MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
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The Minority Shareholders Watch Group is now on Twitter. The presence at Twitter is the first step for us to create strong social media presence and engage with our stakeholders more effectively. Do follow MSWG's Twitter account at @MSWGMalaysia and share your thought on our tweets from time to time.

In conjunction with the Hari Raya Aidilfitri celebration next week, The Observer will take a break with publication resumes in the week of 21 May. Selamat Hari Raya Aidilfitri to our Muslims friend.

❖ MCCG 2021 - a boon to minority shareholders

On 28 April 2021, the Securities Commission (SC) announced a revision to the Malaysian Code on Corporate Governance (MCCG). The MCCG 2021 has introduced new practices and enhancements. Key focus areas are as follows:

1) Board policies and practices on the selection and nomination processes/criteria for directors,
2) The role of the board and senior management in addressing sustainability risks and opportunities
3) Engagement between the company and its stakeholders,
4) Gender diversity
5) Guidance for practices with low levels of adoption.

We believe these changes are positive for minority shareholders and minority shareholder activism.

Two-tier voting for IDs of more than 9 years

One of the most notable changes in the MCCG 2021 is the adoption of the two-tier voting approach to retain independent directors (IDs) with tenure of more than nine years.

The two-tier voting process was introduced in MCCG 2017. It was to be applied by PLCs to retain IDs with tenure of more than 12 years.

The two-tier voting is a powerful empowerment tool for minority shareholder activism as it empowers them to have a say in the re-election of long-serving IDs. It provides minority shareholders the opportunity to vote against such retention as they comprise the second tier in the voting process.

Stern action should be taken against PLCs which do not adopt 2-tier voting when they should.

As of 31 March 2021, 434 IDs have tenures of more than 12 years, out of which 49 IDs have served on the same board for more than 20 years and one ID in his 42nd year.

Long tenure tends to compromise independence as, over time, IDs become less and less independent as they become more and more familiar with management. There is a risk that long-tenure IDs will lose the motivation and the will to challenge management and exercise tactful scepticism; they may become subservient to management.

A 12-year tenure limit for IDs

Following the MCCG 2021 update, Bursa Malaysia will introduce a 12-year tenure limit for IDs in the Listing Requirements (LRs). The targeted issuance of this cap is in fourth quarter of 2021. Bursa will solicit feedback from listed issuers and industry before finalising the Requirement.

The LRs provide 'more bite' as they are rules which PLCs must comply with. Failure to comply with LRs may result in sanctions by Bursa Malaysia.

The MCCG, however, is a principle-based code of practices which PLCs must 'apply or explain an alternative'. Some PLCs have been ingenious in explaining alternatives that are not satisfactory alternatives to the advocated practice; they do not achieve the intended outcome.

An example is when PLCs explain, in their Corporate Governance Report, that the two-tier voting is against the Companies Act 2016, that it is against the principle of one-share-one-vote and that it goes against the principle of 'majority rule'. Sometimes, such explanations are accompanied with legal opinion and case law to try and justify the non-adoption of the two-tier voting process in the retention of long-serving IDs.

The SC has made it clear in its FAQs that the two-tier voting approach does not go against the Companies Act 2016 nor the one-share-one-vote principle - the SC has also outlined its reasoning in the FAQs. Perhaps only a judicial review will put an end to this issue.

Appointment of active politicians on Boards

A PLC is now discouraged from appointing active politicians on its board. 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.

We believe there are two main reasons for this discouragement.

Firstly, an active politician may have time constraints as serving the constituents can be a substantial time commitment. There may not be much time left over to address PLC matters.

Secondly, there may be a risk of conflict of interest between the political interests (including the citizens interest) and the shareholders' interest when making decisions at the PLC level.

Bank Negara Malaysia, under its CG guideline, already prohibits the appointment of active politicians as directors of financial institutions.

Conduct of general meeting including e-AGMs

The importance of meaningful engagement between the Board, senior management and shareholders could not be stressed enough in the MCCG 2021. PLCs should have the required infrastructure and tools to support the smooth broadcast of the AGM and the interactive participation by shareholders.

Besides, questions raised by shareholders should be made visible to all meeting participants during the meeting itself. Doing so will enhance the transparency and accountability by the Board.

