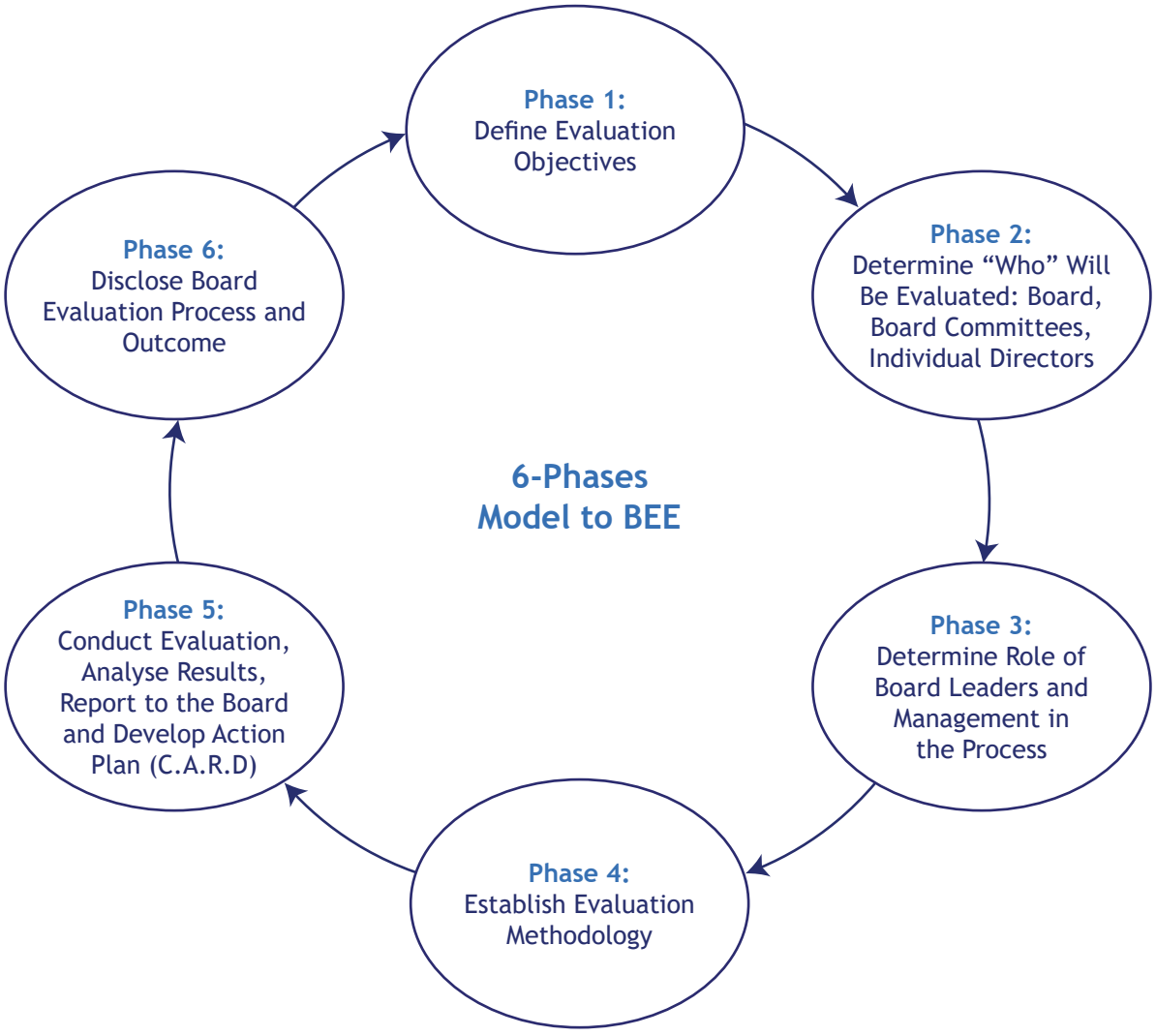
[6] 2014, *Performance Evaluation of Boards and Directors*, Deloitte

It is not uncommon for boards to enlist external advisors to facilitate the assessment process. Indeed, **Practice 6.1 of MCCG** calls for Large Companies to engage independent experts on at least

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A well-defined, structured and methodologial framework for board evaluation and self-assessment will go a long way of achieving multitude of goals mentioned earlier. The following "6-Phases Model to Board Effectiveness Evaluation ("BEE")" can be followed in establishing an overall "step-by-step" framework for a board evaluation[7]:



[7] *Strengthening the Board's Effectiveness in 2020: A Framework for Board Evaluations*, 2020. Harvard Law School Forum on Corporate Governance

Phase	Description
1. Define Evaluation Objectives	The initial phase is where the board should clearly define, understand and agree upon the objective of the board evaluation exercise for the financial year. This is also where the board should decide whether it would be an in-house exercise or an externally facilitated one.
2. Determine "Who" Will Be Evaluated: Board, Board Committees, Individual Directors	The board should clearly scope out the assessment coverage. Is it just the main board or will the subsidiary boards be included? Will there be individual assessment of directors? Will some new or specialised board committees be excluded for the evaluation this year? These are the questions that boards need to ponder upon.
3. Determine Role of Board Leaders and Management in the Process	Typically, the Chairman of the Board or the Chairman of the NRC can be appointed as the custodian of the exercise. The custodian should drive key issues and highlight some preliminary observations that the BEE could hone into. Whilst the board drives the board evaluation, the company secretary will execute the processes and procedures of the evaluation and support the administrative tasks.
4. Establish Evaluation Methodology	In this phase, the board must decide on the many tools or modalities (e.g. questionnaire, interview, minutes review) offered in conducting the board evaluation. *Note: in-depth explanation on this will be provided in the ensuing pages.*
5. Conduct Evaluation, Analyse Results, Report to the Board and Develop Action Plan (C.A.R.D)	In this climatic phase, the key activities of the board evaluation will come into fruition including the conduct of the evaluation, analysis of results, reporting to the nominating committee or board and development of a solid action plan.
6. Disclosure of Board Evaluation Process and Outcome	The completion of the board evaluation exercise will ensue the final phase in which companies should adopt quality, timely and complete disclosure of its board evaluation process and outcome.

In order to improve the disclosure on how boards are assessed and for the process to be transparent, **Bursa Securities Listing Requirements** have put the onus of driving the evaluation process on the nominating committee.

Paragraph 2.20A of Bursa Securities Listing Requirements

Qualification of directors and other key officers

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 or business trust.

Paragraph 15.08A(3)(c) of Bursa Securities 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:

(c) the assessment undertaken by the nominating committee in respect of the performance 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 **Standard 13.1 of Bank Negara Malaysia's Policy Document on Corporate Governance**. Similar to **Practice 6.1 of MCCG, Guidance 13.2** of 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 in order to achieve a meaningful outcome.

Key considerations relating to the application of **Practice 6.1 of MCCG** are discussed below:

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quality and professional review?

- Is the composition of the board in terms of skills, knowledge, experience and business outlook well-suited for the company?
- Are there open and constructive conversations when discussing issues during board meetings?

- Is the performance of board committees during the year evaluated?
- What are the weaknesses and shortcomings of the board and how to overcome them?[8]

What are the main tools in conducting a holistic board effectiveness evaluation?

The most commonly used evaluation methods are questionnaires, informal review, review of board papers and minutes 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 clear, concise, and pertinent as the requirement of the boards differ within the industries. They are

> **MCCG Practice 4.4**
> Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

Accordingly, as stated in **Practice 4.4 of MCCG**, performance evaluations of the board and senior management should include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities. Embedding ESG questionnaires into the board evaluations is crucial in measuring and monitoring the board's value-added role in ESG oversight.

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. The informal review can take place vis-à-vis an informal meeting or chat between the independent directors and the chairman.

[8] Forrest P, *The importance of evaluating the board*, 2012. Singapore Institute of Directors

Review of board papers and minutes

It is essential that board papers and meeting minutes are also reviewed for corroborative purposes. The review of board papers can identify gaps in which board members consume information and turn it into insight and this includes strategic papers, financial results and risk reports. As purported by the Financial Reporting Council, non-executive directors need to insist on receiving high-quality information sufficiently in advance so that there can be thorough consideration of the issues prior to, and informed debate and challenge at, board meetings[9]. They should seek clarification or amplification from management where they consider the information provided is inadequate or lacks clarity. The completeness of quality board papers can be measured via the following parameters:

- accurate, clear, comprehensive and up-to-date;
- contain a summary of the contents of any paper (i.e. Executive Summary); and
- inform the director what is expected of them on that issue (actionable items; for approval, for discussion or for notification)

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. It gives opportunities for a collection of candid and valuable feedback which may encourage interviewees to discuss sensitive issues in a more forthcoming manner. The board members involved in the process tend to be more engaged in communicating than in filling out forms and questionnaires. This leads to better results that allow the board to draw insights and formulate plans on recruitment and retention of directors. Gathering views from senior management personnel that has a close nexus with the boardroom is also encouraged. Valuable insights on the board dynamics and working relationship with management can be extracted from these interviews.

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[10].

[9] *Guidance on board effectiveness*, 2018. Financial Reporting Council.
[10] Behan, B 2017, *Engaging Directors on Board Composition*, Board Evaluation & CEO Succession Planning

To recap, the following tools can be deployed in either an in-house or externally-facilitated board evaluation. The conduct of the board evaluation can be on a stand-alone basis or in combination of different tools available:

The tools for an effective board evaluation:


Questionnaire


Informal review


Review of board papers and minutes


Interview

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, is 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 board skills matrix);
- 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 the required time to fulfil the role and perform their responsibilities effectively;
- technical knowledge on specific industry/company activities/processes;
- 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 IV**: Board and Board Committees Evaluation Form (to be used in tandem with **Appendix II** of this Pull-out which relates to sample board evaluation questionnaire on ESG or sustainability)
- **Appendix V**: Directors'/Key Officers' Evaluation Form
- **Appendix VI**: Audit Committee Evaluation Form
- **Appendix VII**: Audit Committee Members' Self-Evaluation and Peer Evaluation Form
- **Appendix VIII**: Sample Board Skills Matrix

How can the board follow-up with the findings and conclusions of a board evaluation?

The success of the evaluation process often depends on the board chairman. The findings rests on the integrity of the board chairman, not every board is forthcoming to the issues that arise from the results, in which boards may not necessitate momentous changes immediately[11]. An effective board chairman will engage directors in an open and honest debate, and facilitate the identification of priorities, agreed actions, responsibilities and timeframes.

A list of identifiable and practical action plan must be drawn up upon the conclusion of an evaluation. There are a number of options, including the following:

- the original assessment should be presented to the directors or as a perspective to which the evaluator (internal or independent) has contributed the context, judgment and recommendations, on a no-name basis;

[11] Kerstetter, K 2017, *3 Guidelines for Taking Action on Board Evaluation Results*, Diligent Insights

- the original assessment should be presented to the directors or as a perspective to which the evaluator (internal or independent) has contributed the context, judgment and recommendations, on a no-name basis;
- quotes and comments obtained from the respective directors who were evaluated may be used (e.g. in relation to strengths and improvement considerations) whilst maintaining appropriate anonymity;
- recommendations and/or action plans for enhancements, based on the evaluation results are tabled to the nominating committee first and then the board for adoption and approval;
- concerns regarding individuals should be identified (the board chairman may debrief all individual directors on their strengths and improvement considerations); and
- directors should have informal discussions on the evaluation process, i.e. structure, content, coverage, and to accord directors an avenue to voice their feedback.

Investors and other stakeholders should request for the board to provide their action plan from the last evaluation to know the extent of the actions taken by the board. This would show how well the board functions and how strong the evaluation process is within the board.

How can companies prioritise the identified action plans moving forward?

The identified actionable items can also be mapped out according to the board's "appetite". For instance, the identified actionable items can be stratified based on effort and value/impact. The following is an example of how companies can prioritise board evaluation action plans and findings:

Low effort | Low value/impact:

- Invite functional heads to appropriate board committees;
- Revisit terms of references/board charter;

Low effort | High value/impact:

- Formulate a board skills matrix;
- Designate a senior independent director;
- Periodic review of governing documents;
- Restructure strategic retreat;

High effort | Low value/impact:

- Reshuffle board committee membership
- Undertake a corporate governance diagnostic assessment
- Benchmarking exercise on governing structures

High effort | High value/impact:

- Undertake a NED remuneration review;
- Reorganise group governance framework;
- Developing a dynamic board agenda
- Training needs analyses

What should be disclosed for the evaluation of a board, board committee or individual director's performance?

As required by **paragraph 15.08A(3)(c) of Bursa Securities Listing Requirements**, disclosure of the activities of the nominating committee in the annual report must, amongst others, include the assessment undertaken by the nominating committee in respect of the performance of its board, committees and individual directors together with the criteria used for such assessment.

In Corporate Governance Monitor 2019, Securities Commission Malaysia highlighted gaps in the disclosures on outcomes of board evaluations, in particular lack of discussion on key strengths and/or weaknesses that were identified from the evaluation and measures that have or will be taken by the board to address them. There were some improvements in the disclosure in 2019 but there is still room to further enhance the quality of discussions.

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, the results of the evaluation and how such results were utilised (e.g. training needs analysis of individual directors). It will enable a company to develop greater levels of trust and confidence amongst their stakeholders as the value of disclosing results of its evaluation will inevitably support notions of good governance.

Based on a finding of the Corporate Governance Monitor 2019, below is an example of an unsatisfactory disclosure provided in the Corporate Governance Report of a listed issuer:

Unsatisfactory disclosure

"During the year, the Board conducted an internally facilitated Board assessment via the Nomination Committee. The results and recommendations from the evaluation of the Board and Committees are reported to the full Board for full consideration and action. The Board was comfortable with the outcome and that the skills and experience of the current Directors satisfy the requirements of the skills matrix and that the Chairman possesses the leadership to safeguard the stakeholders' interest and ensure the Group's profitable performance."

Further, **Guidance to Practice 6.1 of MCCG** states that the nominating committee of the companies should disclose the following information in its Corporate Governance 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;
- steps or enhancements proposed to be undertaken to mitigate or address the weaknesses identified; and
- impact of the evaluation on board composition (if any).

In addition to the above, when an independent third party is used to carry out the board evaluation, the board should disclose the identity of the third party.

The illustrative disclosure on the following page provides an example of a good disclosure on an externally facilitated evaluation process as published by the London Stock Exchange Group[12].

[12] *London Stock Exchange Group (LSEG) Annual Report* 2020

Illustrative disclosure (foreign jurisdiction)

Chairs Forum
During 2021, the Chairs Forum was established. The membership of the Forum is comprised of the Chairs of the Group's largest subsidiaries, the Group Chair and the Group CEO. The Forum provides opportunities for NEDs from across the Group to engage on common themes and topics of interest.

Board Effectiveness and Leadership
2020 Effectiveness Review
A Board Effectiveness Review is carried out annually. Every three years this is externally facilitated. In 2020, the Board engaged Jan Hall (No.4 Consulting) to facilitate an external review of its effectiveness. Jan Hall was appointed following a review of providers in the market. She is not currently engaged in any other work on behalf of the Company.

No.4 interviewed each of the Board directors and also the Executives who are most closely involved with the Board, on a confidential and unattributable basis.

The Review sought the views of Directors on the effectiveness of the organisation and dynamics of the Board and the Committees; the papers and topics covered at the Board and Committee meetings; the purpose and culture of the business; stakeholder engagement; the relationship between the NEDs and the management; the Composition of the Board and the leadership of the Board.

The output of the evaluation was captured in a report to the Board in December 2020 to enable the Directors to discuss the points raised by the Review.

To ensure that the process was robust, following the Board meeting, Jan Hall spoke to the Senior Independent Director to confirm that all the information provided in the report was a fair reflection of the range of views provided by each of those interviewed and that the conclusions in the report were not influenced inappropriately by anyone.

The results of the Review will be used to assist the Board in the future development of the Board, its Committees and its individual Directors.

Results
The results suggested that Board members are content with the governance and functioning of the Board.

The Review identified a number of positive attributes including management of Board meetings, shaping of agendas, functioning of the Board's Committees and the Chair's leadership of the Board.

Next steps
The Board recognised that areas of focus for 2021 should be:

Board Organisation – Board agendas, content and KPIs to reflect the new Group following the Refinitiv acquisition.

Values and Culture – the Board should focus on culture and cultural differences and how these will be addressed as part of integration.

Board Dynamics – in the context of virtual Board meetings and changes to Board composition, finding ways to ensure that there remains a supportive and collegiate atmosphere whilst continuing to ensure appropriate challenge.

Strategy and Integration and Performance Delivery – a focus on successful integration of the Refinitiv business as well as monitoring financial financial performance and delivery of synergies.

The effectiveness reviews of the Board's Committees were positive about the management and composition of the committees as well as the quality of the information received. Areas for focus are summarised in the table below.

Committee	2021 Area of Focus
Audit	• Increased scrutiny of larger geographic footprint, multiple tax regimes, different compliance requirements and greater revenues.
Nomination Committee	• A focus on NED succession planning including for Committee chairs. • Give focus to the talent pipeline for the new combined company.
Remuneration Committee	• Ensure committee membership reflects the scale and global nature of the Company.
Risk Committee	• Assess where the material risks sit following completion of the merger and ensure focus on the breadth of risks.

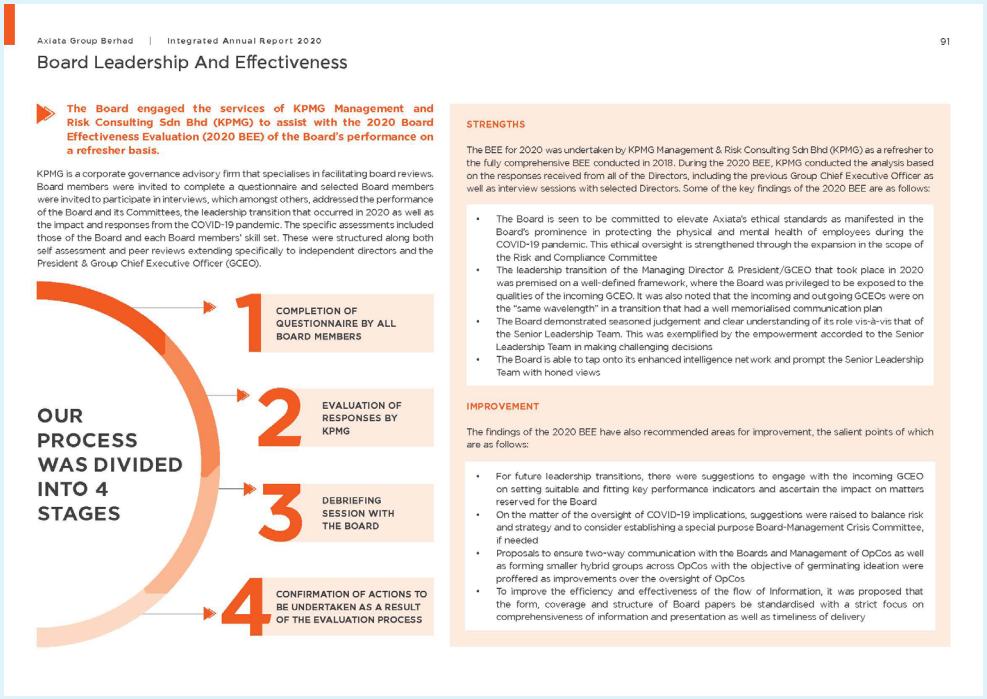
2019 Effectiveness Review
The 2019 Effectiveness Review identified a number of areas on which the Board considered focus would be needed in 2020. These are summarised below, together with the resulting actions taken in 2020.

Area	Description	Summary of actions identified and taken
Board Composition	Board members to continue to consider the appropriate size of the Board and balance of skills, in particular, as a result of the Refinitiv acquisition.	As detailed in the Nomination Committee Report a number of changes were made to the composition of the Board during the year. The Report of the Nomination Committee can be found on pages: 88–90.
Stakeholder Engagement	To continue to seek improvements in stakeholder engagement.	Opportunities for in person stakeholder engagement have been more limited in 2020. See page 79 for details of in person engagement with employees and pages 68–69 for details of other stakeholder engagement.
Technology	Board to continue to find ways of improving the Board's ability to oversee and provide effective challenge on technology opportunities and threats.	The Board was provided with an increased number of updates related to technology including an update on the Group's technology strategy, cyber security and critical, strategic IT projects.
Refinitiv Integration	To continue to oversee preparations for integrating with Refinitiv.	The Board received a written and verbal update at each of its scheduled Board meeting on Integration from the COO. It also received a number of teach-ins on the Refinitiv business from the Refinitiv CEO and his leadership team.

Page 81; Governance: Board Effectiveness and Leadership

Note: This is good example of reporting the results, methodology and service provider of an externally facilitated board effectiveness evaluation. Highlighted area of improvements was also reported with clear action plans by the board to pursue improvements. Moreover, stakeholders can also appreciate the disclosure made of the preceding years' board evaluation review with a summary of actions identified and taken.

Illustrative disclosure (local jurisdiction) [13]



Axiata Group Berhad | Integrated Annual Report 2020 91

Board Leadership And Effectiveness

The Board engaged the services of KPMG Management and Risk Consulting Sdn Bhd (KPMG) to assist with the 2020 Board Effectiveness Evaluation (2020 BEE) of the Board's performance on a refresher basis.

KPMG is a corporate governance advisory firm that specialises in facilitating board reviews. Board members were invited to complete a questionnaire and selected Board members were invited to participate in interviews, which amongst others, addressed the performance of the Board and its Committees, the leadership transition that occurred in 2020 as well as the impact and responses from the COVID-19 pandemic. The specific assessments included those of the Board and each Board members' skill set. These were structured along both self assessment and peer reviews extending specifically to independent directors and the President & Group Chief Executive Officer (GCEO).

OUR PROCESS WAS DIVIDED INTO 4 STAGES

1 COMPLETION OF QUESTIONNAIRE BY ALL BOARD MEMBERS

2 EVALUATION OF RESPONSES BY KPMG

3 DEBRIEFING SESSION WITH THE BOARD

4 CONFIRMATION OF ACTIONS TO BE UNDERTAKEN AS A RESULT OF THE EVALUATION PROCESS

STRENGTHS

The BEE for 2020 was undertaken by KPMG Management & Risk Consulting Sdn Bhd (KPMG) as a refresher to the fully comprehensive BEE conducted in 2018. During the 2020 BEE, KPMG conducted the analysis based on the responses received from all of the Directors, including the previous Group Chief Executive Officer as well as interview sessions with selected Directors. Some of the key findings of the 2020 BEE are as follows:

- The Board is seen to be committed to elevate Axiata's ethical standards as manifested in the Board's prominence in protecting the physical and mental health of employees during the COVID-19 pandemic. This ethical oversight is strengthened through the expansion in the scope of the Risk and Compliance Committee
- The leadership transition of the Managing Director & President/GCEO that took place in 2020 was premised on a well-defined framework, where the Board was privileged to be exposed to the qualities of the incoming GCEO. It was also noted that the incoming and outgoing GCEOs were on the "same wavelength" in a transition that had a well memorialised communication plan
- The Board demonstrated seasoned judgement and clear understanding of its role vis-à-vis that of the Senior Leadership Team. This was exemplified by the empowerment accorded to the Senior Leadership Team in making challenging decisions
- The Board is able to tap onto its enhanced intelligence network and prompt the Senior Leadership Team with honed views

IMPROVEMENT

The findings of the 2020 BEE have also recommended areas for improvement, the salient points of which are as follows:

- For future leadership transitions, there were suggestions to engage with the incoming GCEO on setting suitable and fitting key performance indicators and ascertain the impact on matters reserved for the Board
- On the matter of the oversight of COVID-19 implications, suggestions were raised to balance risk and strategy and to consider establishing a special purpose Board-Management Crisis Committee, if needed
- Proposals to ensure two-way communication with the Boards and Management of OpCos as well as forming smaller hybrid groups across OpCos with the objective of germinating ideation were proffered as improvements over the oversight of OpCos
- To improve the efficiency and effectiveness of the flow of information, it was proposed that the form, coverage and structure of Board papers be standardised with a strict focus on comprehensiveness of information and presentation as well as timeliness of delivery

Page 91; Board Leadership and Effectiveness

Note: This is good local example of reporting the results, methodology and service provider of an externally facilitated board effectiveness evaluation. The detailed disclosure also has discussed both areas of strengths and the areas of improvement for the board. Clear action plans were outlined with regards to the results and findings of the board evaluation.

[13] *Integrated Annual Report 2020*, Axiata Group Berhad.

As a general rule of thumb, companies can follow the following parameters in disclosing **Practice 6.1** and communicating the outcomes[14]

MCCG Practice 6.1

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, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations.

2. Describe the evaluation method - How it works? What's new?

Whether it was an internal evaluation or conducted externally; the format, methodology, findings and responses should be explained – including the purposes of each format e.g. self and peer evaluation, one-to-one interviews or discussions, questionnaires: why they were used and the intended outcomes. Any enhancements to the process should also be highlighted.

3. Share how evaluation outcomes are addressed

It is important to describe the process on how the evaluation results are discussed and by whom to demonstrate that the outcomes and takeaways formulated will lead to appropriate follow-up actions by all relevant parties – the board, committees and the individual directors.

4. Communicate the evaluation outcomes and takeaways

Disclosure on evaluation outcomes should highlight strengths and any areas requiring further upskilling or development in order for the board to meet current and anticipated needs of the business. Explanation on how individual evaluation results affect upcoming decisions on the re-election of directors is also useful and supports shareholders in making an informed assessment of individual director and board performance. It is also important for boards to demonstrate their commitment and disclosure efforts in relation to succession planning and board refreshment.

5. What are the next steps?

Board evaluations should not focus entirely on historical assessment of directors' performance but should include forward looking considerations including mapping current board competencies against those required to drive the company's future strategies. The disclosure should also describe the board's response plan to the evaluation outcomes, including steps that the board will take to ensure gaps are addressed and board composition remains optimal.

To avoid falling into a perfunctory and box-ticking exercise, boards should actively work towards improving their evaluation approach and methodology. Involving shareholders or other stakeholders to enhance the effectiveness of board evaluations should also be considered to ensure the board evaluation is a meaningful exercise and able to support board leadership.

[14] *Best Practices: Communicating Board Evaluation Outcomes*, 2020. Institute of Corporate Directors Malaysia. Note: This article was also featured in the CG Monitor 2020.

How often should companies conduct an externally facilitated evaluation and what is the current state of play?

There are no numerical prescriptions provided on the frequency of an externally facilitated evaluation, as these will vary for each company based on its circumstances.

For large companies however, **Practice 6.1 of MCCG** calls for Large Companies to engage independent

> **MCCG Practice 6.1**
> 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, actions taken and how it has or will influence board composition.
>
> For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations.

to adopt digital means to facilitate their board evaluations; 9% of the companies leveraged a digital or online platform to conduct the assessment. 5 Large Companies facilitated a group-wide BEE exercise, assessing also the boards of its flagship subsidiaries. 3 out of the 5 companies were banks. Financial institutions with multicomplex group structures benefit more with a group scale board effectiveness evaluation exercise.

Further reflection

Group-wide board effectiveness exercise is seen as a rising market practice for leading companies, particularly ones with a conglomerate structure as well as for financial institutions such as holding banks. A group-wide exercise would entail also the assessment of its subsidiary boards, subsidiary board committees and the subsidiary directors. Key focus areas of the assessment include group oversight, information flow, intra-group transactions, group risk management and the performance of individual subsidiary directors. It would be a worthwhile endeavour for a parent company to assess the governance and effectiveness of its group in entirety in order to gain a holistic appreciation.

Echoing the Basel Committee on Banking Supervision[16], the holding company plays an important role in group governance: "In a group structure, the board of the parent company has the overall responsibility for the group and for ensuring the establishment and operation of a clear governance framework appropriate to the structure, business and risks of the group and its entities (Principle 5)". Below are some assessment areas in which can probe the effectiveness of a company's group governance structure:

- is the configuration of its subsidiary boards effective and suitable to its business size?
- how can reporting lines between the main board and subsidiary board be clearer?

[15] Internal analyses and repository. The data is based on a total of the top 150 listed issuers by market capitalisation with a financial year end on or after 31 December 2020 which have published their Annual Reports and Corporate Governance ("CG") Reports as at 31 December 2020.
[16] Corporate governance principles for banks, July 2015. Basel Committee on Banking Supervision (BIS).

- how are subsidiary-level issues communicated and reported to the main board?
- are the limits of authority between the main and subsidiary board clear and precise (i.e. are there set thresholds?)
- how can subsidiary CEOs (if any) improve its relationship with the main board?
- how are inputs on strategy by the subsidiary board being fed to the main board?
- can the main board reverse decisions approved by the subsidiary board (i.e. are there veto powers in place for major decisions?)

WHERE? Regional/International perspectives

As with the MCCG, corporate governance provisions around the world, including those in Australia and United Kingdom have emphasised on the evaluation process as a key activity for the board.



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 for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period. Commentary: The board should consider periodically using external facilitators to conduct its performance reviews. A suitable non-executive director (such as the deputy chair or the senior independent director, if the entity has one) should be responsible for the performance evaluation of the chair, after having canvassed the views of the other directors. ***(Recommendation 1.6 and extract of Commentary)***

Country	Provision(s)
United Kingdom	Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively. ***(Principle L)*** There should be a formal and rigorous annual evaluation of the performance of the board, its committees, the chair and individual directors. The chair should consider having a regular externally facilitated board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement made about any other connection it has with the company or individual directors. ***(Provision 21)*** The chair should act on the results of the evaluation by recognizing the strengths and addressing any weaknesses of the board. Each director should engage with the process and take appropriate action when development needs have been identified. ***(Provision 22)*** The annual report should describe the work of the nomination committee, including: • how the board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition. ***(Extract of Provision 23)***

Oversight on Remuneration Matters

MCCG Intended Outcome 7.0
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 7.1
The board has remuneration 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 remuneration policies and practices should appropriately reflect the different roles and responsibilities of non-executive directors and senior management. The policies and procedures are periodically reviewed and made available on the company's website.

MCCG Practice 7.2
The board has a Remuneration Committee to implement its remuneration policies and procedures including reviewing and recommending matters relating to the remuneration of board and senior management.

The Remuneration Committee has written Terms of Reference which deals with its authority and duties and these Terms are disclosed on the company's website.

WHY? The case for change

The issue of remuneration concerning directors and senior management is often a contentious subject, especially if the company's performance over the past years appears unsatisfactory. Shareholders, locally and globally, are increasingly playing a more prominent role in general meetings, seeking clarification and even expressing objection to the remuneration of directors and senior management. For instance, more than a third of Standard Chartered Plc's shareholders voted against the bank's 2019 directors' remuneration report that had outlined plans to increase its CEO's pension allowance[1].

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 stakeholder 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.

[1] *UK parliamentary committee questions StanChart's remuneration policy* 2019, Reuters

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).

Consequently, it has become common for boards 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.

Some of the factors to be taken into account in today's remuneration policy and procedures for companies are shown below[2]:



Rise of the environment, social governance agenda

As the ESG agenda becomes more prominent in companies' strategy, it has to have a more discernible link to executive pay



Fairness agenda

'Fairness', as subjective as the term may appear, needs to be accounted for when assessing how the board and management are rewarded and how they participate in the success of the company



Refreshing performance conditions

Clear attention is needed on the financial and non-financial performance conditions for shareholder value to be increased



Use of discretion

In-flight and forward looking long-term and annual incentive plans need to be implemented with discretion during a crisis and in its aftermath, and discretion must be clearly articulated where exercised



Effective stakeholder engagement

Early and continued engagement needs to be established to understand the rapidly changing perception of stakeholders



Inclusion, diversity and social equality

Consideration should be paid to constituent parts of remuneration packages to ensure promotion of individuals from minority groups are not discouraged, linking diversity and equal pay targets to executive remuneration

[2] *Guide to Directors' Remuneration 2020, KPMG*

Practices 8.1 and 8.2, as well as Step Up 8.3 of the MCCG has called upon companies to make

MCCG Practice 8.1
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 8.2
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 Step Up 8.3
Companies are encouraged to fully disclose the detailed remuneration of each member of senior management on a named basis.

[3] Paragraph 11, Part A, Appendix 9C of Bursa Securities Listing Requirements
[4] Section 230 of Companies Act 2016

HOW? The practice in substance

Bursa Securities Listing Requirements have outlined some factors on how remuneration should be structured for executive and non-executive directors, while the **Companies Act 2016** requires listed issuers to seek shareholders' approval at a general meeting for directors' fees and benefits.

Such requirements ensure the board and remuneration committee design remuneration policies and procedures that are aligned with the company's long-term objectives.

Paragraph 7.23 of Bursa Securities 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 Securities Listing Requirements

The fees of directors, and any benefits payable to directors shall be subject to annual shareholder approval at a general meeting.

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.**

Whilst **Bursa Securities Listing Requirements** enumerates aspects of directors' remuneration in terms of disclosure, types of remuneration payable and requirement for shareholder approval, it does not prescribe a remuneration committee. Meanwhile, **Standard 12.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** has mandated the establishment of a remuneration committee for financial institutions. **Guidance 12.2** of the said document allows them to combine the nominating committee and remuneration committee.

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 deciding as to whether a stand-alone remuneration committee should be established[5].

[5] Of the ten largest listed issuers on Bursa Malaysia, by market capitalisation as at 31 March 2021, seven listed issuers have combined their nominating and remuneration committee. This includes three financial services group (the combining of such committees is permitted by **Bank Negara Malaysia**).

It is important to appreciate that none of the aforementioned regulatory requirements are intended to suppress directors and executives' remuneration. A 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.

In relation to **Practices 7.1 and 7.2 of MCCG**, it would be pertinent for companies to design

MCCG Practice 7.1
The board has remuneration 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 remuneration policies and practices should appropriately reflect the different roles and responsibilities of non-executive directors and senior management. The policies and procedures are periodically reviewed and made available on the company's website.

MCCG Practice 7.2
The board has a Remuneration Committee to implement its remuneration policies and procedures including reviewing and recommending matters relating to the remuneration of board and senior management.

The Remuneration Committee has written Terms of Reference which deals with its authority and duties and these Terms are disclosed on the company's website.

company's position and performance (including in managing material sustainability risks and opportunities), market rates, and stakeholders' expectations.

The committee adopts a framework based on sound principles (e.g. The Investment Association Principles of Remuneration by Institutional Voting Information Service).

The implementation
The remuneration committee has played its role. The scheme is implemented fairly, consistently and comprehensively.

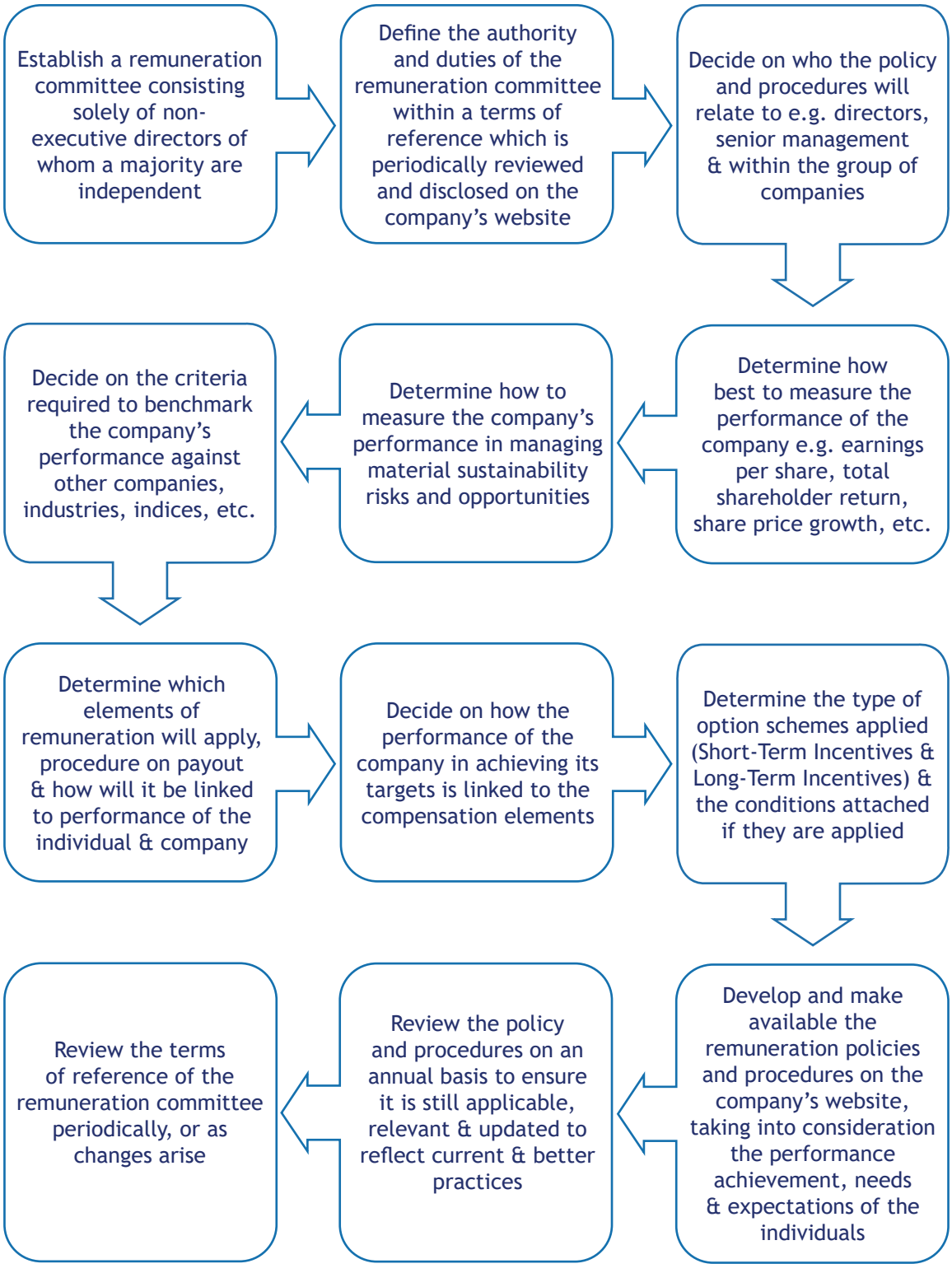
Professional assistance is sought, when required, to lend objectivity to the committee's review.

Remuneration policies and procedures should be designed in such a way that they support the strategies, long-term vision of the company, and its sustained financial health. They should be structured to provide incentives for directors and senior management to pursue the long-term growth objectives of the company while promoting sound risk management for the benefit of all stakeholders.

The main challenge faced by most remuneration committees in this regard is in relation to the process of developing remuneration policies and procedures which take into consideration the best practices, market benchmarks as well as the views of stakeholders.

The diagram on the following page illustrates the steps that can be considered by the remuneration committee in drawing up remuneration policies and procedures.

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 (as depicted below):



One of the remuneration committee's key tasks is to develop and agree on the remuneration policy 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. The company's human resources department will be involved in providing input on the details of remuneration for the employees of the company and if needed, this will be done with the help of third party experts in relation to benchmarking studies. The input would include senior management and any other group of employees covered by the remuneration policy and procedures and it will be reviewed by the remuneration committee prior to a recommendation to the board for its approval. Likewise, in relation to remuneration of non-executive directors, the company secretary would facilitate the process and this is typically done through market benchmarking studies which is carried out with the assistance of third party experts.

The ambit of a well-considered remuneration policy and procedures should not only be limited to directors and senior management, but also include other groups within the company's ecosystem (e.g. gatekeepers). Gatekeepers refer to the group of individuals who act in a risk management and internal controls capacity, such as 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 the remuneration committee be composed?

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

as outlined in **Practice 1.4 of MCCG.**

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 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.

What are the key responsibilities of a 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 remuneration committee are as follows:

- support the board in actively overseeing the design and operation of the company's remuneration system in a fair and transparent manner;
- regularly engage with key stakeholders, including management, regulators, shareholders, employees;
- establishing frequent communication with other board committees, namely nominating committee, to align remuneration policies and procedures to succession plans and talent management of executives, and risk management committee to ensure risk outcomes are adequately considered in the design of remuneration policies and procedures;
- 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, by 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;
- ensure that the remuneration packages for non-executive directors, executive directors and senior management personnel are comparable to market peers;
- oversee the qualitative and quantitative disclosures of remuneration made in the annual report and notice to general meetings, and ensure that resolutions on the approval of the fees for each non-executive director is tabled separately at 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.

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. **Guidance to Practice 7.2 of MCCG** highlights that Directors who are shareholders and controlling shareholders with a nominee or connected director on the board should also abstain from voting on the resolution to approve directors' fees at the general meeting.

How should remuneration policy and procedures be determined?

The board should consider the need for the remuneration to commensurate with the respective role and 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, long-term objectives of the company, and the company's performance in managing sustainability risks and opportunities.

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 supports 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), clearly outlining the link between remuneration and financial and non-financial key performance indicators.
- 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.
- Explanation of the decision-making process for determination, review and implementation of the remuneration policy.

Remuneration packages for executive directors and senior management should involve a balance between fixed and performance-linked (variable) elements. 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. It is the remuneration committee's duty, when recommending incentive schemes, to ensure that the linkage between pay and performance is robust. Thoughtful considerations should be undertaken into the following aspects to ensure the awarding of incentives can be clearly justified and less likely to be manipulated:

- Definition of indicators – *if based on profits, profits should be defined (i.e. earnings before interest, taxes and amortisation ("EBITDA"), net income)*
- Select a benchmark or growth approach – *baseline upon which performance is measured*
- Identify performance threshold – *certain measure of the indicator that has to be achieved in order to be eligible for incentives*
- Select fixed or tiered approach – *fixed incentives across various levels of employees in the company's hierarchy or different incentives for various tiers*
- Select allocation formula – *determine the elements of incentives which will be communicated to participating employees (i.e. share options)*
- Determine personal performance component – *define whether there will be a certain personal performance standard that will impact an employee*

Some indicators which can be utilised for incentives, based on the industry and context in which a company operates, include the following:

Company indicators	Department indicators
Return in equity	Gross sales
Return on assets	Gross margins
Earnings per share	Overhead percentage
Gross sales	Contribution to margin
Net income	Expenses to budget
Earnings before incentives	Production quotas
EBITDA	Employee retention percentages
Economic profit (productivity profit)	Registrations
Revenue per employee	Client referrals
Profit per employee	New loans
Customer satisfaction indicators	Deposits
ESG indicators	Reduction of emissions

Market benchmarking should be undertaken to ensure the linkage between pay and performance is just and competitive, and the use of non-financial indicators, such as employee engagement, customer satisfaction and environmental, social and governance metrics, should be utilised, where key stakeholders of the non-financial measures are surveyed for feedback.

A summary of the main components of the typical remuneration package for executive directors and senior management as well as their key objectives is set out as follows:

	Base salary and benefits	Short-term incentive modalities	Long-term incentive modalities
Purpose	• Recognise status and responsibilities • Attract and retain qualified leaders	• Creates a performance culture • Supports short-term operational objectives • Rewards achievement of financial and short-term personal targets	• Long-term focus • Purports to align executives to shareholders • Retains key talents • Addresses skills shortages
Variables	• Role and responsibilities • Complexities of business • Skills and experience • Performance of the company in managing material sustainability risks and opportunities • Market rates	• Achievement of pre-defined performance measurement criteria	

<table>
<tr><td rowspan="2">Element</td><td rowspan="2">• Base salary
• Basic benefits, including retirement funding vehicle and/or housing allowances etc.</td><td>May be based on any of the following:
• Operating profits or pre-tax profits
• Earnings per share
• Total shareholder return
• Economic value added</td><td>May be based on any of the following:
• Performance share plan
• Share options
• Restricted share plan
• Deferred bonus matching plans
• Single incentive plans
• Share appreciation rights or virtual share plan</td></tr>
<tr><td colspan="2">Note: For senior management on short term contract, the institution of incentive schemes can incorporate an additional vesting period that extends beyond the envisaged contract tenure of the concerned senior management personnel (e.g. conditional vesting upon contract renewal or incorporation of long-term hurdle rate).</td></tr>
</table>

As for non-executive directors, the remuneration should take into account fee levels and trends for similar positions in the market and the time commitment required from the director (estimated number of days per year). Such packages should take into consideration any additional responsibilities undertaken such as a director acting as chairman of the board, chairman of a board committee or as the senior independent director.

Non-executive directors are normally remunerated by way of fees (i.e. board fee, board committee fee), meeting allowance (i.e. board meeting allowance, board committee allowance) and other benefits payable (in the form of cash and by a fixed sum) that are approved by shareholders on an annual basis.

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, the company's size, and nature of business.

The remuneration committee should have at least three scheduled meetings in the year, where the first meeting should be conducted at the beginning of the financial year to confirm performance measures of directors and senior management, as well as set for the year ahead and validate the likely remuneration outcomes. A second meeting should be called towards the middle of the year, to facilitate an interim review carry out updates, if any, to the performance reward structure. Finally, the remuneration committee should meet towards the end of the financial year and review the overall performance of directors and senior management, to determine payout, if any[6].

More frequent meetings may be called as the need arises, especially when there are major changes to the composition of executive directors, changes to the corporate structure of the company or its group, where there are legislative changes and updates, or in a time of crisis.

[6] *Remuneration Committee Guide* 2018, Singapore Institute of Directors

WHERE? Regional/International perspectives

As with Malaysia, many jurisdictions have enumerated provisions for companies to put in place fair and transparent remuneration policy and procedures (as well as to disclose them), and for the establishment of a remuneration committee.



Country	Provision(s)
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 and with the entity's values and risk appetite ***(Principle 8)***. The board of a listed entity should: • have a remuneration committee which: ◦ has at least three members, a majority of whom are independent directors; and ◦ is chaired by an independent director,

Country	Provision(s)
	and disclose: ◦ the charter of the committee; ◦ the members of the committee; and ◦ as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendance of the members at those meetings; or • if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remunerations is appropriate and not excessive ***(Recommendation 8.1)***.
Hong Kong	An issuer should disclose its directors' remuneration policy and other remuneration related matters. The procedure for setting policy on executive directors' remuneration and all directors' remuneration packages should be formal and transparent. Remuneration levels should be sufficient to attract and retain directors to run the company successfully without paying more than necessary. No director should be involved in deciding his own remuneration ***(Principle B.1)***. The remuneration committee's terms of reference should include, as a minimum:- • to make recommendations to the board on the issuer's policy and structure for all directors' and senior management remuneration and on the establishment of a formal and transparent procedure for developing remuneration policy; • to review and approve the management's remuneration proposals with reference to the board's corporate goals and objectives; • either: ◦ to determine, with delegated responsibility, the remuneration packages of individual executive directors and senior management; or

Country	Provision(s)
	◦ to make recommendations to the board on the remuneration packages of individual executive directors and senior management. This should include benefits in kind, pension rights and compensation payments, including any compensation payable for loss or termination of their office or appointment; • to make recommendations to the board on the remuneration of nonexecutive directors; • to consider salaries paid by comparable companies, time commitment and responsibilities and employment conditions elsewhere in the group; • to review and approve compensation payable to executive directors and senior management for any loss or termination of office or appointment to ensure that it is consistent with contractual terms and is otherwise fair and not excessive; • to review and approve compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that they are consistent with contractual terms and are otherwise reasonable and appropriate; and • to ensure that no director or any of his associates is involved in deciding his own remuneration ***(Provision B.1.2)***.
Singapore	The Board has a formal and transparent procedure for developing policies on director and executive remuneration, and for fixing the remuneration packages of individual directors and key management personnel. No director is involved in deciding his or her own remuneration. ***(Principle 6)***. The Board establishes a Remuneration Committee ("RC") to review and make recommendations to the Board on: (a) a framework of remuneration for the Board and key management personnel; and (b) the specific remuneration packages for each director as well as for the key management personnel ***(Provision 6.1)***.

Country	Provision(s)
	The RC comprises at least three directors. All members of the RC are non-executive directors, the majority of whom, including the RC Chairman, are independent ***(Provision 6.2)***. The level and structure of remuneration of the Board and key management personnel are appropriate to the sustained performance and value creation of the company, taking into account the strategic objectives of the company ***(Principle 7)***. The company is transparent on its remuneration policies, level and mix of remuneration, the procedure for setting remuneration, and the relationships between remuneration, performance and value creation ***(Principle 8)***.
South Africa	All members of the committee for remuneration should be non-executive members of the governing body, with the majority being independent non-executive members of the governing body ***(Recommended Practice 66 of Principle 8)***. The committee for remuneration should be chaired by an independent non-executive member ***(Recommended Practice 67 of Principle 8)***. The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term ***(Principle 14)***.
United Kingdom	Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy ***(Principle P)***. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome ***(Principle Q)***. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances ***(Principle R)***.

Country	Provision(s)
	The board should establish a remuneration committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two. In addition, the chair of the board can only be a member if they were independent on appointment and cannot chair the committee. Before appointment as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least 12 months ***(Provision 32)***.

Disclosure of Remuneration

MCCG Intended Outcome 8.0
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 8.1
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 8.2
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 Step Up 8.3
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 highly valued, clarity in directors' remuneration has become the "new normal". There have been clarion calls by stakeholders for companies to reflect on the accountability and objectivity of the remuneration structure, particularly in attracting talent and spurring the right behaviour to promote competitive performance.

With regards to senior management, given that behind every successful company is a great management team, stakeholders should also be allowed to determine if the senior management team is being appropriately compensated. It is important to assure shareholders that the senior management team is also paid with a 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 the compensation of the senior management team transparent, it can also help make a meaningful comparison between teams in the same industry and across other industries. Companies can ensure that their senior management personnel are paid well within the industry norms. More pertinently, the enhanced transparency will encourage a culture whereby executive remuneration is anchored to appropriate and defensible bases.

Further reflection

Disparity in 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 an oft-cited contention which calls for greater transparency. Based on a study conducted by Securities Commission Malaysia in 2019, it was found that CEOs were typically paid 17 times more than the average worker[1]. The increasing disparity is attributable to the increasingly complex marketplace whereby there is a greater demand for senior management with heightened responsibility and as a corollary, the shrinking of middle-management and non-managerial positions. In order to address pay gap issues, it is important for companies to make transparent pay policies and the underlying reasons as well as to engage in long term development programmes with a view of continuously upskilling the workforce.

[1] *Malaysia to review CEO-employee pay gap 2019.* Human Resource Director

HOW? The practice in substance

Apart from the **MCCG**, the **Companies Act 2016** and **Bursa Securities Listing Requirements** have also enumerated the following 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:

Provided that where a director or any firm of which the director is a member, acts for the company in a professional capacity, the amount paid to the director or to his firm for services rendered to the company in that capacity shall not be included in 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 but shall be shown separately whether by way of note or otherwise;

(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.

