

Are these directors truly independent?

| BY SIOU CHEN MING |

The selection of independent directors in listed companies has constantly raised questions over whether their appointment or redesignation (to independent status) is done in "spirit" rather than form.

Given the requirements that at least one-third of the board must be made up of independent directors and the fact that the majority of the audit committee members of a listed company must be independent directors, the selection of suitably qualified independent directors has become all the more important for the benefit of minority shareholders.

But what normally happens is that individuals who have a close relationship with management or major shareholders are appointed as independent directors. In some cases, these directors stay on for too long in the company until they become affiliated to the major shareholder or management.

A week ago, Khet Kok Yin, a veteran of the MUI group and a former long-time aide to MUI's controlling shareholder Tan Sri Khoo Kay Peng, was redesignated from non-independent non-executive director to independent director in six of the listed companies under the group.

The companies are Pan Malaysia Holdings Bhd (PM Holdings), Pan Malaysia Capital Bhd (PM Cap), MUI Properties Bhd, Pan Malaysia Corp Bhd (PM Corp), Pan Malaysian Industries Bhd (PMI), and Malayan United Industries Bhd (MUI).

Khet's redesignation as independent director in these companies came two years after he had stepped down as managing director of PMI — the ultimate holding company of the MUI group — on Jan 1, 2007, to become a non-executive director. According to Bursa Malaysia's listing requirements (see box), one of the key conditions for an independent director is that the appointee has not been, within the last two years, holding an executive position or is an employee of the listed company.

"However, given the fact that Khet had been serving within the MUI group for many years, it is not suitable that he be redesignated as an independent director in the six listed companies under the group. Whether these companies already have more than one-third of its board being independent directors, excluding Khet, is besides the point," says a person familiar with the MUI group.



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Apart from being an executive in PMI, Khet, 62, had previously served in the MUI group as joint managing director of MUI Bank Bhd (now Hong Leong Bank Bhd after it was sold to the Hong Leong group in 1984); managing director of Metrojaya Bhd (a retail arm of the MUI group that was privatised), PM Holdings and PM Cap; chief executive of PM Corp and director of MUI Continental Insurance Bhd.

In a similar case, Star Publications (M) Bhd had a week ago redesignated Datuk Oh Chong Peng, 64, from non-independent non-executive director to independent director. This was after he stepped down as a director in Huaren Holdings Sdn Bhd, the investment arm of the MCA that controls 40.4% of Star.

But the fact that Oh had joined the board of Star since 1987 and has a close relationship with the MCA leadership had some observers questioning the merit of his redesignation as

an independent director of the newspaper publishing company. Nevertheless, Oh had subsequently resigned from Star last week amid some fresh changes at the boardroom.

Another recent example worth examining is the appointment of Haji Long Abdul Rahman as an independent director in TDM Bhd, a plantation outfit that is 53.9%-owned by Terengganu's investment arm, Terengganu Incorporated Sdn Bhd. Long had been a long-serving civil servant in the Terengganu government. His present position includes directorships in the state's museum and Pertama Terengganu Sdn Bhd — a foodstuff manufacturer wholly owned by the state government.

While Long's appointment as TDM's independent director does not go against Bursa Malaysia's listing requirement, it gave rise to a perception that, given his background, he is a representative of the state government rather than of the minority shareholders as he is supposed to be.

At one time, TDM's board had nine directors, comprising the chairman, three non-independent directors and five independent directors, according to its 2007 annual report published in June last year. Three of the five independent directors then had held various

civil service positions in the Terengganu government. Nevertheless, the composition of the board has since changed following the political changes in Terengganu.

In the opinion of Rita Benoy Bushon, CEO of the Minority Shareholders Watchdog Group, there are no two ways about the roles of independent directors. If there are such doubts or issues, shareholders have to bring them up during the AGM and question the board over such appointment.

"In whichever company you are in, if you are an independent director, it means you have to be independent. You have to be independent in spirit over form, because you are the one who is there to look after the minority's interest," says Bushon.

She says an independent director who has stayed in a particular company for a very long time tend to develop a "buddy" relationship with management, and thus find it difficult to retain his independent judgement of the company's affairs.

"After 10 years, can you be independent? I doubt it. I think companies should change their independent directors after a certain period of time, though it is not required by Bursa," says Bushon.

She says it is important to have a board of listed companies whose directors come from diverse backgrounds in terms of gender, race and expertise.

"The function of the board is policymaking, hence it should comprise members of various backgrounds to lend it more credence. The board is unlike management, which should consist of experts in the industry. It is important to have diversity. Most UK companies have a policymaking board where many of the members are independent. They believe that you don't need to have that many family members or one party-kind of representation in the board," says Rita.

That scenario has yet to be seen in the Malaysian corporate scene in general. Family-owned companies are dominated by members of the family or their close friends. Boards where a majority of members are truly independent are far and few. For years there have been calls for independent boards. But it is not happening yet in a big way.

Nonetheless, there should be pressure on major corporations, whether government-linked or family-controlled, to set the right tone for such practices. ■

Paragraph 1.01 of the Listing Requirements of Bursa Malaysia and Practice Note No. 13/2002 provide as follows:

An independent director is one 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 interest of a listed company. Without limiting the generality of the foregoing, an independent director is one who:

- Is not an executive director of the listed company or any related corporation of such listed company (hereinafter referred to as "the listed corporation");
- Has not been within the last two years and is not an officer (except as an independent director) of the listed corporation;
- Is not a major shareholder of the listed corporation;
- Is not a relative of any executive director, officer or major shareholder of the listed corporation;
- Is not acting as a nominee or representative of any executive director or major shareholder of the listed corporation;
- Is not engaged as a professional adviser by the listed corporation under such circumstances as prescribed by Bursa Malaysia 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 listed corporation under such circumstances as prescribed by Bursa Malaysia;
- Has not engaged in any transaction with the listed corporation under such circumstances as prescribed by Bursa Malaysia 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 listed corporation under such circumstances as prescribed by Bursa Malaysia.