Many PLCs do not display all the questions raised by shareholders during their virtual general meetings.

To ensure that all questions receive meaningful response from the Board during virtual meetings, PLCs should not pre-fix a duration for the Q&A session. One of the common reasons given for cutting short the Q&A session is 'time constraint', despite MCCG stating that shareholders should be given the opportunity to ask questions during meeting, and the Board should provide meaningful response to questions addressed to them.

Hence, all relevant questions must be answered; and answered meaningfully during the meeting itself – no beating around the bush or vague and ambiguous answers.

Another common pitfall in virtual general meetings is the practice of stating that the board will respond to the shareholder's questions after the end of the meeting. This should be prohibited unless it is such a complicated question that the board does not have the answer at hand.

A virtual general meeting should strive to emulate a physical meeting as far as possible. As such, PLCs should strive to allow for audio-visual shareholders participation at general meeting.

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

The Chairman of the Board should not chair a Board's sub-committee due to the persuasive and influential role that a chairman plays at Board and committee meetings.

It would be awkward for a chairman of a sub-committee to address himself (as chairman of the board) when he presents the sub committee's findings to the Board. In the same vein, it is untenable for the Chairman of the Board to sit as a member of a Board's sub-committee; the chairman and other members of the sub-committee

will feel obliged to defer to the chairman of the board who is sitting as a member of the sub-committee.

If this advocated practice is difficult to achieve, the PLC should re-examine the board size – maybe, there are not enough directors to go around the various sub-committees.

Introduction of new sections on sustainability

The MCCG 2021 introduces several new practices that place greater emphasis on the sustainability risks and opportunities in the PLC's day-to-day operation.

This emphasis on sustainability is in line with the definition of CG which talks about structures and processes that enhance long-term shareholder value whilst taking into consideration stakeholders' interests; sustainability is both a shareholder and stakeholder interest.

Medium and smaller PLCs tend to place lesser emphasis on the importance of sustainability issues by providing limited disclosure to shareholders. It is common to see just two or three pages of disclosure in annual reports on the different material risks that affect business sustainability.

But sometimes, the nature of the business of these medium and smaller PLCs has a substantial impact on their sustainability.

Under the revision, it is clearly stated that the Board and management are responsible for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.

In addition, the performance assessment of board and senior management will now have to include a review on their performance in addressing the company's material sustainability risks.

Independent experts for board evaluations

Large Companies will now have to engage independent experts to conduct board evaluation at least once every three years. This is a more specific requirement (with timeline stated) as opposed to the previous Practice of carrying out such evaluations periodically; periodically being subject to subjective interpretations.

There is also a requirement that 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. This is an existing Practice with the lowest adoption rate, even by bigger PLCs. Only 122 PLCs applied this practice out of the 868 PLCs assessed by the SC (CG Monitor 2020).

The common reason given by a PLC for not adopting this practice is the fear/risk that their senior management staff will be 'pinched' by another company if the approximate remuneration of these senior management is disclosed.

Another reason given is the maintenance of 'harmony' amongst the senior management by avoiding them being able to compare their salaries.

Publication of AGM minutes within 30 business days

Some PLCs either do not publish the minutes of AGM or if they do, they normally take months to do so.

Under the MCCG 2021, PLCs should publish the complete minutes of the AGM not later than 30 business days after the meeting. The minutes should comprise meeting proceedings including issues or concerns raised by shareholders and responses by the company. This will enable those shareholders who were unable to attend the AGM to appreciate the deliberations at the AGM. Again, transparency is enhanced.

There is already a listing requirement for PLCs to publish a summary of the key matters discussed (KMD) at the AGM though no timeframe is stipulated.

Since the KMD at the AGM is part of the meeting minutes, it would make more sense to amend the LRs to stipulate that the minutes should be published within 30 days as the minutes incorporates the KMD anyway.

If there is a need to emphasize the KMD, this can be done by highlighting the related paragraphs, perhaps in bold font, within the minutes. This would cut down the work for PLCs as they will no longer need to prepare a KMD for the meeting to comply with LRs and the disclosure of minutes of AGM within 30 days as a MCCG 2021 requirement.

30% women at board and senior management

Previously, the Practice of having at least 30% women directors only applies to Large Companies. Now, this Practice will be applied across the board.