Paragraph 11, Part A, Appendix 9C of Bursa Securities Listing Requirements

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.

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.

In other words, 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 companies' basis and motivation behind their remuneration frameworks.

Key considerations relating to the application of **Practices 8.1 and 8.2** as well as **Step Up 8.3** are

MCCG Step Up 8.3
Companies are encouraged to fully disclose the detailed remuneration of each member of senior management on a named basis.

and other emoluments.

MCCG Practice 8.2
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.

board committee fee and meeting allowance between the listed issuers and its subsidiaries. For example, in one conglomerate with a holding company and two operating subsidiaries, the group-level board committee fee is allocated in a proportionate manner based on the asset size of the holding company (e.g. 60%) and the respective two subsidiaries (e.g. 25% and 15% correspondingly).

It is also important to note that in the event the directors do not receive any additional remuneration for services rendered in the subsidiaries (apart from that received at the listed issuer level), a statement to that effect should be reflected in the annual report of the listed issuer. In all instances, the disclosure on directors' remuneration should also cover directors' who were appointed or retired during the year.

[2] Refers to the listed issuer and its subsidiaries

The MCCG uses the terms "fees, salary, bonus, benefits in-kind and other emoluments". Benefits in-kind include the value of any benefits and perquisites, such as non-business or non-assignment related travel, medical, car, residence or housing, credit cards, and other benefits-in-kind or perquisites. These do not include any sort of cost reimbursement resulting from fulfilment of the director's duties or tasks (e.g. travel or hotel expenses) nor company assets or goods regularly provided to directors in order to fulfil their duties (e.g. office equipment). These are broadly speaking the main categories of remuneration. The classifications, however, are not cast in stone and the company can accommodate more categories as deemed appropriate (e.g. share-based payment).

An illustrative disclosure outline to show directors' remuneration on an individual or named basis is provided in the updated prescribed template for Corporate Governance Report as accessible on the website of Bursa Malaysia Berhad (refer to sample extract below):

No	Name	Directorate	Company ('000)							Group ('000)						
			Fee	Allowance	Salary	Bonus	Benefits-in-kind	Other emoluments	Total	Fee	Allowance	Salary	Bonus	Benefits-in-kind	Other emoluments	Total
1	Input info here	Choose an item.	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here
2	Input info here	Choose an item.	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here
3	Input info here	Choose an item.	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here
4	Input info here	Choose an item.	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here
5	Input info here	Choose an item.	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here	Input info here

Who are members of the top five senior management team for which disclosure is propounded under Practice 8.2?

MCCG Practice 8.2
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 8.1
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.

a board member and his remuneration is already disclosed in detail as part of the disclosure of individual director's remuneration (Practice 8.1), the disclosure need not be replicated as part of disclosure to Practice 8.2. As mentioned in the preceding pages, in the context of licensed financial institutions and pursuant to paragraph 4, Appendix 4 of Bank Negara Malaysia's Policy Document on Corporate Governance, disclosure of material risk takers is also required in addition to senior management personnel.

An illustrative disclosure outline to show the detailed remuneration of the senior management team on a named basis is provided in the updated prescribed template for Corporate Governance Report as accessible on the website of Bursa Malaysia Berhad (refer to sample extract below):

No	Name	Position	Company					
			Salary	Allowance	Bonus	Benefits	Other emoluments	Total
1	Input info here	Input info here	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.
2	Input info here	Input info here	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.
3	Input info here	Input info here	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.
4	Input info here	Input info here	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.
5	Input info here	Input info here	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.

WHERE? Regional/International perspectives

As in the case of Malaysia, enumerations on disclosure of directors' remuneration (and to some extent, remuneration of the senior management team) have been established in numerous jurisdictions.



Country	Provision(s)
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. *Note: Definition of key management personnel is provided below (Section 300A)*

Country	Provision(s)
	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)***.
Singapore	The company discloses the names and remuneration of employees who are substantial shareholders of the company, or are immediate family members of a director, the CEO or a substantial shareholder of the company, and whose remuneration exceeds S$100,000 during the year, in bands no wider than S$100,000, in its annual report. The disclosure states clearly the employee's relationship with the relevant director or the CEO or substantial shareholder ***(Provision 8.2)***. The company discloses in its annual report all forms of remuneration and other payments and benefits, paid by the company and its subsidiaries to directors and key management personnel of the company. It also discloses details of employee share schemes ***(Provision 8.3)***.
United Kingdom	The directors of a quoted company must prepare a directors' remuneration report for each financial year of the company ***[Section 420(1)]***.

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;
- 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 designated board 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 designated board 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.

A sample whistleblowing form is outlined at the end of this policy for whistleblowers to submit their reports.

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]

Whistleblowing Form

A. Particulars of Whistleblowing Form

Name
(As per NRIC/ Passport)

: _____

NRIC/ Passport no.

: _____

Employee no.*

: _____

Designation and Department*

: _____

Contact no.

H/P : _____ Office: _____ Email address: _____

**For employees only*

B. Particulars of Alleged Wrongdoer

Name or description of the alleged wrongdoer committing the concerned misconduct

: _____

Designation and department (if known)

: _____

C. Details of the Improper Conduct

1) Has the improper conduct been committed or about to be committed?
Please mark (X) where applicable.

☐ Has happened

☐ Suspect to happen

2) Nature of the improper conduct –

3) Have you previously made a disclosure/complaint of the said improper conduct to any external authorities or enforcement agencies?

☐ Yes ☐ No

If Yes, please provide the following particulars:

Name of authority receiving the disclosure/complaint: _____

Date the disclosure/complaint was made : _____

Status of the disclosure/Complaint (if known) : _____

Declaration

I confirm that all the information given herein are made voluntarily and true to the best of my knowledge and I will be entitled to the whistleblower protection from the company. I understand further that in the event I have made this disclosure maliciously or in bad faith, the whistleblower protection accorded will no longer be applicable to me and I may be subjected to disciplinary or legal proceedings by the company (if an employee of the company).

Signature and Date

_____

Appendix II: Sample Board Evaluation Questionnaire Relating to ESG or Sustainability

The following is an illustration of sample questionnaires to be incorporated in the overall board effectiveness evaluation, where appropriate. In ensuring effectiveness, this sample must be tailored in accordance to the company's needs and circumstances.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

Section: Environmental, Social and Governance (ESG) issues. *Note: Practice 4.4 has put the spotlight on the integration of ESG considerations and sustainability targets into the performance evaluation of the boards and senior management.*	
1. Rate the extent to which Board members are able to articulate and exercise robust deliberations of the company's material matters on ESG. Comments (if any):	
2. Rate the training and professional development programme in terms of ESG learning for the Board. Are the trainings tailored-made specific to the individual directors? *For the latter part of the question, please provide comments below.* Comments:	
3. Are ESG risks and considerations integrated to the company's risk registers and the overall enterprise risk management framework? Comments (if any):	

4. How effective is the company's overall sustainability governance framework in reporting its ESG risks, sustainability targets and initiatives including the support accorded by management-level sustainability working group/committee? Comments (if any):	
5. Rate the ability of the Board in distilling sustainability-related risks facing the company which have a material bearing to the businesses and strategies and this includes a clear understanding of the time-horizons of sustainability-related risks (i.e. "immediate threat", "emerging threat" or "long-term transitional threat"). Comments (if any):	
6. Is the Board able to monitor sustainability Key Performance Indicators (KPIs) and targets and establish accountability to senior management regime in reaching sustainability targets? Comments (if any):	
7. Does the remuneration framework and incentive bearings of the executive team consider non-financial metrics such as sustainability targets? Comments (if any):	
8. Kindly recall a situation whereby the Board is presented with a case that requires a critical deliberation on an ESG issue, has there been a time whereby you found it challenging to make decisions due to the lack of insights or support from Management? In hindsight and drawing lessons from the past, what would the Board have done differently? *For this question, please provide comments below* Comments:	

9. Is there a dedicated high-level executive or C-suite officer in charge of delivering, executing and monitoring the company's sustainability strategies and goals (i.e. a Chief Sustainability Officer)?

   If not, taking into the account ESG exposures, future strategies and risks, how is strategic management of ESG matters being addressed? For this question, please provide comments below

   Comments:

Appendix III: Individual Directors' Report Card

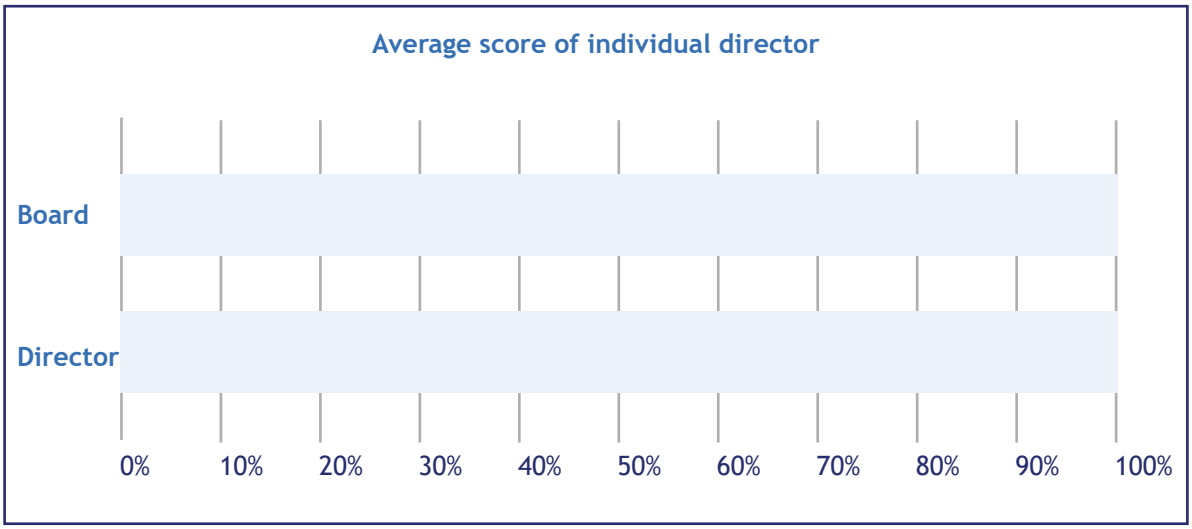
The following is a sample of an Individual Directors' Report Card. The evaluation of an individual director's performance should be a component of the board effectiveness evaluation exercise, and the findings gleaned can be presented as outlined below, for ease of assessment vis-à-vis the re-election of the director.

This sample report card may be customised according to the designation of the director (i.e. chairman, senior independent director), the directors board committee membership, and the scope of the board effectiveness evaluation exercise undertaken.

Name of Director: _____

	Individual director score	Board average score
Contribution and performance		
Criteria A		
Criteria B		
Criteria C		
Criteria D		
Criteria E		
Overall score		

Overall findings:



Individual Directors' Writeup and Independence Confirmation:

Individual Director Benchmark across Market:

Appendix IV: 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 a particular 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 optimise 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 fosters 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 candour)?

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:			

11. Is the number of board members suitable or appropriate for the company taking into account the size and complexity of the company's operations?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

Section B: Quality of information and decision making

12. Is adequate information on important issues in relation to the company's business sufficiently provided before board meetings?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

13. Is adequate and sufficient information presented to facilitate decision-making on subject matters, 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:			

14. 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:			

15. 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?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

16. Do all directors have adequate access to management and/or the Chairman?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

17. 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:			

18. 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:			

19. Does the board have in place, a set of approved procedures for its members with regard to conflict resolution?

Yes ☐			No ☐
Comment:			

20. Does the boardroom culture promote constructive, candid and rigorous deliberations with diversity in opinions being valued? *(For this question, please indicate your rating based on the description below)*

Rating	Description
1.	Board members rarely express their views and disagreements.
2.	Board members occasionally engage in rigorous challenge, particularly on risky transactions.
3.	Board members engage in healthy discussions with no one individual director dominating discussions.
4.	Board members are unafraid to take an unpopular stance and there is a culture of openness whereby views are freely expressed and debated to allow diverse perspectives to be considered.

21. Suggest the changes that you would like to see in terms of the **quality and quantity** of information provided to the Board.

Comment:

Section C: Boardroom activities

22. Do you believe that the board understands its role, authority and priorities?

Yes ☐			No ☐
Comment:			

23. 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:			

24. Has the board identified a suitable performance framework, i.e. key performance indicators, to monitor executive and senior management's performance?

Yes ☐			No ☐
Comment:			

25. Has the board sufficiently identified and managed risks that may have a considerable impact on the company?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

26. 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:			

27. 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:			

28. Does the board oversee the development and implementation of a stakeholder communication policy for the company?

Yes ☐			No ☐
Comment:			

29. Does the board ensure that feedback received from stakeholders is considered by the company when making business decisions?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

30. 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:			

31. With each director's nomination, does the board consider the mix of the director's characteristics, experience, diverse perspectives and skills that is appropriate for the company?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

32. 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:			

33. 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:			

34. Does the chairman oversee an effective decision-making process and ensure crucial alternatives are considered?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

35. 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:			

36. Have board members provided significant input and devoted enough time in discussing the business strategy, financial performance and position, and annual business plan?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

37. Does the board adopt guidelines addressing the competing time commitments that are faced when directors serve on multiple boards?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

38. Did board members devote enough time during the year to the affairs of the company?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

39. Did the board accord adequate attention to discuss strategic issues that impact the company's value creation process? *(For this question, please indicate your rating based on the description below)*

Rating	Description
1.	The board only endorsed the strategic plan set by management.
2.	The board held discussions with management and was fairly involved in setting the strategic plan of the company.
3.	The board was intimately involved in the formulation of strategic plan with adequate review of the factors affecting the company and the views of stakeholders.
4.	The board devoted adequate time and effort to set the company's strategic plan with a periodic review of the plan amidst the changing business environment and expectations of stakeholders.

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

40. What are the two potential improvements that you would like to see in terms of boardroom conduct and activities?

Comment:

Section D: Board's relationship with the management

41. Does the board encourage management to undertake "open communication" with the board members?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

42. Is there sufficient support provided by the board towards management in terms of working partnership and strategic oversight?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

43. What are the two potential improvements that you would like to see in terms of execution of the board's directives by management?

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 make 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 _____	☐	☐	☐	☐	

		Rating				Remarks
	iii) _____ committee	1	2	3	4	
	Director A _____	☐	☐	☐	☐	
	Director B _____	☐	☐	☐	☐	
	Director C _____	☐	☐	☐	☐	
	iv) _____ committee	1	2	3	4	
	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	☐	☐	☐	☐	

		Rating				Remarks
6.	Is the communication by the board committees of sufficient quality?	1	2	3	4	
	i) _____ committee	☐	☐	☐	☐	
	ii) _____ committee	☐	☐	☐	☐	
	iii) _____ committee	☐	☐	☐	☐	
	iv) _____ committee	☐	☐	☐	☐	
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 V: 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 a particular 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 follows 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 displays 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. Articulates 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 with 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 monitors 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:
Designation:

Appendix VI: Audit Committee 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 company 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 a particular 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 AC Charter?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

3. Does the AC chairman have adequate time scheduled to fulfil his/her responsibilities, possess 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 the matters that are presented to it?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

8. If there has been any case whereby 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 compiled by:

Name:
Designation:

Appendix VII: 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:			

Appendix VIII: Sample Board Skills Matrix

To gain a holistic view and appreciation of a board members' skillset and corporate experience, the board skills matrix should be look at through a two-pronged lens. First is the background of the said director and this includes academic background or educational degree, and any professional certification or accreditation. Secondly is the experience of the director and this includes the years accumulated in helming a senior executive position within a specific industry as well as any regional or global business exposure.

For a forward-looking board skills matrix (envisaged board skills matrix), the board can consider listing identified skillset as either a "must have" (i.e. compulsory, longstanding skillset for the board) or a "nice to have" (i.e. complementary, value-adding skillset for the board).

Legend and descriptors:

Fundamental Awareness (basic knowledge)



Intermediate (practical application)



Advanced (applied theory)



Expert (recognised authority)



Powerhouse (industry leader)



		Director 1	Director 2
Experience	Industry Experience		
	Regional/ Global exposure		
	Former chief executive officer		
Background	Accounting and finance		
	Corporate governance, risk management and internal controls		
	Human capital or talent management		
	Information technology or digital strategy		
	Public sector or governmental body experience		
	ESG or sustainability		
	Legal and regulatory		
	General business and economics		



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Corporate Governance Guide Pull-out II

Guidance on Effective Audit and Risk Management

Corporate Governance:
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Contents

Introduction 1
Background 1
Section I : Establishment and Effectiveness of the Audit Committee 2
Section II : Roles and Responsibilities of the Audit Committee 9
Section III : Communication on Audit, Risk Management and Control 21

Practices and Step Ups 23
Audit committee
Practice 9.1 24
Practices 9.2 and 9.3 35
Step Up 9.4 and Practice 9.5 50

Risk management and internal controls framework
Practices 10.1 and 10.2 64
Step Up 10.3 89
Practices 11.1 and 11.2 99

Appendices 110
Appendix I : List of Indicators to be Aware of and Questions to be Posed to Management — Financial Reporting and Impact of Other Key Disclosures on Financial Reporting 111
Appendix II : External Auditor Evaluation Form 118
Appendix III : Matters to be Tabled to the Audit Committee on Related Party Transactions 129
Appendix IV : Financial Literacy Questionnaire 131
Appendix V : Questions to be Posed to Management – Controls and Compliance 133
Appendix VI : Examples of Risk Indicators 144
Appendix VII: Evaluation of Internal Audit Function 147

Introduction

Background

This Introduction to **Pull-out II ("Effective Audit and Risk Management")** is designed to provide companies with broad guidance in making suitable arrangements for their audit and risk management processes as well as to assist directors serving on audit committees in carrying out their role. The Introduction also intends to provide companies with direction in implementing the relevant enumerations of **Principle B** in the **Malaysian Code on Corporate Governance ("MCCG")** and thus, should be read in conjunction with the write-ups on the individual Practices and Step Ups encapsulated in this Pull-out.

In today's complex and evolving business environment, an effective audit and risk management process can make a strong contribution to a "no surprises" environment. Being vigilant of uncertainties requires companies to anticipate future challenges, understand what is on the horizon, and address risk more strategically – all of which calls for greater oversight, accountability and transparency.

In this regard, a robust audit committee can be a key feature of a strong corporate governance culture underpinned by effective audit and risk management. In discharging its mandate, it is imperative for audit committees to be supported by fundamental building blocks, namely an appropriate structure and foundation, well-defined responsibilities, an understanding of current and emerging issues as well as a proactive, risk-based approach to its work.

An audit committee's relationships with the board, management as well as internal and external auditors play a pivotal role in driving its effectiveness. The essential features of these interactions are a frank, open working relationship and a high level of mutual respect. The audit committee must be prepared to listen to their views (i.e. management, internal and external auditors), deliberate on the issues candidly and take a robust stance when necessary.

Every company needs to consider in detail what audit and risk management arrangements are best suited for its particular circumstances as what works best for one company may not necessarily be ideal for another. These arrangements need to be proportionate to the task and will vary according to the size, maturity, complexity and risk profile of the company. Nevertheless, there are certain guiding principles and practices which underlie the effectiveness of an audit and risk management process and they can help to ensure that company-specific approaches are applied effectively (i.e. by the right people with the right information, procedures and perspectives).

This Introduction is set out over three sections. **Section I** addresses the establishment and effectiveness of the audit committee. **Section II** explores the audit committee's responsibilities in overseeing the areas of financial reporting, related party transactions and conflicts of interests, internal control environment, internal audit and external audit. **Section III** meanwhile sheds light on the communication of audit, risk management and internal control matters.

SECTION I Establishment and effectiveness of the audit committee

Establishment and terms of reference

Given the importance of an audit committee to the governance structure of a company, the establishment of this committee is mandated for listed issuers through **paragraph 15.09 of Bursa Securities Listing Requirements, and Practice 9.1 - Practice 9.5 of the MCCG**. The need for a

MCCG Practice 9.1
The Chairman of the Audit Committee is not the Chairman of the board.

MCCG Practice 9.2
The Audit Committee has a policy that requires a former partner of the external audit firm of the listed company1 to observe a cooling-off period of at least three years before appointed as a member of the Audit Committee.

MCCG Practice 9.3
The Audit Committee has policies and procedures to assess the suitability, objectivity and independence of the external auditor to safeguard the quality and realibility of audited financial statements.

The committee should recommend any changes to its terms of reference to the board for approval.

Step Up 9.4
The Audit Committee should comprise solely of Independent directors.

Practice 9.5
Collectively, the Audit Committee should possess a wide range of necessary skills to discharge its duties. All members should financially literate, competent and are able to understand matters under the purview of the Audit Committee including the financial reporting process.

All members of the Audit Committee should undertake continuous professional development to keep themselves abreast of relevant developments in accounting and auditing standards, practices and rules.

Composition and membership

Appointments to the audit committee should be made by the board on the recommendation of the nominating committee, in consultation with the audit committee chairman. In determining the composition and membership of the audit committee, the board should take into account factors such as size, independence and desired skills and qualities of the members.

Size

The size of the audit committee will vary depending on the needs of the company, the board and the extent of responsibilities delegated.

Paragraph 15.09(1)(a) of Bursa Securities Listing Requirements mandates that the audit committee must be composed of not fewer than 3 members.

Independence

As stated in **paragraph 15.09(1)(b) of Bursa Securities Listing Requirements**, all the audit committee members must be non-executive directors, with a majority of them being independent directors. As outlined in **Step Up 9.4**, companies can go further in achieving

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

MCCG Practice 9.1
The Chairman of the Audit Committee is not the Chairman of the board.

Practice 9.5
Collectively, the Audit Committee should possess a wide range of necessary skills to discharge its duties. All members should financially literate, competent and are able to understand matters under the purview of the Audit Committee including the financial reporting process.

All members of the Audit Committee should undertake continuous professional development to keep themselves abreast of relevant developments in accounting and auditing standards, practices and rules.

Practice 9.5 calls for all members of the audit committee to be financially literate, as defined in **paragraph 15.09(1)(c)(i),(ii) and (iii) of Bursa Securities Listing Requirements**.

Detailed considerations on financial literacy and other pertinent qualities are covered in detail in the write-up to **Practice 9.5**.

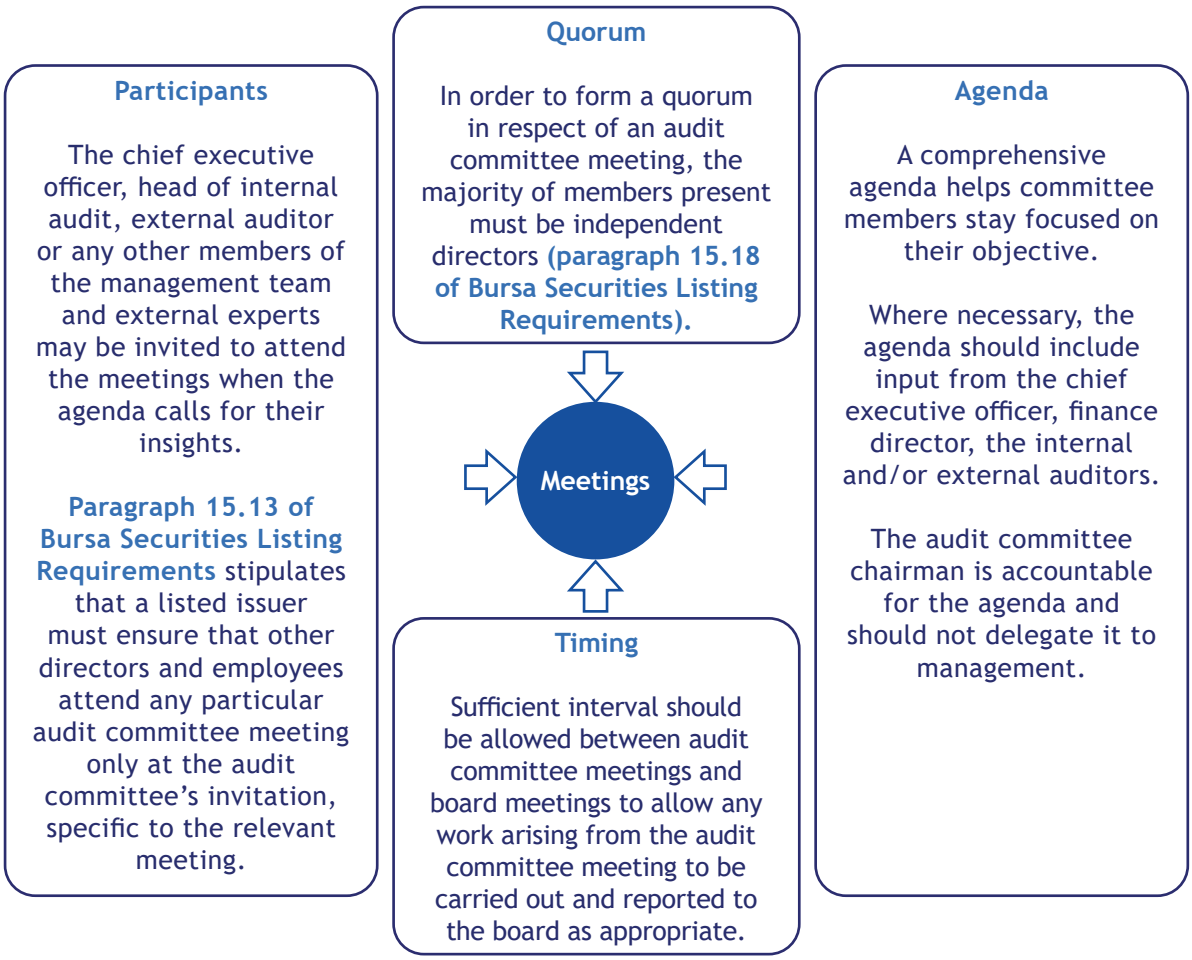
Meetings

It is for the audit committee chairman, in consultation with the company secretary, to decide on the frequency and timing of the audit committee's meetings. There should be as many meetings as the audit committee's roles and responsibilities require. The audit committees of the top 50 listed issuers (by market capitalisation as at 31 March 2021) meet at an average of seven times a year[1], with planned meetings held to coincide with the key dates within the financial reporting (quarterly results and annual reporting) and audit cycle. The audit committee should meet prior to the release of the company's quarterly results and annual reports to discuss on the proposed disclosures.

In terms of duration, sufficient time must be allocated to thoroughly address all items in the agenda and for all parties involved to ask questions or provide input. Audit committee members should be assured that they have covered all the agenda items without feeling pressured to rush discussions and decision-making.

The audit committee secretary plays an important role in organising and providing assistance during audit committee meetings. Generally, the company secretary is the audit committee secretary.

Other relevant considerations in organising an audit committee meeting are outlined below:



[1] Intelligence of KPMG Management & Risk Consulting Sdn Bhd, 2021

Rights and resources

Paragraph 15.17 of Bursa Securities Listing Requirements empowers audit committee with the rights to carry out its work in an unhindered manner.

Paragraph 15.17 of Bursa Securities Listing Requirements

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.

In furtherance of their duties, audit committees may enlist the services of external experts or advisors such as valuers, engineers or tax consultants at the cost of the company in accordance with a procedure determined by the board.

Performance evaluation

Paragraph 15.20 of Bursa Securities Listing Requirements states that 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. Sample exhibits on the assessment of the audit committee as a whole and individual audit committee members are provided in **Appendix VI** and **Appendix VII** of **Pull-out I**.



Upon completion of the review, the nominating committee should deliberate on the outcome and provide suggestions to the board on appropriate remedial actions for the audit committee. For example, relevant training or education programmes may be recommended for audit committee members to carry out their duties in a more informed manner.

Training and development

Continuous professional development by all members of the audit committee is a necessary component in ensuring the audit committee keeps abreast with the relevant developments in accounting and auditing standards, practices and rules, as well as new technologies and its impact on the business and future of internal and external audit.

Training programmes can range from those related to the core functions of the audit committee, development of technical and interpersonal skills, the role and purpose of the audit committee and other topical updates. Training programmes should be systematic, and able to meet the learning objectives and expectations of the audit committee members.

With the support of the company secretary, the following steps should be pursued in relation to the continuous professional development of audit committee members:



Audit committee relationships and communications

The broadening of responsibilities, rising complexities of accounting and risk issues as well as the heightening demand of stakeholders necessitates audit committees to be more focused than ever in enhancing their efficiency and effectiveness. Vital to achieving these are the strength and collegiality of the audit committee's working relationships with the board of directors, management, internal and external auditors.

Better practices call for continuous engagement between the audit committee (particularly the chairman of the committee) and senior management (including executive members of the board) of the company, as well as the internal and external auditors. These engagement sessions serve as a platform for relevant issues affecting the company to be brought to the attention of the audit committee in a timely manner.

A brief summary of the audit committee's working relationship with the aforementioned parties is outlined below:

Relationship with the board

As the board is ultimately responsible for the oversight of the company, it needs to be consistently kept informed by the audit committee of its activities.

Any irregularities, significant findings or matters of concern under the purview of the audit committee should be communicated to the board immediately.

Any relevant proposals requiring substantive action by the board should also be submitted promptly in writing in order to provide board members ample time to review and consider the proposals.

Relationship with other board committees

The audit committee should develop regular communication and coordination with other board committees.

This ensures that important information is shared across the various committees, skills and expertise needed for the audit committee is understood by the nominating committee, potential overlaps in oversight responsibilities between board committees are avoided, risks of remuneration policies and procedures are better understood by the audit committee.

Relationship with internal and external auditors

Both internal and external auditors provide integral support to the audit committee by acting as a sounding board.

The audit committee should have direct and unrestricted access to the auditors without the presence of management. During these sessions, the audit committee can and should follow up on areas of concern identified by the internal and external auditors.

The audit committee should also make inquiries on significant discussions between management and the auditors.

Relationship with management

It is the responsibility of the audit committee to satisfy itself that management has maintained a sound internal control system and prepared complete and reliable financial statements and disclosures in accordance with the applicable approved accounting standards and in compliance with relevant rules and regulations.

In doing so, the audit committee should continuously apply critical and probing view as well as effectively challenge the assertions made by management in this regard.

In its working relationship with management, the audit committee should endeavour to achieve an adequate understanding of the representations made by management and scrutinise these matters accordingly.

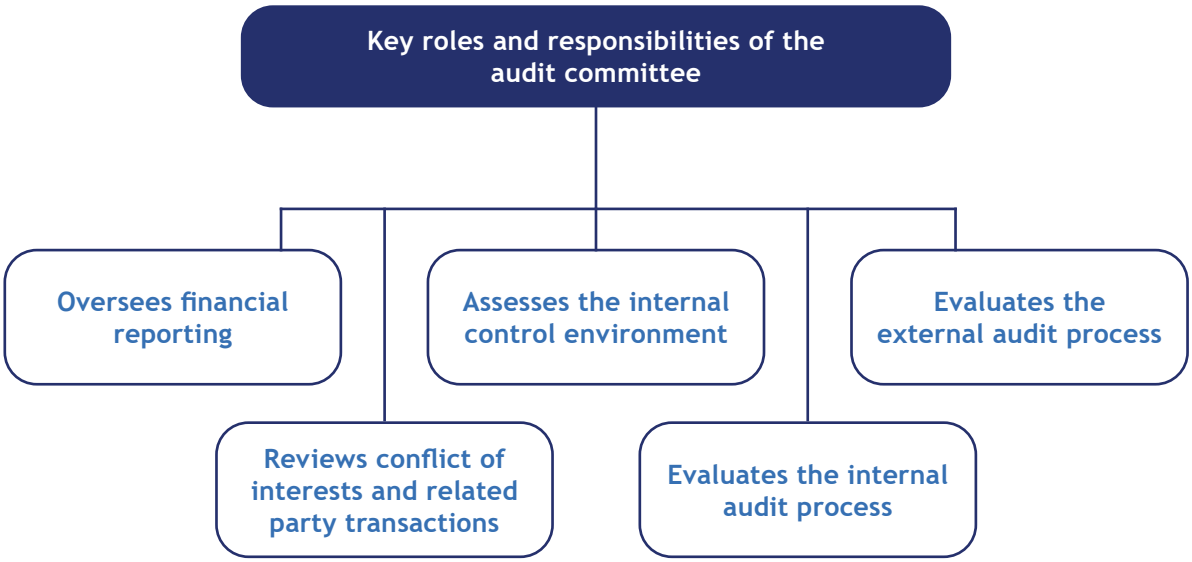
Some of the key questions that should be posed to management include:

- What is your assessment of the overall control environment including ability to detect/ identify in a timely manner related party transactions and conflict of interest situations?
- What processes do you have in place to ensure material errors will not occur?
- What materiality level did you employ in assessing whether the financial reports presented are of a true and fair view?
- Did you assess the materiality of all information reported to investors taking into account the information most valued by investors and regulatory requirements?
- What are the most significant estimates and judgments you made in preparing the financial report? What was the range of values used in those estimates? Justify the appropriateness of the underlying assumptions and the reliability of information/ methodologies/tools used.
- Are all key assumptions subject to appropriate internal controls and reasonable checks?
- What are the nature and size of year-end adjustments and related party transactions?
- Did any non-recurring transactions materially impact the financial results? If so, what were they and what was the impact?
- What were the major financial reporting standards and regulatory changes instituted during the year and what was their impact?
- What are the significant differences existing in the financials between the current and prior period? Why have these variances occurred?
- Is the financial result significantly different from the budget? If so, why?
- Which aspects of the company's financial viability and sustainability do you feel least comfortable with?
- Have there been any disagreements between management and the internal or external auditors? If so, what were they and how were they resolved?
- How do you monitor the effective application of policies, processes and activities related to internal control and risk management?
- What are the steps taken to ensure you provide a single view of risk and internal control if there are inconsistencies in risk or internal control information received from competing functions?
- Have you identified material ESG risks faced by the company?
- What controls are in place to ensure that ESG information is reliable? Have you considered whether some level of assurance would increase confidence in the disclosures?

SECTION II Roles and responsibilities of the audit committee

Understanding of roles and responsibilities

An effective audit committee should be critically aware of its responsibilities, fully understand and embrace them, and recognise what is necessary to fulfil them. The audit committee must be vigilant, informed and diligent in fulfilling its oversight responsibilities. As outlined in **paragraph 15.12 of Bursa Securities Listing Requirements**, every audit committee should at the very least assume the following fundamental responsibilities:



In addition to the aforementioned responsibility areas, audit committees of financial institutions are also required to review the accuracy and adequacy of the chairman's statement in the directors' report, corporate governance disclosures, interim financial reports and preliminary announcements in relation to the preparation of financial statements[2].

Oversight of financial reporting

Paragraph 15.12(1)(g) of Bursa Securities Listing Requirements requires the audit committee to review the quarterly results and year-end financial statements prior to 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.

[2] Paragraph 10, Appendix 1 of Bank Negara Malaysia's Policy Document on Corporate Governance

It is essential for the audit committee to ensure that the finance function within a company is carried out by the right personnel with the skills, experience, training and authority suitable to the industry and the complexity of the company's business.

Apart from having the right personnel, audit committees should also ensure that the finance function is equipped with adequate resources (i.e. human capital and technology) and the right infrastructure (i.e. financial and accounting systems) to support the financial reporting process.

In reviewing the quarterly results and year-end financial statements, the audit committee should also be vigilant of significant adjustments arising from the external audit (e.g. impairment of assets during the global oil and gas downturn) and the appropriateness of the going concern assumption used in preparation of the financial statements. The audit committee is encouraged to consult the external auditors on these matters if the need arises.

In general, the audit committee should focus on the following when reviewing financial statements of the company:

- monitoring the integrity of the company's financial information such as ensuring information is supported by proper documents, reviewing the relevance and consistency of the accounting principles used (including criteria and principles used for consolidation) and understanding the effects of any changes in the accounting policies and practices, either as a result of changes in regulatory requirements or mooted by management for better accounting treatment;
- understanding the methods used to account for any complex and unusual transactions where their treatment may be open to different approaches and any significant accounting policy issues or audit adjustments recommended by auditors (those agreed by management and those waived);
- ensuring any significant accounting policy issues or audit adjustments recommended by auditors are communicated early enough to enable appropriate actions to be taken, as needed;
- assessing the company's financial position/condition including risk of tax exposures and considering the question of going concern;
- assessing the process of how transactions are recorded in the system to ensure accuracy, completeness and consistency of financial information, including compliance with the relevant accounting standards and other legal requirements;
- considering related party transactions, the financial impact of such transactions and whether they have been entered into according to the terms stipulated in the shareholders' mandate or in the best interests of the company;

- requesting external auditors to present their findings on internal control weaknesses noted during their statutory audits and highlighting findings which are disputed by management or where management has not agreed to implement remedial actions to rectify the reported weaknesses; and

- understanding non-financial information which is relevant in assisting the audit committee to gain further insights into the company's financial results (e.g. the impact of capacity utilisation on the company's profit margin and the impact of the actions by competitors on the company's revenue).

Appendix I of this **Pull-out** sets out a list of indicators that the audit committees should be aware of in relation to financial reporting and a sample questionnaire that can be customised to seek management's representation on a range of financial reporting matters.

Review of conflict of interest situations and related party transactions

The audit committee is tasked under **paragraph 15.12(1)(h) of Bursa Securities Listing Requirements** to review and report to the board on any related party transactions (including recurrent related party transactions) and conflict of interest situations that may arise within the listed issuer or group. This includes any transaction, procedure or course of conduct that raises questions of management's integrity. The audit committee should therefore ensure that the transactions carried out are amongst others, in the best interest of the listed issuer as well as not detrimental to the minority shareholders[3].

Conflicts of interest situations generally refer to circumstances where a person with a vested interest in the company is in a position or has the opportunity to influence the company's business or other decisions in ways that could lead to personal gain or advantage of any kind ("interested parties").

Examples of situations that are likely to give rise to conflicts of interest amongst others include the following:

- where the interested party(ies) have an interest in a business that competes or is likely to compete, either directly or indirectly, with the business of the company or its subsidiaries (collectively "the group");

- where the interested party(ies) conduct or have an interest in business transactions involving goods or services, either directly or indirectly, with the group;

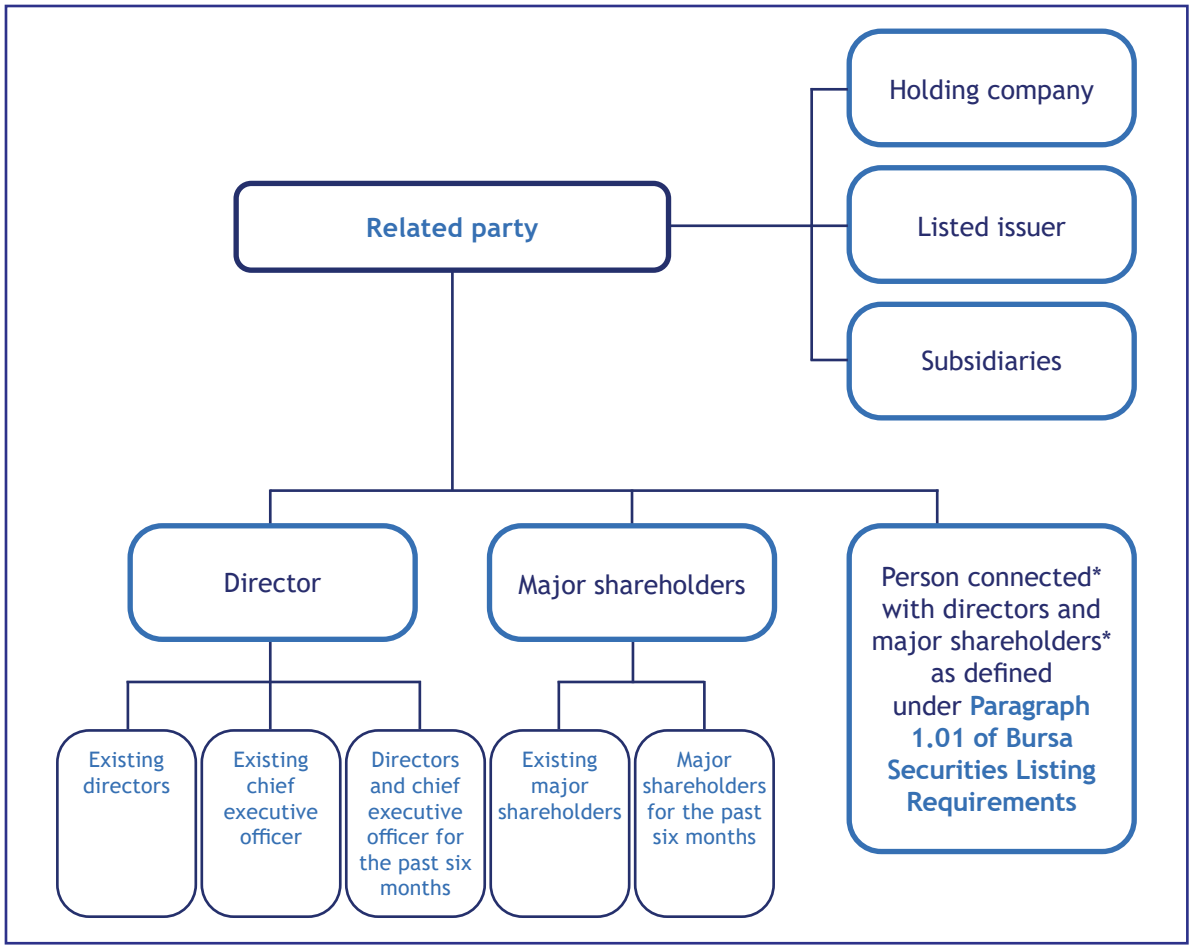
- where the interested party(ies) provide or receive financial assistance from the group; and

- where the interested party(ies) lease property to or from the group.

[3] Refer to **paragraph 3(a), Appendix 10C of Bursa Securities Listing Requirements**

A related party transaction meanwhile is a transaction entered into by the listed issuer or its subsidiaries which involves the interest, direct or indirect, of a related party. **Paragraph 1.01 of Bursa Securities Listing Requirements** defines a related party in relation to a corporation as a director, major shareholder[4] or person connected with such director or major shareholder. Transactions that fall within the ambit of related party transactions include the acquisition, disposal or leasing of assets, establishment of joint ventures, provision of financial assistance, provision or receipt of services or any business transaction or arrangement entered into by the listed issuer or its subsidiaries[5].

The various persons who are included in the definition of a related party as stated in **Chapter 10 of Bursa Securities Listing Requirements** are depicted below.



[4] Major shareholder refers to a person who has an interest in 10% or more of the total number of voting shares in the corporation; or 5% or more of the total number of voting shares in the corporation where such person is the largest shareholder of the corporation.
[5] **Paragraph 10.02(l)(ii) of Bursa Securities Listing Requirements.**

In addition to **Bursa Securities Listing Requirements**, companies (including listed issuers) which come under the purview of reporting within the **Malaysian Financial Reporting Standard 124** (Related Party Disclosures) are required to provide disclosures on related party transactions which are defined as the "transfer of resources, services or obligations between a reporting entity and a related party[6], regardless of whether a price is charged".

Companies should also be cognisant of **Section 228 of Companies Act 2016** which prescribes the obligations of a company (i.e. to obtain prior shareholder approval at a general meeting) in respect of transactions involving a director or substantial shareholder[7] of the company or its holding company, or its subsidiary, or a person connected with a director or substantial shareholder.

Taking into account the aforementioned enumerations, it is therefore incumbent on companies, particularly listed issuers through the audit committee, to determine how to address conflict of interest situations and monitor compliance with related party transaction policy and/or mandate, including transactions or situations that warrant timely internal and regulatory disclosures and appropriate review and reporting.

To this end, the audit committee should ensure that management establishes a comprehensive framework for the purposes of identifying, evaluating, approving, reporting and monitoring such situations and transactions. It is essential to ensure that the framework put in place enables related party transactions and conflict of interest situations to be brought to the attention of the audit committee for its consideration and immediate action.

Key factors which must be addressed by the audit committee in its oversight of conflict of interest situations and related party transactions are as follows:

- nature of conflict of interest situations, areas of concern, and the impact on the company;
- identification of the interested and related parties as well as the nature of such potential transactions; and
- whether the related party transactions are in the best interest of the company, and whether the necessary controls and/or safeguarding measures are in place in the management of conflict of interests, as well as the corrective and/or remedial actions to be taken in respect of each of the conflict of interests situations, to ensure that interested parties and related parties do not abuse their powers to gain an unfair advantage.

[6] An entity is related to a reporting entity if it has control or joint control over the reporting entity; has significant influence over the reporting entity; or is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
[7] A substantial shareholder is a person who has not less than 5% of the voting shares in the company.

In undertaking an assessment on the conflict of interest situations or the related party transactions, audit committees may be guided by the following considerations:

- Are the terms of the transaction (including the price) fair, reasonable and on normal commercial terms?
- What impact will the transactions have on the financial statements?
- Are there business reasons or economic substance for the company to enter into the transaction with the related party and not a third party?

Examples of matters to be tabled to the audit committee on related party transactions are outlined in **Appendix III** of this **Pull-out**.

In addition, it is important for the audit committee to look into transactions that do not neatly fall within the definition of a related party transaction as stated in **Chapter 10 of Bursa Securities Listing Requirements** but may still involve a certain level of conflict of interest due to the close proximity (e.g. relationship) of the counterparties with individuals (such as employees) within the listed issuer who are involved in the transactions.

In certain instances, the audit committee may also be faced with the possibility of undisclosed conflict of interest situations or related party transactions. Hence, it is important for the audit committee to ensure that the comprehensive framework mentioned above is able to identify questionable transactions or potential conflict of interest situations or related party transactions. For this purpose, the audit committee should request management to provide the following information:

- background information on the company's trading partner and transacting parties;
- information on the trading partners' directors and substantial shareholders;
- identity of related parties;
- information about the key business partners, major customers, major suppliers and parties to key contracts; and
- salient terms or arrangements of the transactions.

Assessment of internal control environment

The audit committee must determine whether management has implemented effective and adequate internal controls to preserve the company's value creation. The internal control framework of a company should address the following inter-related components:

Control environment	This sets the tone and culture of the company. It is the foundation of all aspects of internal controls, providing discipline and structure. It includes the integrity, ethical values and competency of the personnel.
Risk assessment	Identifies and analyses relevant risks that prevent the company from achieving its objectives and forms the basis for determining how those risks should be managed.
Control activities	These are the policies and procedures that help ensure the necessary actions are taken to address risks impeding the achievement of the company's objectives, and maintaining these risks within an acceptable risk appetite.
Information and communication	Identifies, captures and communicates information in a form and timeframe that enables personnel to carry out their responsibilities.
Monitoring activities	Assesses the performance of the control system on a continuing basis.

It is important to note that the design of internal controls in silos and without reference to their associated risks can lead to an imbalance and consequently, certain key risk areas may be left unaddressed. It is thus imperative for the internal control system to be embedded in the operations of the company and be capable of responding quickly to evolving business risks, whether they arise from factors within the company or from changes in the business environment. Succinctly put, the internal control system should form an integral part of the company's day-to-day business processes.

Given the evolving nature of risks in the marketplace and the dense agenda of the audit committee, it is also increasingly regarded as a better practice for companies to have a separate board-level committee, namely, risk management committee to provide dedicated oversight on risk management matters. In assessing the company's risk management framework and policies, the board committee overseeing risk management matters should, amongst others, consider the following:

- the principal risks and the process of identification, evaluation and management of the principal risks;
- the alignment between risk management execution and the implementation of the company's overall strategy;
- the alignment of remuneration to risk taking and risk management;
- the effectiveness of measures deployed by management to address those risks (i.e. accept, avoid, transfer or mitigate the risks);
- corrective measures undertaken to remedy failings and/or weaknesses;
- ability of the company to meet changes in significant risks and respond to constant changes to the business and/or external environment;
- scope and quality of management's ongoing monitoring of risks and robustness of the risk management process;
- communication and monitoring of risk assessment results to the board; and
- actual and potential impact of any failing or weakness, particularly those related to

MCCG Step Up 10.3
The board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company's risk management framework and policies.

provided in write-up to **Step Up 10.3**.

Evaluation on internal audit

Each listed issuer by virtue of **paragraph 15.27 of Bursa Securities Listing Requirements** is required to establish an internal audit function that reports directly to the audit committee. This function serves as an important source of advice for the audit committee by bringing an objective and disciplined approach to evaluate and improve the effectiveness of risk management, internal control and governance processes.

The internal audit function which can either be performed in-house or outsourced, including outsourced to group internal auditors (i.e. internal auditor of the holding company or subsidiary of the holding company) must be premised on the requirements of an **"independent and objective" function**. At all times, the audit committee should ensure that the internal audit function has a reporting line to the audit committee, which allows the internal auditors to operate independently

MCCG Practice 11.1
The Audit Committee should ensure that the internal audit function is effective and able to function independently.

MCCG Practice 11.2
The board should disclose:

- whether internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence;
- the number of resources in the internal audit department;
- name and qualification of the person responsible for internal audit; and
- whether the internal audit function is carried out in accordance with a recognised framework.

Practices 11.1 and 11.2.

Evaluation on external audit

External auditors play a vital role in the process of accountability to shareholders. Their primary role is to form an opinion on the financial statements of the company, including accounting and other records relating to those financial statements and thereafter report to the shareholders in general meetings. In their course of work, they may identify and, where appropriate, quantify the financial risk that may result in adjustments to the financial statements.

As stated in **paragraph 15.12(2) of Bursa Securities Listing Requirements**, the audit committee is required to recommend the nomination of a person or persons as external auditors.

The audit committee's recommendation on the appointment of external auditors should be based on an assessment of the independence and capabilities of the external auditors as well as the effectiveness of the audit process. **Paragraph 15.21 of Bursa Securities Listing Requirements** outlines the factors (shown below) that a listed issuer must consider, among others, in appointing an external auditor:

Adequacy of the experience and resources of the accounting firm	Persons assigned to the audit	Accounting firm's audit engagements	Size and complexity of the listed issuer's group being audited	Number and experience of supervisory and professional staff assigned to the particular audit

In the event of removal or resignation of the external auditors, it is imperative for the audit committee to look into the reasons thereof, especially when the impending removal or resignation arises from an inability to resolve contentious matters that affect financial reporting.

Paragraph 15.22 of Bursa Securities Listing Requirements stipulates 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 Companies Act**.

