

ORGANISATION: MINORITY SHAREHOLDER WATCHDOG GROUP

RESPONSE TO CONSULTATION QUESTIONS: CONSULTATIVE DOCUMENT ON AUDITORS' ROLES AND RESPONSIBILITIES

Question 1:

Do you agree that an auditor should be required to submit a written representation in relation to his removal or resignation to the company in addition to the regulators? If yes, do you agree that the auditor is required to either state that there are no circumstances connected with his or her resignation that need to be brought to the attention of members of the company, or to set out what are the circumstances for his resignation?

Yes, agreed.

It is for the auditor to be able to submit a written representation. In his performance of his duties as auditor, he/she owes it to the shareholders. How independent can he/she truly be if he/she cannot set out the circumstances that have caused his/her resignation? Corporate disclosure should go far enough in view of auditor's liability to shareholders.

The company should be required to circulate the notice of resignation accompanied with the auditor's statement to all the shareholders, and for listed companies, to also announce the same via Bursa Malaysia's website. This will increase transparency and give a better understanding, particularly to the shareholders on the reasons for the auditor's resignation.

Question 2:

Do you agree that the company should be required to circulate the notice of resignation accompanied by the statement to the shareholders?

Yes, agreed as mentioned in Question 1 above.

In theory, auditors are paid by the owners of the company – the shareholders to ensure that the financial statements prepared by management present a true and fair view.

It will be up to the shareholders to officially approve the auditor's resignation after having perused the auditor's statement.

Question 3:

Do you agree that the auditor's resignation is to be effective at the end of 21 days from the time the notice is deposited with the company?

We appreciate the rationale that the auditor should not be forced to stay in office once the auditor has submitted its notice of resignation to the company. Nevertheless, in the event the directors fail to convene a meeting once a notice of auditor's resignation has been received, then shareholders may be at a disadvantage in that the resignation would have taken effect at the end of the 21 days from the time the notice is deposited with the company. In this case, when the directors eventually convene a general meeting, would the auditor then be obliged to attend (since his resignation has been effected), especially if there are matters to be brought to the attention of the members of the company?

Also, if the directors fail to convene a meeting, would the auditors be required to ensure that its written representations to the company on its resignation is circulated to all members of the company?

It is important that the audit committee plays a role here to ensure that the notice is duly served.

Question 4:

Do you agree that the auditor's resignation should be subject to the regulator's approval?

Yes, to protect shareholder interest as well as public interest in general. The role of auditors as an important gatekeeper supports the efficient running of the economy and the capital market.

The auditor's role goes beyond the obligations to shareholders to provide an accurate reporting of the financial statements and extends to an obligation to the capital market generally (effectively shareholders and potential investors). Because of this broad obligation to the capital market, generally the role of auditors is in fact more properly akin to a regulatory role than a service role. Easier resignation or removal by management is clearly not in the interest of the regulator.

Question 5:

Do you agree that the directors must proceed duly within 21 days from the date of the deposit of a notice of resignation to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given?

Yes, we agree that the directors must proceed within 21 days from the date of the deposit of a notice of auditor's resignation to convene a general meeting not more than 28 days after the date of the notice of the meeting. It is in the best interest of the company that the general meeting to appoint a new auditor to be held as soon as possible. It is also important that the company secretary plays his/her role to ensure that the notice is duly served.

Question 6:

Do you agree that every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine?

Yes, agreed. Directors who fail to take reasonable steps to convene such meeting should be guilty of an offence and be liable to appropriate fines. Such provisions should also be included in the Listing Requirements which would enable regulators to take swift actions against errant directors.

The main purpose of this provision is investor protection. A breach of duty by the directors in this area is one which should not be regarded as capable of being ratified by the general meeting. The only possible sanction is an action on behalf of the company for shareholders' protection and their interest.

Question 7:

What are your views in relation to reliance on best practices in relation to mandatory rotation of audit firms?

Mandatory rotation of audit firms may be detrimental to the overall quality of the audit because of the learning curve that new auditors have to face. In the first few years new auditors will know less about the business and its management, which may increase the risk of audit failure as it takes time to become familiar with an often complex business.

A properly managed audit partner rotation would be a more effective safeguard against the threat of independence.

Mandatory audit rotation should continue to be a matter of best practice. Nevertheless the Malaysian Institute of Accountants (MIA) should monitor that this best practice is being observed by its members to ensure the audit quality and maintain the integrity of the profession.

Question 8:

Do you agree that the current regime that relies on statute to state the general duty of auditors to report whether the accounts give a true & fair view of the company's financial position while relying on best practice and self-regulation to provide guidance on how the assessment of whether the accounts give a true and fair view of the company's financial position should be retained?

Yes, agreed. The role of auditors as a profession is regulated by the Malaysian Institute of Accountants (MIA) and its binding standards of professional ethics. Audit firms must ensure that they maintain the quality of audit and comply with applicable auditing standards in the performance of their duty.

Question 9:

What are your views on the codification of the categories of persons to whom auditors' owe a duty of care?

The auditors' duties are set out both in case law and in statute. Auditors are expected to demonstrate reasonable care and skill as judged by the standards of the day, to carry out their duties.

In practice, the audit practice is normally carried out by persons who are qualified as accountants. It has been said judicially that the task of the auditor is to be a watchdog, not a bloodhound. This means that the auditor is not required actively to look for irregularities though he must of course, draw attention to them if he sees any. It might just be added that another duty of a watchdog is not to let his attention wander while on duty, thereby missing evidence of wrongdoing when it passes before him. The purpose behind codification may serve to ensure auditor take reasonable care as may be necessary.

In order to codify the categories of persons, it is important to work towards legislation to define auditors' duties more clearly and to define to whom auditors are legally liable for their reports. In codifying the categories of persons, the auditors must not lose sight of their true client i.e. the shareholders specifically and capital market generally.

Question 10:

What are your views as to the establishment of an independent statutory body that will be responsible for auditor oversight?

We are supportive of the establishment of an independent statutory body that will be responsible for auditor oversight. The establishment of an independent statutory body must not reduce but instead enhance the role of audit committee and bridge the expectation gap between audit committee and the external auditors.

The emphasis of this statutory body must be on independence and on auditor's role and responsibilities. The reliance by accounting firms on substantial non-audit services from companies they are auditing should be monitored lest they are perceived to lack independence.

The proposed independent statutory body is a step in the right direction to further improve the accounting profession standards, quality and integrity. Its establishment would be an additional measure to strengthen the protection of shareholders, particularly minority shareholders.

Organisation: Minority Shareholder Watchdog Group

Response To Consultation Questions: Consultative Document On Auditors' Roles And Responsibilities

Golden Plus Board Tussle – Minorities To Exercise Rights