The company's policy on gender diversity now extends to senior management and needs to be disclosed in the annual report.

If the composition of women directors on a Board is less than 30%, the Board should disclose the timeframe and measures that it has taken or will be taking to achieve the 30%. A reasonable timeframe is one that is three years or less.

It is time for all PLCs to relook at their board composition if they have not done so earlier, especially the all-male boards.

Empowering calibre women to be on boards enhances board diversity. These women should be independent directors preferably. Hopefully, we do not see more wives and daughters being appointed to the board as executive directors to make up the numbers.

And we all know that the excuse that there are not enough capable women candidates is just a convenient excuse.

The implementation timeline of MCCG 2021

The first batch of companies that is required to report their application of the MCCG 2021 will be companies with financial year ended 31 Dec 2021. The reporting will be based on their activities from 1 January 2021 to 31 December 2021.

This may leave PLCs a very tight deadline (it is already May 2021 now) to apply some of the Practices especially on matters regarding nomination and appointment of directors.

Conclusion

The MCCG 2021 is a boon for minority shareholder activism. Overall, much subjectivity has been enhanced by quantifiable objective measures. The CG bar has been raised for the better.

❖ Maybank's 6-hour AGM - a record of sorts

On 6 May, Malayan Banking Berhad (Maybank) held its annual general meeting successfully. Its earlier scheduled AGM on 15 April was adjourned due to a technical glitch on the part of a virtual platform provider.

Last year

Before the commencement of the Q&A session, Maybank's Chairman Tan Sri Zamzamzairani Mohd Isa took the opportunity to extend a sincere apology for not being able to read out all the questions received during Maybank's 60th AGM last year. During that meeting, the Board was only able to read out and answer about half of the questions received due to time constraint. The unanswered questions were answered after the meeting and both the questions received and Maybank's responses were published on Maybank's corporate websites within a week from the date of the AGM.

This year

The AGM lasted 6 hours, from 10 am to 4pm. This 6-hour AGM must be a record of sorts. It took the Board and management approximately three and half hours to deal with questions raised by shareholders. There were about 1000 questions and comments received; of these, about 200 were received prior to the AGM. About 3000 shareholders attended the virtual AGM.

We understand that Group Investor Relations responded directly and live during the AGM to questions on door-gifts, AGM administrative matters, etc. so that they may not need to be read out later by the Board. Only questions pertaining to the board/ directors, business/ operations and resolutions were fed directly to the Board.

There were many repeat questions. The Board still read out these repeat questions and said that they had addressed these questions earlier. Shareholders are encouraged to attend the AGM from the start so that they will know the questions raised and answers given. Joining an AGM half-way may result in the raising of questions which have already been answered earlier.

This year was a marked improvement as all questions and comments received from shareholders were displayed on the screen with the shareholders' names and timestamp. An independent moderator was appointed to oversee the Q&A session.

About 200 questions were received by the Bank prior to the AGM. The Board grouped similar questions together and provided a unified response to these questions.

If shareholders submit their questions/comments before the AGM, the PLC will be in a better position to prepare a meaningful well-researched response at the AGM. In addition, it will cut-down the AGM duration as similar questions can be lumped together and answered. This should not take away the right to ask questions during the AGM.

In addition, the answers to many of the questions raised during the meeting were in the administrative details, annual report etc.

Overall, the AGM was well conducted. It was both exhausting and exhaustive. Maybank will probably be conducting a post-mortem to discover opportunities for improvement.

Devanesan Evanson
Chief Executive Officer

MSWG AGM/EGM Weekly Watch 10 – 14 May 2021

For this week, the following are the AGMs/EGMs of companies which are in the Minority Shareholders Watch Group's (MSWG) watch list.

The summary of points of interest is highlighted here, while the details of the questions to the companies can be obtained via MSWG's website at www.mswg.org.my.

Date & Time	Company	Quick-take
10.05.21 (Mon) 10.00 am	MMC Corporation Bhd (AGM)	In FY2020, MMC posted a lower revenue of RM4.5 billion (FY2019: RM4.7 billion). However, it recorded PATAMI of RM375 million for FY2020, an increase of 47.1% as compared to FY2019 on the back of continued operational efficiencies across all business divisions and operating companies. It is committed to strengthen its financial and market positions by focusing on operational excellence and cost optimization, whilst exploring new business opportunities. Overall, MMC expects to sustain its financial and operational performance for FY2021.