In overseeing the external audit process, **paragraph 15.12(1)(a)-(d) of Bursa Securities Listing Requirements** states that the audit committee must review with the external auditor - the audit plan, external auditor's evaluation of the system of internal controls, audit report and assistance given by the employees of the listed issuer to the external auditor.

The audit committee needs to be aware of the scope and approach of the external audit. Whilst the audit plan is the external auditor's responsibility, it is important that the audit committee fully understands the plan. At the start of each annual external audit cycle, the audit committee needs to consider the external auditor's overall strategy, including planned levels of materiality and proposed resources to execute the external audit plan, and evaluate whether it is consistent with the scope of the external audit engagement.

In order to accomplish this effectively, the audit committee should perform the following:

- discuss with the external auditor before the audit commences, the nature and scope of the audit, including the terms as detailed in the external auditor's engagement letter. This will clarify the responsibilities of the company and the external auditor and other logistical matters; and
- study and evaluate the audit plan, especially the approach to be deployed by the external auditor.

The elements encapsulated in a typical audit plan are outlined below:

- scope of the audit, timing of the audit and reporting deadlines;
- audit team;
- key areas of business risk and significant transactions for the group, as appropriate;
- major accounting systems and systems of internal control to be reviewed;
- extent of planned testing of controls;
- areas where contention may arise;
- nature and extent of audit procedures to be performed, including materiality level;
- identification or anticipation of significant changes for the financial report as a result of new or revised accounting policies and/or regulatory requirements;
- locations to be visited and audit procedures to be undertaken in respect of those locations not visited;
- liaison with subsidiaries' auditors on consolidation of financial statements;
- coordination with internal audit to avoid duplication of efforts and to optimise audit efficiency;
- the extent to which the planned audit scope can be relied upon to detect errors or irregularities (i.e. fraud); and
- frequency of meetings with the audit committee and any reports or other deliverables the audit committee and management are likely to receive.

Following the audit and before signing off the auditor's audit report in the financial statements, the external auditor would normally present the following to the audit committee:

- a report, detailing the results and significant findings from the audit;
- the external auditor's audit report which notably includes opinion relating to the financial statements and key audit matters; and
- a management letter concerning improvement measures that management should consider pertaining to weaknesses or deficiencies in the internal control system.

MCCG Practice 9.2
The Audit Committee has a policy that requires a former partner of the external audit firm of the listed company1 to observe a cooling-off period of at least three years before appointed as a member of the Audit Committee.

MCCG Practice 9.3
The Audit Committee has policies and procedures to assess the suitability, objectivity and independence of the external auditor to safeguard the quality and realibility of audited financial statements.

detail in the write-up to **Practices 9.2 and 9.3**.

SECTION III Communication on audit, risk management and control

Pursuant to **paragraph 15.15(1) and (2) of Bursa Securities Listing Requirements**, a listed issuer must ensure that its board of directors prepare an audit committee report at the end of each financial year and clearly set it out in the annual report. The audit committee report must contain, at the very least, the following information as stated in **paragraph 15.15(3) of Bursa Securities Listing Requirements**.

Paragraph 15.15(3) of Bursa Securities Listing Requirements

Audit committee report

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; and

(e) a summary of the work of the internal audit function.

Note: As stated in Paragraph 2, Appendix 4 of Bank Negara Malaysia's Policy Document on Corporate Governance, financial institutions are required to disclose the attendance of each director at board and board committee meetings during the financial year and discuss the roles and responsibilities of the board and the board committees.

The audit committee report should describe relevant significant issues in a concise and understandable form, tailored to the specific circumstances of the listed issuer. Merely disclosing the audit committee's terms of reference or charter without describing how the committee actually carried out its roles and responsibilities during the financial year would not be particularly useful for stakeholders.

In addition to the audit committee report, **paragraph 15.26(b) of Bursa Securities Listing Requirements** requires the board of the listed issuer to provide a **statement about the state of risk management and internal control** of the listed issuer as a group. The statement should contain sufficient and meaningful information needed by stakeholders to make an informed assessment of the main features and adequacy of the listed issuer's risk management and internal control system. Further, **paragraph 15.23 of Bursa Securities Listing Requirements** provides for the external auditors to review the statement made by the board of directors of a listed issuer, 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.

It is also important to note that the chairman of the audit committee should be present at the annual general meeting to answer questions on the audit committee's activities and on matters that are within the scope of the audit committee's responsibilities.

Practice & Step Ups

Chairman of the Audit Committee

MCCG Intended Outcome 9.0
There is an effective and independent Audit Committee.

The board is able to objectively review the Audit Committee's findings and recommendations.

The company's financial statement is a reliable source of information.

MCCG Practice 9.1
The Chairman of the Audit Committee is not the Chairman of the board.

WHY? The case for change

Whilst all directors have a duty to act in the best interests of the company, the audit committee has a specific role which is to provide objective oversight in the areas of financial reporting, related party transactions and conflicts of interest, internal control environment, internal audit and external audit processes.

This need for objectivity is particularly imperative for the chairman of the audit committee as the effectiveness of the committee is often dependent on his or her leadership. The chairman is expected to demonstrate courage to deal with tough issues and support other members to do the same, especially in probing management on areas where subjectivity is inherent (e.g. choice of accounting policies and estimates made in arriving at the figures recorded in the financial statements).

Recognising the need for objectivity amongst audit committee members, regulators have placed a heightened focus on the composition of this committee with an emphasis on its chairman, as shown below:

Paragraph 15.09(1)(a) and (b) of Bursa Securities Listing Requirements

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; and

(b) all the audit committee members must be non-executive directors, with a majority of them being independent directors.

Paragraph 15.10 of Bursa Securities Listing Requirements

The members of an audit committee must elect a chairman among themselves who is an independent director.

In addition to being independent, it is of paramount importance for the chairman of the audit

MCCG Practice 1.4
The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

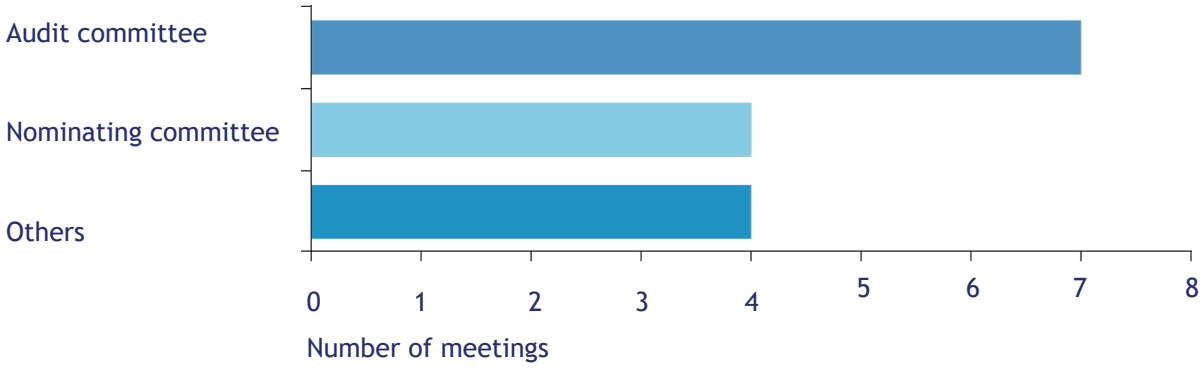
This Practice is also aligned with **Practice 1.4 of MCCG** which stipulates that the board chairman should not be a member of the audit committee, nomination committee and remuneration committee. A slew of corporate failures and scandals spanning almost all continents focus on the political and regulatory attention on the audit profession and the serious corporate governance failings within the audit function and oversight by the board. These include the collapse of Carillion, Patisserie Valies and London Capital & Finance in the UK, as well as failings in Transnet, Eskom, and South African Airway in South Africa, and multiple recent corporate scandals in Malaysia. Such scandals and failures raise questions about the objectivity of the board's oversight on the company's audit practices and procedures.

Such a situation may also potentially lead to concentration of power in a single director. The need for financial institution to maintain a distinction between the chairman of the board and chairman of the audit committee is enumerated in **Standard 12.4 of Bank Negara Malaysia's Policy Document on Corporate Governance** which states that "to promote robust and open deliberations by the board on matters referred by the board committees, the chairman of the board must not chair any of the board committees".

In addition, the separation of these two positions is necessary to enable the chairman of audit committee to devote sufficient time to the affairs of the committee. Being the chairman of the board and board committee would result in the said director being subjected to additional responsibilities, thus, making the performance of his or her duties fairly onerous.

In tandem with global trends, audit committees continue to be the most time-consuming committee in corporate Malaysia. A review of the 2020 annual reports across the top 50 listed issuers (by market capitalisation as at 31 March 2021) revealed that audit committees averaged 7 meetings a year compared to nominating committees (4 meetings) and other board sub-committees (4 meetings)[1].

Average Number of Meetings Held by Board Committees



[1] Intelligence of KPMG Management & Risk Consulting Sdn Bhd, 2021

Audit committees are often tasked with not only overseeing a company's financial reporting and internal controls, but also a gamut of other responsibilities which include oversight of risk, compliance and corporate governance matters.

The need for audit committee members to be apprised of relevant developments also demands additional time and professional commitment. Over the recent years, there have been major developments in the accounting and auditing landscape, such as the amendments to accounting standards, which necessitate continuous professional development.

HOW? The practice in substance

In structuring its audit committee, the board should ensure that the chairman of the audit committee is distinct from the chairman of the board. The company's board charter and the audit committee's terms of reference should set out the separation between the roles of the board chairman and the chairman of the audit committee.

In addition, as stated in **paragraph 15.10 of Bursa Securities Listing Requirements**, the chairman of the audit committee must be an independent director.

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

What are the key responsibilities of an audit committee chairman?

An audit committee chairman is responsible for setting the tone and work style of the committee, as well as ensuring that audit committee meetings run efficiently and that the agenda is designed to ensure the committee's effectiveness. The committee chairman is often the key contact between the committee members and members of the board, as well as senior management and the auditors. Responsibilities of an audit committee chairman, amongst others, are as below[2]:

- **Leadership**
  - Sets the tone of dedication, being informed and probing, as well as independent and not shying away from holding management accountable.
  - Ensures participation and engagement from all committee members and promotes formal and informal communication amongst committee members.
  - Pursues engagement with management and auditors, between committee meetings, to ensure all relevant issues are identified and addressed by the committee.
- **CFO support**
  - Develops a strong and professional, trust-based, relationship with CFO.
  - Participates in informal sessions with CFO, focused on between-meeting developments.
  - Helps CFO to maintain focus on long-term sustainable performance rather than short-term earnings targets.
  - Assists CFO to ensure adequate resources and bench-strength across the finance function.

[2] *The role of the audit committee chair* 2019, KPMG

- **Alignment with board and other board committees**
  - Ensures risk oversight activities of the board and other board committees are well coordinated with the audit committee, especially when the company has additional board committees with oversight of risk, i.e. risk committee, technology committee.
- **Clarity in expectations for internal and external auditors**
  - Ensures the audit committee devotes sufficient time and consideration to the nomination, removal and resignation of the external auditor.
  - Clarifies the role of the internal audit, including ensuring a shared vision by the audit committee and CEO on the role of the internal audit function.
  - Develops a constructive relationship with the head of internal audit.
- **Conflict of interests**
  - Ensure the audit committee is able to identify any conflict of interests or potential conflict of interests situation that may arise within the listed issuer or group, and conduct the necessary assessment and inquiry when warranted, as part of the process in the review of conflict of interests matter. Conflict of interests situations should include but not be confined to conflict of interests in the context of related party transactions only. **Paragraph 15.12(1)(h) of Bursa Securities Listing Requirements** outlines that the audit committee should review 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, and report the same to the board.
  - Together with the audit committee, ensure policies and procedures are in place to ensure proper disclosure of conflict of interests or reporting of conflict of interests.
  - Coordinate with the nominating committee or any relevant board committees in the review of conflict of interests.
- **Agenda setting**
  - Focuses on quality of financial accounting, corporate reporting, and effective internal controls.
  - Aligned with the committee's roles and responsibilities, as outlined in its terms of reference, while also ensuring flexibility to discuss emerging issues.
  - Includes dedicated time, i.e. "white space", at the beginning of each meeting for members to reflect on the agenda and allocated time, and meeting materials
  - Incorporates a deep dive into important areas of risk, accounting policy, judgement estimate.
  - Streamlines committee's responsibilities to prevent taking on too much responsibility beyond core responsibilities of which members' skills are aligned to.

- Ensures audit committee is equipped with the necessary resources for its effective outworking.
- Encourages periodic reviews of the audit committee terms of reference.

- **Meeting quality**
  - Ensures timeliness in distribution of meeting materials. The audit committee can be guided by the **Guidance to Practice 1.6** which outlines that directors should receive information and materials required for the meeting at least five business days in advance of the board meeting.
  - Encourage members to seek clarification on additional information in advance, to optimise discussion time at meetings.
  - Balances presentation time with time spent on meaningful discussion and debate.
  - Ensures attendance of relevant invitees, such as, CFO and head of internal audit.
  - Calls for private sessions between audit committee and head of internal audit and external audit partner to deliberate on matters such as management's corporate reporting and control, resources and relationships.

What are some of the key attributes of an effective audit committee chairman?

The chairman of the audit committee should be recognised for his or her leadership and vision, and be acknowledged by other committee members and management as being able to set and manage the audit committee's agenda.

Attributes of an effective audit committee chair (non-exhaustive):

- an independent, proactive leader with confidence and integrity;
- a highly respected and experienced board member, who possesses strong financial literacy skills and time available to develop and closely monitor the committee's agenda;
- a person with an excellent working knowledge of audit committee practices;
- a good listener and communicator who can facilitate successfully;
- a person who is able to champion open and frank discussion with discipline; and
- a person who is tenacious and prepared to ask the tough questions.

Can the chairman of the audit committee chair another board committee within the same company?

There are no restrictions for the chairman of the audit committee to chair another board committee within the same company as possibilities of conflicts of interest are minimal under normal circumstances.

In some instances, companies may find it value-adding for the chairman of the audit committee to chair another board committee, given the synergies that are involved between these two committees (e.g. audit committee and risk management committee or in the case of some financial institutions, audit committee and financing committee).

However, as mentioned above, the board should be cognisant of the workload of the audit committee chairman in deciding if he or she can assume the chairmanship of another board committee without compromising the standard of work performed.

Further reflection

Just as it is important for the audit committee to be aligned with the board, the audit committee should also pursue communication and coordination with other board committees to facilitate the optimal allocation and coverage of topics covered by each committee. The diagram on the following page outlines topics which the audit committee chairman should promote coordination and dialogue on with other board committees.

Furthermore, with the growing complexities of board responsibilities and the ever more challenging business and risk environments, boards are delegating oversight duties to a larger number of board committees. As such, the audit committee chairman should pay consideration to the nature of interactions between the audit committee and the other committees formed by the board.

Nominating Committee

- Coordinating on skills and experience needed for the audit committee to carry out its responsibilities effectively

Remuneration Committee

- Understanding of risks that remuneration policies and procedures may bear on financial statements and internal controls
- Understanding of management and employee rumuneration plans and how related metrics impacts fraud risks

Coordination and communication between audit committee and other board committee

Additional Consideration

- Prevents overlapping oversight responsibilities (i.e. cybersecurity may be covered by both audit committee and also a risk committee for instance)
- Ensures important information is shared across the various board committees
- Avoids a “default mentality” where directors or board committees assume the audit committee has sole responsibility for specific risks

Case Study: Nissan Motor Co Ltd (Japan)

Background:	• Carlos Ghosn was the Chairman of Nissan, before he was fired from his position in 2018 following a criminal case against him on underreported remuneration, misused company money and the funnelling of millions of dollars into secret, off-shore entities for his own benefit[3].
Facts:	• In Japan, listed companies are required to disclose, in annual reports, an executive's compensation when it exceeds JP¥ 100 million (approximately USD 800,000). However, Nissan's CFO has not included Ghosn's deferred compensation arrangement that he would receive after his retirement, which comes up to almost USD 44 million, in the company's annual reports. • This raised questions about the role of Nissan's independent auditors in ensuring disclosures in its annual reports accurately reflected compensation records of its top executives. • Here, there are three points which stand out. ◦ Nissan did not have an audit committee to appoint the external auditor and review audit procedures. The external auditor was chosen by the company's chairman, subject to the board's approval. ◦ Nissan's board was not equipped with a remuneration committee to decide on the board and senior management's remuneration, where Ghosn played a role in determining his own compensation. ◦ Nissan's board did not establish a nominating committee, and independent directors were chosen by the chairman, subject to the board's approval[4].
Lessons Drawn:	• The audit committee is an integral component of a company's corporate governance, particularly in its role of appointing the external independent auditor. As such, a high level of importance needs to be placed on the composition of the audit committee, particularly its chairman, to ensure that the committee functions in an independent and objective manner. • The separation of the board chairman from audit committee chairman position is able to prevent deliberations and decision-making related to the company's audit from being dominated by a single individual, and promotes the board's oversight on the effectiveness of the audit committee. • The objectivity of the audit committee chairman is further stressed in the audit committee's relationship with other board committees, to facilitate an effective corporate governance ecosystem within the firm.

[3] *Ex-boss Carlos Ghosn used company money for private events*: Nissan 2020, Kyodo News
[4] *Pozen, R.C 2018, Carlos Ghosn, Nissan, and the need for stronger corporate governance in Japan*, Harvard Business Review

WHERE? Regional/International perspectives

As in the case of Malaysia, jurisdictions such as Australia and United Kingdom have enumerated prescriptions for the chairman of the audit committee to be distinct from the chairman of the board in order to enable the audit committee chairman to give full commitment and exercise independent judgment.



Country	Provision(s)
Australia	The board of a listed entity should: • have an audit committee which: ◦ has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and ◦ is chaired by an independent director, who is not the chair of the board **(Extract of Recommendation 4.1)**.

Country	Provision(s)
South Africa	When determining which of its committees the chair of the governing body should serve on, either as member or chair, the governing body should consider how this affects the overall concentration and balance of power on the governing body. Generally, the following should apply: • The chair should not be a member of the audit committee **(Extract of Recommended Practice 36 of Principle 7)**
United Kingdom	The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two. The chair of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates **(Provision 24)**

Oversight of External Auditors by the Audit Committee

MCCG Intended Outcome 9.0
There is an effective and independent Audit Committee.

The board is able to objectively review the Audit Committee's findings and recommendations. The company's financial statement is a reliable source of information.

MCCG Practice 9.2
The Audit Committee has a policy that requires a former partner of the external audit firm of the listed company[1] to observe a cooling-off period of at least three years before being appointed as a member of the Audit Committee.

MCCG Practice 9.3
The Audit Committee has policies and procedures to assess the suitability, objectivity and independence of the external auditor to safeguard the quality and reliability of audited financial statements.

WHY? The case for change

An audit has value to financial statement users because it is performed by a competent third party who is viewed as having no interest in the financial success of the company[2]. Investors take comfort in the fact that independent professionals have performed the required procedures and have a reasonable basis for the opinion that they render in the financial statements.

Given that audit quality is integral to the informed decision-making of investors, safeguards should be put in place to preserve the integrity and credibility of the audit process. A high level of scrutiny is also increasingly being placed by stakeholders on the work of external auditors. Independent audit regulators across the globe are now increasingly focusing on the drivers of audit quality via their inspection efforts. The Global Annual Survey of Audit Inspection 2021 by the International Forum of Independent Audit Regulators revealed that whilst there is a general decline in the inspection findings, there is a continuing need for external audit firms to make continued efforts to address the high level of findings and inconsistencies. On the local front, Securities Commission Malaysia's Audit Oversight Board ("AOB") introduced annual transparency reporting for firms that audit public interest entities in Malaysia to outline details that include the audit firm's governance and leadership structure as well as measures undertaken by the firm to uphold audit quality and manage risks[3].

[1] This applies to all former partners of the audit firm and/or the affiliate firm (including those providing advisory services, tax consulting etc.)
[2] *Concept release on auditor independence and audit firm rotation* 2011, Public Company Accounting Oversight Board of United States
[3] Audit Oversight Board registered firms that for two years in a row have more than 50 public interest entity audit clients with combined market capitalisation of above RM10 billion are required to publish an Annual Transparency Report (in respect of the financial year ended 31 December 2020 onwards). For audit firms that subsequently fail to meet the stated criteria above for two consecutive calendar years, these audit firms are encouraged to continue with transparency reporting. For all other audit firms, adoption of annual transparency reporting is encouraged *(Source: Annual Transparency Reporting for Firms that Audit Public Interest Entities in Malaysia 2019, Securities Commission Malaysia)*.

Further reflection

In Malaysia, the AOB conducts inspections on registered audit firms and individual auditors of public interest entities and schedule funds on a regular basis. Inspections involve an assessment of the degree of compliance by auditors with auditing and ethical standards applicable in Malaysia as well as the quality of the auditor's reports relating to the audited financial statements of public interest entities and schedule funds. As gathered from AOB's Annual Inspection Report 2020, the top five common findings observed from the AOB's inspections over a three-year period are illustrated below:

2020	2019	2018
Sampling	Sampling	Sampling
Accounting estimates	Accounting estimates	Accounting estimates
Auditor's report/ Revenue recognition	Auditor's report	Auditor's report
Fraud procedures/ Presentation and disclosure	Fraud procedures	Engagement quality control review
Inventory procedures	Group audits	Group audits/ Revenue recognition

In providing further clarity, it was stated in the AOB's Annual Inspection Report 2020 that some of the common root causes which led to these deficiencies included the absence or lack of professional scepticism among auditors in executing the audit, particularly in assessing the reliability of documents, responses to inquiries and other information obtained from management or those charged with governance throughout the audit. In addition, it was gathered that the aforementioned common findings were mostly caused by insufficient understanding or appreciation for the requirements of International Standards on Auditing and relevant accounting standards.

Recognising that promoting audit quality is not within the sole purview of external oversight bodies, regulators have also placed audit governance responsibilities on the audit committee, including in the selection and evaluation of the external auditor.

To this end, **Bursa Securities Listing Requirements** call upon audit committees to be proactive in overseeing the external audit process including the appointment of the external auditor.

Paragraph 15.12 of Bursa Securities Listing Requirements

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) any letter of resignation from the external auditors of the listed issuer;
- (f) 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.

Note: Extract of paragraph 15.12 of Bursa Securities Listing Requirements pertaining to external auditor requirements.

Paragraph 15.21 of Bursa Securities Listing Requirements

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.

In exercising its oversight functionalities over the external audit process, the audit committee is also empowered to have direct access to the external auditors as and when needed.

Paragraph 15.17 (d) and (f) of Bursa Securities Listing Requirements

Functions 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 –

- have direct communication channels with the external auditors and person(s) carrying out the internal audit function or activity; and
- 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

Note: Extract of paragraph 15.17 of Bursa Securities Listing Requirements pertaining to external auditor requirements.

Similar provisions are also encapsulated for licensed financial institutions in **Bank Negara Malaysia's Policy Document on Corporate Governance** with the audit committee being required to foster a quality audit of the licensed financial institution. In exercising oversight over the external auditor, the audit committee of licensed financial institutions should take cognisance of the expectations and qualification requirements of the external auditor as set out in the **Bank Negara Malaysia's Policy Document on External Auditor**.

HOW? The practice in substance

In assessing the suitability, objectivity and independence of the external auditor, the audit committee should establish policies and procedures which cover all aspects of the audit service provided by the audit firm.

The audit committee's recommendation on the appointment of an external auditor should be based on an assessment of the independence and capabilities of the external auditor as well as the effectiveness of the audit process.



Key considerations relating to the application of these Practices **(Practices 9.2 and 9.3 of MCCG)** are discussed on the following page.

MCCG Practice 9.2
The Audit Committee has a policy that requires a former partner of the external audit firm of the listed company1 to observe a cooling-off period of at least three years before appointed as a member of the Audit Committee.

MCCG Practice 9.3
The Audit Committee has policies and procedures to assess the suitability, objectivity and independence of the external auditor to safeguard the quality and realibility of audited financial statements.

What are policies and procedures that can be put in place by an audit committee to assess the suitability (in terms of capabilities, objectivity and independence) of the external auditor?

Examples of policies and procedures (non-exhaustive) that can be established by the audit committee in this regard are outlined below:

Examples of policies:

- Having in place a policy on the appointment, re-appointment and removal of external auditor (including selection and qualification criteria)[4].
- Establishing a policy on the types of non-audit services that are prohibited and limits to the level of fees for non-audit services rendered by the external auditor.
- Having in place a policy to govern the appointment of all former partners of the audit firm and/or the affiliate firm as a member of the audit committee and/or employee.

Examples of procedures:

- Obtaining written assurance from the external auditors confirming that they are, and have been, independent throughout the conduct of the audit engagement in accordance with the terms of all relevant professional and regulatory requirements.
- Developing a list of audit quality indicators by the audit committee to monitor effectiveness of the external audit process. Examples of such indicators may include:
    - adequacy of audit scope;
    - ability of the external audit firm to meet audit deadlines;
    - timeliness in escalating audit issues to the audit committee;
    - allocation of resources to significant audit risk areas; and
    - effectiveness of the external audit firm's recommendations in addressing weaknesses observed during previous audits, particularly on internal controls relevant to financial reporting process.
- Performing an annual evaluation on the performance of the external auditor and undertaking follow-up measures thereafter *(note: a sample exhibit on the evaluation of external auditor is provided in **Appendix II** of this **Pull-out**).*

[4] ***Paragraph 15.21 of Bursa Securities Listing Requirements*** outlines the considerations in appointing an external auditor.

What are the salient areas that should be considered in evaluating an external audit firm's capabilities to conduct the audit?

In evaluating the external auditor's capabilities in relation to its expertise, experience, network and reputation, the audit committee should give consideration to a range of factors as set out below.

Relevant considerations in evaluating an external audit firm's capabilities (non-exhaustive):

- the audit firm's reputation and its presence in the industry;
- qualifications of its professionals, including the breadth and depth of resources and experience of the team members;
- networking ability and competency to address overseas subsidiaries not audited by the firm (i.e. its liaison capability with the secondary auditors);
- audit methodology employed by the firm such as the underlying methodology and materiality used to determine the nature, extent and timing of testing required;
- the internal quality control processes in place (e.g. independent quality control review and approach to audit judgments); and
- how the audit firm delivers value other than through the provision of the statutory audit report.

In addition, the audit committee should also consider information presented in the Annual Transparency Report of the external audit firm for which the minimum content would include the following[4]:

Legal and governance structure
• Legal and ownership structure • Governance and leadership structure • Network and structural arrangements • Disclosure on partners with substantial equity in the partnership • Disclosure on family relationship between partners undertaking leadership role or holding substantial equity in the partnership with other partners of the external audit firm

[4] AOB's Annual Inspection Report 2020

Measures undertaken by the external audit firms to uphold audit quality and manage risks
• Firm's systems of quality controls • Accountability framework for partners • Compliance monitoring • Risk management process

Information on the external audit firm's measurement of indicators for audit quality comprising 15 indicators to be disclosed relating to:
• Audit partner workload • Auditor independence • Capacity and competence of the firm • Audit engagement supervision • Firm's investments to uphold quality • Monitoring reviews on quality

If the external audit firm is not required to issue an Annual Transparency Report, the audit committee is encouraged to engage the audit firm on matters typically covered in an Annual Transparency Report including the audit firm's governance and leadership structure as well as measures undertaken by the firm to uphold audit quality and manage risks.

How can the audit committee institute policies and procedures to avert potential threats to an external auditor's independence?

Two key issues that commonly bear on the external auditor's independence are the provision of non-audit services as well as the appointment of all former partners of the audit firm and/or the affiliate firm (entities that are related to the audit firm including those providing advisory services, tax consulting etc.) as a director or an employee of the company who is in a position to exert significant influence over the preparation of financial statements.

As mentioned above, the audit committee should put in place policies and procedures to aid in the safeguarding of the external auditor's independence and objectivity, taking into consideration relevant professional and regulatory requirements. The policies and procedures should provide adequate coverage on the aspects of provision of non-audit services as well as appointment of former partners of the audit firm and/or the affiliate firm (as elaborated below):

Provision of non-audit services

Provision of non-audit services by the external auditor to a company may result in misaligned incentives. In such instances, external auditors may be exposed to the possibility of reviewing part of their own work or have their objectivity challenged by over-reliance on the fee generated and the familiarity developed with the company.

Appointment of former partners of the audit firm and/or the affiliate firm

There may be serious concerns to objectivity when a member of the audit firm and/or the affiliate firm joins the company (the audit client) and is in a position to exert significant influence over the preparation of the company's financial statements.

i) Provision of non-audit services

Prior to the provision of any non-audit services by the external auditor, the audit committee should review and approve the acceptance of such engagements, drawing guidance from the **By-Laws (on Professional Ethics, Conduct and Practice) by the Malaysian Institute of Accountants ("MIA")**. If the non-audit service results in concerns on independence to an extent that they cannot be reduced to an acceptable level by the application of safeguards, the non-audit service shall not be accepted.

Examples of non-audit services that shall not be provided by the external auditors of a public interest entity pursuant to the **By-Laws (on Professional Ethics, Conduct and Practice) by the MIA** are outlined below.

Prohibited non-audit services (non-exhaustive)[5]:

- **accounting and bookkeeping services**, including payroll services and the preparation of financial statements or financial information;
- **valuation services** if the valuations would have a material effect on the financial statements;
- **preparation of tax calculations** of current and deferred tax liabilities (or assets) for the purpose of preparing accounting entries that are material to the financial statements;
- **internal audit services** that relate to a significant part of the internal controls over financial reporting, financial accounting systems or amount or disclosures that are material to the financial statements;
- **design or implementation of information systems** that form a significant part of the internal control or information on financial reporting, accounting records or financial statements;
- acting in an advocacy role on behalf of the company to resolve a **dispute or litigation** when the amounts involved are material to the financial statements;
- **recruiting services** with respect to a director, officer or senior management personnel who would be in a position to exert significant influence over the preparation of accounting records or the financial statements; and
- **corporate finance services** which involve promoting, dealing in, or underwriting shares.

[5] *Section 600 of the By-Laws (on Professional Ethics, Conduct and Practice)* by the MIA

In accordance with **Bursa Securities Listing Requirements**, disclosure should also be made on the nature and extent of non-audit services if the fees on such services are "significant".

Paragraph 18, Part A, Appendix 9C of Bursa Securities Listing Requirements

The content of an annual report must contain the following particulars in relation to the audit and non-audit services rendered to the listed issuer or its subsidiaries for the financial year:

- amount of audit fees paid or payable to the listed issuer's auditors, stating the amount incurred by the listed issuer and the amount incurred on a group basis respectively; and
- amount of non-audit fees paid or payable to the listed issuer's auditors, or a firm or corporation affiliated to the auditors' firm, stating the amount incurred by the listed issuer and the amount incurred on a group basis respectively. If the non-audit fees incurred were significant, details on the nature of the services rendered. If no non-audit fees were incurred, a statement to that effect.

*Note: **Item 9.47A of the Questions and Answers in relation to Bursa Securities Listing Requirements** clarifies that listed issuers should consider the amount of non-audit fees incurred compared to the amount of audit fees paid to determine if the non-audit fee is "significant". Generally, if the non-audit fees constitute 50% of the total amount of audit fees paid to their external auditors, then such non-audit fees are regarded as significant.*

ii) Appointment of former partners of the audit firm and/or the affiliate firm

The circumstances under which former partners of the audit firm and/or the affiliate firm can be appointed to the board or be employed by the company should be governed. There should be stipulations on a cooling-off period to govern the independence of such appointments. An illustrative disclosure highlighting the stipulations on appointing former partners of the audit firm and/or the affiliate firm as members of the company's audit committee or employees is shown on the following page with the following elements outlined:

- responsibility of the audit committee to oversee the policy;
- coverage of policy (i.e. applicable to former partners of the audit firm and/or the affiliate firm and other audit team members); and
- length of cooling-off period established.

Illustrative disclosure

As part of its remit, the audit committee keeps under review the objectivity, independence and effectiveness of the external auditor. The committee has approved a policy on appointment of former partners of the audit firm and/or the affiliate firm and former employees of the external auditor firm, to the company. Under this policy:

- On an ongoing basis, the audit committee agrees with the external auditors which members of the audit team are categorised as "partners of the audit firm and/or the affiliate firm" and "other key team members of the audit engagement team".
- Former partners of the audit firm and/or the affiliate firm will not be offered employment or be appointed as a member of the audit committee by the company or any of its related corporations within three years of undertaking any role on the audit.
- Other key team members of the audit engagement team will not be offered employment or be appointed as a member of the audit committee by the company or any of its related corporations within six months of undertaking any role on the audit.
- Other audit engagement team members who accept employment or are appointed as a member of audit committee by the company or any of its related corporations must cease the audit activity immediately and tender their resignation to the audit firm.

Any offer of employment to a former employee of the audit firm in respect of a senior management position or appointment of the former employee as a member of the audit committee must be pre-approved by the audit committee. Between meetings, the audit committee chairman has the delegated authority to deal with such appointments at his or her discretion. Any such interim approval must be ratified at the next meeting of the committee.

Adapted from KPMG's Audit Committee Institute Handbook 2017

WHERE? Regional/International perspectives

As with Malaysia, audit committees in many jurisdictions including Singapore and United Kingdom are tasked to exercise robust oversight of the external audit process, including in evaluating the suitability and independence of the external auditor.



Country	Provision(s)
Singapore	The duties of the audit committee include: (a) making recommendations to the Board on: (i) the proposals to the shareholders on the appointment and removal of external auditors; and (ii) the remuneration and terms of engagement of the external auditors; (b) reviewing the adequacy, effectiveness, independence, scope and results of the external audit and the company's internal audit function ***[Provision 10.1 (a) and (b)]*** The audit committee does not comprise former partners or directors of the company's existing auditing firm or auditing corporation: (a) within a period of two years commencing on the date of their ceasing to be a partner of the auditing firm or director of the auditing corporation; and in any case, (b) for as long as they have any financial interest in the auditing firm or auditing corporation ***(Provision 10.3)***

Country	Provision(s)
United Kingdom	The main roles and responsibilities of the audit committee should include: • conducting the tender process and making recommendations to the board, about the appointment, reappointment and removal of the external auditor, and approving the remuneration and terms of engagement of the external auditor • reviewing and monitoring the external auditor's independence and objectivity • reviewing the effectiveness of the external audit process, taking into consideration relevant United Kingdom professional and regulatory requirements • developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, taking into account the relevant regulations and ethical guidance in this regard, and reporting to the board on any improvement or action required ***(Extract of Provision 25)*** The annual report should describe the work of the audit committee, including: • the significant issues that the audit committee considered relating to the financial statements, and how these issues were addressed • an explanation of how it has assessed the independence and effectiveness of the external audit process and the approach taken to the appointment or reappointment of the external auditor, information on the length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans;

Country	Provision(s)
United Kingdom	• in the case of a board not accepting the audit committee's recommendation on the external auditor appointment, reappointment or removal, a statement from the audit committee explaining its recommendation and the reasons why the board has taken a different position (this should also be supplied in any papers recommending appointment or reappointment) • an explanation of how auditor independence and objectivity are safeguarded, if the external auditor provides non-audit service ***(Extract of Provision 26)***

Composition and Calibre of the Audit Committee

MCCG Intended Outcome 9.0
There is an effective and independent Audit Committee.

The board is able to objectively review the Audit Committee's findings and recommendations. The company's financial statement is a reliable source of information.

Step Up 9.4
The Audit Committee should comprise solely of Independent directors.

Practice 9.5
Collectively, the Audit Committee should possess a wide range of necessary skills to discharge its duties. All members should be financially literate, competent and are able to understand matters under the purview of the Audit Committee including the financial reporting process.

All members of the Audit Committee should undertake continuous professional development to keep themselves abreast of relevant developments in accounting and auditing standards, practices and rules.

WHY? The case for change

Independence and financial literacy are the cornerstone of a well-functioning audit committee. The ability of its members to exercise their judgment in an informed and impartial manner is important to the fulfilment of the audit committee's mandate, especially in overseeing and providing advice to the board on the areas of financial reporting, related party transactions and conflicts of interest, internal control environment, internal audit and external audit processes.

It should be noted that the core functions of audit committees set out in many, if not all, global authoritative governance documents, are expressed in terms of "evaluation", "assessment" or "review" of the aforementioned areas. The undertaking of such responsibilities would naturally necessitate audit committee members to critically and objectively apply a probing view on pertinent matters, particularly in areas which involve a high degree of judgment. In many instances, audit committee members are expected to take tough, constructive, or even unpopular stances, all of which requires sound financial literacy and call for independence in "thought and action".

Research findings indicate that the independence and competence, including financial literacy, of the audit committee have a positive and significant influence on investment decision making, as a result of improved quality of financial reporting, internal control and audit, that increases investor trust[1].

Recognising that objectivity is essential to the proper functioning of the audit committee, regulators have outlined provisions on the composition of the audit committee with due regard to the element of independence.

Paragraph 15.09(1)(a) and (b) of Bursa Securities Listing Requirements

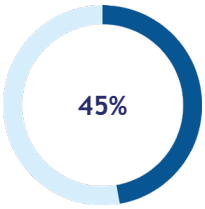
A listed issuer must appoint an audit committee from amongst its directors which fulfils the following requirements:

(a) the audit committee must be composed of not fewer than 3 members; and

(b) all the audit committee members must be non-executive directors, with a majority of them being independent directors.

*Note: Only requirements pertaining to the composition of the audit committee are extracted from the said paragraph. Similar provisions are also applicable for financial institutions under **Standard 12.3 of Bank Negara Malaysia's Policy Document on Corporate Governance**. The requirements in relation to the composition of audit committees for financial institutions are the same as that of other board committees.*

A large number of companies have wholly independent audit committees[2], premised on the proposition that such a committee would be better positioned to perform the functions entrusted to it. A review of annual reports across the top 100 listed issuers (by market capitalisation) in Malaysia as at 31 March 2021 revealed that 45% of them have audit committees which are composed exclusively of independent directors[3].



Companies with wholly independent audit committees in the top 100 listed issuers (by market capitalisation) as at 31 March 2021.

[1] Al-Hadrami, A et al. 2020, *The impact of an audit committee's independence and competence on investment decision: A study in Bahrain*, Asian Journal of Accounting Research
[2] Referring to audit committees comprising wholly of independent directors
[3] Review undertaken by KPMG Management & Risk Consulting Sdn Bhd in 2021

Further reflection

Several research studies have shown that the value of having an audit committee comprising solely of independent directors can be particularly evident when a company is undergoing financial distress.

For example, a prominent research performed by Bronson et.al highlighted that wholly independent audit committees are more likely to protect external auditors' independence during a dispute with management of a financially distressed company. The research highlighted that given the negative consequences associated with a going concern report (an opinion by the auditors that the company may not be viable in the foreseeable future), management may try to pressure the external auditor into not issuing the said report when one is warranted. In such a scenario, having a fully independent audit committee would more likely lead to objective support for the external auditor and mitigate pressure from management relating to the going concern reporting decision. Conversely, audit committees with members who are affiliated with management were found to be more likely in replacing the external auditor in such a circumstance[4].

In the course of establishing a fully independent audit committee, boards are not expected to compromise on the skill sets and make unwieldy changes to the composition of the audit committee. In order to create a conducive environment for insightful deliberations of the audit committee, boards should ensure that the enlisted independent audit committee members are financially literate and have a sufficient understanding of the company's business.

As businesses become more complex, globalised, and increasingly face new risks, the breadth and complexity of the audit committee responsibilities similarly continue to increase. The need for audit committee members to possess sound financial understanding is now made more important than ever by the changes in business models and financial reporting requirements.

[4] Bronson, SN et al. 2009, *"Are fully independent audit committee really necessary?"*, Elsevier

In order to ensure that the audit committee is well-equipped to carry out its mandate, regulators have emphasised the importance of having members with accounting or financial acumen.

Paragraph 15.09(1)(c) of Bursa Securities Listing Requirements

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.

It is important to note that financial literacy is a prerequisite for each member to deliver tangible value to the functions of the audit committee. Having only a single audit committee member with special knowledge or skills in accounting would place undue reliance on that one individual and render the deliberations of the audit committee ineffective. To this end, the audit committee as a whole should consist of financially literate members who would be able to challenge, encourage and support each other in a more meaningful manner.

HOW? The practice in substance

It is therefore incumbent on the board to assess the composition and calibre independence of its audit committee, and consider establishing a wholly independent audit committee with the range of skills, experience, knowledge and qualifications, that can further strengthen the company's corporate governance practices and processes. Every member's appointment is an occasion for careful deliberation and the board should have a strong understanding of how imperative is independence to the effective functioning of the audit committee, and sound understanding of the language of accounting and finance to the performance of its duties.

Key considerations relating to the application of this **Step up** are discussed below:

Step Up 9.4
The Audit Committee should comprise solely of Independent directors.

As with other independent directors, independent audit committee members should display a strong element of objectivity, both in appearance ("perceived independence") as well as of mind ("independence in thought and action").

Step Up 9.4
The Audit Committee should comprise solely of Independent directors.

Practice 9.5
Collectively, the Audit Committee should possess a wide range of necessary skills to discharge its duties. All members should financially literate, competent and are able to understand matters under the purview of the Audit Committee including the financial reporting process.

All members of the Audit Committee should undertake continuous professional development to keep themselves abreast of relevant developments in accounting and auditing standards, practices and rules.

- drives for complete and accurate financial and non-financial information disclosures that reflect substance over form which can be issued on a timely basis;
- actively engages internal and external auditors and fosters candid two-way relationship;
- suspends prevailing assumptions and continues to ask questions until satisfactory responses are obtained;
- changes the angle of debate to probe for further information;
- raises any issues or "red flags" promptly with the audit committee chair; and
- leverages on internal and external audit findings to review the way management manages business risks as well as how the risks are managed to enhance shareholder value.

The consideration of independence is often a matter of substance rather than mere compliance with specific rules. The board should also be cognisant and mindful of situations in which the regulatory definition of independence is met, yet impairment of objectivity or perceived conflicts of interest may still arise.

There are four facets of independence which the audit committee must concern itself with:

- The audit committee must be independent from management.
- External auditor's opinions must be solely based on its independent professional judgement, without influence from management.
- The company's internal auditors must be independent from management and report directly to the audit committee.
- The board and management should be independent from vendors or any other third parties, and where personal relationships exists, they must be disclosed and the relevant personnel must recuse themselves from discussions and voting on the matters.

How should audit committee members deal with conflict of interest situations?

Audit committee members should declare any matter in which they have an interest. Normally, the process for recording declarations of conflicts of interest in the audit committee should mirror that used by the board. Each member of the committee should undertake to declare proactively, at the outset of each meeting, any potential conflict of interest relating to the affairs of the committee or from changes in the member's personal circumstances.

Depending on the nature, extent and potential duration of the conflict of interest situation, the chairman of the audit committee should then determine an appropriate course of action with the said member. For example, the member might be asked to abstain from deliberation and decision-making, or in more extreme cases, the member could be asked to step down from the committee.

If it is the chairman of the audit committee that has a conflict of interest, the board should ask another member of the committee to lead in determining the appropriate course of action.

What constitutes a financially literate audit committee member?

To carry out its duties of financial oversight efficiently, it is of utmost importance that members of the audit committee possess sound financial literacy. Research findings indicate that the efficiency of an audit committee is enhanced by the financial expertise of its members, as it allows them to engage with management and external auditors in a more thorough manner, improving clarity and reliability of reporting and information flow[5].

[5] Anasweh, M 2021, *The relationship between audit committee characteristics and bank performance*, Turkish Journal of Computer and Mathematics Education

Financial literacy goes beyond basic familiarity with financial statements and would include the following:

Attributes of a financially literate audit committee member[6]:

- ability to read and understand financial statements, including a company's statement of financial position, statement of profit or loss and other comprehensive income, statement of changes in equity, cash flow statement, notes to the statements, cost accounting, budgets and management's discussion and analysis ("MD&A");
- ability to understand and assess the general application of accounting principles and apply a critical view on the underlying assumptions;
- ability to analyse financial statements and challenge management's assertions on financials;
- awareness of, and familiarity with, new financial reporting standards and how they impact the company's financial performance to enable the member to ask pertinent questions;
- ability to assess the effectiveness of the audit process and the company's finance functions in generating reliable and timely financial information; and
- ability to ask probing questions about the company's operations against internal controls and risk factors.

Note: A sample questionnaire is provided in the Appendix IV of this Pull-Out in order to further understand and assess who may qualify as a financially literate member.

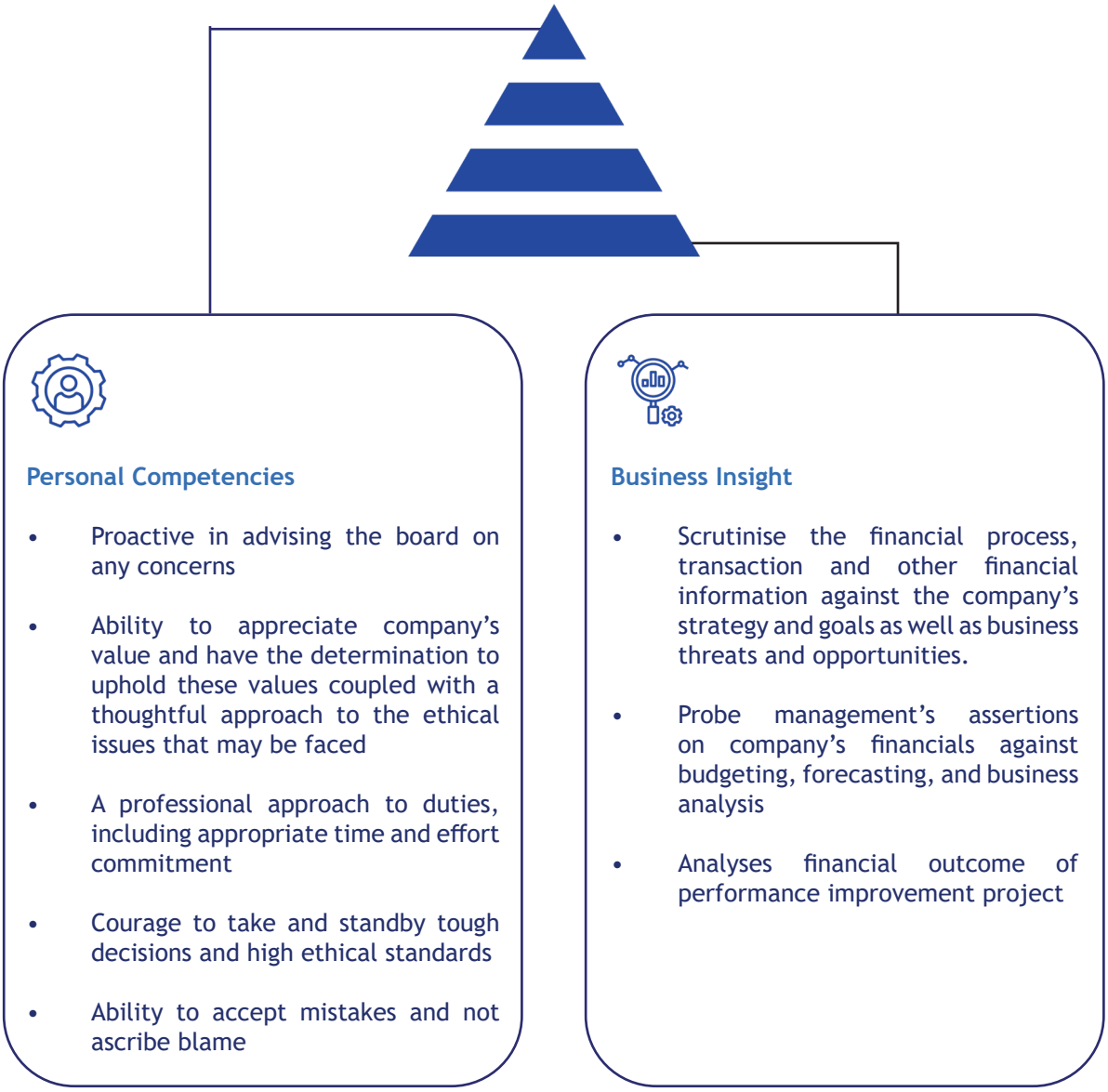
Examples of indicators which may highlight a lack of financial literacy amongst audit committee members are as follows:

- inability of the audit committee to critically probe highly risky transactions as well as key accounting policies and judgments adopted by the company in its financial reporting;
- undue reliance by the audit committee on management, auditors and experts to ensure the reliability of the financial statements; and
- lack of strategic input from the audit committee to the board on the drivers of financial performance.

What are the other qualities that should be considered in selecting audit committee members?

The audit committee members' financial literacy should be supplemented with personal competencies, and a sufficient understanding of the company's business, as captured in the ensuring page:

[6] *Adapted from the Guidebook for Audit Committees in Singapore (2014) issued by the Audit Committee Guidance Committee*



How can new audit committee members be onboarded effectively?

The requirements for specialised skills, expertise and qualities (i.e. financial literacy, objectivity, business insights) to occupy the audit committee may result in new or specialist directors joining the audit committee. The company should ensure that they are supported through a thoughtfully designed onboarding process which is tailored to the new member's background and experience.

The onboarding process should include meetings with heads of business units, including the chief financial officer, head of internal audit, general counsel, company secretary, head of investor relations, to gain insights that are valuable to the directors understanding of his or her duties.

Additionally, the audit committee member should visit operational sites beyond the company's headquarters, such as factories, so as to gain a wholistic perspective on the company for better insights into the facts and figures listed above.

The onboarding components outlined above are also be applicable to experienced audit committee members, as the nature of business, risks, and challenges companies face are wide ranging.

What is the nature of continuous professional development programmes that should be undertaken by audit committee members?

Given the ever changing financial reporting and corporate landscape, it is essential for members of the audit committee to undertake continuous professional development to keep themselves abreast of relevant developments, as outlined in the areas below.

Core functions

- Accounting and auditing standards
- Internal audit framework
- Internal audit and external audit processes
- Financial management
- Corporate governance
- Regulatory and compliance requirements
- Risk management

Skills development

Technical skills:

- Reviewing internal controls
- Reviewing financial statements and audit reports
- Reviewing related party transactions and conflict of interest situations
- Reviewing enterprise risk management processes

Interpersonal skills:

- Questioning, challenging and supporting management and auditors

Role and purpose of the audit committee

- Key roles and responsibilities
- Accountability

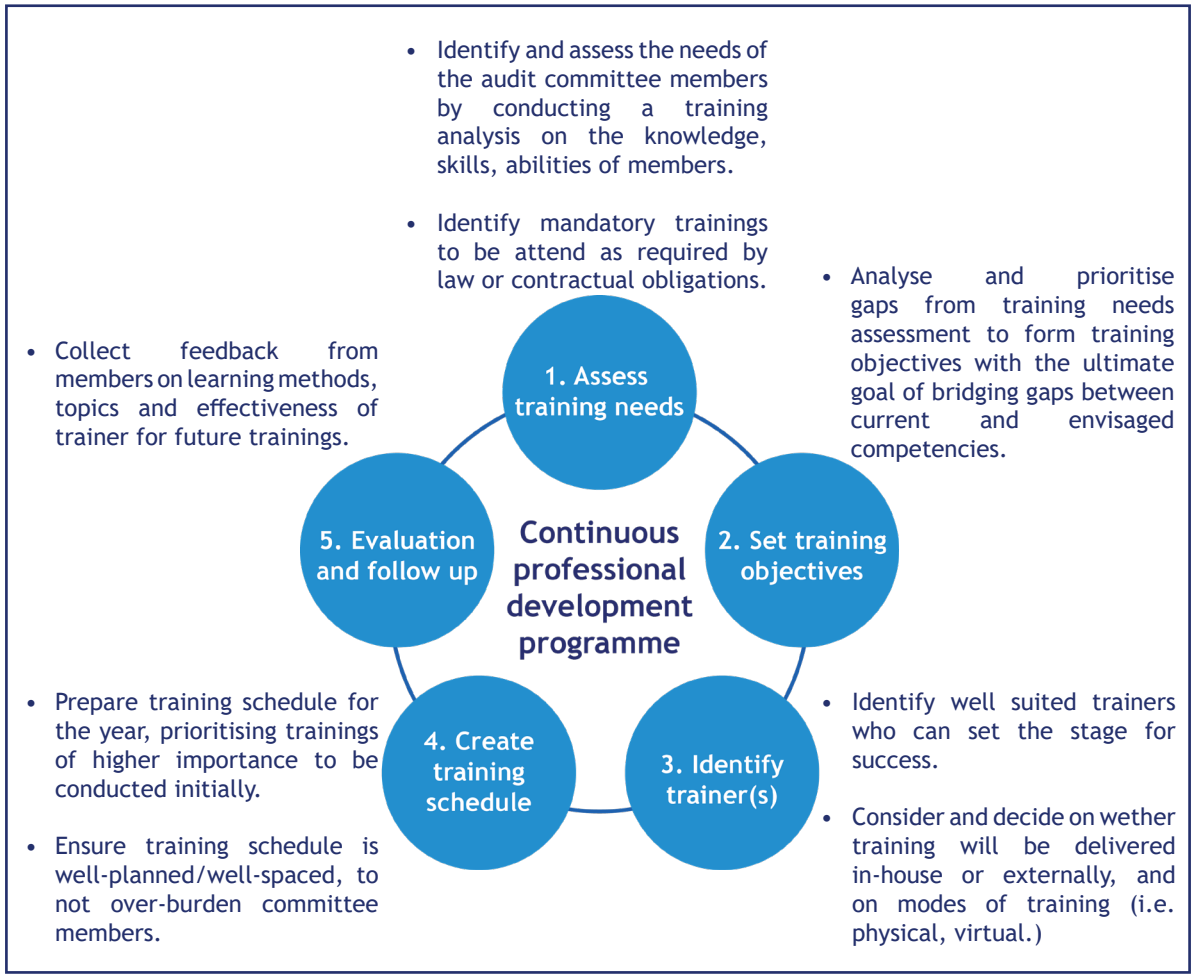
Topical updates

Examples include:

- New auditors report
- Corporate reporting
- Cybersecurity and data analytics
- Financial technology and digital economy
- Regulatory changes
- Transformations to business environment

Adapted from United Kingdom's Chartered Institute of Public Finance and Accountancy

To ensure training programmes undertaken by audit committee members are systematic and able to meet the learning objectives and participants expectations, the following steps should be undertaken with the support of the company secretary:



How can the deliberations of the audit committee be enriched?

Effective audit committee deliberations necessitate members to get to the root of the issues that is impacting the company's financial reporting process. This includes an assessment of relevant non-financial information such as business model and other operational aspects that can have a significant bearing on the company's value creation process. Audit committee members are required to apply an inquiring mind and make informed inquiries. Whilst audit committee members are entitled to avail themselves to external advisors, they should take a diligent and an informed interest in the information that is presented to them.

Applying an inquiring mind and making informed inquiries are key aspects of effective audit committee oversight. One of the world's distinguished investors, Warren Buffet is known for three key questions he developed for audit committees to consider, and he suggests the discussion of these matters be documented in the minutes of their meetings[7].

[7] Herdman, RK 2002, *Making Audit Committees More Effective*, Securities and Exchange Commission

Question I

If the auditor were solely responsible for the preparation of the company's financial statements, would they have been prepared in any way different than the manner selected by management? The audit committee should inquire as to both material and non-material differences.

Question II

If the auditor were an investor, would he have received the information essential to a proper understanding of the company's financial performance during the reporting period?

Question III

Is the company following the same internal audit procedure that would be followed if the auditor himself were the chief executive officer ("CEO")? If not, what are the differences and why?

A list of indicators that the audit committee should be aware of in relation to financial reporting and examples of questions to be posed to management on financial reporting are outlined in **Appendix I** of this **Pull-out**.

Case study: Toshiba Corporation (Japan)

Background:
- In 2015, it was revealed that Toshiba had overstated its earnings by JP¥ 151 billion (approximately USD 1.2 billion) for the period 2008 to 2014 in accounting irregularities, where the company's top management were involved[8].

Facts:
- An independent investigation committee comprising independent and impartial external experts was established, in 2015, to investigate the appropriateness of accounting treatments, and where deemed inappropriate, to investigate the cause and provide recommendations.
- The investigation committee had filed a report to the Tokyo Stock Exchange on its findings.
- The report highlighted the issues in the accounting treatment and crucially too, on the composition of the audit committee[9];
  - In an attempt to meet profit targets, Toshiba implemented a mechanism known as carry-over to overstate current year profits by adjusting profits and losses since 2008;

[8] Ando, R 2015 *Toshiba inflated profits by $1.2 billion with top exes' knowledge: Investigation*, Reuters
[9] *Investigation Report: Summary Version* 2015, Independent Investigation Committee for Toshiba Corporation

	◦ There was no evidence that the audit committee reported or commented on the inappropriate carry-overs. Additionally, there was difficulty in confirming that checks of the appropriateness of the accounting and financial reports were sufficiently implemented; ◦ Of the several projects for which the accounting was investigated, it was noted that the audit committee was aware of issues, but did not raise red flags or challenge the accounting treatment; ◦ In 2015, audit committee member, Seiya Shimaoka, had suggested to the audit committee chairman, Makoto Kubo, and other members, for a thorough examination regarding the accounting treatment for a restructure exercise which was resolved at a 2014 board meeting, to review whether there were issues related to the accounting treatment, but his repeated requests were not taken up. The report shows that there were indeed issues with the accounting related to the restructuring exercise; ◦ The former CFO of Toshiba, Tomio Muraoka, had chaired the audit committee from June 2011 to June 2014, after which he was succeeded by the next former CFO Makoto Kubo, who took over the position from June 2014; and ◦ At the time when the inappropriate accounting treatments had taken place, the audit committee was structured such that there was one full time member (the former Chief Financial Officer) in charge of finance and accounting audits, and the three other members, were outside directors, but unfortunately, did not possess adequate knowledge of finance and accounting. • In its recommendations, the investigating committee had stressed the need for Toshiba to appoint audit committee members who are familiar with finance and accounting, and for the audit committee to comprise independent directors.
Lessons Drawn:	• Independence of the audit committee members needs to be ensured from both aspects, namely “independence in appearance” and “independence of mind”, so that they are free from associations or circumstances that may impair the exercise of their independent judgement, and their thoughts and actions can be translated in their courage to stand up for an objective point of view. • Being financially literate enables audit committee members to carry out their duties successfully, being able to effectively challenge management’s assertions, as well as remain vigilant and raise skepticism on financial anomalies or irregularities in financial statements.

WHERE? Regional/International perspectives

Alongside Malaysia, jurisdictions such as Canada, South Africa and United Kingdom have incorporated enumerations for public listed companies to establish audit committees which comprise solely of independent directors.



Country	Provision(s)
Canada	Every audit committee member must be independent ***[Extract of Provision 3.1(3)]***. Every audit committee member must be financially literate ***[Extract of Provision 3.1(4)]***.
South Africa	The members of the audit committee should, as a whole, have the necessary financial literacy, skills and experience to execute their duties effectively ***(Recommended Practice 55 of Principle 8)***. All members of the audit committee should be independent, non-executive members of the governing body ***(Recommended Practice 56 of Principle 8)***.

Country	Provision(s)
South Africa	The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two. The chair of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates ***(Provision 24)***.

Risk Management and Internal Controls

MCCG Intended Outcome 10.0
Companies make informed decisions about the level of risk they want to take and implement necessary controls to pursue their objectives.

The board is provided with reasonable assurance that adverse impact arising from a foreseeable future event or situation on the company's objectives is mitigated and managed.

MCCG Practice 10.1
The board should establish an effective risk management and internal control framework.

MCCG Practice 10.2
The board should disclose the features of its risk management and internal control framework, and the adequacy and effectiveness of this framework.

WHY? The case for change

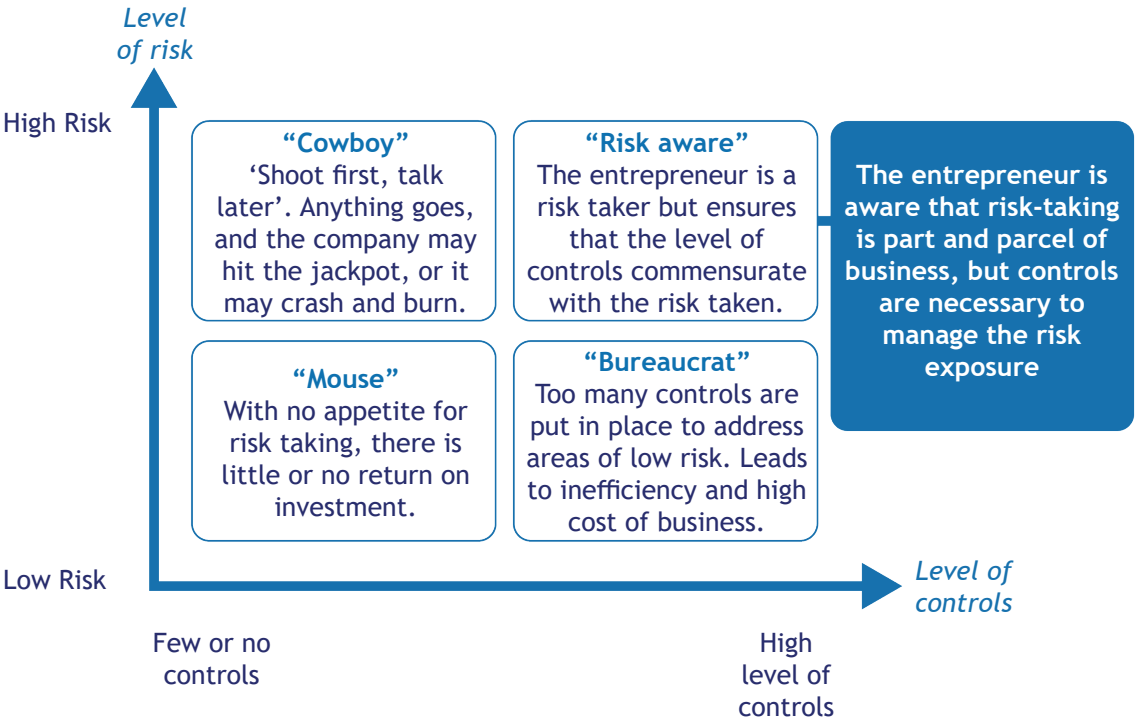
The changing nature risk, the art and science of choice, lies at the core of our modern economy. Every path that the board and management take in the pursuit of a business objective or strategy has its risks. From day-to-day operational decisions to the fundamental trade-offs in the boardroom, dealing with risk in these choices is a part of decision-making[1]. Risk management and internal controls provide the foundational systems and frameworks in which risks are managed, monitored and mitigated in order to increase the likelihood that established objectives and goals will be achieved. Within that definition, controls are the action taken by management who plan, organize and direct the performance of sufficient measures in providing reasonable assurance that objectives and goals will be achieved[2].

The understanding of risk management and internal controls as a value-adding proposition to a company is burgeoning. And when risk is considered in the formulation of an organisation's strategy and business objectives, enterprise risk management[3] helps to optimise outcomes and contribute to the performance of a company.

[1] *Enterprise Risk Management Integrating with Strategy and Performance*, 2017. The Committee of Sponsoring Organizations (COSO).
[2] Note: Definition adapted from; *Topics and Resources: Governance, Risk & Control*. 2021. The Institute of Internal Auditors.
[3] Defined here as: *"Enterprise risk management is a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives."* Source: Enterprise Risk Management — Integrated Framework Executive Summary, 2004. COSO.

Risk is defined by COSO as "the possibility that events will occur and affect the achievement of strategy and business objectives."[4]. Correspondingly, risks are no longer confined to operational or business risk, but companies are exposed to an ever expanding range of ESG risks.

The diagram below is commonly used to illustrate the relationship between entrepreneurship and risk management, and how they are complementary and not mutually exclusive.



Risk management and internal controls have become integral components in enhancing business resilience as we continue to live in a world that is volatile, uncertain, complex and ambiguous (VUCA). VUCA changes how organisations view the world, interact with each other, and respond to their environments. The manifestation of VUCA can be seen in many forms – the global COVID-19 pandemic, a massive collapse in oil and commodity prices, acts of terrorism, cyber security threats, natural disasters, climate change, and many more globally identified risks that can change the course of a business entity[5]. That is why organisation need to be more adaptive to change. Boards and management need to think strategically about how to manage the increasing volatility, uncertainty, complexity, and ambiguity of the world.

[4] *Compliance Risk Management: Applying the COSO ERM Framework*. 2020. COSO.
[5] *The Global Risks Report*, 2021. World Economic Forum.

Therefore, running a business with an appropriate risk management and internal control framework can be equated to driving fast whilst equipped with brakes. An agile board and management team can also gain value from establishing a robust risk management and internal control framework by steering the car (i.e. provide conscious leadership), checking the side mirror (i.e. learning lessons from the past) and looking ahead towards the final destination (i.e. future-oriented risk management).

Some of the benefits of risk management and internal controls are as follows:

- sharpens corporate strategy and heightens strategic focus;
- frees up capital to be invested in activities with higher returns;
- reduces costs;
- improves the risk finance portfolio;
- improves regulatory and legal compliance;
- enhances reputation and the company's attractiveness to investors;
- supports long-term plans and the sustainability of the business;
- equips the necessary structures for business continuity management; and
- acts as the platform for sound managerial decision-making.

HOW? The practice in substance

As with the **MCCG**, the **Companies Act 2016** and **Bursa Securities Listing Requirements** outline prescriptions on internal controls and risk management.

Section 246(1) of Companies Act 2016

The directors of a public company or a subsidiary of a public company shall have in place a system of internal control that will provide reasonable assurance that –

(a) the assets of the company are safeguarded against loss from unauthorized use or disposition and to give a proper account of the assets; and

(b) all transactions are properly authorized and that the transactions are recorded as necessary to enable the preparation of true and fair view of the financial statements of the company.

Paragraph 15.12(1) of Bursa Securities Listing Requirements

Without limiting the generality of **paragraph 15.11**[6] 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:

(b) with the external auditor, his evaluation of the system of internal controls;

(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.

Note: The above only represents an extract.

Paragraph 15.23 of Bursa Securities Listing Requirements

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.

[6] Requirement for audit committee to have written terms of reference

Flowing from the above, providing balanced disclosures in relation to risk management and internal controls (highlighting areas of strengths as well as improvement considerations) is important for shareholders and other stakeholders. To facilitate disclosure and pursuant to **paragraph 15.26(b) of the Listing Requirements**, the Statement on Risk Management and Internal Control: Guidelines for Directors of Listed Issuers ("SORMIC Guidelines") was issued by the Taskforce on Internal Control with the support and endorsement of Bursa Malaysia Securities Berhad.

Paragraph 15.26(b) of Bursa Securities Listing Requirements

A listed issuer must ensure that its board of directors makes the following additional statements in its annual report:

(b) a statement about the state of risk management and internal control of the listed issuer as a group.

Note: The above only represents an extract.

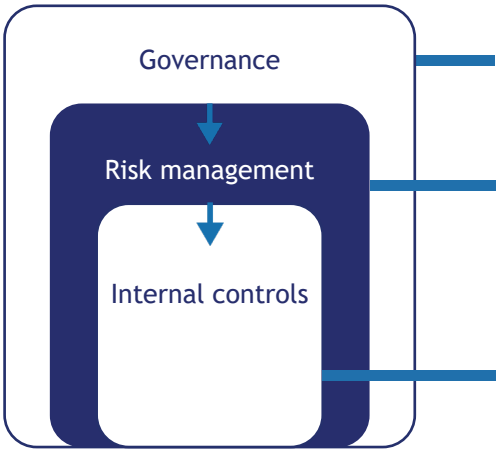
Enumerations in this regard for financial institutions are encapsulated in **Bank Negara Malaysia's Policy Document on Corporate Governance**[7]. **Paragraph 4 of the Bank Negara Malaysia's Policy Document on Corporate Governance** states that the established risk management committee is to support the board in meeting the expectations on risk management as set out in the policy document on Risk Governance[8].

[7] Paragraphs 3,4,5 7 and 12 of Appendix 1, Bank Negara Malaysia's Policy Document on Corporate Governance
[8] Bank Negara Malaysia's Policy Document on Risk Governance

It is helpful to view risk management and internal controls in the context of governance and how each element relates to the other:

The company's governance framework is always the starting point for its risk management and internal control processes. This is simply because the board will articulate the company's strategy, set the values and shape its culture.

These elements will influence the company's risk management appetite and in turn, the risk management appetite will dictate the kind of controls the entity will integrate into its business processes.



The board sets the strategy and defines the culture of the company. The risk-taking tone and philosophy is defined.

The risk management process works out risks associated with the company's strategic direction and also for its day-to-day operational processes. How much risk can the company bear at any one time without impacting its status as a going concern?

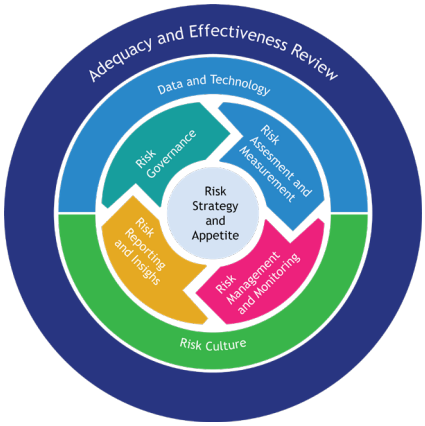
Internal controls are designed to address and manage risks identified. Stronger internal controls are assigned to areas of high risk whilst controls are moderated for processes that have a lower risk profile.

A number of methodologies have been developed to help companies approach risk management and internal controls in a systematic manner. Some of these have been widely accepted and include the following:

- ISO 31000 (2018) on principles and guidelines for risk management;
- The internal control environment framework suggested by the Committee of Sponsoring Organisations of the Treadway Commission (the "COSO framework" which in its latest iteration is now known as "Enterprise Risk Management—Integrating with Strategy and Performance", highlights the importance of considering risk in both the strategy-setting process and in driving performance); and
- Other globally recognised internal control and risk management frameworks developed by professional organisations include:
    - Criteria of Control Framework as developed by the Canadian Institute of Chartered Accountants or widely known as "CoCo Framework";
    - Control Objectives for Information and Related Technology, as published by the Information Systems Audit and Control Association (ISACA) and the IT Governance Institute or widely known as "COBIT";
    - KPMG's Enterprise Risk Management (ERM) methodology.

- Locally recognised internal control and risk management guidance documents that capture aspects on managing specific risks amongst other include:
    - **Bank Negara Malaysia's Policy and Guidance Documents** covering risk management in technology, compliance, agent management, e-money issuance etc; and
    - **Prime Minister's Department's Guidelines on Adequate Procedures** (Pursuant to **Subsection (5) of Section 17A** under the **Malaysian Anti-Corruption Commission Act 2009**) (on corruption and fraud risks).

Examples of key aspects contained in a frame of reference to drive the governance of risk management and internal controls in a systematic manner is outlined below:



KPMG's Enterprise Risk Management (ERM) methodology takes a structured, holistic approach to managing the uncertainties that businesses face. It relies on the creation of robust internal mechanisms for gathering, analysing, monitoring and understanding the relevant information. Rather than addressing risk in isolation, a strategic and coordinated approach to risk allows organizations to integrate data and improve risk management effectiveness. An integrated view of risk management strengthens the risk and compliance functions by creating collaboration, transparency, and accountability—and ultimately, a foundation of trust.

Risk strategy and appetite	Conscious collective decision to use risk management to support strategic objectives. It includes risk appetite statements and tolerance limits.
Risk governance	A structure through which the company directs, manages and reports its risk management activities. It encompasses clear roles and responsibilities, decision rights, the risk governance operating model, and reporting.
Risk assessment and measurement	Tools and techniques to identify, measure and quantify current and emerging risks. It allows companies to consider the extent to which potential events may have an impact on achievement of objectives.

Risk management and monitoring	Management's risk strategies and responses to manage risks and improve risk and business performance. Continuous monitoring against established metrics permits proactive and timely response where warranted.
Risk reporting and insights	Reporting of risk information provides insights on significant risks and the strengths and weaknesses in managing them. Disclosure of risk management information to key stakeholders also supports timely decision-making.
Data and technology	Information and associated storage and delivery mechanisms which provide management with a real time view of the key risks and how these are being managed (including risk register).
Risk culture	Values and behaviours that shape risk decisions. Risk culture influences the decisions of management and employees. A strong risk culture helps to encourage strategic decisions and long term value for all stakeholders.
Adequacy and effectiveness review	Internal processes by which management and the Board derive assurance on the overall adequacy and effectiveness of the internal control and risk management systems.

Whilst the board remains responsible over risk management and internal controls, the task of scrutinising the framework (i.e. its design and effectiveness) is often taken up by a board committee, typically the risk management committee and the audit committee. In some entities, these committees are combined. It is pertinent for the committee members to have sound knowledge of risk management and internal control concepts, and to be able to assess risks in an objective manner – given the elements of self-interest and pressure to achieve returns, representations made by management may not represent the true picture.

Key considerations relating to the application of these Practices **(Practices 10.1 and 10.2)** are discussed below:

MCCG Practice 10.1
The board should establish an effective risk management and internal control framework.

MCCG Practice 10.2
The board should disclose the features of its risk management and internal control framework, and the adequacy and effectiveness of this framework.

Some guidance are provided below:

- Establishing an effective and well-designed internal control system that takes into account

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

Appendix V of this Pull-out

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

advocated by COSO) are outlined on the following page.

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

Note: To explore more on the oversight and management of ESG risks, please refer to the write-up to Practice 4.1 - 4.5.

[9] *COSO Enterprise Risk Management—Integrating with Strategy and Performance*, 2017.

Five interrelated components of an internal control and risk management framework

Note: The term "objectives" in the explanations below refers to the objectives relating to operations, reporting and compliance.



Governance & Culture	1. Governance sets the organization's tone, reinforcing the importance of, and establishing oversight responsibilities for, enterprise risk management. 2. Culture pertains to ethical values, desired behaviors, and understanding of risk in the entity.
Strategy & Objective-Setting	3. Enterprise risk management, strategy, and objective-setting work together in the strategic-planning process. 4. A risk appetite is established and aligned with strategy; business objectives put strategy into practice while serving as a basis for identifying, assessing, and responding to risk.
Performance	5. Risks that may impact the achievement of strategy and business objectives need to be identified and assessed. Risks are prioritized by severity in the context of risk appetite. 6. The organization then selects risk responses and takes a portfolio view of the amount of risk it has assumed. The results of this process are reported to key risk stakeholders.

Review & Revision	7.	By reviewing entity performance, an organization can consider how well the enterprise risk management components are functioning over time and in light of substantial changes, and what revisions are needed.
Information, Communication & Reporting	8.	Enterprise risk management requires a continual process of obtaining and sharing necessary information, from both internal and external sources, which flows up, down, and across the organization.

Source: Adapted from the COSO Enterprise Risk Management—Integrating with Strategy and Performance[10]

How can the board assess the adequacy and effectiveness of the risk management and internal control framework?

The board should define the processes to be adopted for its on-going monitoring and review, including specifying the requirements, scope and frequency for reporting and assurance. The board should form its own view on effectiveness and adequacy of the risk management and internal controls, based on the evidence it obtains.

The board's assessment should, in particular, consider[11]:

- the company's willingness to take on risks (its "risk appetite"), the desired culture within the company and whether this culture has been embedded;
- the operation of the risk management and internal control systems, covering the design, implementation, monitoring and review, and identification of risks and determination of those which are principal to the company;
- the integration of risk management and internal controls with considerations of strategy and business model, and with business planning processes;
- any changes since the last assessment in the nature and extent of significant risks, and the company's ability to respond to changes in its business and the external environment;
- the work of its internal audit and risk management (where applicable) units and other assurance providers;
- the extent and frequency of the communication relating to the results of the monitoring, to the board [or board committee(s)];

[10] COSO is a framework that is developed by the International Committee of Sponsoring Organizations of the Treadway Commission to guide companies in designing, implementing and evaluating internal controls in response to the risks that are being faced by the company.
[11] *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* 2014, Financial Reporting Council of United Kingdom

- the incidence of significant control failings or weaknesses that were identified at any time during the period and their impact on the company's performance or condition (financial or otherwise);
- the integration of risk management and internal controls with ESG risks and opportunities; and
- any events that impacted the achievement of objectives that were not anticipated by management.

Further reflection

The exposure to nuanced risks such as regulatory, cyber security, information technology, reputational and geo-political risks are often overlooked (i.e. "orphan risks") and not integrated as part of a company's risk management framework, ultimately to a company's detriment. In the wake of corporate governance failures and the Global Financial Crisis 2007, non-financial risks have risen as an emerging issue due to systemic shock it could cause to the global economy[12].

In 2019, the Corporate Governance Taskforce of the Australian Securities and Investments Commission released a report on "Director and officer oversight of non-financial risk"[13] and found that many directors identified challenges with overseeing non-financial risks in large, complex organisations. One major takeaway is that in overall risk appetite and accompanying metrics for non-financial risk were immature compared to those for financial risk. Upon reviewing 29,000 documents which included board papers and minutes, in terms of information flow, it also learned four crucial gaps:

(1) material information about non-financial risk was often buried in dense, voluminous board packs – boards did not own or control the information flows from management to the board to ensure material information was brought to their attention;

(2) management reporting often did not identify a clear hierarchy or prioritisation for non-financial risks;

(3) care needed to be taken to ensure undocumented board sessions and informal meetings between directors didn't create asymmetric information at board level; and

(4) information flows between board committees and full boards were sometimes informal and ad hoc.

[12] *Global Financial Stability Report Responding to the Financial Crisis and Measuring Systemic Risk*. 2009. International Monetary Fund.
[13] *Executive Summary: Director and officer oversight of non-financial risk report*, 2019. Australian Securities and Investments Commission.

What are the common pitfalls that should be avoided in the management of risks?

The following are some of the issues the board should be wary of:

Common pitfalls in risk management:

- box-ticking rather than business-led assessment of risk approach;
- failure and/or the inability to prioritise principal risks in relation to their mitigating measures leading to unidentified strategic risks turning into emerging risks without a preparedness to respond;
- risks are managed in silos and their impact is not considered across business units and functions;
- inadequate attention is given to the ever changing internal and external market environment;
- merely discussing risk issues without integrating them into the board's own decision-making process, since strategic risks can be difficult to identify;
- general failure to embed risk management in the culture and processes of the company and its workforce, leading to the lack of a sustainable risk identification system in place across business units and functions;
- there is no precise documented accountability for managing risks;
- level of investment is not always a reliable proxy for the level of enterprise risk;
- the board does not have a sense of assurance arising from risk management implementation; and
- bad news is not easily communicated to the top.

Can internal controls be designed independently outside the risk management process?

Internal controls are policies and procedures put in place by management to ensure that, among other things, the company's financial statements are reliable[14]. The objective of the auditor (typically the internal auditor) is to identify and assess the risk of material misstatement, whether due to fraud or error, at the financial statement and assertion levels. It includes understanding the entity and its environment and the entity's internal controls in order to design the proper audit procedures to achieve the desired level of assurance. Internal controls as designed by the head of business units should be socialised to the respective users with clear guidance in the form of standard operating procedures. The design and operating effectiveness of the internal controls should be monitored closely and be subject to periodic internal audits.

The design of internal controls in silos and without reference to their associated risks can lead to an imbalance and consequently, certain key risk areas may be left unaddressed. For example, too many controls (and thus, resources) are put in place over petty cash, which in the grand scheme of things is hardly material to a company's survival.

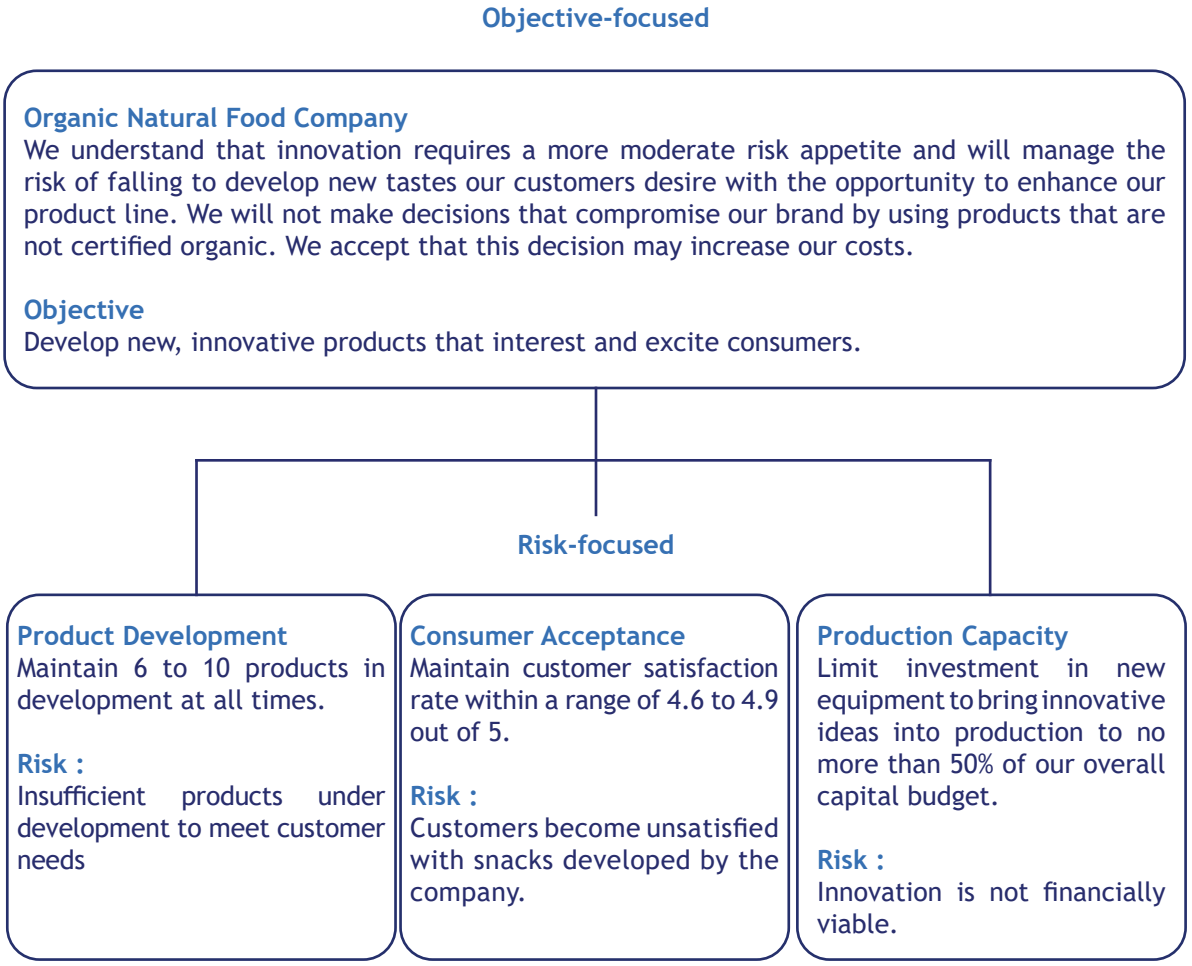
Testing of internal controls includes making inquiries to management and employees, inspecting source documents, observing inventory counts, and actually re-performing client procedures. Finally, the internal auditor will perform more substantive procedures to assess the level of overall risk according to the audit strategy.

What are some of the more common ways in which a company's appetite for risk can be articulated?

Risk appetite should underpin a company's risk management activities. Some companies prefer the distinction between risk tolerance (i.e. maximum risk that can be taken before financial distress) and risk appetite (amount of risk that is actually taken for risk reward benefits). Risk appetite is defined as the amount of risk, on a broad level, an organization is "willing to accept" in pursuit of value[15].

[14] *Internal Controls: Policies and procedures to ensure the reliability of financial statements.* 2015. Corporate Finance Institute.
[15] *Enterprise Risk Management — Understanding and Communicating Risk Appetite*, 2012. COSO.

An organisation may choose to adopt an objective-focused approach and cascade those objective-based appetite statements into risk-focused statements. Below is an example as shared by COSO[16]



[16] *Risk Appetite — Critical to Success*, 2020. COSO

A company's risk appetite can be articulated in the following ways:

Common ways to articulate risk appetite (non-exhaustive):

- **Setting a boundary on the "impact vs likelihood" grid**

  Established through the use of risk matrices where a risk appetite line is drawn to demarcate the boundary between those risks that are deemed to be "high" and those which are not. Typically identified through an "Enterprise Risk Management" process.

- **Economic capital measures/balance sheet based expressions**

  Achieved by the ability to absorb losses by holding surplus capital against the desire to invest capital to generate a positive return. The higher the risk premium, the lower the appetite for risk.

- **Changes in credit ratings**

  Based on probability of default by a rating agency, companies with "AA" rating may not wish to take any risks that may cause a downgrade to an "A" rating.

- **Profit and loss measures**

  Profit and loss based expressions, e.g. companies that set maximum loss figures.

- **Value based measures**

  Accomplished by setting limits around the volatility of share price or against a target share price. This allows companies to direct their attention to investments, projects and activities that are likely to achieve these targets/limits.

- **Develop effective targets or thresholds for key risk indicators**

  The simplest method where the company sets a range of key risk indicators (monitors changes in exposure to a specific risk event), key control indicators (monitors to determine whether specific controls are operating effectively) and key performance indicators ('KPIs") (monitors to keep track on the financial performance or operational efficiency). Examples of common risk indicators are outlined in **Appendix VI** of this **Pull-out**.

- **Qualitative statements**

  Expressions of statements that cannot be articulated numerically. Also applied to areas of risk that are difficult to quantify effectively, such as reputation risks. Often easy to understand and communicate and integrate within the organisation's culture or statement of values, e.g. "We have zero tolerance for fraud".

An illustrative non-exhaustive list of risk appetite threshold (quantitative and qualitative) is provided below:

Quantitative	
Measure	**Risk Appetite (Variance Range)**
Revenue	1% - 2.5%
Earnings per share	3% - 5%
Cash flow	5% - 10%
Credit rating	To maintain grade of XX

Quantitative	
Measure	**Risk Appetite (Target)**
Energy efficiency	Reduce consumption per unit
Safety measures e.g. recorded accident rates	To achieve recordable case
Reputation exposures	Zero tolerance for negative press coverage or customer satisfaction improvements
Greenhouse gas	X% reduction per tonne

What should be considered from a disclosure perspective?

The state of internal control system of the group (the listed issuer and its subsidiaries) is articulated primarily through the "Statement of Risk Management and Internal Control" within the listed issuer's annual report. In essence, directors are to comment amongst others on the following:

- What are the features of the risk management process and internal control system – for example, how are risks identified? Were risks flagged during a workshop session or during a board session? How are risks, as they evolve, tracked and managed?
- Did the board assess the design of the risk management process and internal control system and test their effectiveness?
- If weaknesses surfaced during the process, how did the board treat such weaknesses? Were any deficiencies corrected?
- In summary, what does the board think of the risk management process and internal control system?

In making the Risk Management and Internal Control Statement, a listed issuer should be guided by the SORMIC Guidelines which is issued by the Taskforce on Internal Control with the support and endorsement of Bursa Malaysia Securities Berhad.

Paragraphs 41 and 42 of the said document which is reproduced below outline the key elements that a listed issuer should provide in its narrative statement so as to enable stakeholders to make an informed assessment of the main features and adequacy of the listed issuer's risk management and internal control system.

Some iterations of the SORMIC Guidelines include:

Paragraph 41 of SORMIC Guidelines

In its narrative statement, the board should disclose the following:

- The main features of the company's risk management and internal control system;
- The ongoing process for identifying, evaluating and managing the significant risks faced by the company in its achievement of objectives and strategies;
- That such process has been in place for the year under review and up to the date of approval of this statement for inclusion in the annual report;
- The process it (or where applicable, through its committees) has applied in reviewing the risk management and internal control system and confirming that necessary actions have been or are being taken to remedy any significant failings or weaknesses identified from that review;

- That a review on the adequacy and effectiveness of the risk management and internal control system has been undertaken;
- Commentary on the adequacy and effectiveness of the risk management and internal control system;
- The process it has applied to deal with material internal control aspects of any significant problems disclosed in the annual report and financial statements; and
- Where material joint ventures and associates have not been dealt with as part of the group for the purposes of applying these guidelines, this should be disclosed.

Paragraph 42 of SORMIC Guidelines

In its narrative statement, the board should also include whether it has received assurance from the chief executive officer and chief financial officer on whether the company's risk management and internal control system is operating adequately and effectively, in all material aspects, based on the risk management and internal control system of the company.

It should be noted that **Audit and Assurance Practice Guide 3: Guidance for Auditors on Engagements to Report on the Statement on Risk Management and Internal Control included in the Annual Report (Revised February 2018)** by the MIA provides guidance for auditors in applying Malaysian Approved Standard on Assurance Engagements, International Standard on Assurance Engagements 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information in the performance of a limited assurance engagement to report on the Statement on Risk Management and Internal Control.

The case study below demonstrates the non-negotiable importance of managing cyber risks.

Case Study: Singapore Health Services ("SingHealth") cyberattack[17] (Singapore)

Background:	• Between June 27 and July 4, 2018, an Advanced Persistent Threat (APT) cyberattack was deployed on SingHealth's Sunrise Clinical Manager (SCM) database, exposing 1.5 million patients' and 160,000 outpatients' electronic medical records, including chief target, Singapore's Prime Minister Lee Hsien Loong. • The hackers targeted a public healthcare database with significant amount of Personally Identifiable Information (PII) that can be used for scams and phishing acts. • Dubbed as the "largest cyberattack in Singapore thus far", the incident has explicitly brought issues like cyber risks, cyber security, data governance, third-party risk management and crisis management to the fore.
Facts:	• SingHealth is Singapore's largest group of healthcare institutions owned by the Ministry of Health via parent company, MOH Holdings Pte Ltd. • Following the incident, a Committee of Inquiry (COI) was set up in late July 2018 to investigate how the cyberattack occurred, its root causes and impact. • Allscript, SingHealth's software provider, highlighted weakness of SingHealth's Electronic Medical Records (EMR) system back since 2014, however was met with inadequate and tardy actions from SingHealth and its technology partner, Integrated Health Information System (IHiS). By the time the system was closed, patients' confidential data were stolen. • The COI's investigation on the "pauses, gaps and overlaps" of the breach can be summarised by the following: (1) inadequate level of cybersecurity awareness, training, and resources to identify and respond to cyberattacks; (2) failure of effective prevention response from key IT personnel; (3) vulnerabilities of database system which allowed easy hacking; (4) skilled hackers that utilized APT attack methods;

[17] Adapted from; Mak, Y.T. *SingHealth: Poor Data Health; Corporate Governance Case Studies Volume 8*, 2019. CPA Australia.

	(5) poor work culture (i.e. head knowledge syndrome); (6) lack of technical cybersecurity expertise at management level; and (7) overreliance on informal communication mediums, causing chaotic and incomplete reporting. • In terms of crisis management, SingHealth (with ample support and coordination with the government) implemented a series of counter-measures to assure public fears (i.e. setting up dedicated hotline, server mitigation, halting of other data projects involving public records and a commissioned study on the vulnerabilities of IT systems and infrastructure of other public sectors).
Lessons Drawn:	• As operations of the company are increasingly digitalised, cyber risks should take center stage in the agenda of the board. • "Black-swan events" like these often are only understood by boards and management when it actually happens. There should be some form of "doomsday scenario planning" in the risk treatment by the board, particularly independent directors. • The saying "people are always the weakest link in the risk management and internal control framework" is a worthwhile consideration for boards. Because risk items like work culture or social settings are not quantifiable or tangible, boards must develop a better understanding of non-financial risks. • Crisis management can flourish if there is effective coordination, transparency, use of resources and strategy. In this case, owning up to the "people of Singapore" was the main driving force in reaction to the event.

WHERE? Regional/International perspectives

Risk management and internal controls are well-established concepts and therefore, as in the case of Malaysia, many jurisdictions have long incorporated them into governance documents.



Country	Provision(s)
Australia	A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework. **(Principle 7)** A listed entity should disclose: (a) if it has an internal audit function, how the function is structured and what role it performs; or (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its governance, risk management and internal control processes. **(Recommendation 7.3)** A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks. **(Recommendation 7.4)**

Country	Provision(s)
Singapore	The Board is responsible for the governance of risk and ensures that Management maintains a sound system of risk management and internal controls, to safeguard the interests of the company and its shareholders. ***(Principle 9)*** The Board requires and discloses in the company's annual report that it has received assurance from: (a) the CEO and the Chief Financial Officer ("CFO") that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and (b) the CEO and other key management personnel who are responsible, regarding the adequacy and effectiveness of the company's risk management and internal control systems. ***(Provision 9.2)***
South Africa	The governing body should exercise ongoing oversight of risk management and, in particular, oversee that it results in the following: (a) An assessment of risks and opportunities emanating from the triple context in which the organisation operates and the capitals that the organisation uses and affects. ***(Extract of Recommended Practice 6 under Principle 11)*** In addition, the following should be disclosed in relation to risk: (a) An overview of the arrangements for governing and managing risk. (b) Key areas of focus during the reporting period, including objectives, the key risks that the organisation faces, as well as undue, unexpected or unusual risks and risks taken outside of risk tolerance levels. (c) Actions taken to monitor the effectiveness of risk management and how the outcomes were addressed. (d) Planned areas of future focus. ***(Recommended Practice 9 under Principle 11)***

Country	Provision(s)
South Africa	The governing body should assume responsibility for assurance by setting the direction concerning the arrangements for assurance services and functions. The governing body should delegate to the audit committee, if in pace, the responsibility for overseeing that those arrangements are effective in achieving the following objectives: (a) Enabling an effective internal control environment. ***(Extract of Recommended Practice 40 under Principle 15)***
United Kingdom	The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the company is willing to take in order to achieve its long-term strategic objectives. ***(Principle 0)*** The board should carry out a robust assessment of the company's emerging and principal risks. The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated. ***(Provision 28)*** The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls. ***(Provision 29)*** In annual and half-yearly financial statements, the board should state whether it considers it appropriate to adopt the going concern basis of accounting in preparing them, and identify any material uncertainties to the company's ability to continue to do so over a period of at least twelve months from the date of approval of the financial statements. ***(Provision 30)***

Country	Provision(s)
United Kingdom	Taking account of the company's current position and principal risks, the board should explain in the annual report how it has assessed the prospects of the company, over what period it has done so and why it considers that period to be appropriate. The board should state whether it has a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary. ***(Provision 31)***

Establishment of Risk Management Committee

MCCG Intended Outcome 10.0
Companies make informed decisions about the level of risk they want to take and implement necessary controls to pursue their objectives.

The board is provided with reasonable assurance that adverse impact arising from a foreseeable future event or situation on the company's objectives is mitigated and managed.

MCCG Step Up 10.3
The board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company's risk management framework and policies.

WHY? The case for change

The marketplace is becoming increasingly complex as new waves of change are reshaping numerous industries, as illustrated in the diagram below:

Key changes in the current business context:



Source: *On the 2021 board agenda*, KPMG Board Leadership Centre

As seen in the diagram in the previous page, boards will continue to operate against a backdrop of tremendous uncertainty and heightened expectations from stakeholders on the items listed out above such as ESG, human capital, business resilience and etc. In other words, boardroom agendas are increasingly packed and becoming more complex with multitude of issues and opportunities. Hence, board members need to have the adequate skills and knowledge to address these wide-ranging risks.

The greater sophistication and complexity of businesses have significantly affected the way in which management implements key decisions. Being able to challenge management on how the company is responding to these signals and exposures necessitates greater attention at the oversight level.

A key driver for the establishment of a dedicated board risk management committee is the need for comprehensive views as opposed to silo perspectives. At present, most of the committees and other governance mechanisms are focused on one specific aspect of the company's risks. For example, audit committees typically oversee financial reporting risks and certain compliance-related risks that can have financial reporting implications. Remuneration committees oversee risks related to how the remuneration structure drives behaviour within the company. This oversight model commonly leaves other critical risks such as technological, litigation and environmental risks unattended, thus giving rise to the scenario dubbed as "orphan risks syndrome".

The move towards an ever more integrated and comprehensive risk oversight typically results in establishment of a dedicated risk committee. Indeed, as reported by Organisation for Economic Co-operation and Development (OECD), assigning the role of risk management oversight to a board-level committee is also becoming more common in large companies[1]. In a study of 50 leading governance jurisdictions[2], the OECD also observed that regulatory and code provisions for a separate board-level risk committee is slowly picking up. Risk committees are required or recommended in 19 jurisdictions as shown in the diagram below:



Source: *OECD Corporate Governance Factbook 2021, OECD*

[1] *Risk Management and Corporate Governance*, 2014. OECD.
[2] *OECD Corporate Governance Factbook* 2021, OECD.

In the case of financial institutions, the need for a stand-alone risk management committee is even more compelling as the nature of risks inherent in their operating models are varied and nuanced. Exposures such as market, credit and liquidity risks are closely related to the fluctuating macroeconomic environment, thus rendering them volatile. These exposures elicit the deployment of complex risk infrastructures and call for greater scrutiny at the board level.

Recognising the significance of dedicated risk oversight in licensed financial institutions, **Standard 12.1(c) of Bank Negara Malaysia's Policy Document on Corporate Governance** mandated the establishment of a risk management committee.

HOW? The practice in substance

It is clear that whilst ultimate responsibility for a company's risk management framework rests with the board, having a risk management committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgment needed to oversee the company's risk management framework.

Key considerations relating to the application of this **Step Up** are discussed below:

MCCG Step Up 10.3
The board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company's risk management framework and policies.

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 risk management committee are set out below:

Key risk oversight responsibilities (non-exhaustive)[3]:

- Review with management the primary elements comprising the company's risk culture, including establishing "a tone from the top" that reflects the company's core values and the expectation that employees act with integrity and promptly escalate non-compliance in and outside of the company; accountability mechanisms designed to ensure that employees at all levels understand the company's approach to risk as well as its risk-related goal.
- Review with management the company's risk appetite and risk tolerance and assess whether the company's strategy is consistent with the agreed-upon risk appetite and tolerance for the company.
- Maintain/Establish a clear framework to hold management accountable for building and maintaining an effective risk appetite framework and providing the board with regular, periodic reports on the company's residual risk status.
- Review with management the design of the company's risk management functions, as well as the qualifications and backgrounds of senior risk personnel and the policies applicable to risk management, to assess whether they are appropriate given the company's size and scope of operations.
- Oversee the conduct, and review the results, of company-wide risk assessments, including the identification and reporting of critical risks.
- Review with management the categories of risk the company faces, including any risk concentrations and risk interrelationships, as well as the likelihood of occurrence, the potential impact of those risks, mitigating measures and action plans to be employed if a given risk materialises.

[3] Adapted from Lipton et al 2018, *Risk management and the Board of Directors*, Harvard Law School Forum on Corporate Governance

- Review with management the ways in which risk is measured on an aggregate, company-wide basis, the setting of aggregate and individual risk limits (quantitative and qualitative, as appropriate), the policies and procedures in place to hedge against or mitigate risks and the actions to be taken if risk limits are exceeded.

- Review with management the assumptions and analysis underpinning the determination of the company's principal risks and whether adequate procedures are in place to ensure that new or materially changed risks are properly and promptly identified, understood and accounted for in the actions of the company.

- Review management's implementation of its risk policies and procedures, to assess whether they are being followed and are effective.

- Provide advice to the board on risk strategies and coordinate the activities of the various standing board committees for risk oversight.

- Review internal systems of formal and informal communication across divisions and control functions to encourage the prompt and coherent flow of risk-related information within and across business units and, as needed, the prompt escalation of information to senior management (and to the board or board committees as appropriate). Review reports from management, independent auditors, internal auditors, legal counsel, regulators, stock analysts and outside experts as considered appropriate regarding risks the company faces and the company's risk management function, and consider whether, based on each individual director's experience, knowledge and expertise, the board or committee primarily tasked with carrying out the board's risk oversight function is sufficiently equipped to oversee all facets of the company's risk profile—including specialized areas such as cybersecurity—and determine whether subject-specific risk education is advisable for such directors.

- Review with management the means by which the company's risk management strategy is communicated to all appropriate groups within the company so that it is properly integrated into the company's enterprise-wide business strategy.

Care should be exercised to minimise overlaps in relation to specific risks that the risk committee is assigned to oversee (e.g. oversight of compliance risk by both the audit committee and risk management committee). Although there will be unavoidable overlaps between the risk management committee with other board committees in terms of risk discussions and agenda, there should be clear communication and alignment between the board committees to ensure that there is no "double work" or information asymmetry. Hence, the terms of reference of the risk management committee should also be crafted in a way that minimises any potential overlaps from the "get go".

Can a combined board committee lead to focused or dedicated oversight of risk management as envisaged by Step Up 10.3 of MCCG?