10.05.21 (Mon) 10.00 am	Tenaga Nasional Bhd (AGM)	TNB has set a target of increasing its renewable energy capacity to 8,300MW by 2025 from 3,398.2MW as of end of 2020. By then, it expects the RE portfolio to make up 40% of its total capacity mix. The ramp-up of its RE portfolio is to prepare itself for the depleting coal related revenue from 2030 onwards. The power producer has pledged not to invest in greenfield coal plant (the Jimah East Power which was commissioned in 2019 is the last new coal plant for TNB).
11.05.21 (Tue) 10.00 am	PPB Group Bhd (AGM)	PPB's revenue decreased by 11% y-o-y to RM4.2 billion for FY2020, mainly due to lower contribution from the Film Exhibition and Distribution segment - a result of prolonged total and partial closure of cinemas and deferment of major movie releases during pandemic. However, its PBT rose 12% y-o-y in FY2020 to RM1.4 billion, supported largely by contribution from its associate, Wilmar International Limited, and higher profits achieved by Grains and Agribusiness, and Consumer Products segments. Its FY2021 financial performance will depend on and be significantly bolstered by Wilmar's business performance.

One of the points of interest to be raised:	
Company	**Points/Issues to Be Raised**
MMC Corporation Bhd (AGM)	1. Other operating expenses have increased by 19.6% or RM72.3 million from RM369.8 million in FY2019 to RM442.1 million in FY2020 (page 190 of AR 2020) What were the reasons for the significant increase in the expenses in FY2020? 2. The Group has recognised in its financial statements a write-off of property, plant and equipment (PPE) amounted to RM15.64 million, an increase of 170.5% from RM5.78 million in FY2019 (page 201 of AR 2020).

	What were the reasons for the significant increase in PPE write-off in FY2020? 3. The Group's accumulated impairment losses on other receivables have increased significantly to RM200.7 million in FY2020 (FY2019: RM92.6 million) (Note 23, page 270 of AR 2020). a) What were the reasons for the high impairment losses on other receivables? b) What was the nature of these impairment losses and what actions have been taken to recover the said amount? c) What is the percentage of the impairment losses of RM200.7 million that is expected to be uncollectable? d) To which business segment does the impaired other receivables relate to? How much of the impaired other receivables have been recovered to-date?
Tenaga Nasional Bhd (AGM)	1. The Regulatory Period 2 had been extended for another year to 2021 with base tariff maintained at 39.45 sen per kWh and weighted average cost of capital (WACC) at 7.3%. a) Will the base tariff (which is computed based on capital expenditure and operating expenditure numbers before 2018) yield the similar level of return in 2021, considering the rising operating cost over the years? How does the extension impact the profitability of TNB? b) What are key salient points in TNB's RP3 proposal submission to the Energy Commission on 26 February 2021?
PPB Group Bhd (AGM)	1. It was stated in the Managing Director's Review, the Group revenue was 11% lower at RM4.19 billion (2019: RM4.68 billion), largely due to a revenue decline in the Film Exhibition and Distribution segment. This segment was the most affected with cinema closures during the MCO period, and it takes cognisance of the continuing uncertainty surrounding the reopening of cinemas operating in reduced capacity. (page 18 of AR 2020) a) Cinemas were allowed to re-open on 5 March 2021 at 50% seating capacity, were there signs of pent-up demand for watching movies at GSC cinemas after

	the easing of MCO restrictions and the planned roll-out of vaccines? b) Film Exhibition and Distribution segment recorded a loss of RM135.6 million in FY2020 (Note 35, page 160 of AR 2020), does the Company expect this segment to break-even in FY2021? 2. The Company entered into an agreement in February 2021 to acquire cinema assets from the former operators of the MBO cinema circuit. The asset acquisition is targeted to be completed by end-June 2021. (page 23 of AR 2020). a) What is the payback period for the above investment? b) What is PPB Group's expectation from this acquisition in terms of financial contribution? c) What are the Company's plans and strategies for MBO cinema?

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DISCLOSURE OF INTERESTS

•With regard to the companies mentioned, MSWG holds a minimum number of shares in all these companies covered in this newsletter.