MCCG Step Up 10.3
The board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company's risk management framework and policies.

Under normal circumstances, a combined committee (e.g. audit and risk management committee) would not be considered as an application of **Step Up 10.3 of MCCG**. Combined committees are commonly overwhelmed with their primary agenda and may not have the expertise to oversee risk management matters in an effective manner.

What are the factors that should be taken into account in establishing the composition of a risk management committee?

In order to be able to discharge the committee's mandate effectively, a risk management committee should be of sufficient size and independence (majority independent directors) and its members between them should have a sufficient understanding of the industry in which the company operates. Having directors who have little knowledge of the industry or the business environment would not add value to the committee and its function, leading to substandard risk assessment.

Key factors in determining the committee's composition are outlined below:

Size

The risk management committee should be of an appropriate size (i.e. at least three members) so that members can deliberate in an effective manner and any changes to the composition can be managed without undue disruption.

Independence

The risk management committee should comprise a majority of independent directors to enable objective oversight of risk matters. Whilst executive directors have more in-depth knowledge on the exposures that the company is subjected to, it is widely held that executive directors have a greater propensity to take risks given that their evaluation and remuneration are usually linked to the company's performance.

Business/Industry knowledge

Directors with risk management experience and strong industry or business knowledge can significantly add value to the deliberations of the risk committee, particularly on operational risks. Their knowledge on the subject matter relating to the industry and the external environment may help to provide a better understanding of business-specific issues or growing exposures.

Time commitment

The establishment of an additional committee demands the time of directors. As such, consideration should be given in appointing members who are able to devote the time and attention to the affairs of the risk management committee.

Catastrophic operational and governance failures have driven the need for a dedicated risk management committee. In the case study below, we look at how risk oversight has evolved for one of the biggest aviation and aerospace companies in the world, Boeing;

Case Study: The Boeing Company ("Boeing") and risk management oversight[4] (United States of America)

Background:

- The crashes of Lion Air Flight JT610 and Ethiopian Airlines Flight ET302 astounded the aviation industry, triggered numerous investigations, and resulted in a worldwide grounding of hundreds of Boeing 737 Max jets.
- The 737 Max is Boeing's newest family of single-aisle airplane and the fastest-selling airplane in Boeing history, accumulating almost 4,700 orders from over 100 customers worldwide.
- As commercial air travel increased globally, the sales for Boeing's new commercial jetliners, the 737 Max and 787 Dreamliner, soared due to increased international orders. As a result, Boeing saw its revenue exceeding US$100 billion for the first time in 2018 and the company's stock price skyrocketed.
- Intense competition and market demand pushed Boeing to "rush" its planes. Reports gathered that due to market rumours that Boeing might lose out to its main rival, Airbus, Boeing rushed to launch the 737 Max into the market and offered the plane to American Airlines even before obtaining approval for the design from the board.
- Multiple investigations into the flight crashes reported that vulnerable systems and inadequate technical failures proved to be fatal (i.e. malfunctioning stick shaker, the airspeed and altitude indicators, failure in automatic flight control system).

Facts:

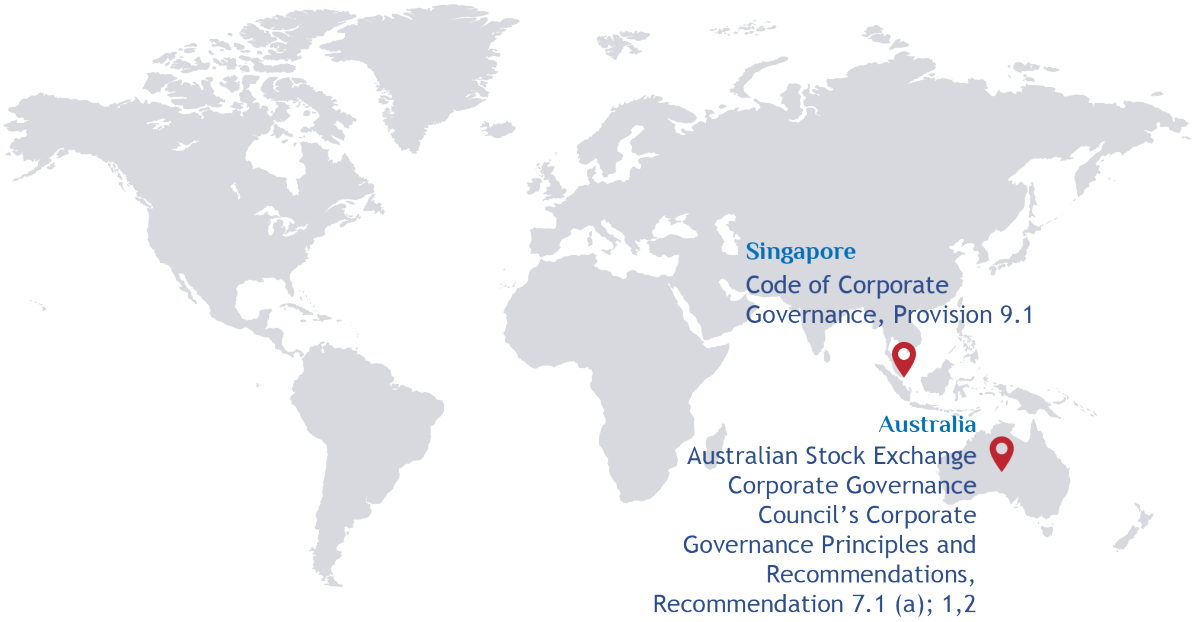
- For the longest time in Boeing's history, risk management has always been a function under the audit committee. The Chairman of the Audit Committee also came under the scrutiny of Glass Lewis, which felt that Lawrence Kellner should be removed from his Audit Committee Chairman position due to probable shortfalls in Boeing's risk management framework that might have resulted in the crashes.
- The apparent lack of a specialised risk management committee focusing on aviation safety, coupled with Boeing's close relationship with the FAA, have left many questioning how vigorous the testing processes were before the planes were certified and deemed ready to be in the skies.

[4] Adapted from; Mak, Y.T. *Boeing: A Plane Wreck; Corporate Governance Case Studies Volume 9*, 2020. CPA Australia.

	•	In the board of 13 directors, the closest person having some technical expertise relevant to the aircraft manufacturing industry is David Calhoun, who used to be the Chief Executive of GE Aircraft Engines.
	•	On 25 September 2019, Boeing announced the addition of a new permanent fixture at Boeing, the Aerospace Safety Committee, with the responsibility of ensuring that the company's products and services are safe. The committee's main objective is to review policies and processes that were in place for the design and development of the airplanes to ensure safety and recommend any changes or improvements to those policies and procedures.
Lessons Drawn:	•	In the mad rush to be the first to market, it is the board's essential role to "take a step back" and ensure that management has ticked all the right boxes (i.e. risk management) before the launch of an integral product.
	•	Technical expertise or domain industry experience in the makeup of a board can be one of the most valuable assets a board can have.
	•	The separation of a dedicated risk management committee is proven to be indispensable given the overladen responsibilities of the audit committee.

WHERE? Regional/International perspectives

Alongside Malaysia, selected jurisdictions including Australia and Singapore have also placed emphasis on the establishment of risk management committees in public listed companies premised on the evolving nature of risks in the corporate landscape which necessitates more focused oversight on risks.



Country	Provision(s)
Australia	The board of a listed entity should: (a) have a committee or committees to oversee risk, each of which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director, **(Extract of Recommendation 7.1)**

Country	Provision(s)
Singapore	The Board determines the nature and extent of the significant risks which the company is willing to take in achieving its strategic objectives and value creation. The Board sets up a Board Risk Committee to specifically address this, if appropriate. **(Provision 9.1)**

Effectiveness of an Internal Audit Function

MCCG Intended Outcome 11.0
Companies have an effective governance, risk management and internal control framework and stakeholders are able to assess the effectiveness of such a framework.

MCCG Practice 11.1
The Audit Committee should ensure that the internal audit function is effective and able to function independently.

MCCG Practice 11.2
The board should disclose:

- whether internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence;
- the number of resources in the internal audit department;
- name and qualification of the person responsible for internal audit; and
- whether the internal audit function is carried out in accordance with a recognised framework.

WHY? The case for change

An internal audit function helps a company to accomplish its goals by bringing an objective and disciplined approach to evaluate and improve the effectiveness of risk management, internal control and governance processes. The internal audit function is essentially the “eyes and ears” of the audit committee, serving as a sounding board on deficiencies in the aforementioned areas and providing advice on the remedial measures to be meted out by the company.

Further reflection

The internal audit function has changed considerably over time to meet the challenges of modern economy and the complexities of business. Stakeholders are increasingly looking to the internal audit function for insights regarding the future and to provide advisory services earlier in the life cycle of business initiatives.

A domestic survey titled "Rethinking Internal Audit" which was based on 200 responses from a broad range of stakeholders in Malaysia revealed that there are heightened expectations for internal audit to be one step ahead to provide value-added insights to the organisation, especially in the context whereby are new challenges and disruptions in the marketplace. Internal auditors are well placed to provide business insights on issues such as technological disruptions, new regulatory requirements and emerging risks. In fact, 76% of the respondents agreed that management is viewing the internal audit function as a valuable business partner in their organisation[1]. To this end, the survey findings iterated that insightful business recommendations require experienced internal auditors with strategic mindset and business specialism.

Likewise, in performing a value-added role, it is important for internal auditors to undertake root cause analyses to enable recommendations to address the source of the weaknesses identified. This certainly represents a room for improvement in the domestic context as a thematic study on the annual reports of 40 public listed companies which was commissioned by Bursa Malaysia Berhad in 2019 together with Institute of Internal Auditors Malaysia identified that there was no mention of root-cause analysis conducted by 83% of the reviewed public listed companies before coming up with recommendations in the internal audit reports[2].

As an enhanced internal audit value proposition, there is also a need to align the audit effort towards issues which matter most to the organisation. Internal audit personnel may not be strategy consultants, but it is important for the audit observations to contain strategic insights into the organisation. The power of technology (e.g. data analytics) can be exploited to enable further efficiency, and to obtain valuable inputs on the state of the business.

[1] *Rethinking Internal Audit 2019*, Institute of Internal Auditors Malaysia & PwC
[2] *Effectiveness of Internal Audit Function: Thematic Review Findings and Key Takeaways 2019*, Bursa Malaysia Berhad and Institute of Internal Auditors Malaysia

Given the significance of this function in safeguarding a company against weaknesses in risk management, internal control and governance, a facilitative environment should be created to enable the internal audit function to carry out its responsibilities in an effective manner.

To this end, the need for listed issuers to establish an internal audit function and the responsibilities of the audit committee in overseeing the effectiveness of this function are well-codified in **Bursa Securities Listing Requirements.**

Paragraph 15.27 of Bursa Securities Listing Requirements

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.

Paragraph 15.12(1)(e) and (f) of Bursa Securities Listing Requirements

Without limiting the generality of **paragraph 15.11**[3] 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:

(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; and

(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.

Note: Extract of paragraph 15.12 of Bursa Securities Listing Requirements pertaining to oversight on internal audit function by the audit committee.

[3] Requirement for audit committee to have written terms of reference

Similar provisions are also encapsulated for financial institutions in **Bank Negara Malaysia's Policy Document on Corporate Governance**. Specifically, stipulations in the said document requires audit committees of financial institutions to oversee the effectiveness of the internal audit function in relation to its scope, procedures and frequency, key audit reports, disagreements between the chief internal auditor and the senior management team as well as the performance evaluation of the function.

*Note: Detailed supervisory expectations on an effective internal audit function are outlined in the **Guidelines on Internal Audit Function for Licensed Institutions issued by Bank Negara Malaysia**.*

Recognising that the value of internal audit lies in the objectivity of its process and the trust that has been placed on this function by stakeholders, regulators have also enumerated prescriptions to enhance transparency in this regard. It is therefore important for companies to appreciate that the disclosed information serves as the basis for constructive dialogue with stakeholders.

Paragraph 15.15(3)(e) of Bursa Securities Listing Requirements

(3) The audit committee report must include the following:

(e) a summary of the work of the internal audit function.

Note: Only requirements pertaining to internal audit function are extracted from the said paragraph

Paragraph 30, Part A, Appendix 9C of Bursa Securities Listing Requirements

The contents of an annual report must include :
a statement relating to the internal audit function of the listed issuer, i.e. whether the internal audit function is performed in-house or is outsourced and the costs incurred for the internal audit function in respect of the financial year.

HOW? The practice in substance

In order for the internal audit function to provide objective assurance on the quality of a company's risk management, internal control and governance processes, it is imperative to ensure that this function is well-equipped to deliver the depth and quality of the work that is expected of it.

Key considerations relating to the application of these Practices **(Practices 11.1 and 11.2 of MCCG)**

MCCG Practice 11.1
The Audit Committee should ensure that the internal audit function is effective and able to function independently.

MCCG Practice 11.2
The board should disclose:

- whether internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence;
- the number of resources in the internal audit department;
- name and qualification of the person responsible for internal audit; and
- whether the internal audit function is carried out in accordance with a recognised framework.

feedback on adherence to the company's code of conduct and/or code of ethics;

- ad-hoc reviews of other areas where there is a concern that affects financial reporting or a threat on the safeguarding of the company's assets;
- ad-hoc review of strategic transactions (e.g. across the stages of target screening, due diligence, and integration during mergers and acquisitions)
- reviews on adherence to contractual provisions and supply chain requirements;
- reviews on the integrated risk management process covering financial and non-financial risks (including. assessing whether all the risks that may have an impact on stakeholder evaluation and support are considered)
- reviews of the compliance framework and specific compliance issues (e.g. assessment programmes by authorities such as the customs department);
- follow-up visits to determine the status of management implementation of plans to address observations reported in preceding internal audit visits; and
- value-added recommendations for more effective and efficient use of resources within the company.

What are the key attributes of an effective internal audit function?

The salient characteristics which are commonly exhibited by an effective internal audit function are outlined below:

Objective and free from undue influence

Internal audit personnel should be able to exercise objectivity by being free from conflicts of interest or the undue influence of others that will override professional and business judgment.

In order to preserve the independence of this function, the head of internal audit should report directly to the audit committee. The audit committee should also be responsible for deciding on the appointment and removal as well as the performance evaluation and remuneration of those in the internal audit function.

Adequately resourced

The internal audit function should be resourced with adequate manpower and supporting infrastructure, such as auditing tools and knowledge repositories. The resources and budget allocated should be proportionate with the envisaged extent and complexity of the audit work, in line with the company's size and circumstances.

The audit committee should ensure that internal audit personnel, particularly the head of internal audit is competent to carry out the work.

Appropriately positioned

The internal audit function should be appropriately positioned within the company to be recognised as an authoritative voice. In this regard, as highlighted in **Guidance to Practice 11.1 of MCCG**, the audit committee should ensure that the head of internal audit has sufficient standing and authority to discharge his or her functions effectively.

The function should be accorded with unrestricted access to the necessary information, records, physical properties and personnel to perform its agreed-upon objectives and responsibilities.

Aligned with the strategies and risks of the company

The internal audit coverage should be tailored in response to changes in the company's business, risks and operations.

The evaluation performed by the internal auditor should be contextualised to the business and industry, identify root-causes of issues and offer new insights with a consideration of the future impact.

What are the key factors that should be taken into account in evaluating the capability and adequacy of resources of the internal audit function?

In evaluating the resources of the internal audit, due cognisance should be given (as a minimum) to the aspects of people and process.

As mentioned in the previous page, the quality of the people (i.e. internal audit personnel) should reflect the extent and complexity of internal audit coverage. This would, amongst others, entail:

- the relevant academic and professional accreditation;
- the experience that is crucial to enable them to carry out internal audit work;
- reasonably strong interpersonal skills in discussing with the auditee and writing reports, articulating issues in no uncertain terms;
- maturity of the personnel in engaging with management on contentious issues encountered when carrying out the internal audit projects; and
- the ability to provide recommendations that are not only practical for implementation but also take into consideration the "cost-benefit" aspects of the suggestions.

In terms of process, the evaluation should focus on how structured and robust is the approach deployed by internal audit personnel in achieving the internal audit objective. Internal audit plans should be clear and objective enough to enable the personnel to execute the work procedures and to obtain as well as evaluate the audit evidence for reliability and sufficiency. The adoption of a professionally recognised framework such as the International Professional Practices Framework ("IPPF") by the Institute of Internal Auditors would also go a long way in fostering the need for proper adherence to independence and ethical standards as well as technical standards on execution of internal audits and quality assurance.

Over the years, it was observed that there continues to be a substantial number of listed issuers which recorded a considerably low internal audit fee (i.e. below RM 24,000 per annum)[4]. As the cost incurred for the internal audit function is indicative of how much emphasis the listed issuer places on the function that provides independent assurance on risk management, control, and governance processes, the resources and budget allocated should be proportionate with the envisaged extent and complexity of the internal audit work, in line with the listed issuer's size and circumstances.

*Note: A sample exhibit outlining a checklist to evaluate the internal audit function is provided in **Appendix VII** of this **Pull-out**.*

Should an internal audit function be conducted in-house or outsourced[5]?

Companies may choose to have an in-house internal audit function or outsource it, depending on the circumstances of the company.

It is commonplace for audit committees to consider outsourcing the internal audit work when there is a lack of specialised expertise to carry out the audit. For example, an in-house internal audit function may not have the appropriate information technology skills to conduct an audit of information technology systems, thus necessitating the need to commission specialised information technology auditors to perform the necessary audit work.

In the event the audit committee decides to outsource the internal audit function, it is pertinent that the audit committee assesses the remit of the outsourced internal audit provider to ensure that relevant criteria, such as independence, qualification, skills and experience, adequacy of resources and remuneration have been considered for the work to be carried out effectively.

[4] *MSWG-ASEAN Corporate Governance Scorecard* 2018, 2019 and 2020
[5] References to outsource includes outsourcing in full or in part ("co-source").

Key considerations in outsourcing the internal audit function:

- assessment of outsourcing risks (e.g. contracts and confidentiality agreements including any sub-contracting arrangements);
- scope of internal audit work to be outsourced;
- service provider selection process including the independence, qualification, skills and experience, as well as knowledge;
- adequacy of resources deployed and remuneration of the outsourced service provider;
- internal audit framework adopted by the outsourced service provider;
- roles and responsibilities of the outsourced service provider;
- access to information, records, physical properties, and personnel as well as the reporting workflow; and
- effectiveness of the internal audit service rendered by the outsourced service provider and continuity of such service (for subsequent outsourcing arrangements).

How do the disclosures in relation to "number of resources" and "person responsible for internal audit" (in Practice 11.2 of MCCG) vary for an outsourced function vis-à-vis an in-house function?

MCCG Practice 11.2
The board should disclose:

- whether internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence;
- the number of resources in the internal audit department;
- name and qualification of the person responsible for internal audit; and
- whether the internal audit function is carried out in accordance with a recognised framework.

If the function is outsourced, disclosure shall include:

- name of the outsourced service provider/external firm;
- name and qualification of the lead individual in charge of the engagement (from the outsourced service provider/external firm); and
- number of resources deployed by the outsourced service provider/external firm for the said engagement.

As for partially outsourced (co-sourced) internal audit engagements, a more prudent approach can be adopted by providing disclosure on both the name and qualification of the head of internal audit as well as that of the lead individual in charge of the engagement from the outsourced service provider/external firm. A statement should also be made on the nature of work that is outsourced.

The following illustrative disclosure outlines an example with regards to the following (in-house internal audit function):

- name and qualification of the head of internal audit *(note: experience of the said individual was also provided)*; and
- number of resources *(note: general description of their qualifications was also provided)*.

Illustrative disclosure (in-house internal audit function)

Disclosure on the name and qualification of the head of internal audit:

Ms. Say Nee was appointed as the Acting Head of Internal Audit of Singapore Press Holdings Limited ("SPH") in October 2014. She subsequently took over as Division Head in April 2015.

Ms. Say Nee has been with the Division for 10 years, having joined in October 2005. Say Nee's 15 years of experience in the profession spanned across both public and commercial sectors. She began her career in the Auditor-General's Office in 2000, where she was involved in the financial audit and system controls review at the Ministry of Manpower and Central Provident Fund Board,

MCCG Practice 11.2
The board should disclose:

- whether internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence;
- the number of resources in the internal audit department;
- name and qualification of the person responsible for internal audit; and
- whether the internal audit function is carried out in accordance with a recognised framework.

elements as stated in **Practice 11.2 of MCCG**:

- whether the internal audit personnel are free from any relationships or conflicts of interest, which could impair their objectivity and independence (e.g. annual confirmation by the head of the internal audit to the audit committee on the objectivity and independence of the internal audit function); and
- whether the internal audit function is carried out in accordance with a recognised framework (e.g. IPPF).

Is there a distinction in disclosure requirement for the cost of internal audit [paragraph 30, Part A, Appendix 9C of Bursa Securities Listing Requirements] when the internal audit is outsourced as opposed to being conducted in-house?

The cost is to be disclosed regardless of whether the internal audit function is performed in-house or outsourced. Such cost should include all costs involved in performing the internal audit function, including but not limited to salary of personnel, overhead expenses (e.g. expenses on training and knowledge repositories) and other ancillary expenses incurred.

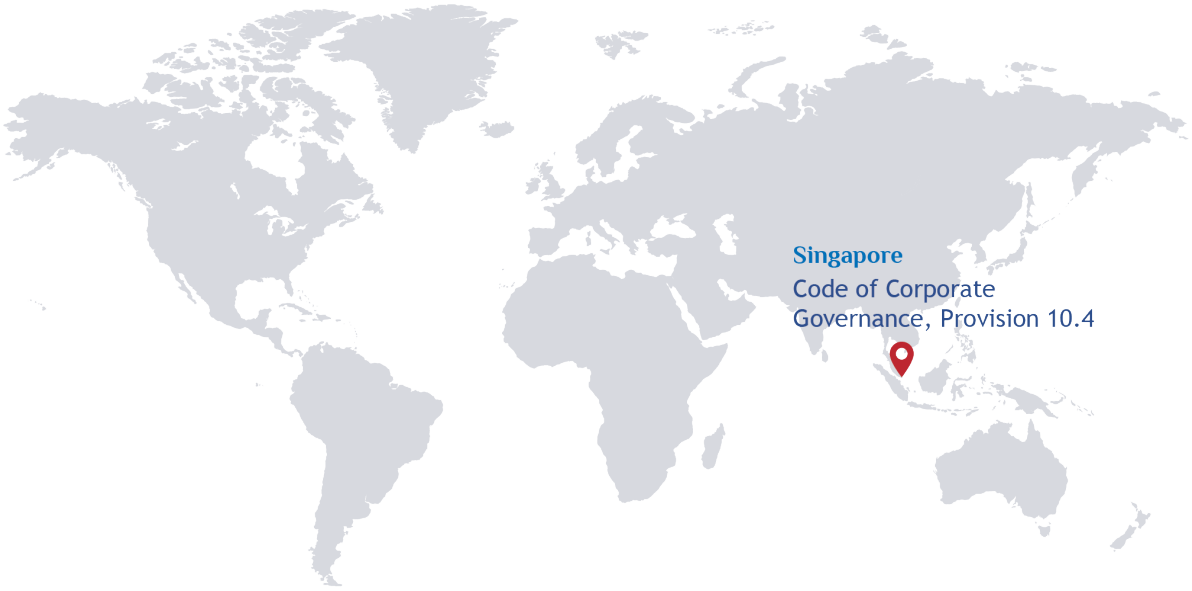
What should a disclosure on the summary of the work of the internal audit function [paragraph 15.15(3)(e) of Bursa Securities Listing Requirements] include?

In providing disclosures on the summary of activities performed by the internal audit function, companies should provide meaningful insights into the actual areas that were audited during the financial year and how internal audit performed its function. A mere statement that the "internal audit function has reviewed the state of internal control of various operating cycles within the company" would not be particularly useful for stakeholders. The following elements (non-exhaustive) can be encapsulated in the annual reports of listed issuers to exhibit good disclosures in this regard:

- number of internal audit assignments completed during the year and a statement as to whether these were aligned to the audit plan;
- specific areas that were audited such as finance, sales, marketing and procurement, with details of the specific aspects audited;
- a statement or discussion that the scope of internal audit engagements were aligned with the companies' risk management profile (i.e. the audited areas were identified as key risk areas);
- a statement or discussion that the internal audit's reports were deliberated at the senior management level and that action plans were put in place to complete the necessary preventive and corrective actions;
- a statement or discussion that the internal audit's findings and management's responses were tabled to the audit committee to ensure that management undertakes the agreed remedial actions;
- detailed breakdown of data to show how many internal audit personnel were involved in specific areas audited; and
- analysis of the variations in the internal audit costs or fees with explanations.

WHERE? Regional/International perspectives

Premised on the importance of a robust internal audit process, many jurisdictions have enumerated provisions for public listed companies to establish an internal audit function with the audit committee being responsible for immediate oversight of this function. As in the case of Malaysia, selected jurisdictions such as Singapore have also provided emphasis on the need for the internal audit to have appropriate standing within the company.



Country	Provision(s)
Singapore	The primary reporting line of the internal audit function is to the AC, which also decides on the appointment, termination and remuneration of the head of the internal audit function. The internal audit function has unfettered access to all the company's documents, records, properties and personnel, including the AC, and has appropriate standing within the company. ***(Provision 10.4)***

Appendices

Appendix I:
List of Indicators to be Aware of and Questions to be Posed to Management – Financial Reporting and Impact of other Key Disclosures on Financial Reporting

The questionnaire, which is not meant to be exhaustive, covers a broad range of issues, some of which may not be applicable or only relevant to certain types of companies. Accordingly, the scope and nature of the questions should be adapted to suit the circumstances of the company's activities, relevant legislation (including overseas reporting requirements) and perceived contentious reporting issues. The questionnaire would typically be completed by the chief financial officer.

The following is a list of indicators that the audit committees should be aware of in relation to financial reporting:

- sharp fall in the company's share price
- overly complex transactions and company structures
- deterioration in the collection of debts and/or quality of debtors
- increase in amounts owing to creditors
- ongoing or previous investigations by regulators
- unusual rapid growth
- regular deferral of capital expenditure
- unrealistic earning expectations by the financial community
- excessive or inappropriate performance-based compensation
- gearing or liquidity forecast to be a problem
- loan agreement covenants not being complied with
- results appear unrealistically high in the given industry and economic conditions
- key ratios deteriorating or differing greatly compared to its peers
- last minute transactions that resulted in significant revenue
- delay in the issuance of financial reports

Directors should consider what further actions or information they require on financial reporting and tailor the questionnaire accordingly. For example, all "No" answers may require further explanation. Also, directors may wish to organise a series of detailed presentations from relevant senior management on specific issues.

A. Overall

1.	Do the company's financial statements comply in all respects with applicable approved accounting standards and other relevant reporting requirements?	Yes ☐	No ☐

B. Accounting policies

2.	Are there any new applicable approved accounting standards or other authoritative pronouncements in the current period	Yes ☐	No ☐
3.	Are there any changes to the company's accounting policies this year?	Yes ☐	No ☐

C. Going concern

4.	Does the company or any of its controlled entities have a liquidity or solvency problem?	Yes ☐	No ☐
5.	Have cash flow forecasts been prepared to determine whether the company's liabilities can be met as and when they fall due?	Yes ☐	No ☐

D. Cash

6.	Have bank reconciliations been performed regularly and reviewed by an appropriate person?	Yes ☐	No ☐
7.	Are any cash balances of controlled entities or those held in foreign countries subjected to any restrictions? If yes, please describe.	Yes ☐	No ☐

E. Investments

8.	Is the company trading in shares?	Yes ☐	No ☐
9.	Are there established authority limits covering investments?	Yes ☐	No ☐
10.	Have there been incidences where the limits of authority were not adhered to?	Yes ☐	No ☐

F. Account receivable

11.	Are there any new types of transactions giving rise to complex revenue recognition considerations?	Yes ☐	No ☐
12.	Is the provision for doubtful receivables adequate?	Yes ☐	No ☐
13.	Has adequate provision been raised for sales returns?	Yes ☐	No ☐
14.	Has the company observed a correct cut-off for its sales transactions?	Yes ☐	No ☐

G. Inventories

15.	Do the relationships between inventory movements, inventories at year-end, trade receivables and sales revenue appear reasonable?	Yes ☐	No ☐
16.	Are there material adjustments made to the book inventory to reflect the physical inventory?	Yes ☐	No ☐
17.	Is the company's method of valuing inventories consistent with most companies in the industry and in line with applicable approved accounting standards?	Yes ☐	No ☐
18.	Is the provision for obsolete and excess inventory adequate?	Yes ☐	No ☐
19.	Have all anticipated variations and claims relating to construction contracts and other service contracts been considered in the determination of contract outcome?	Yes ☐	No ☐
20.	Have expected losses on construction contracts and other service contracts been recognised immediately?	Yes ☐	No ☐
21.	Have profits on construction contracts and other service contracts been properly determined in accordance with appropriate accounting standards?	Yes ☐	No ☐

H. Property, plant and equipment

22.	Have all major acquisitions of property, plant and equipment been subjected to a duly authorised approval process?	Yes ☐	No ☐
23.	Has there been any valuation conducted on the land and buildings in accordance with the applicable approved accounting standards and if so, is it appropriately disclosed in the financial statements, where required?	Yes ☐	No ☐
24.	Are the useful lives and methods used to depreciate plant and equipment reasonable?	Yes ☐	No ☐
25.	Has a review of idle plant and surplus premises, including leased assets and premises, been performed for possible impairment?	Yes ☐	No ☐
26.	If borrowing costs have been capitalised in property, plant and equipment, has the capitalisation been carried out as allowed by applicable approved accounting standards?	Yes ☐	No ☐

27.	If the company has capital commitments on the purchase of property, plant and equipment, have appropriate disclosures required by the Companies Act 2016 been made in terms of amounts approved but not contracted for; and amount contracted but not provided for in the financial statements?	Yes ☐	No ☐
28.	Does the company periodically take a physical inventory of property, plant and equipment?	Yes ☐	No ☐
29.	Were there any significant adjustments made to the carrying value of property, plant and equipment?	Yes ☐	No ☐
	If yes, provide details of the adjustments:		

I. Intangible assets

30.	Have the intangible assets been impaired to reflect the useful life of the asset?	Yes ☐	No ☐
31.	Is the impairment policy clearly disclosed in the financial statements?	Yes ☐	No ☐

J. Other non-current assets

32.	Do all other non-current assets satisfy the definition of "asset" as defined in the applicable approved accounting standards?	Yes ☐	No ☐
33.	Is the impairment policy appropriate?	Yes ☐	No ☐
34.	Does the company have contingent assets and have these been disclosed according to applicable approved accounting standards?	Yes ☐	No ☐

K. Liabilities

35.	Have provisions only been raised when there is a legal, equitable or constructive obligation present as a result of past transactions or events?	Yes ☐	No ☐
36.	Are any assets pledged to secure borrowings?	Yes ☐	No ☐
37.	If yes, have they been properly disclosed in the financial statements?	Yes ☐	No ☐
38.	Has the company entered into any significant sale and lease back transactions during the financial year and if so, is the transaction appropriately recorded in accordance with applicable approved accounting standards?	Yes ☐	No ☐

39.	Has the company adequately disclosed any contingent liabilities and off-balance sheet items according to applicable approved accounting standards?	Yes ☐	No ☐

L. Shareholders' equity

40.	Have there been any share buybacks during the period?	Yes ☐	No ☐
41.	Has the amount of any asset revaluation reserve attributable to assets disposed of been transferred to retained earnings or to a capital reserve, as appropriate?	Yes ☐	No ☐
42.	Have issues of financial instruments, other than ordinary shares, been properly classified as equity or debt in accordance with applicable approved accounting standards?	Yes ☐	No ☐

M. Revenue and expenses

43.	Are the methods of recognising major items of income/expense appropriate in the circumstances?	Yes ☐	No ☐
44.	Are the company's methods of recognising income/expense consistent with methods used in the industry?	Yes ☐	No ☐
45.	Has the gross profit on sales percentage changed significantly during the year?	Yes ☐	No ☐
46.	Are the financial results of the company in line with analysts' expectations?	Yes ☐	No ☐
47.	Have intra-group transactions been appropriately eliminated, including unrealised profits?	Yes ☐	No ☐

N. Taxation

48.	Has the current tax liability in the financial report been calculated in accordance with current income tax laws and applicable approved accounting standards, including deferred tax?	Yes ☐	No ☐
49.	Have the tax calculations been reviewed by a party independent of the preparer and who has appropriate knowledge of the tax requirements?	Yes ☐	No ☐
50.	Are there any significant tax balances in dispute?	Yes ☐	No ☐
51.	Has the effective tax rate been reconciled with the statutory tax rate?	Yes ☐	No ☐

O. Acquisitions/disposals

52.	Have all acquisitions and disposals been subjected to due diligence procedures and board's/ shareholders' approvals, where required?	Yes ☐	No ☐
53.	Has the company carried out post acquisition reviews to assess the actual performance against the proposed business case?	Yes ☐	No ☐
54.	Have all discontinuing operations been properly identified and disclosed only in accordance with applicable approved accounting standards?	Yes ☐	No ☐

P. Earnings per share

55.	Have any changes in capital structure or accounting policies during the year significantly affected the earnings per share?	Yes ☐	No ☐
56.	Have basic and diluted earnings per share been accurately computed and disclosed in accordance with applicable approved accounting standards?	Yes ☐	No ☐

Q. General

57.	Are assumptions regarding the determination of carrying value of assets and liabilities subjected to significant risks?	Yes ☐	No ☐
58.	Have all major suspense, clearing or inter-office general ledger accounts been reconciled and cleared at reporting date?	Yes ☐	No ☐
59.	Are there any significant post reporting date events that have a bearing on the financial report?	Yes ☐	No ☐

R. Bursa Securities Listing Requirements

60.	Does the annual report comply with all of the disclosure requirements in the Bursa Securities Listing Requirements disclosures?	Yes ☐	No ☐
61.	Do the quarterly reports announcements contain the required disclosures as prescribed by the Bursa Securities Listing Requirements and applicable approved accounting standards?	Yes ☐	No ☐
62.	Is there sufficient clarity in the disclosures made pertaining to management of economic, environmental and social risks and opportunities in terms of governance, scope, materiality and management approach within the sustainability statement?	Yes ☐	No ☐

S. Directors' Report

63.	Have all disclosures required by the Companies Act 2016 been made in the directors' report, including principal activities, review of operations, significant changes in the state of affairs, etc.?	Yes ☐	No ☐

Appendix II:
External Auditor Evaluation Form

This sample exhibit, which is not exhaustive in nature, illustrates key questions which may be used to assist the process for the evaluation of external auditor, prior to its appointment and/or re-appointment. The external auditor by definition includes its network member firms and companies based on the By Laws (on Professional Ethics, Conduct and Practice) by the Malaysian Institute of Accountants.

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 a particular criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Name of External Auditor:

Section A: Calibre of external audit firm

1. Are there recent or current litigation cases against the firm?

Yes ☐			No ☐
Comment:			

2. Does the external audit firm have the size, resources and geographical coverage required to audit the company?

Yes ☐			No ☐
Comment:			

Section B: Quality processes/performance

3. How are the quality control processes maintained in the external audit firm? Factors to be considered include the level and nature of review procedures, the approach to audit judgments and issues, independent quality control reviews and the external audit firm's approach to risk.

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

4. How have key risks, including fraud risk and financial misstatement risk, being discussed and factored into the audit plan?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

5. How is the external audit firm's process for internal review of accounting judgments, including an understanding of the key issues?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

6. How are relevant specialists/experts being employed by the external audit firm and how are these linked to the audit process?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

7. How multiple-location audits and/or overseas audits are controlled and are their audit effectiveness regarded as consistent internationally?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

8. Are the reporting processes for subsidiary audit teams[1] effective?

Yes ☐			No ☐
Comment:			

[1] Group engagement team (i.e. audit team from the parent company's external auditor) or component external auditor (i.e. audit team from a different external audit firm) that performs the external audit on the subsidiaries of the parent company.

9. How is the external audit firm's approach to seeking and assessing management representations?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

10. In cases where there are any differences in views between management and the external auditor, does the external auditor communicate its views clearly and accurately from an accounting perspective?

Yes ☐			No ☐
Comment:			

11. Does the audit committee agree with the bases and extent of reliance external auditors place on management and internal audit testing, if any? (Comment as 'Not Applicable' if none).

Yes ☐			No ☐
Comment:			

12. Comment on the external auditor's working relationship with internal audit.

Comment:

13. Did the auditors meet the performance targets, i.e. audit scope, audit plan, timing, etc.?

Yes ☐			No ☐
Comment:			

14. Does the external audit function include detection and investigation of fraud? If it does not, please comment on its role in relation to investigation of fraud?

Yes ☐			No ☐
Comment:			

Section C: Audit team

15. Rate whether audit engagement partner and individuals assigned to the external audit team have the requisite skills and expertise, including industry knowledge, to effectively audit this company and meet its requirements.

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

16. Is the lead engagement partner able to provide a clear and understandable explanation on auditing and accounting issues faced by the company?

Yes ☐			No ☐
Comment:			

17. How is the audit engagement partner's/other senior personnel's involvement in the audit process and is this sufficient?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

Section D: Independence and objectivity

18. Does the external audit firm communicate to the company on any matters which might reasonably be perceived as affecting the independence of the firm and/or of individuals assigned to the external audit team (e.g. provision of services to entities that are related to directors and controlling shareholders of the company)?

Yes ☐			No ☐
Comment:			

19. Does the external audit firm have adequate key member succession plans in place, which meet the relevant audit partner rotation requirements and facilitate the maintenance of objectivity?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

20. Is the audit committee of the opinion that the external audit function is independent and objective?

Yes ☐			No ☐
Comment:			

21. Prior to approval by the audit committee on non-audit services to be rendered by the external audit firm, does the lead engagement partner explain and discuss safeguards in place to protect against impairment to independence and objectivity of the external audit firm?

Yes ☐			No ☐
Comment:			

22. Does the external auditor communicate to the audit committee about new and applicable accounting practices and auditing standards and its impact on the company's financial statement?

Yes ☐			No ☐
Comment:			

Section E: Audit scope and planning

23. Does the external audit firm, with the audit engagement partner present, agree to the audit scope and plan with the audit committee?

Yes ☐			No ☐
Comment:			

24. Is the external audit scope and plan adequate to address company/industry-specific areas of accounting risks, audit risks and financial reporting risks faced by the company?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

25. In planning the audit, are adequate considerations given to geographical coverage, resource allocation, level of audit testing and nature of audit reports issued at each location?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

26. Is specialist input to the audit in areas such as taxation, pensions and regulation at an appropriate level?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

27. Are all key operations covered by the external audit?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

28. Did the auditors maintain or update the audit plan to respond to changing risks and circumstances, in a manner agreeable and determined appropriate by the audit committee?

Yes ☐			No ☐
Comment:			

Section F: Audit fees

29. How does the audit fee compare with other similarly sized companies in this industry?
(Note: In this context, a rating of "4" indicates a relatively high fee whilst a rating of "1" indicates a relatively low fee. A fee that is either too high or too low can be of concern).

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

30. Rate how the differences between actual and estimated fees are handled.

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

31. Is an assessment conducted on the amount and relationship of audit and non-audit fees and services?

Yes ☐			No ☐
Comment:			

32. Does the audit committee consider the fee for the external audit practical and sufficient for the scope, size, complexity and risks of the company?

Yes ☐			No ☐
Comment:			

Section G: Audit communications

33. Does the external audit firm meet freely, regularly, and on a confidential basis with the audit committee, including being able to communicate to the audit committee if not being provided with sufficient cooperation during the audit?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

34. Does the external audit engagement partner maintain professional and open dialogues with the audit committee and communicate findings and discussions in a frank and complete manner (including matters on management's reporting process, internal control over financial reporting, etc.)?

Yes ☐			No ☐
Comment:			

35. Does the external audit firm advise the audit committee about significant issues and new developments regarding risk management, corporate governance, financial accounting and related risks and control matters pertaining to the company on a timely basis?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

36. Does the external auditor discuss the critical accounting policies and whether the accounting treatment is conservative or aggressive?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

37. Does the external audit firm discuss with the audit committee the quality of the company's financial reporting, including the reasonableness of accounting estimates and judgments?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

38. Does the external audit firm resolve accounting issues in a timely manner?

4 ☐	3 ☐	2 ☐	1 ☐
Comment:			

39. Does the external audit firm seek feedback on the quality and effectiveness of the service they are providing?

Yes ☐			No ☐
Comment:			

Evaluation carried out by:

Name:
Designation:

Checked and compiled by:

Name:
Designation:

Appendix III:
Matters to be Tabled to the Audit Committee on Related Party Transactions

The following is an illustrative list. It is not exhaustive but is intended to stimulate thoughts as to the type of matters that should be tabled to the audit committee in relation to the related party transactions/recurrent related party transactions.

i. a description of the transaction;

ii. parties to the transaction, including who the related party is and the relationship involved with the listed issuer or its subsidiary;

iii. relevant details of the transaction, including value and percentage ratio, calculations based on the Listing Requirements. The percentage ratio should be calculated against all methods listed in **Bursa Securities Listing Requirements** and the calculations disclosed to the audit committee;

iv. the nature of the transaction (financial or otherwise), including an explanation of the related party's interest and if it is a recurrent related party transaction, how the transaction meets the relevant criteria for being considered a recurrent related party transaction;

v. whether advisors and/or valuers are to be appointed;

vi. whether any other approvals are required;

vii. rationale for the transaction and cost and benefit to the company/group;

viii. comparative quotes, if available, including sources, methods and procedures through which transaction prices are determined;

ix. justification as to why the transaction must be undertaken with the related party, for example that the services provided by a related party cannot be obtained elsewhere or if need be, a current independent valuation report annexed for that purpose;

x. an explanation of how "arm's length" was maintained during negotiations and in ensuring negotiations and terms to the related party transactions/recurrent related party transactions were carried out were on a commercial basis;

xi. an explanation of why the terms are considered fair and reasonable;

xii. an explanation of why the transaction is considered in the best interest of the company/group;

xiii. an explanation of why the terms are not detrimental to the minority shareholders;

xiv. if the transaction has gone through the usual tender process, to state so and the recommendations of the tender committee;

xv. management recommendations;

xvi. revision/changes to the related party transactions/recurrent related party transactions policy and procedures relating to compliance with mandates arising from the nature and volume of transactions;

xvii. where the transaction relates to any loans, inter-company deposits, advances or investments made or given by the company or its subsidiary:

a. details of the source of the funds in connection with the proposed related party transaction

b. where any financial indebtness is incurred to make or give loans, inter-company deposits – nature of indebtness, cost of funds, and tenure

c. applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured of unsecured and if secured, the nature of security

d. the purpose for which the funds will be utilised by the ultimate beneficiary of such funds pursuant to the related party transaction

Note: Each type of related party transaction with a single party should be disclosed separately to the audit committee and there should not be "clubbing" or "netting" of transactions of the same type. Related party transactions with the same counter party and of the same type may be aggregated.

Appendix IV: Financial Literacy Questionnaire

Financial literacy, which signifies the ability and competency to read, analyse and interpret financial statements, including a company's statement of financial position, statement of comprehensive income, statement of changes in equity, cash flow statement, notes to the statements, cost accounting, budgets and management's discussion and analysis can be acquired through education either formal or self-guided.

Below is a sample questionnaire to gauge the level of financial literacy of an audit committee member. If the answer is "No", that does not mean that the member cannot serve but that training and education for the said audit committee member become imperative.

Name of director/candidate: _____

1.	Ability to read, analyse and interpret the company's financial statements.	Yes ☐	No ☐
2.	General understanding of approved accounting standards relevant to the company's business environment and related industry.	Yes ☐	No ☐
3.	Competency to understand accounting principles, for example revenue recognition, valuation of assets, provisions, accruals, etc.	Yes ☐	No ☐
4.	Ability to assess whether management's judgments/estimates in financial statements are consistent with the industry.	Yes ☐	No ☐
5.	Ability to assess clarity and completeness of disclosures in the financial statements (e.g. significant judgments have been explained in the notes to the financial statements and consistency of information in the financial statements with other parts that constitute the annual report).	Yes ☐	No ☐
6.	Ability to analyse financial statements to quantify the overall financial condition of the company, i.e. use of profitability ratios, liquidity ratios, debt ratios, etc.	Yes ☐	No ☐
7.	Ability to interpret the implications of significant or non-recurring transactions, events or adjustments made in the financial statements.	Yes ☐	No ☐
8.	Ability to understand, analyse and enquire about potential manipulation of financial reporting i.e. did management make an estimate (or change an accounting treatment) to meet earnings target.	Yes ☐	No ☐

9. Ability to assess whether the external audit work plan focuses on the company's key audit risks (i.e. the risk that the external auditor expresses inappropriate audit opinion when financial statements are materially misstated). Yes ☐ No ☐

10. Ability to assess whether internal controls are designed and maintained in a way that keeps pace with economic and business conditions, changes in the company's operations and emerging financial reporting standards. Yes ☐ No ☐

11. Ability to assess whether internal audit function has identified, upon engagement with internal and external stakeholders, key current and emerging risks facing the company in developing the internal audit plan (e.g. staff well-being and talent management, climate change, cyber security and data privacy). Yes ☐ No ☐

12. Ability to understand the financial and non-financial risks and material matters impacting the company, through clarity on the company's risk profile, and how they in turn impact the financial statements. Yes ☐ No ☐

13. What seems to be the main cause for significant or non-recurring transactions or financial reporting adjustments? Please state below and the rationale thereof.

_____

_____

14. Please provide an example of a potential red flag that can adversely affect the quality of financial statements.

_____

_____

15. What are the purposes of holding private meetings between the audit committee and the auditors, both external and internal, without the presence of any other directors and employees?

_____

_____

Appendix V: Questions to be Posed to Management – Controls and Compliance

This sample exhibit, which is not exhaustive in nature, illustrates key questions that the board may require senior management to complete or discuss.

Additional questions may need to be included, depending on the peculiar circumstances of the companies concerned.

Reference for additional questions can be made to the **Appendix 2 of the Statement on Risk Management and Internal Control: Guidelines for Directors of Listed Issuers** which is issued by the Taskforce on Internal Control with the support and endorsement of Bursa Malaysia Securities Berhad.

The Evaluation Questionnaire provides ratings of 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

Yes ☐	No ☐

Where a particular criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Section A: Overall control environment

A.1 Identification and evaluation of business risks

1. Are the company's business risks identified and assessed on an ongoing basis?

Yes ☐			No ☐
Comment:			

2. Do the company's accounting policies appropriately reflect the nature of its operational and business risks?

Yes ☐			No ☐
Comment:			

3. Are employees informed of what is required of them to act in the best interest of the company so as to achieve its strategic objectives?

Yes ☐			No ☐
Comment:			

A.2 Internal controls

4. Are delegations of authority and responsibility to individuals appropriately determined and notified?

Yes ☐			No ☐
Comment:			

5. Are internal controls documented, approved and communicated to employees?

Yes ☐			No ☐
Comment:			

6. Does any one person initiate and approve significant transactions? If yes, does this represent an unacceptable level of risk?

Yes ☐			No ☐
Comment:			

7. Are there policies on competitive bidding for all significant purchases and contracts?

Yes ☐			No ☐
Comment:			

8. Is there a response plan for prompt and effective action when fraud or an illegal act is discovered?

Yes ☐			No ☐
Comment:			

A.3 Information systems and cybersecurity

9. Are computers, programs and data adequately protected from improper use, loss or destruction?

Yes ☐			No ☐
Comment:			

10. Have employees been informed of their responsibilities and accountabilities relating to the secure and confidential use of information technology assets, including data?

Yes ☐			No ☐
Comment:			

11. Have company officers assessed the business impact in the event of a computer breakdown resulting in a sustained loss of processing capability?

Yes ☐			No ☐
Comment:			

12. Is there a disaster recovery/contingency/business continuity plan, which is periodically tested?

Yes ☐			No ☐
Comment:			

13. Is the infrastructure and senior personnel team adequately equipped and competent to face a cyber-attack/breach by external hackers?

Yes ☐			No ☐
Comment:			

14. In the event of a large-scale cyber-attack, are there clear and adequate procedures on reporting to the board?

Yes ☐			No ☐
Comment:			

A.4 Insurance

15. Is there adequate insurance coverage over assets and potential liabilities, in terms of perils covered and sum insured?

Yes ☐			No ☐
Comment:			

16. Have all known reportable incidents, circumstances or events that may give rise to an action against the company reported to the insurers and company lawyers?

Yes ☐			No ☐
Comment:			

A.5 Communications

17. Is there a defined and approved media policy that includes discussions on performance, strategies and progress with market analysts, media rating agencies and similar bodies?

Yes ☐			No ☐
Comment:			

18. Do procedures exist to ensure that all relevant matters are reported to Bursa Malaysia Securities Berhad, Securities Commission Malaysia, Companies Commission of Malaysia, Bank Negara Malaysia, etc.?

Yes ☐			No ☐
Comment:			

A.6 Corporate code of conduct

19. Does the company have a policy on the establishment and maintenance of appropriate ethical standards?

Yes ☐			No ☐
Comment:			

20. Does the company have appropriate procedures to continuously inform and update its employees of the company's ethical standards and monitor their performance?

Yes ☐			No ☐
Comment:			

Section B: Other regulatory areas

B.1 Tax & duties

21. Has the company complied with relevant tax legislations?

Yes ☐			No ☐
Comment:			

22. Have all tax payments been paid on time?

Yes ☐			No ☐
Comment:			

23. Have tax issues been considered in all due diligence procedures for acquisitions and divestments, including tax implications on dividends paid by the company?

Yes ☐			No ☐
Comment:			

24. Have all relevant employees been adequately trained on tax matters?

Yes ☐			No ☐
Comment:			

B.2 Environmental, social and governance (ESG) risks

25. Is there a formal ESG policy and roadmap endorsed by senior management and directors?

Yes ☐			No ☐
Comment:			

26. Is ESG integrated into the overall risk management and internal controls framework of the company?

Yes ☐			No ☐
Comment:			

27. Have significant ESG aspects or impacts been identified and processes put in place to address the aspects?

Yes ☐			No ☐
Comment:			

28. Have ESG provision and the company's obligations under legislation been identified?

Yes ☐			No ☐
Comment:			

29. Have the directors been made aware of all ESG or sustainability reporting requirements under legislation?

Yes ☐			No ☐
Comment:			

30. Does the annual report disclose the details of the company's performance in relation to ESG activities?

Yes ☐			No ☐
Comment:			

31. Is management adequately addressing ESG risks in its risk reporting in the board?

Yes ☐			No ☐
Comment:			

32. Does the risk register consider ESG risks?

Yes ☐			No ☐
Comment:			

Section C: Secretarial

33. Have all required documents, including annual returns been lodged with the Companies Commission of Malaysia?

Yes ☐			No ☐
Comment:			

34. Have all relevant Bursa Securities Listing Requirements been complied with?

Yes ☐			No ☐
Comment:			

35. Have certificates of title for all owned properties, trademarks, patents, intellectual property, etc., been verified and safely stored?

Yes ☐			No ☐
Comment:			

36. Have all property lease agreements, contracts, agreements, etc., been approved in accordance with delegated authorities and reviewed by legal experts?

Yes ☐			No ☐
Comment:			

37. Have all dividends been declared and paid only in accordance with Companies Act 2016 and the company's constitution?

Yes ☐			No ☐
Comment:			

38. Have all share issues, buybacks and cancellations been approved by the board/shareholders, entered in the registers and notifications provided to Bursa Malaysia Securities Berhad and Companies Commission of Malaysia?

Yes ☐			No ☐
Comment:			

Checked and compiled by:

_____

Name:
Designation:

Appendix VI: Examples of Risk Indicators

The following is an illustrative list. It is not exhaustive but is intended to stimulate thoughts in relation to risk indicators. The categorisation of risks are also subjective in nature and are only outlined as a guidance.

Business/Operational

- high turnover of senior management and staff;
- exposure to rapid technological changes;
- industry "softness" or downturns;
- deteriorating employee morale;
- over-ambitious growth goals;
- lack of transparency in the business model and purposes of transactions;
- significant projects having a strategic objective or high market profile such as acquisitions or information technology system implementation.

Financial

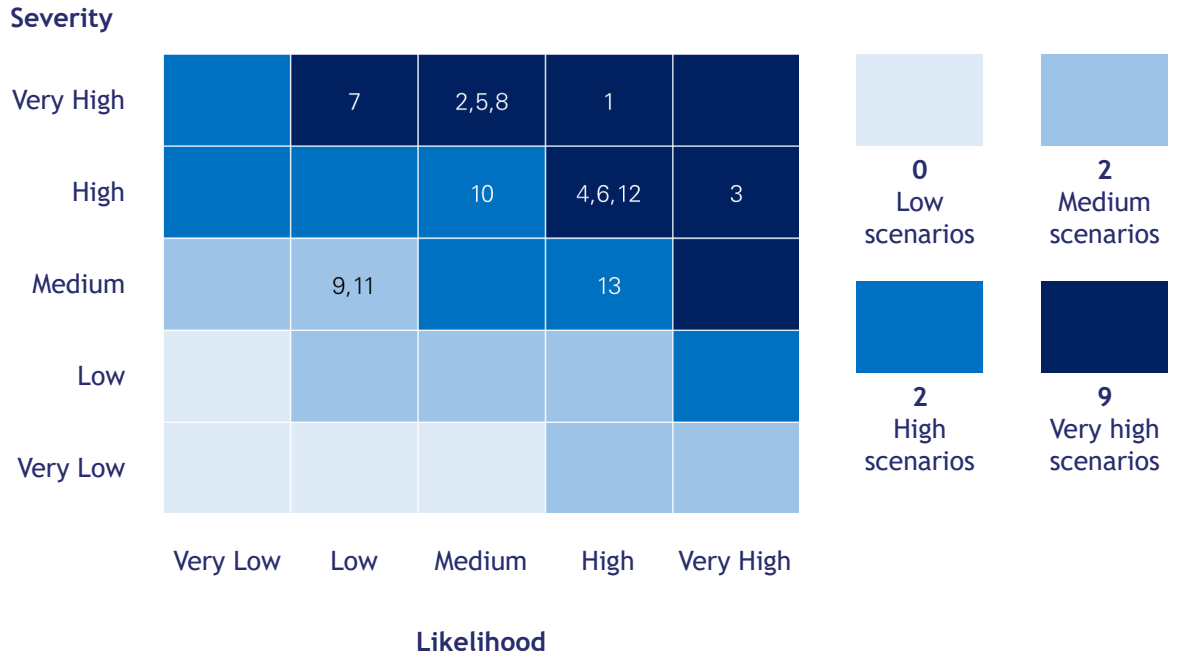
- interest rate and currency exposures;
- late surprises/high frequency of accounting adjustments;
- unusually rapid growth;
- inappropriate focus on the importance of maintaining trends and achieving forecasts;
- unusual results or trends;
- results appearing unrealistically high given the industry and economic conditions;
- key ratios deteriorating or differing greatly compared to its peers;
- regular deferral of capital expenditure
- inadequate explanations for budget variances;

Governance

- lack of oversight and inadequate attention on risk management matters by the board;
- autocratic management;
- untimely reporting and responses to audit committee inquiries;
- overly complex company structures or transactions;
- ongoing or prior investigations by regulators or others;
- bad news not escalated to the top;
- excessive or inappropriate performance-based compensation;
- lack of succession planning;
- cyber-attacks and cybersecurity (see cyber risk indicator heat map on the next page)

The following page showcases an illustrative "dashboard" reporting example of a risk indicator via a risk heat map[1]. The subject of cyber risk is not exhaustive but is intended to stimulate thoughts in relation to reporting an identified risk using a dashboard style.

[1] *Enhanced cyberrisk reporting: Opening doors to risk-based cybersecurity.* 2020. McKinsey.



Example of plotted cyber-incidents

1. Unauthorised transactions internal
2. Unauthorised transactions external
3. Data leakage
4. Information gathering by nation-state
5. Loss of data integrity
6. 3rd-party breach
7. Business-process disruption
8. Insufficient technical-disaster recovery
9. Disruption of services/denial of service attack
10. Physical intrusion
11. Failure of building environment
12. Regulatory risk
13. System settings

Appendix VII: Evaluation of Internal Audit Function

This sample exhibit, which is not exhaustive, illustrates key questions which may be used to assist the process of evaluating the internal audit function. The internal audit function may be performed in-house or outsourced, as the company deems fit.

This sample Evaluation Questionnaire may be customised, depending on the circumstances of the company.

The Evaluation Questionnaire provides ratings of 'yes' and 'no', with the indicators illustrated below, to be responded in relation to the nature of the questions:

Yes ☐	No ☐

Where a particular criterion is deemed not applicable, it shall be indicated as 'Not Applicable' in the comment box.

Name of Audit Committee member:

1. Is the head of internal audit a member of:

   IIAM[1] ☐

   MIA[2] ☐

   Any other professional body

[1] Institute of Internal Auditors Malaysia
[2] Malaysian Institute of Accountants

2. Does the audit committee decide on the scope and functions of the internal audit as required in the Listing Requirements? If not, please comment on who makes that decision and why.

Yes ☐			No ☐
Comment:			

3. Does the internal audit function understand the company's business and the peculiarities of the industry(ies) in which the company operates?

Yes ☐			No ☐
Comment:			

4. Do internal auditors meet with the audit committee without the presence of non-audit committee members whenever deemed necessary in relation to the operations of the company?

Yes ☐			No ☐
Comment:			

5. Does internal audit function perform regular reviews to test the effectiveness of the financial, operational and compliance controls and processes of the company?

Yes ☐			No ☐
Comment:			

6. Does the internal audit function test the effectiveness of risk management framework and policies, covering financial and non-financial risks (including environmental, social and governance considerations)?

Yes ☐			No ☐
Comment:			

7. Does the internal audit function have sufficient resources and competency to carry out its work including to perform reviews on strategic transactions (if needed) and specific compliance issues (e.g. assessment programmes by authorities such as the customs department)?

Yes ☐			No ☐
Comment:			

8. Do the internal auditors undertake their functions according to the standards set by recognised professional bodies?

Yes ☐			No ☐
Comment:			

9. Does the internal audit function provide input into developing action plans to monitor risks and internal controls based on the internal audit plan and processes undertaken?

Yes ☐			No ☐
Comment:			

10. Is the scope of internal audit limited to certain areas only? If so, please state the reason for the limitation.

Yes ☐			No ☐
Comment:			

11. Does the internal audit function include detection and investigation of fraud? If it does not, please comment its role in relation to investigation of fraud?

Yes ☐			No ☐
Comment:			

12. Has the listed issuer carried out a Quality Assessment Review (QAR) of the internal audit function?

Yes ☐			No ☐
Comment:			

13. Do the listed issuer's external auditors rely on the internal audit assessment? If not, why?

Yes ☐			No ☐
Comment:			

14. Does the internal audit function work in collaboration with external auditors, particularly in the area of evaluation of internal controls?

Yes ☐			No ☐
Comment:			

Evaluation carried out by:

Name:
Designation:

Checked and compiled by:

Name:
Designation:



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BURSA MALAYSIA

Corporate Governance Guide Pull-out III

Guidance on Integrity in Corporate Reporting and Meaningful Relationship with Stakeholders

Corporate Governance: Rise Together

4th Edition

www.bursamalaysia.com

Contents

Introduction 1
Background 1
Section I : Boards' Responsibilities to Stakeholders 2
Section II : Corporate Reporting 7
Section III : General Meeting of Shareholders 10

Practices 13
Communication with stakeholders
Practice 12.1 14
Practice 12.2 23

Notice of general meetings
Practice 13.1 44
Practice 13.2 54
Practices 13.3 – 13.5 59
Practice 13.6 72

Appendix 81
Appendix I: Fundamental Concepts, Guiding Principles and Content Elements of the <IR> Framework 82

Introduction

Background

This Introduction to **Pull-out III ("Integrity in Corporate Reporting and Meaningful Relationship with Stakeholders")** is designed to provide companies with broad guidance in making suitable arrangements to meaningfully engage and communicate with stakeholders. The Introduction also intends to provide companies with direction in implementing the Practices of **Principle C** in the **Malaysian Code on Corporate Governance ("MCCG")** and thus, should be read in conjunction with the write-ups on the individual Practices encapsulated in this Pull-out.

In an ever-changing business landscape, companies must understand the importance of maintaining and fostering good meaningful relationships with their stakeholders as they play a key role within the company's ecosystem. Companies should recognise that their stakeholders are affected in one way or another by the companies' actions and vice versa. Directors must also understand that key internal and external stakeholders are becoming ever more influential in terms of shaping and moulding companies' actions as they define and re-define what constitute long-term "value"[1]. Hence, directors, as stewards of the company should take responsibility to improve their communication and relationship with their stakeholders.

A company should ensure the following in fostering a good relationship with its stakeholders:

- set in place methodologies that would enable the company to identify its different set of stakeholders;
- identify the impact of different stakeholder groups towards the company's activities and the output and outcomes of the company;
- examine the company's business impact towards its stakeholders; and
- provide formal mechanisms for engagement and communication with stakeholders.

It is important to note that stakeholders not only receive comfort when they see the company's leadership team present during key events such as general meetings, they also perceive the company in a positive light when there is quick and adequate response to events and crises. For example, Foxconn Technology Group's handling and crisis communication of the rising suicide cases of its workers back in 2010. Ethical studies have found that Foxconn's failure in the crisis management was due to its imbalanced stakeholder relations management that failed to recognise employees (the most critical stakeholder in this crisis) as a key stakeholder and partner in crisis mode[2].

In addition, companies should ensure timely, complete and accurate disclosures are made to their stakeholders and not just for the mere purpose of meeting minimum requirements. High quality disclosures allow stakeholders to form a clear understanding on the company's state of affairs and make informed decisions.

This Introduction is set out over three sections. **Section I** addresses the boards' responsibilities to stakeholders. **Section II** explores corporate reporting whilst **Section III** sheds light on the general meetings of shareholders.

[1] *From principle to practice: Making stakeholder capitalism work*. 2021. McKinsey.
[2] Xu, K., Li, W. 2013. *An Ethical Stakeholder Approach to Crisis Communication: A Case Study of Foxconn's 2010 Employee Suicide Crisis*. Journal of Business Ethics, 371–386.

SECTION I Boards' responsibilities to stakeholders

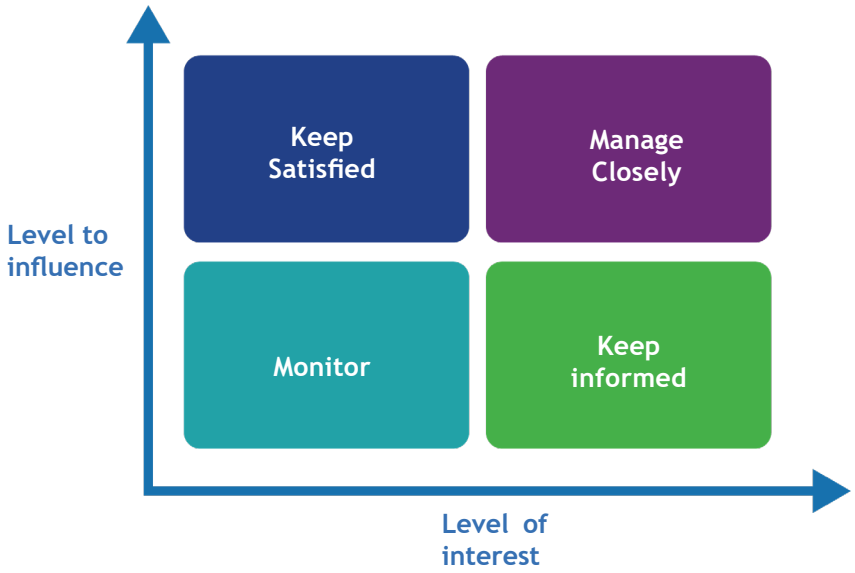
Identifying stakeholders

A company operates within a community or society where it has both internal and external stakeholders involved. The company, is dependent upon the society for resources such as the operating environment, customer base as well as skilled workers that the company requires. Companies now need to consider the impact they have on their stakeholders based on the business decisions they make. This forms an unwritten social contract that reflects the relationship between companies and the communities in which they operate within typically referred to as the "social license to operate". It is imperative that the board first understands who the company's stakeholders are.

The board must understand the different roles and contribution each stakeholder group makes to the company and ensure it takes the appropriate measures to foster a good relationship with them. Leading companies now go even further and assess the impact of stakeholders in different scenarios by conducting stakeholder analysis (see diagram in the ensuing page). As owners of the company, shareholders delegate the responsibility of managing and guiding the company to the directors. Directors in turn are responsible to ensure they carry out their responsibilities based on the mandate given by the shareholders. The diagram below provides examples on the types of stakeholders usually involved in a company (external and internal):



Stakeholder analysis 101:



Using the Mendelow's matrix[3] (as depicted above), companies can leverage on stakeholder mapping.

Stakeholder can help identify stakeholder expectations and power and helps in establishing priorities for different scenarios. The process involves making decisions on the following two issues:

- How interested the stakeholder is to impress their expectations on the organisation's choice of strategies, i.e. how likely is the stakeholder to exercise power?
- To what extent the stakeholder has power to impose its wants?

Responsibilities towards shareholders and other stakeholders

Shareholders

Shareholders represent an important group of stakeholders of a company as they have a direct financial interest in the company and they delegate the responsibility of managing the company to the directors of the company. Shareholders perform a more reactive role in making decisions based on the actions taken by the board and management in governing and managing the company. The board must ensure that the needs and expectations of shareholders are properly understood. The relationship with shareholders should be included as part of the company's board meeting agenda to ensure that the board is aware of the state of its relationship between the company and its shareholders.

[3] *Mendelow's matrix*. 2020. Kaplan Financial Knowledge Bank.

In exercising their responsibilities towards shareholders, directors should take account of the following:

- shareholders' rights stipulated under the **Companies Act 2016, Capital Markets and Services Act 2007, Bursa Securities Listing Requirements** and other relevant legislations as well as the company's policies;
- fiduciary duties and oversight processes undertaken by the board to protect shareholders' rights (e.g. process allowing effective participation of, and voting by, shareholders at general meetings);
- appropriate level of transparency and openness in shareholder communication;
- extent to which debate on contentious issues is embraced and prepared for (e.g. anticipating specific shareholder questions at general meetings and developing appropriate responses);
- implementation of shareholder proposals to be approved by a majority of votes;
- provide shareholders with opportunities to question and interact with board members; and
- ensure high standards of corporate reporting that provides clear and concise information to shareholders.

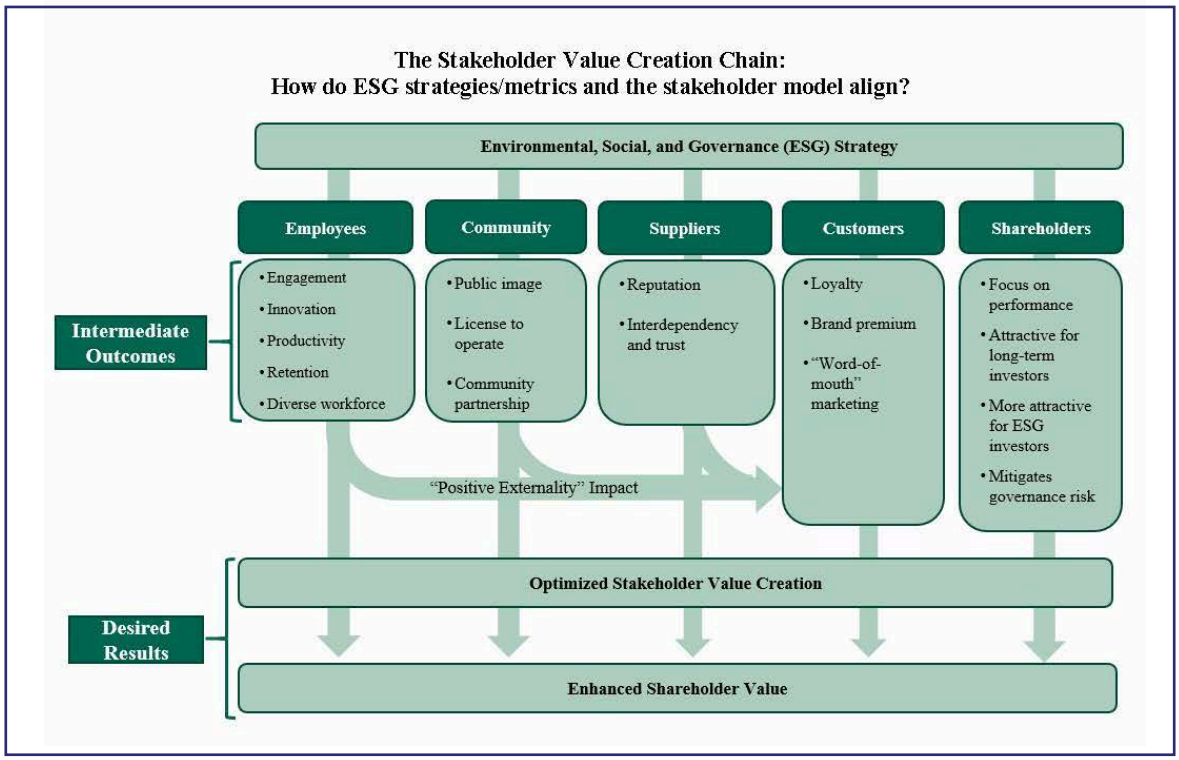
Other stakeholders

Companies should realise that the sustainable running of a company is not only achieved by maximisation of shareholders' value but also by the value the company brings to all its other stakeholders (e.g. employees, customers, creditors, suppliers, business partners, regulators and policymakers and local communities).

A company that focuses on other stakeholders' value will not undermine the importance of its shareholders' value and in fact may provide long-term protection for shareholders' value. In order to achieve an understanding of the varying needs of different stakeholder groups, the company has to constantly and effectively engage with its stakeholders. Effective measures to facilitate stakeholders' communication include identifying and assessing important stakeholders, the establishment of an investor relations function to manage stakeholders' communication and feedback, as well as practising transparent, timely and quality disclosure of information.

Apart from incorporating the welfare of various stakeholders in its business decision-making, a company should also embed stakeholder value in its long-term corporate strategies. This may be done by having a board which is diverse, not only in terms of gender, but more particularly, diverse in terms of the stakeholder groups in which they will represent or be concerned about. Having such an approach to corporate governance will also lead to better consideration and implementation of the sustainability strategies of the company, as the company's objectives shall no longer be only to maximise shareholders' value but also include all its other stakeholders' welfare and sustainability considerations.

On that note, the balancing act of other stakeholders besides shareholders can create long-term value for the company, particularly in guiding the Environmental, Social and Governance ("ESG") oversight. Based on the model developed by Pay Governance called the "Stakeholder Value Creation Chain"[4] as depicted below, the intersection of ESG strategy, the stakeholder model and the creation of value can be mapped. The model captures the reinforcing carryover effect of stakeholders' contributions to the economic success of the company. An example of a "positive externality" is that many employees want to work for environmentally friendly companies, and the increased engagement of those employees may also lead to increase productivity, customer satisfaction, workers' efficiency, etc.



[4] *The Stakeholder Model and ESG 2020*, Harvard Law School Forum on Corporate Governance

Communication

MCCG Practice 12.1
The board ensures there is effective, transparent and regular communication with its stakeholders.

covered in detail in the write-up to **Practice 12.1.**

Feedback from stakeholders should be taken into account in business decision-making. The board should be responsible for setting the tone in the company and should manage stakeholders' expectations. The communication policy may include the following contents:

- **purpose** – describes the purpose of the policy to promote effective communication and provide stakeholders with full and timely information about the company;
- **principles** – applies to the communication of information, including the level of clarity and reliability of information, as well as open, fair, timely and consistent disclosures;
- **point of accountability** – highlights the parties responsible for communication with stakeholders and whom stakeholders can contact, if necessary;
- **methods of communication** – sets out the types of communication by stakeholders such as telephone, mail, email, social media, corporate website, in person at the company's office or via attendance at the annual general meeting ("AGM")/extraordinary general meetings ("EGM"). Communication with stakeholders includes quarterly and annual reports, press releases and announcements; and
- **information** on where the policy or further information about the company can be accessed.

In this regard, companies may be guided by **Bursa Malaysia Corporate Disclosure Guide** that encourages prompt and timely dissemination of information to shareholders and investors. The **Bursa Malaysia Corporate Disclosure Guide** also recommends listed issuers to have in place written corporate disclosure policies and procedures ("CDPP") and provides guidance for companies to establish its CDPP.

Other forms of communication policies include the insider trading policy, whistleblowing policy and company general meetings. The communication policy on general meetings may include matters such as purpose, notice of meeting, date and venue, conduct of meetings and shareholder participation, proxies and disclosure of proxy results, and minutes of the general meeting.

Note: In making arrangements to prepare, convene and conduct an AGM, listed issuers may be guided by the latest update of Securities Commission Malaysia's Guidance and Frequently Asked Questions on the Conduct of General Meetings for Listed Issuers (Guidance Note) and the "Best Practice Guide on AGMs for Listed Issuers" published by the Malaysian Institute of Charted Secretaries and Administrators with the support of Bursa Malaysia Berhad in 2016.

SECTION II Corporate reporting

Corporate reporting has been an integral part of a company's medium of communication to its stakeholders. Generally, corporate reports include information such as a company's financial and operational results, governance, strategy, sustainability and objectives.

In producing corporate reports such as annual reports, board and managements must take into consideration the expectations of stakeholders. Stakeholders, especially shareholders and regulators, expect an increased level of transparency from companies in terms of their reported information on financial, strategy, risk, sustainability and corporate governance.

In tandem with the demand from stakeholders for improved disclosures, there has been an increased focus on the way businesses are run, with greater attention given to how businesses impact the economy, environment and society. **Bursa Securities Listing Requirements** outline provisions in this regard:

Paragraph 29, Part A, Appendix 9C of Bursa Securities Listing Requirements

A narrative statement of the listed issuer's management of material economic, environmental and social risks and opportunities (**"Sustainability Statement"**), in the manner as prescribed by the Exchange. [Cross reference: **Practice Note 9**]

Paragraph 6.1, Practice Note 9 of Bursa Securities Listing Requirements

All listed issuers should ensure that the Sustainability Statement contains information that is balanced, comparable and meaningful by referring to the Sustainability Reporting Guide issued by the Exchange. In identifying the material economic, environmental and social risks and opportunities, the listed issuer should consider the themes set out in the Sustainability Reporting Guide.

Paragraph 6.2, Practice Note 9 of Bursa Securities Listing Requirements

In making the Sustainability Statement, a listed issuer must include disclosures on the following:

(a) the governance structure in place to manage the economic, environmental and social risks and opportunities (**"sustainability matters"**);

(b) the scope of the Sustainability Statement and basis for the scope;

(c) material sustainability matters and –

  (i) how they are identified;

  (ii) why they are important to the listed issuer; and

(iii) how they are managed including details on –

(aa) policies to manage these sustainability matters;

(bb) measures or actions taken to deal with these sustainability matters; and

(cc) indicators relevant to these sustainability matters which demonstrate how the listed issuer has performed in managing these sustainability matters.

MCCG Practice 12.2
Large companies are encouraged to adopt integrated reporting based on a globally recognised framework.

more complex and voluminous by the year. To this end, **Practice 12.2 of MCCG** encourages Large Companies[5] to adopt integrated reporting **based on a globally recognised framework**. Integrated reporting provides an avenue for companies to create a clearer and concise report which would encompass details that can be tailored to meet the needs of different group of stakeholders associated with the company. The following diagram illustrates the different types of reporting that could be integrated into a single report by adopting the elements of integrated thinking in the form of integrated reporting.

How to read an annual integrated report

An annual integrated report provides extensive cross-references to other reporting publications as shown below:

Annual integrated report

Primary annual report to stakeholders contains succinct material information and conforms to local and other international reporting framework, as applicable.

Annual financial statements

Contains a full analysis of the company's financial results, with detailed financial statements, prepared in accordance with **Malaysian Financial Reporting Standards**.

Specific regulatory report

Reports issued in accordance with legal and regulatory requirements such as quarterly reports.

Sustainability report

A report covering economic, environmental and social matters.

[5] 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).

Integrated reporting facilitates the connectivity of information by linking factors such as strategy, available resources and performance. Integrated reporting also helps management and the board to better understand the processes involved in the business as well as pertinent issues faced, which allows them to better articulate their business value creation story (short, medium and long-term) to their stakeholders. Embarking on an integrated journey also may help on breaking the silo mentalities of different departments and business units and strengthen the companies'

MCCG Practice 12.2
Large companies are encouraged to adopt integrated reporting based on a globally recognised framework.

considerations pertaining to integrated reporting is covered in the write-up to **Practice 12.2**.

MCCG Practice 13.3
Listed companies should leverage technology to facilitate-

- voting including voting in absentia; and
- remote shareholders' participation at general meetings.

Listed companies should also take the necessary steps to ensure good cyber hygiene practices are in place including data privacy and security to prevent cyber threats.

MCCG Practice 13.4
The Chairman of the board should ensure that general meetings support meaningful engagement between the board, senior management and shareholders. The engagement should be interactive and include robust discussion on among others the company's financial and non-financial performance as well as the company's long-term strategies. Shareholders should also be provided with sufficient opportunity to pose questions during the general meeting and all the questions should receive a meaningful response.

MCCG Practice 13.5
The board must ensure that the conduct of a virtual general meeting (fully virtual or hybrid) support meaningful engagement between the board, senior management and shareholders. This includes having in place the required infrastructure and tools to support among others, a smooth broadcast of the general meeting and interactive participation by shareholders. Questions posed by shareholders should be made visible to all meeting participants during the meeting itself.

shareholders during general meetings are covered in detail in the write-up to **Practice 13.3 - 13.5**.

It is important to note that shareholder attendance and the voting process only form a part of the overall general meeting process. Shareholders' participation may be further encouraged at general meetings by:

- setting the timing and the location of the general meeting so that it is convenient for shareholders to attend;
- ensuring the participation and availability of the external auditor to answer questions from shareholders about the conduct of the external audit, including the preparation and content of the independent auditor's report such as the key audit matters. Shareholders attending the general meeting should be made aware of the presence of the external auditor and their prerogative to ask questions to the external auditor concerning the conduct of the audit;
- providing information to shareholders in plain and simple language, both in English and other relevant languages to facilitate easy reading and understanding; and
- utilising available communication channels such as corporate website to keep shareholders updated on material matters.
- appointing an independent moderator to facilitate a smooth questions & answers (Q&A) session; and
- equipping shareholders with clear and concise "step-by-step" guide on access and voting procedures for virtual general meetings;

Improving directors' participation

General meetings are an important platform for shareholders to meet and engage the board. Interaction with the board allows shareholders to hear directly from the directors on how the board

> **MCCG Practice 13.2**
> All directors attend general meetings. The Chair of the Audit, Nominating, Risk Management and other committees provide meaningful response to questions addressed to them.

in the write-up to **Practice 13.2**.

In order to avoid the possibility of a painful general meeting experience, the board in building meaningful shareholders' relationship should at the very least take into account the following[6]:

- the board and management should spend time attempting to anticipate specific shareholder questions and develop appropriate responses;
- the board and management should put in place consistent communication with shareholders, not just at the time of the AGM, as it allows for better anticipation of shareholders' concerns and contentious issues;
- the chairman of the general meeting should explain the effects and purpose of the proposed resolution before it is tabled at the AGM;
- the board may avoid a confrontational atmosphere by addressing contentious issues in the annual report or in the chairman's formal address to the meeting;
- the board should allow the respective board committee chairmen to address matters pertaining to a specific governance issue, e.g. matters relating to the assessment on the independence and performance of directors should likely be addressed by the chairman of the nominating committee;
- the chairman of the board is normally responsible for the conduct of the general meeting and should be thoroughly familiar with the general meeting agenda and meeting procedures. The chairman should develop an approach for dealing with difficult or hostile responses from the floor;
- the chairman of the general meeting should allow and facilitate discussions of matters that are relevant and practical to the business of the general meeting and important to shareholders. The chairman should not accumulate questions from the shareholders with a view to answer all the questions in one go as this practice will dilute the importance of the questions and generalise the answers;
- the chairman of the general meeting must provide reasonable opportunity to the shareholders as a whole to pose their questions on the management of the company; and
- shareholders could be invited to submit questions prior to the general meeting to facilitate discussions at the meeting. Such questions may be posted on the company's website and addressed to the relevant email address dedicated for shareholder communication.

[6] *Best Practice Guide on AGMs for Listed Issuers*, 2016, Malaysian Institute of Chartered Secretaries and Administrators ("MAICSA") with the support of Bursa Malaysia Berhad

MCCG Practice 13.6
Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

practices regarding AGM minutes is explored further in the write-up to **Practice 13.6**.

Practices

Communication with Stakeholders

MCCG Intended Outcome 12.0
There is continuous communication between the company and stakeholders to facilitate mutual understanding of each other's objectives and expectations.

Stakeholders are able to make informed decisions with respect to the business of the company, its policies on governance, the environment and social responsibility.

MCCG Practice 12.1
The board ensures there is effective, transparent and regular communication with its stakeholders.

WHY? The case for change

The directors of a company are accountable to their stakeholders for the operations and the performance of a company. Stakeholders refer to "any individual or entity who can get benefited or affected by, and/or can benefit or adversely affect, a company's actions in pursuit of its primary objectives"[1]. Apart from shareholders, stakeholders typically include employees, creditors and suppliers, to name a few. Although shareholders are regarded as stakeholders of a company, they differ in many aspects from the other groups as they are owners of the company and they delegate the responsibility of managing the company to the directors.

Each group of stakeholders expect a varying level of interaction from the board based on their differing levels of interest in the company. Stakeholders expect the board to, amongst others, undertake the following:

- communicate in a timely and open manner;
- adopt good corporate governance practices;
- ensure that the company's performance is closely monitored and feedback is provided; and
- engage and interact with stakeholders when making decisions that are significant to the company's direction.

Stakeholders expect timely and accurate dissemination of information and demand greater transparency from the company on their disclosures for them to form an informed view on the company.

[1] *Effective Co-operation and Communication with Stakeholders*, 2007, Organisation for Economic Co-operation and Development

For stakeholders such as shareholders, the Annual General Meeting has in many instances become the sole avenue to engage the board and gain insights on the company's business activities and financial position. Now, stakeholders are increasingly attempting to engage the board beyond the scope of the general meetings. This has made communication between a company and its stakeholders an integral part of the corporate governance framework.

The need for proper communication between a company and its shareholders has become far more evident with increased shareholder activism. In Malaysia, institutional investors are demonstrating heightened stewardship efforts via engagement efforts with their investee companies. Given the significant stakes that they commonly hold in their investee companies, institutional investors are typically in a strong position to influence the corporate governance practices of their investee companies. The heightened interest by domestic institutional investors in the affairs of the investee companies can be seen through their collective action vide the Institutional Investor Council Malaysia ("IIC") to provide unequivocal public statements against contentious matters and vote against resolutions of investee companies on grounds of corporate governance concerns (e.g. purported conflict of interest amongst directors, excessive remuneration of top executives and abrupt removal of external auditors).

Apart from general meetings, other modes of engagement by institutional investors include written submission of concerns and queries to the boards of investee companies and meeting with the companies centred on the topics of financial performance, strategic direction and long-term sustainability of the business[2].

Further reflection

As stated in **Issuers Communication Corporate Website for Listed Issuers (ICN 1/2018) by Bursa Malaysia Securities Berhad**, in this digital age, a majority of research and information gathering are done online. From searching for a prospective supplier or customer, to purchasing a property or a particular service or investing in a promising business or company, more and more business or investment decisions begin and end on the internet. As a result, a website has become an essential component for any business to provide information on the company. From an investor relations standpoint, as more shareholders are now relying on the listed issuer's corporate website for information pertaining to its latest developments, listed issuers are strongly encouraged by Bursa Malaysia Securities Berhad to upload their released announcements immediately onto their corporate website, and in any event no later than 1 day after the announcement has been released on Bursa Malaysia Securities Berhad. This ensures that shareholders are able to promptly and efficiently access information which is current and up-to-date.

In addition, it is interesting to note that progressive companies have taken added steps to introduce 'content-driven strategy' for a richer digital experience of stakeholders. As an example, the investor relations section on the corporate websites of selected companies were observed to be enhanced with interactive infographics, summarised podcasts and key take-away videos to concisely present comprehensive information on the company's business performance. The information formatting was also digitally expanded to include mobile version options to ensure access for a wide range of devices. In a number of companies, the presence of live chat bots was noted on their corporate websites so as to ease any preliminary communications between users and investor relations functions.

[2] *Investor Stewardship and Future Key Priorities*, 2016, Institutional Investor Council Malaysia

HOW? The practice in substance

Ongoing communication and engagement with stakeholders are essential to provide stakeholders with a better appreciation of the company's objectives and the quality of its management. **Chapter 9 of Bursa Securities Listing Requirements** requires a listed issuer to have in place good corporate disclosure policies and effective communication channels to ensure thorough and timely dissemination of material and reliable information from the listed issuer to the Exchange, its shareholders and other stakeholders.

Paragraph 9.01(4) of the Bursa Securities Listing Requirements

Continuing disclosure ensures a credible and responsible market in which participants conduct themselves with the highest standards of due diligence and investors have access to timely and accurate information to facilitate the evaluation of securities.

Paragraph 9.21(2)(a) and (b) of the Bursa Securities Listing Requirements

A listed issuer must publish the following information on its website:

(a) all announcements made to the Exchange pursuant to these Requirements, as soon as practicable after the same are released on the Exchange's website; and

(b) a summary of the key matters discussed at the annual general meeting, as soon as practicable after the conclusion of the annual general meeting.

Paragraph 9.21(4) of the Bursa Securities Listing Requirements

A listed issuer should ensure that its website is current, informative and contains all information which may be relevant to the listed issuer's shareholders including analyst's briefings.

From a company's viewpoint, it is vital to understand that communication depends on the nature of stakeholders that the company is dealing with. In engaging with stakeholders, companies should consider leveraging technology as it facilitates the dissemination of information in a more seamless and inclusive manner.

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

How does the board improve its communication with stakeholders?

The board has to first identify its stakeholders and formalise a policy. The board then has to implement and disclose its policies on stakeholder communication to articulate the approaches towards different stakeholders. These polices must be assessed regularly by the board. A policy on communication with stakeholders should at the very least contain:

- purpose of the policy;

  The policy should describe the purpose of the policy to promote effective communication and provide stakeholders with complete and timely information about the company.

- principles used to formulate the policy;

  There should be an explanation on how the communication policy was formulated, including the level of clarity and reliability of information, as well as the application of open, fair, timely and consistent disclosures. The policy should outline measures to ensure compliance with the disclosure requirements as set out in **Bursa Securities Listing Requirements** and other relevant regulatory requirements such as nature of information that can be released so as to avoid instances of disseminating unpublished price-sensitive information. The nature of information that would be classified as price-sensitive should be clearly ascertained. A clear level of authority should be accorded to designated spokespersons or those handling the material information.

- parties responsible for the communication;

  The policy should include details on the parties responsible for communication with stakeholders and whom stakeholders can contact, if necessary.

- methods of communication; and

  The policy must define and provide details on avenues available to stakeholders to communicate with the company and the board such as telephone, mail, email, facsimile, corporate website, in person at the company's office and for shareholders this also includes attendance at the AGMs/EGMs. Communication with stakeholders also includes quarterly and annual reports, press releases and announcements made by the company.

- location where additional information can be found.

  Information on where the policy or further information about the company can be accessed such as the company website, must be provided to stakeholders.

What are the common channels of communications?

In order to communicate with stakeholders, the board must first ensure the proper channels of communication have been established. This would involve the following:

1. Establishing an investor relations function

Investor relations is the process by which a company organises and conducts itself in an effective two-way communication with its shareholders. Reference can be made to Bursa Malaysia's publication – "Investor Relations – Put Into Practice" which acts as a resource for a company to plan an investor relations programme or review its existing programme. Generally, an investor relations programme includes the activities outlined below.

Scope or activities of an investor relations function[3]:

- Communicate corporate developments, strategy and financial plans to investors/ financial community;
- Develop shareholder management strategy; and
- Obtain feedback from investors/financial community.

Based on the company's size of operations and market capitalisation, the following actions may be considered in terms of investor relations undertakings:

- establishing a separate independent investor relations function;
- providing dedicated investor relations contact on its website and annual report;
- designing and implementing an investor relations programme which amongst includes governed engagement via social media and usage of digital corporate content;
- analysing market and sell-side sentiments;
- investor relations activities represent a standing agenda at board meetings (e.g. headline updates on investor relations matters) and board committee meetings (e.g. briefing on outcome of dialogues with investors/financial community and the attendant integration of the material matters gathered into business operations) at least on a quarterly basis.
- ensuring there are personnel to oversee the communication with stakeholders; and
- heightening efforts in providing information via company website and annual report

[3] *Investor Relations Put Into Practice*, 2007, Bursa Malaysia

2. Conducting engagement sessions with the different types of stakeholders, including analyst and media briefings.

As mentioned above, every stakeholder group is distinct as each group has different interests. Institutional investors would have a different perspective on their investment as opposed to a retail investor. As such, different approaches would be required to communicate with the different groups.

For example, engagement sessions (e.g. briefing and dialogues) allow shareholders and other stakeholders to better understand the company and make informed decisions on exercising their votes. Concerns regarding the company's performance, strategy, corporate governance practices and future prospects can be raised through briefing sessions, which will provide the company and its stakeholders (e.g. investors, analysts and employees) with a common platform to improve the flow of information. As for the briefing of quarterly results to analysts, it would be in the enlightened interest of the listed issuer to ensure that the time interval between the said briefing session and release of quarterly report is not too long so much so that it dissipates interest amongst analysts.

Common questions asked by shareholders and stakeholders currently

- What is the company's strategy going forward, given the current market conditions?
- What are the steps being taken by the company to mitigate the decline in revenue and profitability?
- Why has the company's share price exceeded/lagged behind the others in the same industry? How has the company's share price performed in comparison to competitors?
- Is the company looking for opportunities for acquisition and/or acquiring assets? Is the company looking to expand into complementary industries?
- Why have gross operating margins increased/decreased from prior years?
- Which division/subsidiary/products contributed the most and the least to this year's earnings? Which division/subsidiary/product is expected to be stronger/weaker next year?
- What events have led to company's impairment charges?
- How does the company plan to increase its market share?
- To what extent is the company dependent on short-term financing to operate?
- If the Employee Stock Option Scheme (ESOS)/share grant is granted to non-executive directors, what was the basis or justification provided by the company?

- How has the board assessed the suitability and independence of the external auditor?
- Does the company have clear and measurable key performance indicators (KPIs) to indicate the effectiveness of its management of sustainability matters?

Adapted from investor relations briefing materials, minutes of general meetings across several listed issuers and the Annual General Meeting Corporate Governance Checklist by Securities Commission Malaysia, 2020

3. Ensuring proper and accurate disclosure using available technological means such as the company website and social media.

It is important to note that stakeholders are increasingly active in online forums where latest industry developments and stock performance are shared and discussed. Although they are becoming more informed, there is a risk in them being misled in these forums. By being proactive on the company's website and social media, companies can act to ease the pertinent concerns of stakeholders.

Bursa Malaysia Corporate Disclosure Guide[4] states that a listed issuer should leverage on advances in information technology to broaden its channel for dissemination of information. In tandem with this, the **Bursa Securities Listing Requirements** allows the use of e-communication by the listed issuer to disseminate information to its stakeholders, subject to the provisions in the constitution of the listed issuer, as outlined below.

Paragraph 2.19B of Bursa Securities Listing Requirements

Issuance of documents by electronic means by a listed issuer to its securities holder

A listed issuer may send any document required to be sent under these Requirements to its securities holders ("**Documents**") by electronic means, if the following conditions are complied with:

(a) the constitution of the listed issuer –

(i) provides for the use of electronic means to communicate with its securities holders;

(ii) specifies the manner in which the electronic means is to be used; and

(iii) states that the contact details of a securities holder as provided to the Depository shall be deemed as the last known address provided by the securities holder to the listed issuer for purposes of communication with the securities holder;

[4] Paragraph 3.26, Bursa Malaysia Corporate Disclosure Guide

(b) if the listed issuer publishes the Documents on its website, the listed issuer must separately and immediately notify the securities holders of the following in writing:

(i) the publication of the Document on the website; and

(ii) the designated website link or address where a copy of the Document may be downloaded;

(c) if the listed issuer sends the Documents or notification through electronic mail, there must be proof of electronic mail delivery;

(d) where a securities holder requests for a hard copy of the Document, the listed issuer must forward a hard copy of the Document to the securities holder as soon as reasonably practicable after the receipt of the request, free of charge; and

(e) where it relates to Documents required to be completed by securities holders for a rights issue or offer for sale, the listed issuer must send these Documents through electronic mail, in hard copy or in any other manner as the Exchange may prescribe from time to time.

Note: Sections 319, 320 and 612 of Companies Act 2016 allow companies to deploy technology to engage and communicate with its shareholders.

How can a company's website (on communication with stakeholders) be enhanced and be made user-friendly?

Suggested measures to enhance the content of a company's website are outlined below:

- ensure the website contains a calendar which sets out the important dates for stakeholders (e.g. dates on release of quarterly financial results, date of general meetings, books closure dates as well as ex-dividend or payment dates)
- ensure corporate governance documents and policies (e.g. company's constitution, board charter, terms of reference of board committees, code of conduct and ethics, whistleblowing policy and procedures as well as remuneration policies and procedures) are regularly updated and easily accessible to stakeholders;
- ensure announcements made to the Exchange are published immediately on the company's own website and such announcements should be maintained as long as reasonably practicable for stakeholders' information;
- publish the webcasts (if available), presentation slides and announcements made to the media as well as analysts, on the company's website; and
- provide an investor relations contact to facilitate quick response to stakeholders' queries.

WHERE? Regional/International perspectives

As in the case of Malaysia, countries such as Australia, Singapore and United Kingdom have enumerated provisions (through their respective codes of corporate governance) that aim to foster transparent communication between the board and stakeholders.



Country	Provision(s)
Australia	A listed entity should have an investor relations program that facilitates effective two-way communication with investors ***(Recommendation 6.2)***.
Singapore	The company provides avenues for communication between the Board and all shareholders, and discloses in its annual report the steps taken to solicit and understand the views of shareholders ***(Provision 12.1)***. The company has in place an investor relations policy which allows for an ongoing exchange of views so as to actively engage and promote regular, effective and fair communication with shareholders ***(Provision 12.2)***.
United Kingdom	In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties ***(Principle D)***.

Integrated Reporting

MCCG Intended Outcome 12.0
There is continuous communication between the company and stakeholders to facilitate mutual understanding of each other's objectives and expectations.

Stakeholders are able to make informed decisions with respect to the business of the company, its policies on governance, the environment and social responsibility.

MCCG Practice 12.2
Large companies are encouraged to adopt integrated reporting based on a globally recognised framework.

WHY? The case for change

Traditionally, annual reports have been and continue to be an essential medium to update stakeholders on the company's financial and strategic performance over the past financial years. However, the nature and pace of change in businesses today have evolved over time and stakeholders are now placing greater emphasis on the future performance and non-financial information of a company.

In this respect, integrated reporting represents a form of corporate reporting that enables all the dimensions of a company's values, strategy, risks and opportunities aligned to outputs and outcomes, to be articulated in a single and comprehensive report. Integrated reporting establishes the cycle of integrated thinking and reporting as a core requirement that is designed to support sustainable business and financial stability. It seeks to bridge the traditional silos by blending strategy, resource allocation and relationship that a company is reliant upon and through qualitative and quantitative information.

In preparing an integrated report, companies should be guided by principles and concepts that govern or anchor the overall content of an integrated report. To this end, the Integrated Reporting <IR> Framework, issued by the IIRC represents a widely recognised integrated reporting framework. The <IR> Framework which was originally published in 2013 witnessed a revised version on 19 January 2021 with a focus on amongst others to improve the insights into the quality and integrity of the underlying reporting process[1].

[1] *IIRC publishes revisions to International <IR> Framework to enable enhanced reporting 2021*, International Integrated Reporting Council

The <IR> Framework illustrates the fundamental concepts that underpin integrated reporting (i.e. the articulation of value creation, preservation or erosion within the context of:

- 6 capitals

MCCG Practice 4.1
The board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

The board takes into account sustainability considerations when exercising its duties including among others the development and implementation of company strategies, business plans, major plans of action and risk management.

Strategic management of material sustainability matters should be driven by senior management.

MCCG Practice 4.2
The board ensures that the company's sustainability strategies, priorities and targets as well as performance against these targets are communicated to its internal and external stakeholders.

MCCG Practice 4.3
The board takes appropriate action to ensure they stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

as a fundamental part of effective business management.

MCCG Practice 4.4
Performance evaluations of the board and senior management include a review of the performance of the board and senior management in addressing the company's material sustainability risks and opportunities.

MCCG Step Up 4.5
The board identifies a designated person within management, to provide dedicated focus to manage sustainability strategically, including the integration of sustainability considerations in the operations of the company.

HOW? The practice in substance

In order to explain the company's current state and future aspirations, **Practice 12.2 of MCCG** encourages Large Companies to adopt integrated reporting based on a globally recognised framework.

*Note: In implementing **Practice 12.2 of MCCG**, the focus should be on the substance of the reporting, regardless of how companies opt to brand their annual reports. In providing a statement on the application of this Practice, companies should reflect on the extent to which they have adopted integrated reporting based on a globally recognised framework premised on the objective of providing disclosures on the company's value creation, preservation or erosion in a credible, systematic and comprehensive manner.*

Integrated reporting expands on the current financial reporting model to integrate non-financial information that will help shareholders and other stakeholders understand how a company takes into account the connectivity and interdependences that have a material effect on the company's

> **MCCG Practice 12.2**
> **Large companies** are encouraged to adopt integrated reporting based on a globally recognised framework.

non-financial based statements such as, governance statements and sustainability reports. The integrated report provides information on how a company's strategy, performance, governance and prospects lead to value creation, preservation or erosion. The integrated report enhances the value of information available to stakeholders and advocates higher standards of transparency and accountability from the company towards its stakeholders.

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

How is integrated reporting put into practice?

The first step that has to be taken by a company is to make a conscious decision to adopt integrated reporting. The decision to adopt integrated reporting usually stems from the company's motivation to gain the internal benefits of integrated thinking and to focus their reporting on matters that are considered as material to the company and its stakeholders. Essentially, integrated reporting is an outcome of integrated thinking, premised on how financial and non-financial considerations are embedded into the strategy, governance, performance, resource allocation, outlook and prospects.

A company with which has more mature sustainability reporting practices (covering various non-financial considerations) is therefore in a better position to adopt integrated reporting as it is more likely to have established the necessary systems, controls and assurance processes to assure the senior management that there is a clear presence of quality non-financial data to support the development of an integrated report.

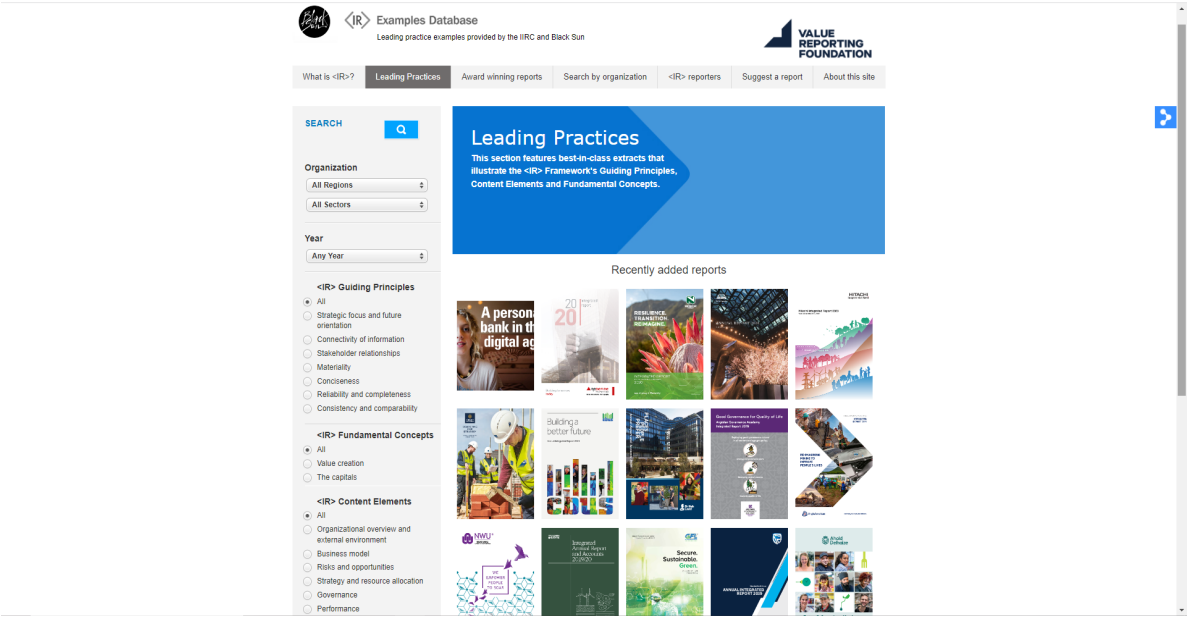
Although the details may vary, the integrated reporting journey of any company usually involves six phases, as outlined below:



For more information on transitioning to integrated reporting, companies may draw to reference to the document, "Transition to integrated reporting - A guide to getting started" by VRF as accessible via https://www.integratedreporting.org/wp-content/uploads/2021/09/Transition-to-integrated-reporting_A-Getting-Started-Guide.pdf.

How can companies prepare an integrated report, guided by the Content Elements as contained in the <IR> Framework?

In preparing an integrated report, companies may draw guidance from the following eight Content Elements. Companies may also take cognisance of example extracts that illustrate the Content Elements of <IR> Framework as accessible on IIRC's database via http://examples.integratedreporting.org/leading_practices (shown below).



Content Element 1: Company overview and external environment

The integrated report should provide an overview of what the company does and under which environment it operates. In providing the company overview, the company should first identify the following:

- the company's:
  - culture, ethics and values;
  - ownership and operating structure;
  - principal activities and markets;
  - competitive landscape and market positioning (considering factors such as the threat of new competition and substitute products or services, the bargaining power of customers and suppliers, and the intensity of competitive rivalry); and
  - position within the value chain;

- quantitative and qualitative information that is key to the company (e.g. the number of employees, revenue and number of countries in which the company operates), highlighting, in particular, significant changes from prior periods; and

- significant factors that affect the external environment and the company's response.

Significant factors impacting the external environment of a company include legal, commercial, social, environmental and political issues that affect the company's ability to create value in the short, medium or long term.

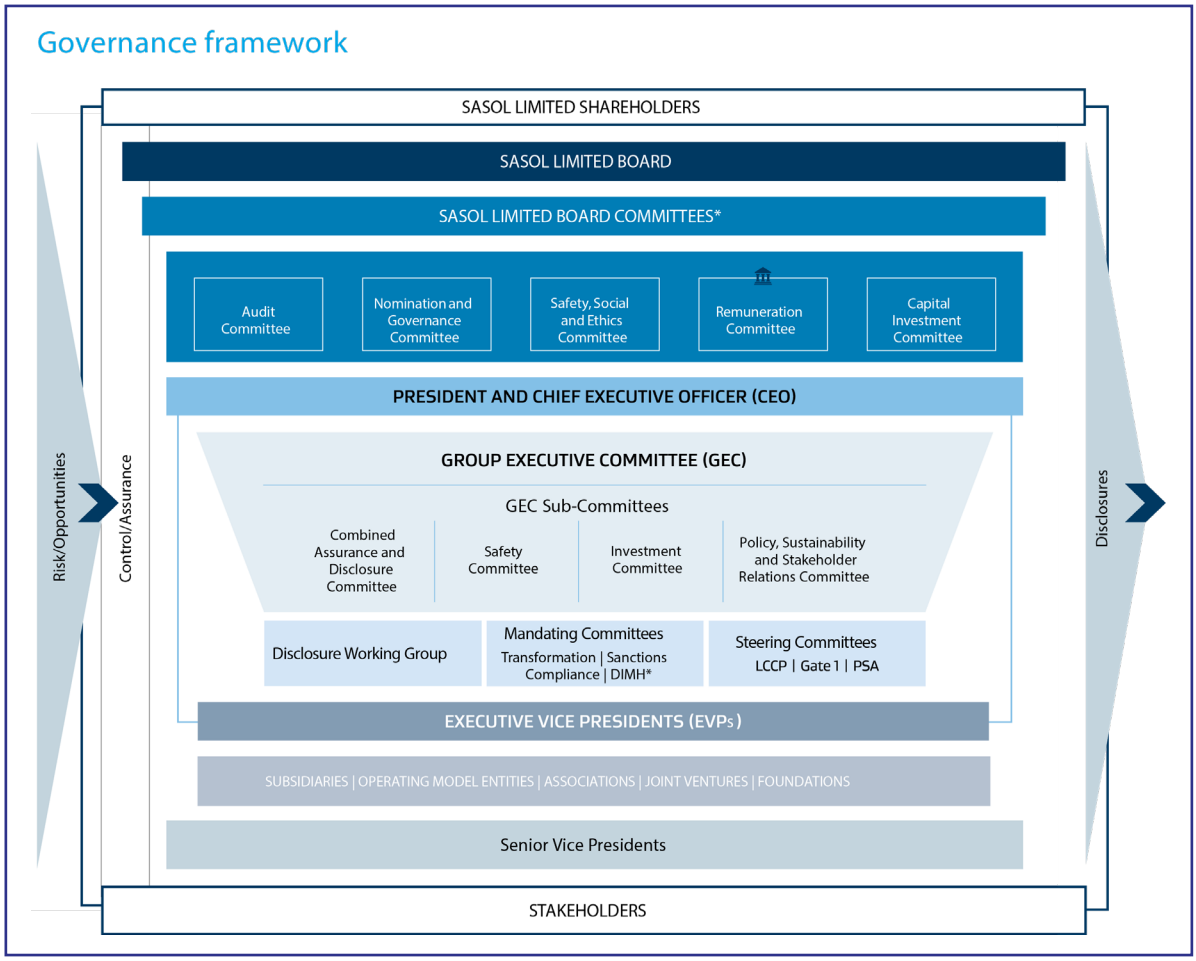
Stakeholder needs, macro and micro economic conditions, market forces, speed and effect of technological change and societal issues are some factors that can impact the company either directly or indirectly (e.g. by influencing the availability, quality and affordability of a capital that the company uses or affects). These factors may vary based on each individual company's business activities, industry and region which it operates in.

Content Element 2: Governance

The company should provide an explanation on how the current governance structure supports its ability to create value in the short, medium and long term.

The integrated report must provide details on the company's leadership structure, the skillset of its board and executive management, the diversity of its members, (e.g. range of backgrounds, gender, competence and experience) the people responsible for the governance within the company and which regulatory requirements influenced the design of the governance structure.

The integrated report must highlight the processes used in implementing strategic decisions, creating and monitoring the company's culture, including the company's risk appetite and the mechanisms in place to address issues relating to integrity and ethics. Information on the steps and measures taken to influence and monitor the company's strategic direction along with the risk management in place should be provided together with the explanation on the company's relationship with its key stakeholders. Other relevant aspects include the responsibility of those charged with governance for promoting and enabling innovation and how remuneration and incentives are linked to value creation, preservation or erosion in the short, medium and long term. The illustration in the following page shows an excerpt on the disclosure of the governance structure:



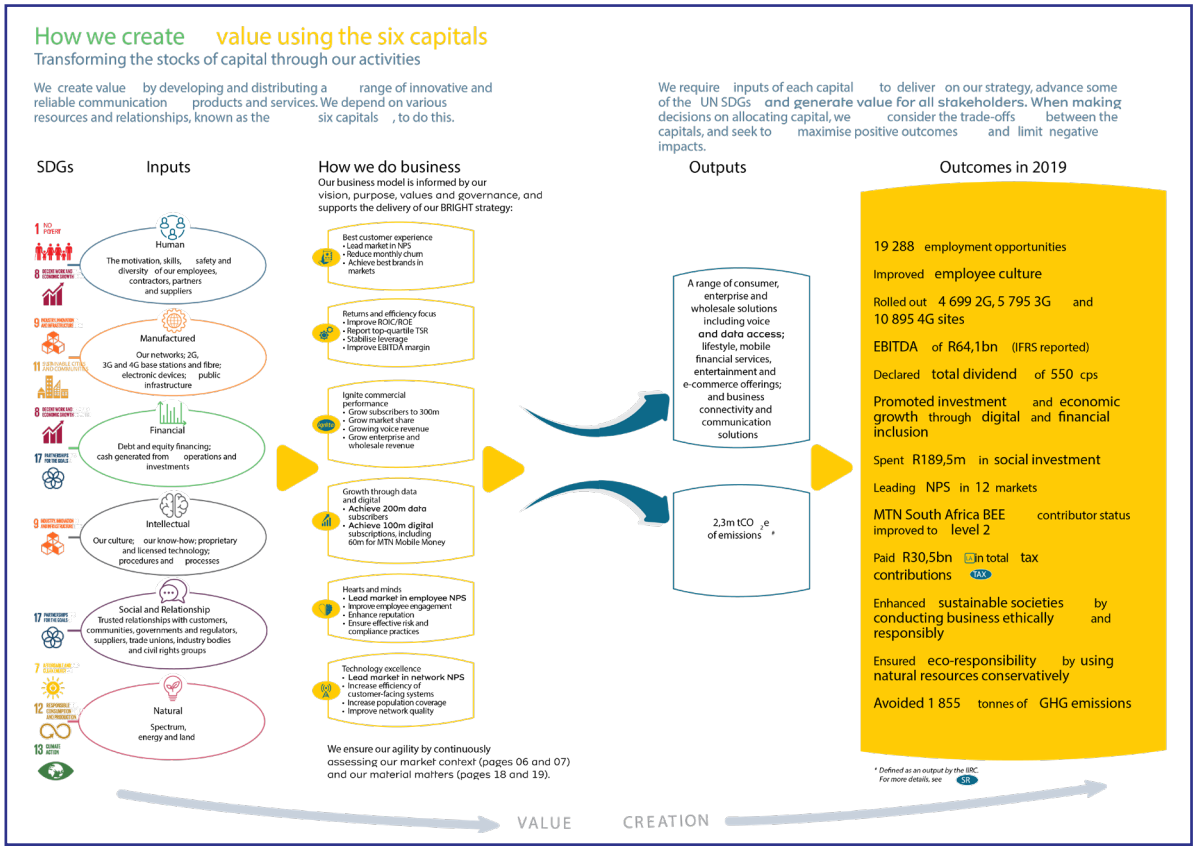
Source: Sasol Limited, Integrated Report, 2020 (South Africa)

Content Element 3: Business model

A company's business model is a setup of transforming inputs, through its business activities, into outputs and outcomes that aims to satisfy the company's strategic need and create the desired value over the short, medium and long term. Factors that could improve the quality and readability of the articulation on the business model include the following:

- recognising the specific elements of the business model;
- providing a diagram illustrating the key elements and providing relevant explanations to the elements;
- ensuring there is a logical flow to the writing; and
- identifying the crucial factors affecting the external environment of the company including but not limited to the needs of stakeholders.

The diagram below provides an example of how the reporting for a business model could be accomplished.



Source: MTN Group Limited, Integrated Report, 2019 (South Africa)

Content Element 4: Risk and opportunities

The company should articulate the risks and opportunities faced by the company and state how it would mitigate the risks and take advantage of the opportunities. It is important for a company to understand what factors have a material impact on its long-term value creation, preservation or erosion. Integrated reporting provides stakeholders with a better understanding of what the risks to the business are and how the company would respond to them. The illustrative disclosure below page provides an example of a strategic risk management response by a company based in India.

Strategic risks				
Risk type	Strategic response	Stakeholders impacted	Capitals impacted	Linkage of material topics
Ability to market increasing volumes	• Expanding market share and customer retention • Leveraging channel financing for providing additional liquidity • Continued focus on cost across cycles	• Customers • Suppliers • Employees • Investors		• Economic performance • Innovation
Raw material security	• Focusing on commissioning acquired mines • Diversifying sourcing across geographies • Buying on Annual Rate Contract where price is linked to TSI and PLATTS index	• Suppliers • Government		• Raw materials • Procurement practices
Safeguarding against exchange and interest rate fluctuation	• Board-approved hedging policy • Hedging through a judicious mix of forwards and options • Ensuring appropriate mix of rupee and foreign currency denominated debt, fixed and floating interest rates and debt of deferral tenure	• Government • Investors		• Economic performance
Mergers and Acquisitions M&As	• Appropriate due diligence process followed before M&A • Transaction structuring to optimise value while complying with regulatory framework • Proactive planning for post merger integration	• Investors • Employees • Government		• Economic performance • Employment

Source: JSW Steel, Integrated Report, 2019 (India)

Linking the issues across the report will allow for the disclosure to focus on the most material issues. If an issue is identified as a key risk or opportunity, the strategy and performance in managing it should also be explained, together with future outlook and governance process. If management finds it difficult to explain this information, they should ask themselves whether they are reporting on issues that are of only peripheral relevance.

Content Element 5: Strategy and resource allocation

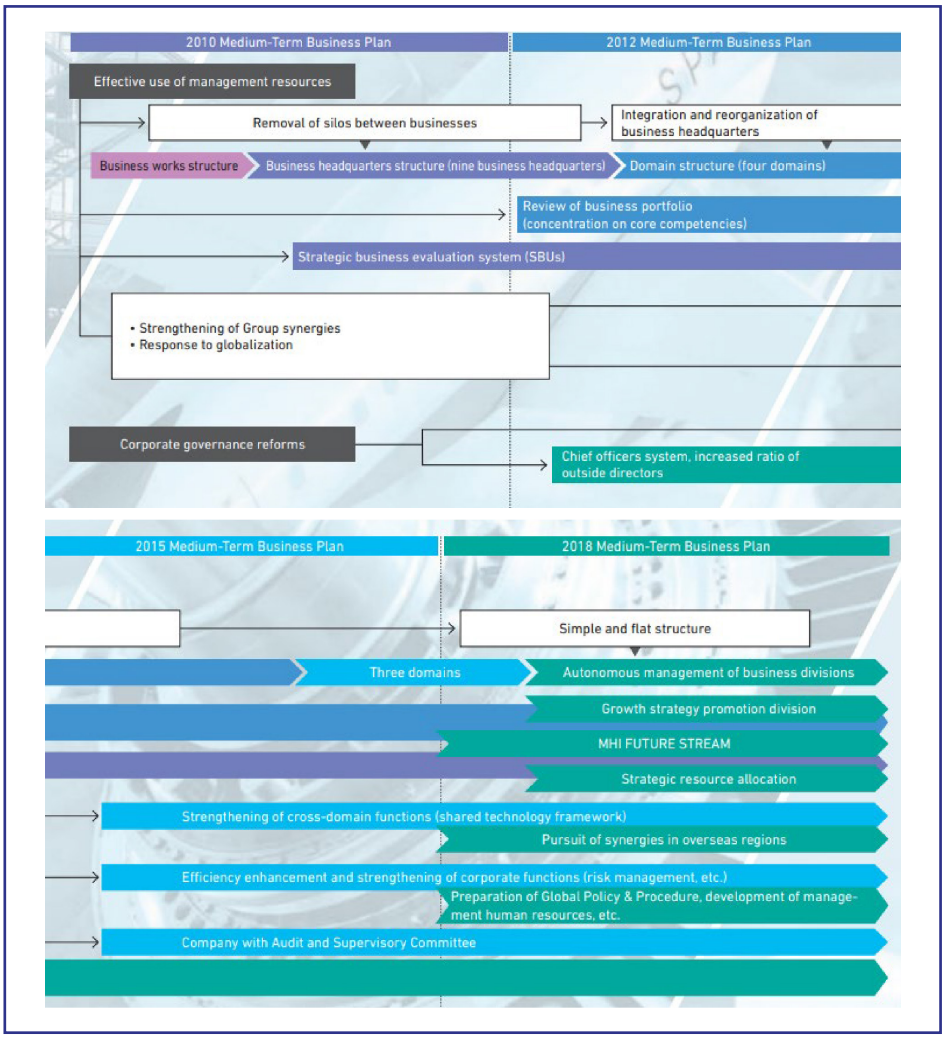
A company should identify its strategic direction and allocate resources (means) to ensure it gets there (ends). There should be a link between the operational and functional risks and the opportunities identified elsewhere in the report along with the strategy. The results should be a mix of information covering the company's short-term operational strategy and long-term strategic vision for the business.

In setting the company's goals, the board and management should consider the following:

- clearly identify the overall company's short, medium and long-term goals and outline how to achieve the said goals;
- the strategies it has in place, or intends to implement, to achieve those strategic objectives;
- identify the resources available to the company; and
- provide a roadmap on the actions or plans taken by the company to achieve its short, medium and long-term goals.

The integrated reporting framework allows companies to reflect upon their business model and implement changes as deemed necessary.

The diagram below provides an example of how a company explains its strategy by showcasing its roadmap:



Source: Mitsubishi Heavy Industries, Integrated Report 2019, (United Kingdom)

Content Element 6: Performance

The integrated report should contain qualitative and quantitative information about the company's performance and value creation, preservation or erosion. It should describe current levels of performance both as a basis for assessing progress in delivering management's strategic targets and as a base for understanding the future outlook for the business.

The information that may be included in the report is outlined below:

- quantitative indicators in relation to targets, risks and opportunities, explaining their significance, their implications, and the methods and assumptions used in compiling them;
- the company's effects (both positive and negative) on the capitals, including material effects on capitals up and down the value chain;
- the relationship between the company and its key stakeholders and how the company has responded to key stakeholders' legitimate needs and interests; and
- the linkages between past and current performance, and between current performance and the company's outlook.

The following example illustrates a clear articulation of performance by a leading company in United Kingdom

	Customer Orientation	Right Places
Achievements against last year's priorities	**Develop our Smart Places product** – Smart-specific guidance documents produced for internal teams and supply chain – Smart-enabled our head office, which will enable us to control and manage space remotely – Selected partner for our Campus app **Strengthened our operational expertise** – Storey operational across 297,000 sq ft including Storey Club and our first standalone building at Wells Street, W1 – Property Management business now fully integrated	**Progress developments, focusing on London campuses** – 135 Bishopsgate completed; 100 Liverpool Street close to completion (delayed due to Covid-19) – Enabling works commenced at Norton Folgate **Refine and re-focus our Retail business** – £296m sales of non-core assets **Progress at Canada Water** – Achieved resolution to grant planning for our Masterplan and confirmation that it will not be called in by the Mayor
Performance	**Customer satisfaction** We extensively survey our customers and other users of our places to assess our performance and identify opportunities for improvement. 2020 8.3 out of 10 2019 8.2 out of 10 2018 8.1 out of 10	**Total property returns** LTIP AI We have underperformed the IPD benchmark this year by 600bps, reflecting the continued strength of industrials where we have no exposure. 2020 (6.4)% 2019 (0.9)% 2018 7.0% **Speculative development commitment** Development supports value and future income growth, but adds risk. We keep our committed development exposure at less than 15% of our investment portfolio, with a maximum of 8% developed speculatively. % of standing investments 2020 0.6% £0.1bn 2019 2.3% £0.3bn 2018 4.5% £0.6bn
Future priorities	– Incorporate sustainability principles as standard within our leasing offer – Develop our Smart Places product to become an integral part of our campus offer – Active networks supporting our customers, communities and suppliers – Leverage our data and insights to develop our office offer and support masterplanning of major schemes	– Make further disposals in retail to progress our plan to deliver a smaller, more focused Retail business – Continued investment in campus development including 1 Broadgate; progress at Norton Folgate – Commence development at Canada Water – Make our places net zero carbon and increase their resilience to climate change
Risk indicators	– Monitor concentration of exposure to individual occupiers or sectors – Consumer confidence – Employment forecasts for relevant sectors – Market letting risk (vacancies, expiries, speculative development)	– Property capital return and ERV growth forecasts – Total and speculative development exposure – Progress of developments against plan – Execution of targeted acquisitions and disposals in line with capital allocation plan – Review of prospective performance of individual

Expert People

Office and Retail businesses fully integrated

- Efficiencies achieved in common functions including marketing and finance
- Leasing and asset management strategies benefitting from more diverse skill set

Median gender pay gap reduced

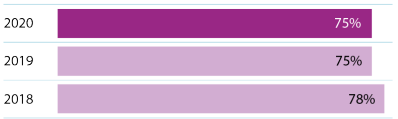
- Reduced to 27.9% from 34.9% across British Land

EnaBLe network formed

- Focused on providing opportunities and excellent customer services to all

Employee engagement score

75% employee engagement score, 6% higher than the United Kingdom benchmark.



2018 data was collated prior to the combination of British Land and British Land Property Management and relates to British Land only.

- Embed Sustainability knowledge more firmly across the business with clear team and department objectives
- Generate efficiencies and leverage experience through new team structure
- Continue to reduce our gender pay gap

- Voluntary staff turnover
- Employee engagement

Capital Efficiency

Maintain appropriate leverage

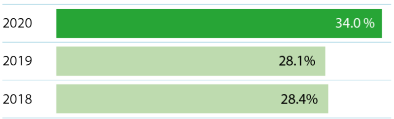
- Debt low with LTV at 34.0%
- Flexible finance: £550m new debt finance arranged; £925m of facilities extended
- £1.3bn of undrawn facilities and cash with no requirement to refinance until 2024

Recycle capital to improve returns

- £86m residential and £296m retail sales
- £125m share buyback completed; total of £625m returned since July 2017

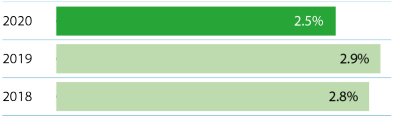
Loan to value (LTV) – proportionally consolidated

We manage our LTV through the property cycle such that our financial position would remain robust in the event of a significant fall in value.



Weighted average interest rate – proportionally consolidated

Our low cost of finance at 2.5% has contributed to reducing our interest cost, supporting our financial performance. Our use of caps as well as swaps for interest rate hedging means we benefit if market rates remain low.



- Take capital allocation decisions based on relative value and in accordance with our strategy
- Maintain balance sheet resilience with sufficient liquidity for business requirements
- Consider Sustainable and ESG linked Finance

- Financial covenant headroom
- Available facilities and cash
- Period until refinancing is required
- Execution of debt financing, availability and cost of finance in the market

Group indicators

Total accounting return (TAR) LTIP

TAR is our overall measure of performance. It is the dividend paid plus the change in EPRA NAV per share expressed as a percentage of EPRA NAV at the beginning of the period.

This year our TAR was (11.0)% comprising a dividend of 15.97p per share offset by a fall in EPRA NAV of 14.5% to 774p per share.

TAR

(11.0)%

2019: (3.3)%

Delivering long term, sustainable value.

Source: British Land, Integrated Report 2020 (United Kingdom)

Content Element 7: Outlook

Integrated reporting highlights the anticipated changes over time and provides information based on sound and transparent analysis on the company's expectations about the external environment and how well equipped is the company to meet the challenges that lie ahead.

The outlook should help the reader form their own views on the future of the company. The illustrative disclosure below and in the ensuing page provides an example on how the company could provide an outlook for the next financial year.

14 External context

Key themes shaping the packaging industry and opportunities

We operate in a fast-paced world with diverse and complex issues impacting our planet, society and the way we do business. Our success is built on our ability to anticipate and respond to the challenges and opportunities we face today and in the future in the packaging markets where we operate, and partnering with others to find long-term solutions for our stakeholders.

To learn more about our wider context, take a look at our Sustainable Development report 2019 website: www.mondigroup.com/sd19





Sustainability

Context and challenges

- Our society continues to face significant environmental challenges. Climate change, degraded ecosystems, resource scarcity, access to sustainable fibre, increasing waste and pollution and the impact of plastic leakage on the environment are key issues our industry needs to be addressing with urgency
- Consumer awareness around these challenges continues to rise, requiring corporates to take decisive action and fostering sustainability pledges by major FMCGs, retailers and packaging players
- Sustainability-related legislation is increasing at a different scale and pace across geographies, creating an increasingly complex landscape to operate in

Opportunities

- Grow with our paper-based packaging solutions, which are renewable and widely recyclable, offering a sustainable packaging alternative
- Develop circular flexible plastic packaging, which is the most resource efficient plastic-based packaging, with a focus on increasing the use of recycled content and designing for recycling
- Collaborate with stakeholders along the value chain to find innovative solutions and educate end-consumers about sustainable choices

How we are responding

- Keeping sustainability core to our business, with sustainable growth at the centre of our strategic framework and clear sustainability performance targets across our Growing Responsibly Action Areas
- Working with our customers to achieve their sustainability goals, using our EcoSolutions approach to replace less sustainable packaging; reduce raw material usage; and design packaging ready to recycle
- Further lightweighting and right-sizing our packaging solutions without compromising strength and functionality
- Working with partners such as Ellen MacArthur Foundation, CEFLEX, CISL, CEPI's 4evergreen and WWF to play a leading role in finding tangible solutions and shape our approach to sustainability

Source: Mondi Group, Integrated Report 2019 (South Africa)

Content Element 8: Basis of preparation and presentation

The integrated report should provide clarity on how the company determines what matters would be included in the report and how they are evaluated and qualified.

The integrated report should contain a clear explanation on the process and application undertaken by the board and management in identifying material matters. The following steps should be taken to identify the material matters:

- establish parameters for the materiality determination process; and
- ensure all matters are filtered to identify and evaluate their relevance, importance and prioritised accordingly;

What are the key changes arising from the revision to the <IR> framework on 19 January 2021 and what actions should companies undertake in view of this revision?

The revised <IR> framework in January 2021 supersedes the <IR> framework (December 2013) and applies to reporting periods commencing 1 January 2022 with early application being welcomed. The revisions in the <IR> framework focus on the following main aspects:

i. Clearer and simplified statement of responsibility for the integrated report

Those charged with governance of the companies are not only called upon to provide an acknowledgement of their responsibility to ensure the integrity of the integrated report but they are also now expected to express the extent to which, the integrated report is presented in accordance with the <IR> Framework. Where a company is in the process of adopting the <IR> Framework, it is appropriate to identify which requirements have not been applied and the reasons why.

Where legal or regulatory requirements preclude a statement of responsibility from those charged with governance, this should be clearly stated. In addition, companies are encouraged to provide process disclosures as a supplement to a statement of responsibility from those charged with governance as this information indicates measures taken to ensure the integrity of the integrated report.

Therefore, in order to discharge its oversight role effectively and resultantly provide a statement of responsibility for the integrated report, boards should embrace the ownership of the integrated reporting process. This would necessarily entail the intimate involvement of the board from the get-go stage particularly for companies that are transitioning into their integrated reporting journey.

ii. Clearer distinction between outputs and outcomes

The revisions bring to bear a greater focus on outcomes (positive/negative over the short, medium and long term) and how these relate to capitals. It is clarified that outcomes are the internal and external consequences (positive and negative) for the capitals as a result of a company's business activities and outputs.

Companies should therefore ensure that their integrated report presents outcomes in a balanced way and where practicable, support the company's assessment of the use of and effects on the capitals with qualitative and quantitative information.

iii. Greater emphasis on the balanced reporting of outcomes and value preservation and erosion scenarios.

The revisions highlight a more balanced perspective with regards to the expanded notion of "value creation" through the explicit recognition of "value preservation and erosion". It is acknowledged that although companies aim to create value, the overall stock of capitals can also either undergo a net decrease or experience no net change – in such cases, value is eroded or preserved.

In light of this, companies should endeavour to give a balanced account of whether value is created, preserved or eroded for the company and others (i.e. stakeholders and society at large). The examples in the ensuing pages show how a company demonstrates the linkages of its outputs and outcomes and this is done in a balanced way, using statistics to evidence the positive and negative outcomes for each capital group.

OUR INPUTS | The resources and relationships we need

		Availability, quality and affordability of capitals
FC	R44.6 billion in equity (2019: R44.6 billion) R36.7 billion in debt (2019: R41.2 billion)	Operating in a capital-constrained and costly environment means that prudent balance sheet management and careful liquidity planning to strengthen the balance sheet and lower our loan-to-value (LTV) is imperative to our sustainability.
MC	Direct local property portfolio of R65.4 billion (2019: R72.8 billion) International listed securities of R7.3 billion (2019: R12.7 billion) Directly held international properties of R8.3 billion (2019: R9.9 billion)	High level of competition for quality assets combined with shifting consumer preferences due to COVID-19 necessitates a strategic approach to sectoral diversification and the exploration of alternative uses for existing property and asset classes. Focus on sectoral diversification versus geographical diversification necessitates the need to simplify the asset platform and to reduce currency exposure risk. Tenant retention is imperative to long-term sustainability – the COVID-19 tenant relief concessions impacted short-term income generation, but without tenants, Redefine ceases to exist.
HC	445 permanent property and financial professionals (2019: 424) 47 temporary employees (2019: 60) 72% of staff able to work remotely during hard lockdown	Shortage of experienced property skills and talent requires focus on growing talent and retaining our high performers in a competitive market. During the lockdown, maintaining jobs was a critical priority. No retrenchments or salary cuts were implemented as a result of COVID-19 lockdowns. As part of our COVID-19 recovery, we focused on three core attributes to ensure our people remained engaged: → Purpose to embed wellbeing and meaning into every aspect of work every day, optimising the power of individuals by harnessing employees' collective and complementary strengths to achieve a common goal → Potential to harness what our employees are capable of achieving as individuals and within teams → Perspective to view uncertainty as offering possibilities rather than threats – moving boldly into the future
SRC	Deepen communication and collaboration to strengthen relationships with our key stakeholders: Investors and funders, Employees, Tenants, Property brokers, Suppliers, Communities	Low trust environment results in businesses needing to demonstrate behaviour that progressively earns trust, which can be easily lost if not carefully managed. The health and safety of our stakeholders remains our highest priority. We continue to apply the guidelines issued by the World Health Organisation and the South African government in all our buildings. We continue to work with regulators, industry bodies and tenants to ensure that we are continuously enhancing our protocols to ensure our stakeholders remain safe.
IC	Integrated strategy Strong brand Innovative thinking and ability to adapt to change Robust governance structures centred on ethical conduct 100 registered trademarks	Pace of change necessitates increased focus on innovation and agility and generation of intellectual property to stay ahead in a competitive and constantly evolving environment.
NC	2.6 million litres of water used in our buildings (2019: 3.1 million litres) 560 386 MWh of electricity used (2019: 656 768 MWh) 17% of properties by gross lettable area (GLA) located in high/extremely high flood risk areas*	Cost and availability of water and electricity continue to support the business case for resource-efficient buildings.

Corporate Governance Guide | Pull-out III

Guidance on Integrity in Corporate Reporting and Meaningful Relationship with Stakeholders

OUR BUSINESS ACTIVITIES | What we do

Our business activities are geared to ensure we secure long-term leases with blue-chip tenants to provide sustained value creation for all our stakeholders. We are committed to monitoring and improving the ESG-related impacts of our business activities and investment decisions.

Our focus is on real estate and related investments – not a particular sector. While COVID-19 has accelerated trends already underway, it has not fundamentally changed what we do. Instead, it has forced us to look at and adapt more rapidly to a changing context.



MANAGING
We actively manage our diversified portfolio to enhance efficiency and maximise returns.

ACQUIRING
Our strategy is to grow and improve the quality of our portfolio by acquiring high-quality buildings with long-term leases in place, which offer secure cash flows and negligible vacancy rates.

DEVELOPING
Driven by demand, opportunity and the need to remain relevant, we develop innovative, operationally efficient and cost-effective buildings and redevelop existing properties to extend value creation.

DISPOSING
We sell assets that have reached the end of their investment cycle for us, and recycle the capital into opportunities that have better long-term capital growth prospects once all other alternative uses for the property have been exhausted.

ENABLING SERVICES
The activities that grow the value of our property portfolio are underpinned by support services that enable the business to function in a manner that creates value in the short, medium and long term.

CAPITAL MANAGEMENT
We have a disciplined approach to capital management. In an environment of scarce and costly capital, we evaluate the prospective returns of each capital deployment opportunity to determine our allocation of capital. Underpinning our business activities are the choices we make about sourcing, deploying, managing and, at times, recycling our manufactured capital in line with our investment strategy to generate sustained cash flow.

OUR OUTPUTS | What we produce

OUR PRODUCT

Quality real estate investments, adding value to society, that deliver sustained cash flow

Total portfolio GLA of 4.4 million m^2
(2019: 4.5 million m^2)

OUR WASTE AND EMISSIONS

Total greenhouse gas (GHG) emissions of 581 283 tCO_2e
(2019: 713 258 tCO_2e)

8 689 tonnes of waste generated from internally managed waste at 39% of our properties by GLA
(2019: 7 674 tonnes for 30% of GLA)

Refer to page 104 for a discussion on what value means for our stakeholders. To understand how we strive to enhance our positive outcomes and ameliorate our negative outcomes, please refer to our value creation sections, starting on page 74.

OUR OUTCOMES | How we create, erode and preserve value for our stakeholders and the broader community

Investors and funders	2020	2019
Full-year distributable income per share of 51.5 cents (2019: 101 cents)	▼	▲
Reduction in non-recurring distributable income of R267 million (2019: reduction of R106 million)	▲	▲
LTV ratio of 47.9% (2019: 43.9%)	▼	▲
Total return to shareholders of -18.8% (2019: 7.1%)	▼	▼
Moody's credit rating downgraded to Ba2, in line with the sovereign rating downgrade (2019: maintained)	▼	■

Employees	2020	2019
Annual employee remuneration at R202.2 million (2019: R175.3 million)	▲	▲
13 172 man-hours spent on training and development (2019: 14 486 man-hours)	▼	▼
No salary increases for FY2021 for employees earning over R200 000	▼	N/A
No short-term incentives (STIs) awarded for FY2020	▼	N/A
Total staff turnover 14.9% (2019: 22.3%)	▲	▼
Staff complement increased by 1.7% (2019: 6%)	▲	▲
244 learners have graduated since 2013 (2019: 198)	▲	▲

Tenants	2020	2019
Tenant retention: 92.1% (2019: 93.3%)	▼	▲
R318.0 million granted in rental relief and concessions during 2020	▲	N/A
Occupancy rate reduced to 92.7% (2019: 95.5%)	▼	■
Increased number of Green Star SA-rated buildings to 101 (2019: 74)	▲	▼
25.9 MWp of renewable energy capacity (2019: 23.7 MWp)	▲	▲
GLA space of 4.4 million m^2 provided (2019: 4.5 million m^2)	▼	▼

Property brokers	2020	2019
23.2% (2019: 28.2%) leasing deals facilitated by brokers by number of deals	▼	▲
R15.6 million (2019: R31.8 million) paid out in commission to brokers	▼	▲

Suppliers	2020	2019
Enhanced ethical standards through a supplier code of conduct	▲	■
R40 million spent on labour component of supplier contracts during COVID-19 lockdown	▲	N/A
100% of procurement spend towards empowering suppliers (2019: 97%) on total measured procurement spend	▲	▲
R540 million spent on supplier development (2019: R593.2 million)	▼	▲
R57 million spent on enterprise development (2019: R54 million)	▲	▲

Communities	2020	2019
R5.2 million contribution to community engagement through corporate social investment (CSI) initiatives (2019: R8 million) and space to the value of R3.9 million	▲	▲
R2.5 million invested in CSI programmes based on *Challenge Convention* feedback	▲	▲
1 579 mentees matched with mentors in *The Mentorship Challenge* (2019: 740)	▲	▲
Level 3 broad-based black economic empowerment (B-BBEE) rating (2019: level 3)	■	■

▲ Positive ▼ Negative ■ Neutral

Source: Redefine Properties, Integrated Report 2020 (South Africa)

WHERE? Regional/International perspectives

Alongside Malaysia, countries such as South Africa and Philippines have enumerated provisions on integrated reporting premised on the need to provide stakeholders with a clear articulation of a company's value creation, preservation or erosion.



Country	Provision
Philippines	The company should ensure that the material and reportable non-financial and sustainability issues are disclosed. ***(Principle 10)***. The Board should have a clear and focused policy on the disclosure of non-financial information, with emphasis on the management of economic, environmental, social and governance (EESG) issues of its business, which underpin sustainability. Companies should adopt a globally recognized standard/framework in reporting sustainability and non-financial issues ***(Recommendation 10.1)***.

Country	Provision
	Explanation As external pressures including resource scarcity, globalization, and access to information continue to increase, the way corporations respond to sustainability challenges, in addition to financial challenges, determines their long-term viability and competitiveness. One way to respond to sustainability challenges is disclosure to all shareholders and other stakeholders of the company's strategic (long-term goals) and operational objectives (short-term goals), as well as the impact of a wide range of sustainability issues. Disclosures can be made using standards/frameworks, such as the G4 Framework by the Global Reporting Initiative (GRI), the Integrated Reporting Framework by the IIRC and/or the Sustainability Accounting Standards Board (SASB)'s Conceptual Framework ***(Principle 10, Recommendation 10.1)***.
South Africa	The governing body should oversee that the organisation issues an integrated report at least annually, which is either: (a) A standalone report which connects the more detailed information in other reports, and addresses at a high level and in a complete, concise way, the matters that could significantly affect the organisation's ability to create value; or (b) A distinguishable, prominent and accessible part of another report which also includes the annual financial statements and other reports that must be issued in compliance with legal provisions. ***(Principle 5, Recommended Practice 12)***

Notice of General Meeting

MCCG Intended Outcome 13.0
Shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings.

MCCG Practice 13.1
Notice for an Annual General Meeting should be given to the shareholders at least 28 days prior to the meeting.

WHY? The case for change

The importance of general meetings cannot be understated as they have a far-reaching impact on a company's strategic direction. The two commonly held general meetings that allow shareholders to exercise their rights, are the **AGM** and **EGM**.

The AGM is an annual gathering of shareholders, board of directors of a company and the external auditor, whereby resolutions such as election or re-election of directors, remuneration of directors and appointment of external auditors are tabled. The EGM meanwhile is a meeting that is called by the directors or any member holding at least 10% of the issued share capital of the company or a lower threshold as determined by the company's constitution to pass a resolution that requires the immediate attention of shareholders.

These meetings provide an avenue for shareholders to communicate directly with the board of directors and are often viewed by shareholders, especially the minority shareholders, as one of the few occasions whereby they can engage in a meaningful discussion with the board.

Given the significance of general meetings, it is essential for the notice of these meetings to be provided to shareholders in a timely manner to accord them with sufficient time to consider the resolutions that will be discussed and decided at the general meeting. **Practice 13.1 of MCCG** calls

MCCG Practice 13.1
Notice for an Annual General Meeting should be given to the shareholders at least 28 days prior to the meeting.

– all of which necessitates greater preparation time by shareholders.

The pertinent regulatory requirements on the requisitioning of general meetings including the prescribed duration for the notice of general meetings are outlined on the following page.

Section 310 of Companies Act 2016

A meeting of members may be convened by –

(a) the Board; or

(b) any member holding at least ten per centum of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members.

Section 311(3) of Companies Act 2016

The directors shall call for a meeting of members once the company has received requisition to do so from –

(a) members representing at least ten per centum of the paid up capital of the company carrying the right of voting at meetings of members of the company, excluding any paid up capital held as treasury shares; or

(b) in the case of a company not having a share capital, members who represent at least five per centum of the total voting rights of all members having a right of voting at meetings of members.

Section 316(2) of Companies Act 2016

A meeting of members of a public company, other than a meeting for the passing of a special resolution, shall be called by notice –

(a) in the case of an annual general meeting, at least twenty-one days or any longer period specified in its constitution; and

(b) in any other case, at least fourteen days or any longer period specified in its constitution.

Section 319(1) of Companies Act 2016

Notice of a meeting of members shall be in writing and shall be given to the members either –

(a) in hard copy;

(b) in electronic form; or

(c) partly in hard copy and partly in electronic form.

Section 340 of Companies Act 2016

1) 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 business:

   a) the laying of audited financial statements and the reports of the directors and auditors;

   b) the election of directors in place of those retiring;

   c) the appointment and the fixing of the fee of directors; and

   d) any resolution or other business of which notice is given in accordance with this Act or the constitution.

2) For the purposes of subsection (1), the annual general meeting shall be held—

   a) within six months of the company's financial year end; and

   b) not more than fifteen months after the last preceding annual general meeting

3) Notwithstanding subsection (1), a company shall not be required to hold an annual general meeting in the year of its incorporation or in the following year provided that the company hold its first annual general meeting within eighteen months of its incorporation.

4) The company may apply to the Registrar to extend the periods referred to in this section, and the Registrar may extend such periods as he considers appropriate, upon being satisfied with the reasons provided.

5) If a company fails to convene an annual general meeting under this section, the Court may, on the application of any member, order a general meeting to be called.

6) The company and every officer who contravene subsection (1), (2) or (3) commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

Paragraph 7.15 of Bursa Securities Listing Requirements

The notices convening meetings shall specify the place, day and hour of the meeting, and shall be given to all shareholders at least 14 days before the meeting or at least 21 days before the meeting where any special resolution is to be proposed or where it is an annual general meeting. Any notice of a meeting called to consider special business shall be accompanied by a statement regarding the effect of any proposed resolution in respect of such special business. At least 14 days' notice or 21 days' notice in the case where any special resolution is proposed or where it is the annual general meeting, of every such meeting must be given by advertisement in at least 1 nationally circulated Bahasa Malaysia or English daily newspaper and in writing to each stock exchange upon which the company is listed.

HOW? The practice in substance

It is therefore clear that an extended notice period with detailed information in the notice and accompanying materials could go a long way in encouraging greater shareholder participation at general meetings.

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

How should the notice of general meetings be disseminated?

As stated in **Section 319(1) of Companies Act 2016**, notice of general meetings should be given to shareholders in writing via hardcopy or electronic format or a combination of both. In addition, for listed issuers, the notice must be given by advertisement in at least 1 nationally circulated Bahasa Malaysia or English daily newspaper and in writing to the stock exchange **(paragraph 7.15 of Bursa Securities Listing Requirements)**.

In deciding how to disseminate the notice, the company should take into consideration the time taken for the notice to reach its shareholders. Circulation via electronic means (e.g. e-mail, company website) typically expedites the delivery of the notice. In the event the company decides to make the notice available on the website, the company should be cognisant of **Section 320(3) of Companies Act 2016** which requires such notice to be made available from the date of notification until the conclusion of the general meeting, as well as **paragraph 2.19B of Bursa Securities Listing Requirements** relating to issuance of documents by electronic means for listed issuers.

What should be encapsulated in the notice of general meetings?

Guidance on the notice of a general meeting can be found in the regulatory requirements, as outlined below.

Section 317(1) of Companies Act 2016

Notice of a meeting of members of a company shall state –

(a) the place, date and time of the meeting; and

(b) the general nature of the business of the meeting.

Paragraph 8.27 of Bursa Securities Listing Requirements

(1) A listed issuer must ensure that all notices convening general meetings contain sufficient information to enable a member to decide whether to attend the meeting.

(2) Without limiting the generality of subparagraph (1) above, a listed issuer must ensure that a notice convening an annual general meeting, where applicable, is accompanied by a statement which includes the information set out in **Appendix 8A**.

(3) Any notice of a general meeting called to consider special business must be accompanied by an explanatory note which contains the necessary information to enable a member to make an informed decision. Such explanatory note must include the effect of any proposed resolution in respect of such special business.

Appendix 8A of Bursa Securities Listing Requirements

Contents of statement accompanying notices of annual general meetings (paragraph 8.27(2))

(1) Further details of individuals who are standing for election as directors (excluding directors standing for a re-election), namely the following:

(a) the name, age, gender, nationality, qualification, and whether the position is an executive or non-executive one and whether such director is an independent director;

(b) the working experience and occupation;

(c) any other directorships in public companies and listed issuers;

(d) the details of any interest in the securities of the listed issuer and its subsidiaries;

(e) the family relationship with any director and/or major shareholder of the listed issuer;

(f) any conflict of interests that they have with the listed issuer; and

(g) other than traffic offences, the list of convictions for offences within the past 5 years and particulars of any public sanction or penalty imposed by the relevant regulatory bodies during the financial year, if any.

(2) A statement relating to general mandate for issue of securities in accordance with **paragraph 6.03(3)**[1] of these Requirements.

Note: In the case of specific matters tabled for approval at general meetings which require the issuance of a circular to shareholders under Bursa Securities Listing Requirements (e.g. corporate proposals undertaken, or transactions entered into, by listed issuers), the notice of meetings must be accompanied by such circulars which contain information as prescribed in Bursa Securities Listing Requirements.

[1] This paragraph stipulates the information that must be included in a statement accompanying the proposed resolution on a general mandate for issue of securities.

As stated in **Guidance to Practice 13.1 of MCCG**, "The notice should provide further explanation beyond the minimum content stipulated in the Listing Requirements for the resolution proposed to enable shareholders to make an informed decision in exercising their voting rights. The notice should include details of the resolutions proposed along with any background information and reports or recommendations that are relevant".

A typical AGM notice would contain the following:

1. Time, date and location of the meeting

   It is important for companies to ensure that the aforementioned information is clearly provided in the notice. Once decided, any changes made to the location, date or the time of the meeting should be communicated to all shareholders.

2. Resolutions that are tabled for approval

   A resolution is a motion tabled by the board or the shareholders (also known as members) of the company to be voted for at the general meeting. There are typically two types of resolutions tabled during general meetings, ordinary resolutions and special resolutions, as outlined in the **Companies Act 2016**:

> **Section 291(1) of Companies Act 2016**
>
> An ordinary resolution of the members or a class of members of a company means a resolution passed by a simple majority of more than half of such members -
>
> (a) who are entitled to vote and do vote in person, or where proxies are allowed, by proxy at a meeting of members; or
>
> (b) who are entitled to vote on a written resolution.
>
> **Section 292(1) of Companies Act 2016**
>
> A special resolution of the members or class of members of a company means a resolution of which a notice of not less than twenty-one days has been given and passed by a majority of not less than seventy-five per centum of such members –
>
> (a) who are entitled to vote and do vote in person, or where proxies are allowed, by proxy at a meeting of members; or
>
> (b) who are entitled to vote on a written resolution.

   The company should provide detailed explanations on the resolutions proposed, outlining the impact of the proposed resolutions on the company's business and on stakeholders, with the aim of ensuring shareholders are well apprised on the implications of their vote prior to decision-making.

An illustrative disclosure providing explanation for a resolution to approve the payment of a director's remuneration is outlined below.

(Note: Singtel Ltd of Singapore, in its Notice of AGM for the year 2019 has provided explanation on the bases for arriving at the proposed amount of the chairman's remuneration)

Illustrative disclosure

In arriving at the proposed Chairman's fees of S$960,000, the Company took into account:

(a) The significant leadership role played by the Chairman on the Board, and in providing clear oversight and guidance to management;

(b) The amount of time the Chairman spends on Singtel matters, including providing input and guidance on strategy and supporting management in engaging with a wide range of other stakeholders such as partners, governments and regulators, as well as travelling to visit the Group's key associates in the region. In this regard, the Board has agreed with the Chairman that he will commit a significant proportion of his time to his role as Chairman of the Singtel Board and will manage his other time commitments accordingly; and

(c) Comparable benchmarks from other large listed companies in Singapore that have chairmen with similar roles and responsibilities, as well as benchmarks from large listed companies in Australia, where Singtel has sizeable operations.

Additional information on the role of the Chairman can be found under 'Corporate Governance' in the Company's Annual Report 2019.

Source: Notice of Annual General Meeting Singtel Ltd (Singapore) for the AGM in 2019

Further reflection

Recent high profile interventions made by shareholders in the affairs of major companies globally, amongst others, have highlighted the powers that shareholders possess to requisition shareholder meetings and force votes on topics of their choosing In Malaysia, where shareholder(s) requisitions for a general meeting, in accordance to **Section 311 of Companies Act 2016**, the company should call for the meeting within 14 days from the date of the requisition, and hold the meeting no later than 28 days after the date of the notice to convene the meeting (**Section 312(1) of Companies Act 2016**). **Section 312(2)** notes that "if the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting shall include the text of the resolution."

Under such circumstance, shareholder(s) who have requisitioned for a meeting, should attempt to provide detailed information on the resolution intended to be moved at the meeting, and likewise, the company should endeavour to include the full extent of the details available in the notice of the meeting. Disclosure on the resolution should be drafted with care, to prevent defamation of any persons or institutions, in line with **Section 302(2) of the Companies Act 2016**.

To promote greater transparency and better governance, the company should ensure that the proposal of multiple non-related items into a single resolution (i.e. the bundling of resolutions), should be avoided. In addition to causing confusion amongst shareholders,

MCCG Practice 13.3
Listed companies should leverage technology to facilitate-

- voting including voting in absentia; and
- remote shareholders' participation at general meetings.

Listed companies should also take the necessary steps to ensure good cyber hygiene practices are in place including data privacy and security to prevent cyber threats.

Practice 13.3). In accordance with **paragraph 8.29A(2) of Bursa Securities Listing Requirements**, the listed issuer is also required to appoint at least 1 scrutineer to validate the votes cast at the general meeting.

To this end, shareholders should be furnished with relevant information on the voting procedures to facilitate a seamless proceeding during the general meeting.

It is also important for shareholders to be informed of their legal right to appoint a proxy to attend the meeting on their behalf, including to ask questions and vote on behalf of the shareholders. In this regard, a copy of the proxy form should be provided alongside the notice for the ease of shareholders.

(*Note: Section 334 of Companies Act 2016 provides detailed explanation on the rights of a shareholder in appointing a proxy for general meetings)*

In this regard, a copy of the proxy form should be provided alongside the notice for the ease of shareholders.

4. Administrative guide

For the conduct of any forms of virtual and hybrid general meetings, the notice of the meeting should be accompanied by an administrative guide which outlines the following matters related to the remote participation of members.

Meeting mode

- A brief clarifying the mode of the meeting with shareholders, providing detailed information on the time and date, meeting platform, and broadcast venue, should be featured in the administrative guide.

Remote participation and electronic voting facilities and procedures

- The administrative guide should detail the process for online registration and logging on to the virtual meeting portal.
- Information relating to the electronic voting procedures should be outlined, and additional information relating to the appointment of independent scrutineers and independent moderators should be captured.
- Technical information, such as the internet bandwidth requirements for good quality of connectivity, should be furnished.

Submission of questions

- The commencing date and closing date for advance submission of questions should be highlighted, and the details on the method of submitting questions on the virtual portal should be outlined.

Lodgement of proxy forms

- Submission of proxy forms should include considerations for both hard copy and via electronic means. The administrative guide should provide details such as location for submission of hard copy, methods for electronic submission, and deadlines for submission.

Contact for enquiries

- Contact information, including a telephone number and email address, of the technology service provider should be made available on the administrative guide for members' reference.

Post general meeting survey form

- A survey form should be included to glean feedback from shareholders and proxies on the effectiveness and efficiency in the conduct of the general meeting.

WHERE? Regional/International perspectives

As in the case of Malaysia, countries such as Australia call for a longer notice period in recognition of the need to ensure that shareholders are given sufficient notice and time to consider the resolutions that will be discussed and decided at the general meetings.



Country	Provision
Australia	Amount of notice of meetings of listed company: (1) Despite section 249H **at least 28 days' notice** must be given of a meeting of a company's members. (2) This section only applies to a company that is listed. (3) This section applies despite anything in the company's constitution. ***(Section 249HA)***

Attendance of Directors at General Meetings

MCCG Intended Outcome 13.0
Shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings.

MCCG Practice 13.2
All directors attend general meetings. The Chair of the Audit, Nominating, Risk Management and other committees provide meaningful response to questions addressed to them.

WHY? The case for change

Good corporate governance to a large extent depends on the role played by directors as stewards of the company. Directors are expected to maintain a high level of professionalism and integrity in steering management to achieve long-term business sustainability whilst reinforcing its accountability to shareholders.

Observations indicate that the rising shareholder activism across the globe is similarly gaining traction in Malaysia, seen in the increasing proactivity by shareholders for greater disclosure and transparency from directors on emerging issues and concerns. General meetings are typically regarded as one of the few available avenues for shareholders to communicate directly with the board, and hence, it is paramount for directors to be present during these meetings to attend to shareholders' questions and concerns.

The participation of all board members in general meetings will serve to distribute the responsibility of engaging with shareholders, to all directors of the company and not just the chairman of the meeting. This would enable the board to communicate with shareholders in a more holistic manner. In a similar vein, it also provides shareholders with an opportunity to seek pertinent clarifications from directors who are acting as custodians of their investments. Shareholders could perceive that a director is not committed in performing his or her responsibilities to the company if the said directors is not in attendance during general meetings.

HOW? The practice in substance

It is therefore clear that all directors should attend the company's general meetings with the chairmen of board committees being present to facilitate discussion on matters such as audit, nomination, remuneration and risk management, as well as any other specific matters pertaining to the company which the board has delegated to board committees.

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

How can communication between board committees and shareholders be enriched during general meetings?

Trends indicate an increase in shareholder enquiry on issues related to remuneration, board governance, company strategy and business continuity, environment, climate change and social issues[1], which largely comprise specialised topics which the board typically assigns to board committees. To this end, shareholders expect the directors who are directly involved in those committees to be present at general meetings and provide meaningful explanation or responses to questions addressed to them.

For example, the chairman of the nominating committee should provide an explanation on the review undertaken in recommending the appointment of new directors to the board. In this regard, the chairman of the nominating committee should disclose during the general meeting on how the nominating committee assessed the candidate and why the board finds him or her suitable for the said role. This in turn would allow shareholders to make informed decisions in casting their votes.

The aforementioned scenario also applies to the other board committees. Although the depth of communication may vary between companies, there should be a conscious effort made by companies during the general meeting to keep shareholders apprised of the activities of the various board committees. The chairmen of each board committee should report back to shareholders at the AGM on activities and achievements of the company vis-à-vis their portfolio, to promote engagement and transparency on the matters delegated to the board committees by the board. This would also reflect the boards priorities and emphasis where additional board committees, such as governance committee, have been established.

[1] *AGM Trends 2020* 2020, Equiniti

Further reflection

In the case of a crisis, non-compliance to regulatory requirements or any other unforeseen circumstances which disrupts the smooth flow of a general meeting, the chairman should consider adjourning the meeting, to ensure meaningful engagement between the board, board committees and shareholders can be maintained.

Below are some key considerations for the board chairman in dealing with adjournments[2]:

- Is quorum present?
  - where quorum is present, consent of the meeting is required for adjournment, and the chairman should undertake adjournment if directed by the meeting;
  - where quorum is not present, the chairman may adjourn the meeting; and
  - the chairman may adjourn the meeting, on his or her own accord, if circumstances prevent him or her from discharging his or her duties.
- How long is the meeting adjourned for?
  - notice of the adjourned meeting should be provided as in case of the original meeting if the meeting is adjourned for more than 30 days, based on the company's constitution; and
  - if the adjourned meeting is held beyond the stipulated timeframe, approval for the extension of time is required from Companies Commission Malaysia.
- Was the meeting adjourned mid-way or at the onset?
  - where the meeting was adjourned mid-way, only the business left unfinished at the original meeting can be transacted at the adjourned meeting, based on the company's constitution.

How can interaction during general meetings be improved?

It is commonly observed that questions posed by shareholders are predominantly answered by the chairman of the board (who also presides the general meeting) or the chief executive officer. In this context, as mentioned in the preceding page, the active participation of the chairmen of the various board committees would go a long way in making these meetings more interactive and informative to shareholders. Shareholders would be able to gather first-hand views from the board committee members who have a deeper understanding of the relevant subject matters.

[2] Section 3.3.8 of the Best Practice Guide on AGMs for Listed Issuers, 2016.
Best Practice Guide on AGMs for Listed Issuers, 2016, was issued by the Malaysian Institute of Chartered Secretaries and Administrators ("MAICSA") with the support of Bursa Malaysia Berhad

It is also essential for the board (including the board committees) to prepare adequate responses to any questions that have been submitted by shareholders in advance of the general meetings. This would allow "question and answer" sessions during the general meeting to be more productive with insights from both the directors as well as the shareholders.

The company should ensure that shareholders' right to speak is not limited to verbal communication, and should take into account other modes of expression (i.e. real time submission of typed texts), particularly when the mode of the meeting is virtual or hybrid, in accordance to **paragraph 2.13 of Guidance Note and Frequently Asked Questions on the Conduct of General Meetings for Listed Issuers**. The company should ensure that questions and remarks are made visible to all shareholders, to promote transparency and ensure meaningful response to questions posed.

In addition, in line with better practices such as that in Australia[3] and South Africa[4], the board should ensure that the external auditor attends the AGM and is available to answer questions that are relevant to the audit process. It is important for companies to ensure that the partner signing the audit report or a representative of the external audit firm has sufficient information and experience to provide an adequate response to any question raised on audit matters.

To promote transparency and accountability at general meetings, other attendees of general meetings should include[5]:

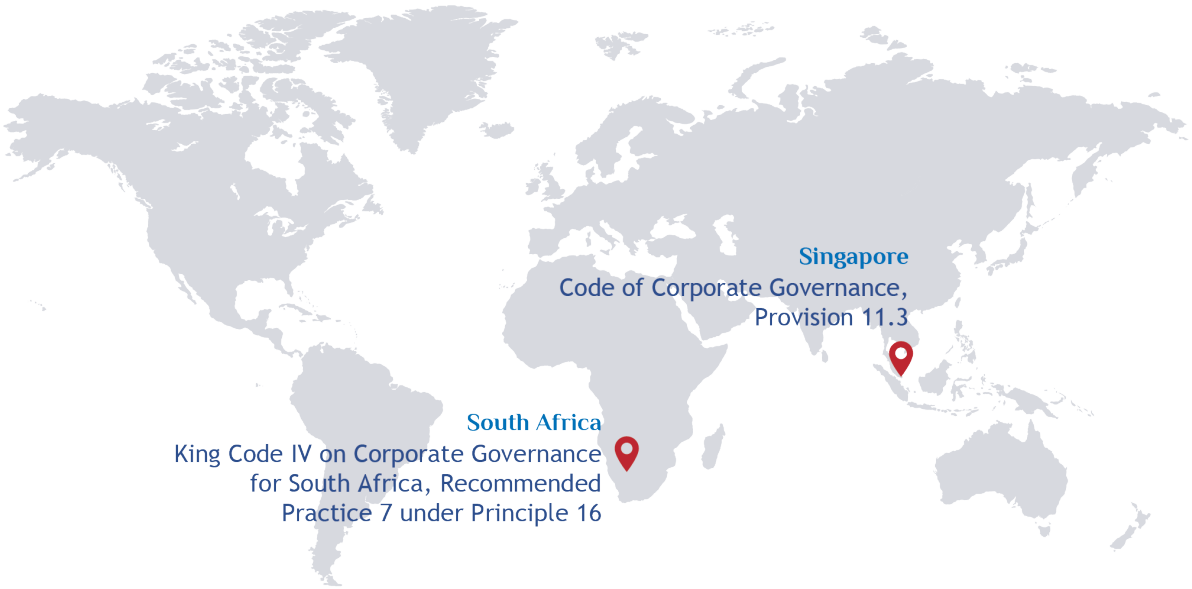
- Senior executives, especially the CEO, CFO and senior management personnel designated to manage sustainability;
- Company secretary;
- Directorship candidates;
- Legal representatives; and
- External experts, such as remuneration advisors.

Apart from the above, companies should also be guided by the recommendations set out in the section on *"Improving directors' participation"* in the Introduction to this **Pull-out III**. Additionally, companies should refer to the guidance set out in **Section 3.7** and **Section 3.8** of the **Best Practice Guide on AGMs for Listed Issuers, 2016** in dealing with shareholders at the AGM and the role of external auditors during the AGM, respectively.

[3] Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations, Recommendation 4.1
[4] King IV Code on Corporate Governance for South Africa, Recommended Practice 8
[5] Directors Tools: Meeting Effectiveness – General Meetings of Members, Australian Institute of Company Directors

WHERE? Regional/International perspectives

As with Malaysia, selected jurisdictions including Singapore and South Africa have enumerated provisions for all directors to be present at general meetings in order to engage with shareholders.



Country	Provision
Singapore	All directors attend general meetings of shareholders, and the external auditors are also present to address shareholders' queries about the conduct of audit and the preparation and content of the auditors' report. Directors' attendance at such meetings held during the financial year is disclosed in the company's annual report ***(Provision 11.3)***.
South Africa	All directors should be available at the AGM to respond to shareholders' queries on how the board executed its governance duties ***(Recommended Practice 7 under Principle 16)***.

Deployment of Technology and the Democratisation of Shareholders During General Meetings

MCCG Intended Outcome 13.0
Shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings.

MCCG Practice 13.3
Listed companies should leverage technology to facilitate-

- voting including voting in absentia; and
- remote shareholders' participation at general meetings.

Listed companies should also take the necessary steps to ensure good cyber hygiene practices are in place including data privacy and security to prevent cyber threats.

MCCG Practice 13.4
The Chairman of the board should ensure that general meetings support meaningful engagement between the board, senior management and shareholders. The engagement should be interactive and include robust discussion on among others the company's financial and non-financial performance as well as the company's long-term strategies. Shareholders should also be provided with sufficient opportunity to pose questions during the general meeting and all the questions should receive a meaningful response.

MCCG Practice 13.5
The board must ensure that the conduct of a virtual general meeting (fully virtual or hybrid) support meaningful engagement between the board, senior management and shareholders. This includes having in place the required infrastructure and tools to support among others, a smooth broadcast of the general meeting and interactive participation by shareholders. Questions posed by shareholders should be made visible to all meeting participants during the meeting itself.

Note: The internalisation and application of writeup to Practice 13.3 - 13.5 should be read in tandem with the prevailing Securities Commission Malaysia's Guidance and Frequently Asked Questions on the Conduct of General Meetings for Listed Issuers (Guidance Note)

WHY? The case for change

General meetings serve as a key platform for shareholders to exercise their rights and hold directors accountable for their actions. It is an avenue for shareholders to challenge the board on issues of concern, discuss strategies for achieving the companies' goals and objectives and have their "voices" heard through the votes cast by them.

Traditionally, voting during general meetings has been carried out either by a show of hands, which represents "one person, one vote" or by poll, which is reflective of an individual or entity's shareholding of the company ("one share, one vote").

A transition to full-fledged poll voting for listed companies in Malaysia took place in the year 2016 whereby **Bursa Securities Listing Requirements** were amended to require resolutions in a general meeting, to be voted by way of poll.

Paragraph 8.29A(1) of Bursa Securities Listing Requirements

A listed issuer must ensure that any resolution set out in the notice of any general meeting, or in any notice of resolution which may properly be moved and is intended to be moved at any general meeting, is voted by poll.

Whilst the rights of shareholders to attend, speak and vote at general meetings are well-defined in the law, there are many constraints that pose a challenge in the exercise of their rights. These include the common practice of voting at general meetings which has to be cast through the physical attendance of shareholders or proxies. In certain instances, the location of the meeting itself can be a hindrance. Some companies have held their meetings without giving due consideration to shareholder demographics and accessibility. This may deter shareholders from attending or they may appoint a proxy to attend on their behalf instead.

It is therefore incumbent on companies to undertake measures, including facilitating voting in absentia to encourage greater shareholder participation during general meetings. Voting and participating in absentia would be particularly helpful for foreign shareholders or shareholders who are relatively distanced from the venue of general meeting, to exercise their rights.

In addition, companies, particularly those with a large shareholding base should consider adopting electronic voting (explained in detail in the ensuing pages of this write-up) as this would enable the proceedings to be managed in a more seamless manner when there is a high turnout of shareholders for the general meeting.

Whilst the adoption of electronic voting will result in an outlay of initial costs, it is envisaged that companies may benefit from long term savings as electronic voting would substantially reduce administrative procedures and paper-work as well as save time.

Additional benefits of electronic voting are outlined below:

- the electronic voting platform provides more reliable, transparent and faster results as compared to the manual counting of ballot papers;
- results are often tabulated and released at a faster pace (often within minutes after the voting process is completed); and
- the electronic voting process helps companies to reduce their carbon footprint by minimising the usage of paper.

The rise of deploying technology to facilitate the conduct of general meetings kickstarted in the midst of the global pandemic. On 18 April 2020, the Securities Commission Malaysia issued the first version of the **Conduct of General Meetings for Listed Issuers (Guidance Note)** in line with the implementation of the Movement Control Order (MCO) and the subsequent standard operating procedures (SOPs) that follow[1]. The Guidance Note is issued to guide all listed issuers and management companies of unit trust funds on the conduct of general meetings, including Annual General Meetings ("AGMs"), Extraordinary General Meeting and Meeting of Unit Holders during the COVID-19 pandemic where physical distancing and other safety and precautionary measures must be exercised. This includes the conduct of fully virtual, virtual, hybrid and physical general meetings.

It should be noted that the use of technology to facilitate the conduct of general meetings is permitted by **Companies Act 2016** subject to the company's constitution.

Section 327(1) of Companies Act 2016

Subject to the constitution, a company may convene a meeting of members at more than one venue using any technology or method that enables the members of the company to participate and to exercise the members' rights to speak and vote at the meeting.

Section 327(2) of Companies Act 2016

The main venue of the meeting shall be in Malaysia and the chairperson shall be present at the main venue of the meeting.

In the aftermath of the initial movement control order in Malaysia and beginning April 2020, several listed issuers staged their first virtual AGMs with several of them reportedly being able to garner greater shareholder participation and engagement compared to the preceding years. As reported in the Corporate Governance Monitor 2020, more than 250 fully virtual general meetings have been conducted since 18 April 2020[2] and according to findings from a Securities Commission survey[3], majority of shareholders would like to maintain having the option to participate in general meetings remotely (online).

[1] Implemented under **Malaysia's Prevention & Control of Infectious Diseases Act 1988, Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020 and the Police Act 1967.**
[2] CG Monitor 2020, Securities Commission Malaysia.
[3] Survey on the Conduct of Fully Virtual General Meetings; Securities Commission Malaysia Annual Report 2020.

Virtual and hybrid general meetings enabled by new technologies, offer the potential for making shareholder meetings more accessible for both retail and institutional investors alike by removing the geographical barriers, travel requirements and reducing other attendance costs. The appetite for virtual or hybrid shareholder meetings has been growing among some issuers and institutional investors even prior to COVID-19 pandemic[4]. This was mainly driven by the fact that institutional investors vote at hundreds, and often thousands, of shareholder meetings every year, and may have to vote at multiple meetings every day during the peak shareholder meeting season of April to June. Furthermore, with global portfolios, institutional investors find it impossible to attend physical shareholder meetings in Europe, North America and Asia on the same date. The Asian Corporate Governance Association also concluded in a recent study that the number of virtual meetings has increased significantly in Asia, including among other countries, India, Malaysia, Singapore and Philippines[5].

Technology-enabled general meetings and the democratisation of shareholders in general meetings is “here to stay”. This new reality in engaging stakeholders will be bring new perspectives and shifts into the overall dialogue between companies and stakeholders.

[4] *The future of Annual General Meetings*, 2020. International Corporate Governance Network.
[5] *CG Watch 2020*, Asian Corporate Governance Association.

HOW? The practice in substance

As stated in **Guidance to Practice 13.3 of MCCG**, the board should take proactive measures to ensure that shareholders are able to participate at general meetings effectively. In facilitating greater shareholder participation, it is important for the company to consider leveraging technology to facilitate electronic voting and remote shareholder participation.

It further elucidates that companies that utilise electronic voting stand to gain from–

- more accurate and transparent voting results;
- shorter turnaround time for declaration of results;
- making voting more accessible even for the disabled;
- reduce administrative cost and paper-work; and
- remove the need for physical ballot papers.

As with **Guidance to Practice 13.4 of MCCG**, the board, particularly the Chairman should ensure that shareholders have the opportunity to participate in these meetings effectively; including having access to information they require to participate in discussions and cast informed votes. Sufficient opportunity should be provided for shareholders to pose questions during the general meeting and the responses to these questions should be provided during the meeting to enable all meeting participants to stay informed.

It is encouraged for the board should also establish a channel where shareholders can continue to share feedback and questions outside of the general meeting and receive the appropriate response. If time does not permit for further discussions during the general meeting, the board should leverage such channel to communicate with the shareholders.

Reinforcing the guidelines above, **Guidance to Practice 13.5 of MCCG**, the board and the chairman should ensure that the conduct of a virtual general meetings supports meaningful engagement between the board, senior management and shareholders. The required preparation and measures should be taken to ensure a seamless experience for shareholders, with those participating remotely (online) feeling as much as possible like they are in a physical meeting – a one-way monologue by the board should be avoided. Thus, it is important to provide the opportunity for shareholders to have real-time interaction with the board and senior management, including responses to any questions or remarks posed.

Key considerations relating to the application of **Practices 13.3,13.4 and 13.5** are discussed below:

MCCG Practice 13.3
Listed companies should leverage technology to facilitate-

- voting including voting in absentia; and
- remote shareholders' participation at general meetings.

Listed companies should also take the necessary steps to ensure good cyber hygiene practices are in place including data privacy and security to prevent cyber threats.

1. Fully Virtual	Conducted online where all meeting participants

MCCG Practice 13.4
The Chairman of the board should ensure that general meetings support meaningful engagement between the board, senior management and shareholders. The engagement should be interactive and include robust discussion on among others the company's financial and non-financial performance as well as the company's long-term strategies. Shareholders should also be provided with sufficient opportunity to pose questions during the general meeting and all the questions should receive a meaningful response.

MCCG Practice 13.5
The board must ensure that the conduct of a virtual general meeting (fully virtual or hybrid) support meaningful engagement between the board, senior management and shareholders. This includes having in place the required infrastructure and tools to support among others, a smooth broadcast of the general meeting and interactive participation by shareholders. Questions posed by shareholders should be made visible to all meeting participants during the meeting itself.

4. Physical	Conducted at a physical meeting venue(s) only, without any online participation.

[6] Guidance Note (revised as of 16 July 2021), Securities Commission Malaysia.
[7] It is envisaged that the essential individuals may include the Chairperson of the general meeting, board members, the Chief Executive Officer, the Chief Financial Officer, the company secretary, the auditor, the scrutineer and those providing audio and visual support for the fully virtual general meeting.

What are the commonly used electronic voting methods?

The traditional poll voting involves a manual process of collecting and tabulating votes that are exercised via printed papers. This process typically takes a longer period of time and could lead to an extended general meeting session.

To this end, the electronic voting system serves as an alternative platform to expedite the voting and tabulation process. Whilst the manner in which the electronic voting process is carried out may vary from company to company, it may be useful to highlight the following electronic voting methods which are commonly deployed by companies:

- Voting via mobile application

  This method requires shareholders to download the e-voting application onto a mobile device, either via a mobile phone or tablet, and connect to a prescribed Wi-Fi network. A slip containing the code for shareholders will be issued upon registration. The shareholder will have to scan the slip to register for the voting process. When the chairman of the general meeting makes an announcement for the votes to be cast, the application allows shareholders to cast their votes from their mobile devices. The results are usually announced within 10-15 minutes upon conclusion of the voting.

- Voting via handheld device

  This process involves shareholders using a specific device provided upon registering for the meeting. The device would contain a card that carries the shareholder's identity and number of shares registered. Similar to the mobile application, the device allows users to key in their voting options (for/against) for each resolution when the chairman makes an announcement for the votes to be cast. The results are shown at the end of voting for each resolution before moving on to the next resolution. Upon conclusion of the meeting, the devices are returned and the process is completed.

- Voting via polling stations

  This is a common platform for companies with a smaller shareholder base as it necessitates shareholders to line up and cast their votes via an electronic screen or a computer. Each shareholder would be provided with a wristband upon registration which would be scanned during the voting process. The scanned code allows the shareholder to access the voting page and register his or her vote. The process would then be completed and the results would be announced later.

- Voting via integrated online platforms

  With the accession of virtual AGMs, integrated AGM online platforms managed by technology service providers offer a full-suite, end-to-end experience for shareholders to attend the general meetings (via livestream), pose questions and comments (via chat-boxes) and vote on resolutions (via instantaneous polling). The integrated online platforms are usually designed to the clientele's nuances and meeting proceedings. It will allow shareholders and members to login and cast their votes electronically in advance of the general meeting – for a time period that the company decides. Only authenticated shareholders or members can access the Online Voting platform. Depending on the capacity of the platform, some providers can obtain real-time results and analysis vis-a-vis a dashboard view of the shareholders' votes.

What are the challenges faced by shareholders in attending general meetings?

The following are common factors that contribute to shareholders' inability to attend a general meeting:

- venue or location of the meeting is unable to cater to the crowd in attendance. Companies where attendance of shareholders are usually in large numbers should consider the comfort and welfare of their shareholders;
- insufficient parking or public transport access;
- competing general meetings of other companies that are scheduled on the same day;
- meeting is scheduled at remote location
- high cost of attending the meeting (especially when meeting requires shareholders to travel long distances). insufficient parking or public transport access;
- inadequate tools, digital literacy and access to stable, high-speed internet in attending a virtual general meeting; and
- lack of clear directives and "step-by-step" by the companies in login and voting procedures for remote participation.

How can a company leverage on technology to facilitate greater shareholders' participation in general meetings?

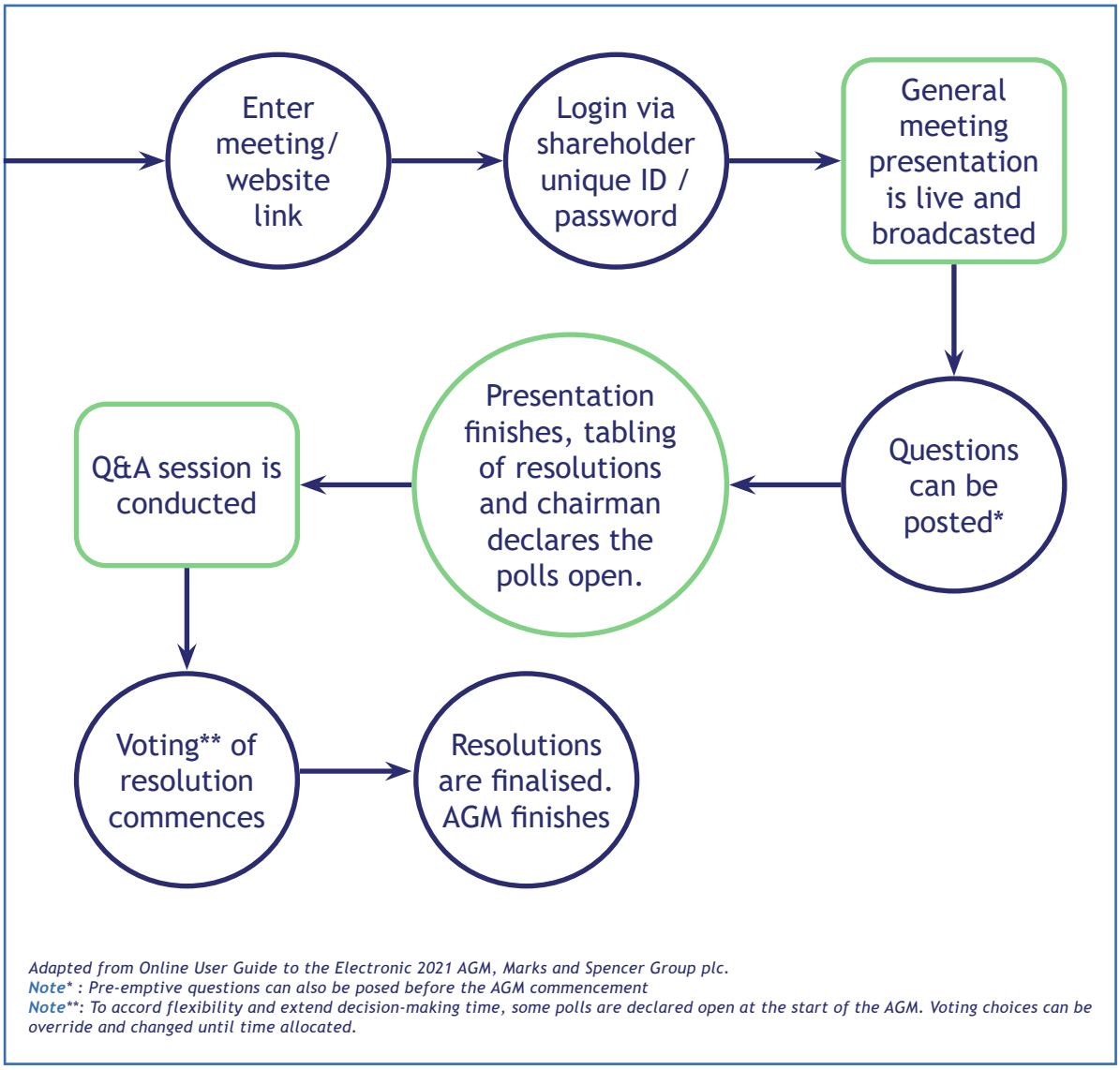
The world took notice in 2016 when Jimmy Choo PLC (United Kingdom) attempted and successfully executed the first electronic AGM. The company was motivated to provide an opportunity for all of its shareholders to attend and participate in its AGM. The company worked together with Equiniti, the first registrar in United Kingdom to oversee a fully electronic AGM. The company also engaged with the regulatory authorities on how they could make the transition from a physical AGM to a full-fledged electronic AGM.

In order to cater to the needs of the general meeting, an application was developed to be used on a mobile, tablet or desktop. The application was integrated with the AGM registration system, allowing shareholders to submit questions and vote on the resolutions tabled during the meeting. A unique meeting code, known as the "meeting ID" was provided to each shareholder in order to access the system. A shareholder will not be permitted to enter the "virtual meeting" if his or her credentials could not be verified[8].This allowed shareholders to be "present" during the meeting without actually having to be physically present at a venue. Shareholders were also free to raise questions prior to the meeting and receive responses in real time through the online platform.

A fully integrated AGM online platform or application such as the above is the best system to facilitate end-to-end participation from shareholders in terms of attendance, voting and engagement. Companies should leverage on experienced and recognised technology service providers to fully embark on the virtual exercise of its AGM.

[8] Provision E.2.2 of United Kingdom's Corporate Governance Code

Whilst different platforms may entail different processes and procedures; the following generalised "step-by step" is illustrated to showcase a shareholder's journey in a virtual AGM session;



Adapted from Online User Guide to the Electronic 2021 AGM, Marks and Spencer Group plc.
Note : Pre-emptive questions can also be posed before the AGM commencement*
*Note**: To accord flexibility and extend decision-making time, some polls are declared open at the start of the AGM. Voting choices can be override and changed until time allocated.*

What are some practical steps to ensure cyber-hygiene in facilitating a virtual general meeting?

In ensuring a seamless experience for shareholders, companies holding a virtual general meeting will need to consider the following matters in terms of cyber-hygiene[8]:

- Decide on the technology provider (in-house or external), experience (webcast or audio-only), technology option for voting (telephone line or online platform) and whether an audio-visual service provider is needed if the general meeting is being filmed in a specific location.

- Establish a dedicated general meeting section on your company website that is easy for shareholders to access. This area would include the details of arrangements for the meeting, instructions on how to use the technology platform, links for web-streaming and can be updated to reflect any changes to arrangements. Typically, a dedicated Investor Relations team should be deployed to manage this in the lead-up to the general meeting.

- Ahead of the general meeting, hold rehearsals to test the technology that will be used to facilitate the meeting and confirm that the chair and key stakeholders are comfortable with it.

- Have a backup plan in the event of a technical glitch or system failure. Consideration needs to be given to what will happen if the technology supporting the general meeting fails, for example as a result of widespread network outages. An alternative chair's script/general meeting procedures can be prepared, and moderators can be located with the technology team to communicate easily with the support team if required. Include in the communications with shareholders on alternative plan in the event something happens with the technology during the meeting.

How can the use of independent moderators promote meaningful engagement and efficiency in the conduct of question and answer proceedings during virtual general meetings?

The board should ensure meaningful engagement during virtual general meetings and shareholders should be given sufficient opportunity to ask questions and all the questions should receive a meaningful response. For transparency, questions posed by shareholders should be made visible to all shareholders.

One way in which companies can efficiently address the practice above is by categorising overlapping questions and provide one meaningful answer to the overarching areas and themes questioned by the shareholders. That is why the Minority Shareholders Watch Group ("MSWG") supports the appointment of an independent moderator[9]. The presence of independent moderators to moderate the Q&A session in a fair, objective and impartial manner will ensure that all relevant questions are answered. The independent moderators can also filter, edit and stream any unsanitary questions or comments raised by shareholders during the AGM as well as addressing any pre-submitted questions in a systematic manner.

[8] Guidance: Holding a virtual AGM, 2020. Governance Institute of Australia and the Australasian Investor Relations Association.
[9] 19 June 2020 MSWG Newsletter.

In a recent guidance produced by Governance Institute of Australia and the Australasian Investor Relations Association[10], more clarification on the role of the independent moderator and chairman is provided:

- The moderator essentially acts as the connection between the chair and shareholders participating online. It is the role of the moderator to receive, manage and electronically send any questions/comments submitted during the meeting to the chair – the chair is able to view the questions on a screen in front of the microphone. The moderator could also send the questions to the company secretary for them to read out. This gives the chair some time to gather their thoughts and prepare a response.

- It is possible that multiple shareholders may submit a question relating to the same issue. It is appropriate that the moderator summarises those questions so that the chair responds to the issue in one response. However, in the interests of transparency, the chair should acknowledge that they have received multiple questions on the same issue and, rather than respond to each question individually, they are doing so on a collective basis. Similarly, if a chair chooses not to answer a specific question (by applying the same principles that they might do in an in person meeting), they should acknowledge that is what they are doing and that someone will respond to that shareholder after the meeting.

As time is of the essence, general meetings and the Q&A session cannot stretch on for unwieldy hours and take too much of time. As practised by several progressive listed issuers, any unresolved questions and comments by shareholders on the AGM day is compiled and answered post-AGM.

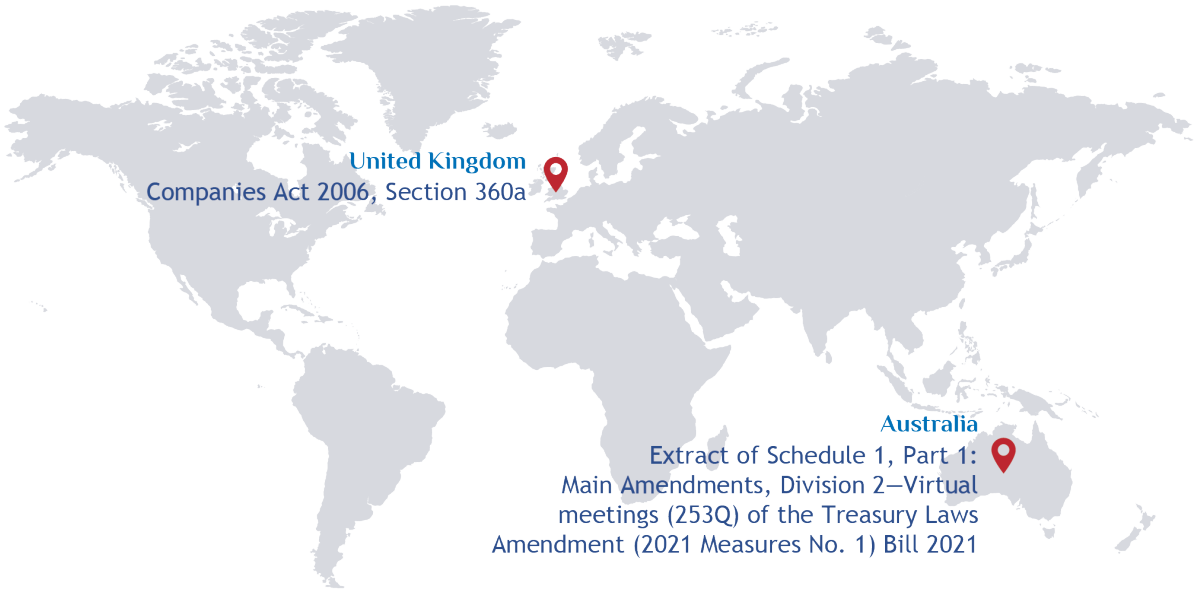
MCCG Practice 13.6
Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

after the general meeting (refer to the write-up to **Practice 13.6**).

[10] *Guidance: Holding a virtual AGM, 2020.* Governance Institute of Australia and the Australasian Investor Relations Association.

WHERE? Regional/International perspectives

As in the case of Malaysia, selected jurisdictions, such as United Kingdom, have recognised technology as a potential enabler of general meetings.



Country	Provision(s)
Australia	1. Virtual meeting technology may be used in holding a Chapter 2G meeting, provided the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate without being physically present in the same place. 2. To avoid doubt: (a) a reasonable opportunity to participate includes a reasonable opportunity to exercise a right to speak; and (b) a person may elect to exercise a right to speak (including a right to ask questions) orally rather than in writing. ***Extract of Schedule 1, Part 1: Main Amendments, Division 2—Virtual meetings (253Q) of the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021***

Country	Provision(s)
United Kingdom	1. Nothing in this Part is to be taken to preclude the holding and conducting of a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it. 2. In the case of a traded company the use of electronic means for the purpose of enabling members to participate in a general meeting may be made subject only to such requirements and restrictions as are — (a) necessary to ensure the identification of those taking part and the security of the electronic communication; and (b) proportionate to the achievement of those objectives. 3. Nothing in subsection (2) affects any power of a company to require reasonable evidence of the entitlement of any person who is not a member to participate in the meeting. ***(Section 360A of Companies Act 2006)***

Minutes of General Meetings

MCCG Intended Outcome 13.0
Shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings.

MCCG Practice 13.6
Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

WHY? The case for change

A company's general meeting remains one of the most important platforms for communication and engagement between the company and its shareholders, as it encompasses a two-way discussion on the company's achievements and performance in the past year and its plans and strategies for the near and long-term future. To many shareholders, the general meeting is the only opportunity to directly pose questions and comments to the company's board and management.

The recording of the proceedings (i.e. discussions and outcomes), in the form of minutes reflects the mutual understanding, agreements as well as resolutions reached between the principal (shareholders) and agent (directors) of the company[1].

[1] Mohd Ariffin, M.S, Wan-Hussin, W.N & Abdul Malak, S.S 2020, *The Quality of Annual General Meeting Minutes of Listed Companies in Malaysia*, Global Business Management Review

HOW? The practice in substance

A complete and comprehensive recording of the general meeting detailing proceedings and issues or concerns raised by shareholders, and the responses by the company should be prepared and published as soon as practicable.

In line with **Practice 13.6 of MCCG, Bursa Securities Listing Requirements** also calls for the

MCCG Practice 13.6
Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

Paragraph 9.21(2)(b) of Bursa Securities Listing Requirements

A listed issuer must publish the following information on its website:

(b) A summary of the key matters discussed at the annual general meeting, as soon as practicable after the conclusion of the annual general meeting.

Note: As stated in Issuers Communication- Corporate Website for Listed Issuers (ICN/1), listed issuers are advised to publish/upload the key matters discussed at the AGM onto its corporate website as soon as practicable and in any event, within 30 days from the date of the AGM. The Annual General Meeting Corporate Governance Checklist for Shareholders (published by Securities Commission Malaysia in collaboration with the Institutional Investors Council and Minority Shareholder Watch Group) notes that the 'key matters discussed', published on the company's website, should chronicle the key issues discussed and the outcomes decided, and should not merely list the resolutions and voting outcomes of the meeting.

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

What is the process behind preparing a comprehensive set of minutes?

The company secretary is the key individual involved in the drafting of the company's general meeting minutes as to be approved by the chairman of the general meeting. The diagram below outlines the process involved in the drafting and approval of the general meeting minutes.

Drafting of minutes

- The company secretary records the proceedings of the general meeting.
- In the absence of the company secretary, any other person authorised by the board on the chairman shall record the proceedings.
- Minutes should be recorded in a clear and concise manner, using plain language, in third person and past tense. Resolutions should be recorded in present tense.

Proofing of minutes draft

- The chairman should ensure that the proceedings of the meeting are accurately recorded.
- The chairman ensures that the matters which are or could be reasonably regarded as defamatory of any person, irrelevant or immaterial to the proceedings should be excluded.

Signing of minutes

- Minutes of a general meeting should signed and dated by the chairman.
- In the event of unforeseen circumstances leading to the inability of the chairman, any director who was present in the meeting, and authorised by the board to, shall sign and date the minutes.
- The chairman should initial each page of the minutes.

General meeting minutes can either be maintained in a physical or in an electronic form where it would be stored with other important company records.

Section 341(1) and (2) and Section 342(4) of the Companies Act 2016 outlines stipulations regarding the records of resolutions and meetings, and its inspection, as shown below.

Section 341(1) and (2) of Companies Act 2016 – Records of resolutions and meetings

(1) Every company shall keep records comprising –

(a) all resolutions of members passed otherwise than at the meeting of members;

(b) minutes of all proceedings of meetings of members; and

(c) details provided to the company in accordance with section 344.

(2) The records shall be kept for at least seven years from the date of the resolution, meeting or decision, as the case may be.

Section 342(4) of Companies Act 2016 – Inspection of records of resolutions and meetings

(4) Any member shall be entitled to be furnished with a copy of any minutes specified under section 341 within fourteen days after he has made a request in writing to the company at a charge not exceeding two ringgit for every one hundred words.

While the company is permitted to charge for a copy of the minutes, it is suggested that this charge be waived, to foster good investor relations[2].

[2] ***Guide on Best Practices for Shareholder Meetings of Listed Companies***, 2019 was prepared Securities Investors Association (Singapore) and Singapore Institute of Directors, and supported by Singapore Exchange Regulation, with acknowledgement to Rajah & Tann Singapore LLP for their help in the preparation of the Guide.

What should the minutes of general meeting comprise?

In order to ensure the general meeting minutes are in line with good governance and can serve as an audit trail of actions taken, the company should ensure its general meeting minutes are structured as follows:

Meeting details:

- Time, date and venue
- Corporate members present (i.e. directors and management) physically and virtually
- Other individuals present (i.e. moderator, scrutineer, technology service providers)
- The chairman of the meeting
- Persons recording the minutes
- Confirmation on quorum
- Pre-meeting announcements
- Acceptance of, or amendments made to the previous meeting's minutes

Agenda:

- Detailed summary of each agenda item discussed, including the name of the individuals presenting

Note: Presentation slides from management at the general meeting should be published together with the meeting minutes for ease of readers' reference.

- Individual resolutions, including proposer and seconder
- Questions raised by shareholder and responses provided by the company

Note: All questions received both before and during the meeting, and corresponding answers can be captured and published on the company's website in a separate a document, as outlined in the illustrative disclosure below.

- Any other business raised

Polling:

- Procedure
- Voting results and vote counts for individual resolutions

Confirmation:

- Signed by the chairman, confirming the minutes as a true record of the general meeting

Additionally, **Paragraph 2.14 of Securities Commission Malaysia's Guidance and FAQs on the Conduct of General Meetings for Listed Issuers** outlines that listed issuers are encouraged to record (video and audio recording) the general meeting proceedings.

How should a company publish its question and answer proceedings of general meetings?

Paragraph 2.7 of Securities Commission Malaysia's Guidance and FAQs on the Conduct of General Meetings for Listed Issuers, advises listed issuers to publish the questions and remarks submitted by shareholders prior to the general meeting, and those raised during the general meeting, along with the listed issuers' response, on the company's website after the conclusion of the general meeting.

An illustrative example on the questions and answer proceedings for general meetings is outline below.

Illustrative outline of question and answer proceeding for general meeting

- Introduction:
  - Provides insights into the percentage of questions raised prior to the meeting, and during the live meeting.
  - Highlights that answers are also provided to questions that were not covered at the meeting due to time constraints.
  - Notes that questions under a similar topic are consolidated, and that questions are edited for enhancing clarity, amending typos, removing inappropriate language and names of individuals.
  - Notes that comments and statements which do not raise questions are removed.
  - Highlights a cut-off date for the views of management upon which the responses and statements are prepared.
- Categorising:
  - The questions raised are categorised under the relevant sub-headings, such as virtual meeting, board of directors, compensation, stockholder proposals, management proposals, capital allocation, business and strategy, ESG: environment, and ESG: social.
- Structure for each sub-heading:
  - Question
  - Related questions
  - Answer

Sample extract of the sub-heading comprising questions on capital allocation from the Q&A document:

Capital Allocation

Q: Is Intel going to stop giving dividends?

Related Questions:

- *Are dividends going to go up soon?*
- *What measures does the current Board intend to put in place to pay out higher dividends on a regular basis?*

A: We remain committed to the dividend. In Q1, we announced a 5% dividend raise from $1.32 to $1.39.

Q: Stock repurchase decreases the true earning potential. As you are aware, this will also artificially increase the share price and does not show real efficiency, and on a long-term basis, it will decrease the intrinsic value. Why are you not reducing treasury stock value by selling it to the open market to reduce the share price and increase dividend yield?

A: As Intel's CFO stated on our April 22, 2021 earnings call, "*We repurchased $2.4 billion dollars of shares, completing the $20.0 billion repurchase plan announced in October 2019. Going forward we expect to have lower stock repurchases as we enter an investment phase to support strong demand growth in Client, build initial infrastructure for future Foundry volumes and make necessary investments to accelerate our return to process leadership.*"

Q: Do you anticipate a stock split in 2021?

A: We currently do not have plans for a stock split.

Source: Intel Corporation Annual Stockholders' Meeting Q&A 2021 (United States)

The company should ensure that it has provided comprehensive disclosure on its processing of shareholders personal data, such as names, identification number, contact information and video images of the shareholders, for the purposes of general meetings and general meeting related disclosures. For instance, when publishing the questions raised by shareholders, the company should decide on whether to disclose the names and other personal information of the shareholders or to publish the questions anonymously. In case of the former, shareholders should be made aware, and they should be given the option to withdraw their consent, subject to reasonable notice.

The company can achieve this by disclosing a data processing statement for shareholders of the company on its website, for which the scope is outlined below.

(1) contact details of the responsible data controller

- (i) e-mail address of the personnel in charge of overseeing the responsible processing of individuals personal data, for individuals to contact for further details on the items below or for individuals to exercise their rights related to item 6 below

(2) purposes and legal bases of data processing and categories of data processed

- (i) describes the purposes for which individuals' data is processed
- (ii) details the specific personal data, made available by the individual, which will be processed by the company
- (iii) outlines the guidelines and regulations that the processing of personal data will conform with

(3) categories of recipients of personal data

- (i) highlights instances in which personal data will be made available to external service providers and additional recipients, if any

(4) duration of data storage and criteria for determining such duration

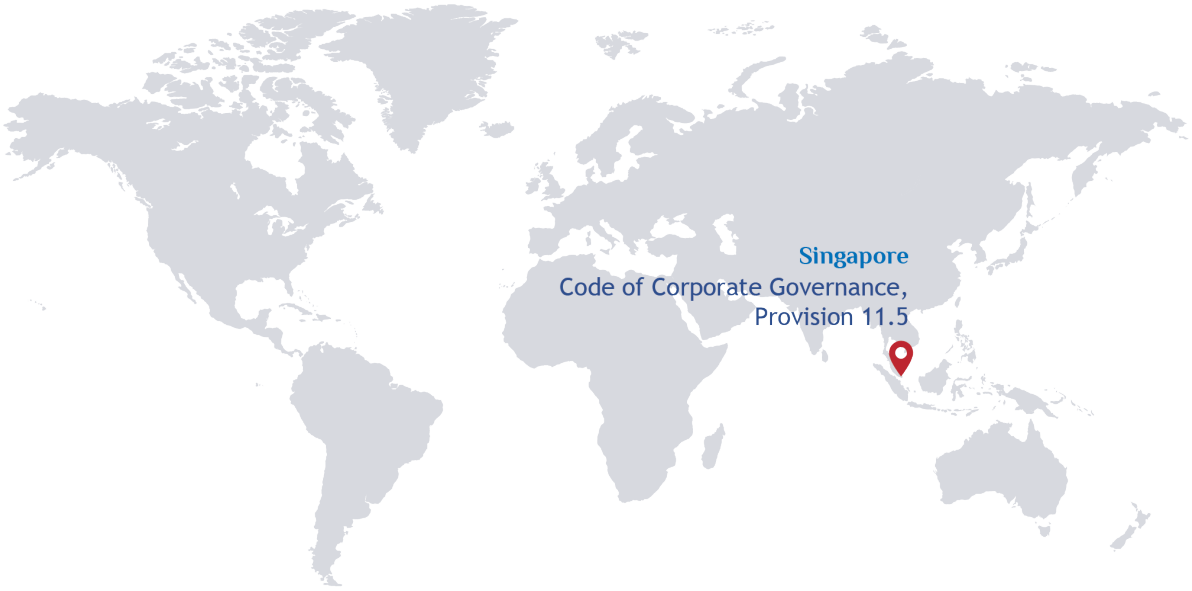
- (i) highlights the retention period of personal data and the commencement of the retention period
- (ii) confirms that the data will be erased in accordance with the retention period or as soon as it is no longer needed.

(5) rights of data subjects

- (i) rights to request for information about the data currently stored by the company
- (ii) rights to request correction to personal data
- (iii) rights to suspend the use of personal data
- (iv) rights to object the provision of personal data to third parties
- (v) rights to complaint about the irresponsible use of personal data

WHERE? Regional/International perspectives

As with Malaysia, Singapore has enumerated provisions for the company's complete general meeting minutes to be circulated in a timely manner.



Country	Provision
Singapore	The company publishes minutes of general meetings of shareholders on its corporate website as soon as practicable. The minutes record substantial and relevant comments or queries from shareholders relating to the agenda of the general meeting, and responses from the Board and Management ***(Provision 11.5)***.

Appendix

Appendix I: Fundamental Concepts, Guiding Principles and Content Elements of the <IR> Framework

Fundamental concepts

- Value creation for the company and for others: Overall, does the report explain how the company creates values for itself and others?
- The capitals: Does the report provide information on the capitals (e.g. financial, manufactured, intellectual, human, social and relationship, natural) that the company uses or affects? Note: The following explains how the capitals apply to companies of all sizes with some non-exhaustive examples.

Capitals	Examples
Financial	The pool of funds available to a company for use in the production of goods or the provision of services, which are obtained through financing, such as debt, loans, equity or grants, or generated through operations or investments.
Manufactured	Physical objects (as distinct from natural physical objects) that are available to a company for use in the production of goods or the provision of services, including buildings, equipment and infrastructure (such as roads, ports and bridges, etc.).
Intellectual	Knowledge-based intangibles, including intellectual properties of a company, such as patents, copyrights, software, rights and licences and organisational capital such as tacit knowledge, systems, procedures and protocols.
Human	People competencies, capabilities and experience, and their motivations to innovate, including their alignment with and support for a company's governance framework, risk management approach, and ethical values along with the ability to understand, develop and implement a company's strategy and loyalties and motivations for improving processes, goods and services, including their ability to lead, manage and collaborate.

Capitals	Examples
Social and relationship	The institutions and the relationships within and between communities, groups of stakeholders and other networks, and the ability to share information to enhance individual and collective wellbeing. Social and relationship capital includes shared norms, and common values and behaviours; key stakeholder relationships, and the trust and willingness to engage that a company has developed and strives to build and protect with external stakeholders; intangibles associated with the company's brand and reputation; and social licence to operate.
Natural	All renewable and non-renewable environmental resources and processes that provide goods or services that support the past, current or future prosperity of the company. It includes air, water, land, minerals and forests, alongside biodiversity and ecosystem health.

Source: <IR> Framework, IIRC 2021

Guiding Principles

- **Strategic focus and future orientation**: An integrated report should provide insight into the company's strategy, and how it relates to the company's ability to create value in the short, medium and long term, and to its use of and effects on the capitals.
- **Connectivity of information**: An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the company's ability to create value over time.
- **Stakeholder relationships**: An integrated report should provide insight into the nature and quality of the company's relationships with its key stakeholders, including how and to what extent the company understands, takes into account and responds to their legitimate needs and interests.
- **Materiality**: An integrated report should disclose information about matters that substantively affect the company's ability to create value over the short, medium and long term.

- **Conciseness**: An integrated report should be concise.
- **Reliability and completeness**: An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.
- **Consistency and comparability**: The information in an integrated report should be presented: (a) on a basis that is consistent over time; and (b) in a way that enables comparison with other companies to the extent it is material to the company's own ability to create value over time.

Content Elements

- **Company's overview and external environment**: What does the company do and what are the circumstances under which it operates?
- **Governance**: How does the company's governance structure support its ability to create value in the short, medium and long term?
- **Business model**: What is the company's business model?
- **Risks and opportunities**: What are the specific risks and opportunities that affect the company's ability to create value over the short, medium and long term, and how is the company dealing with them?
- **Strategy and resource allocation**: Where does the company want to go and how does it intend to get there?
- **Performance**: To what extent has the company achieved its strategic objectives for the period and what are its outcomes in terms of effects on the capitals?
- **Outlook**: What challenges and uncertainties is the company likely to encounter in pursuing its strategy, and what are the potential implications for its business model and future performance?
- **Basis of preparation and presentation:** How does the company determine what matters to include in the integrated report and how are such matters quantified or evaluated?

Source: <IR> Framework, IIRC 2021



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