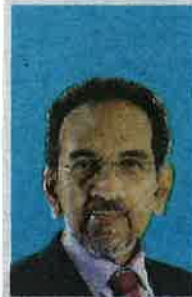


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UPDATED CORPORATE GOVERNANCE CODE

BETTER CHECKS AND BALANCES

THE updated Malaysian Code on Corporate Governance (MCCG) became effective on the day it was issued – on April 28 this year.

The first batch of companies to begin reporting on the adoption of the revised MCCG will be those with their financial year ending Dec 31 this year, which is just around the corner.

The newly-introduced Practice 1.4 of the MCCG 2021 states that the chairman of the board should not be a member of the audit committee, nomination committee or remuneration committee.

The MCCG, 2021's guidance goes on to state that having the same person assuming the positions of chairman of the board and chairman of board committees gives rise to the risk of self-review and may impair the objectivity of the chairman and the board when deliberating on the observations and recommendations put forth by the board committees.

Thus, the chairman of the board should not be involved in board committees to ensure there are checks and balances as well as objective review by the board.

As at Dec 31 last year, about 70 per cent of the top 150 listed issuers by market capitalisation in Malaysia had their board chairmen on board committees.

The nomination and remuneration committee (NRC) recorded the highest percentage of in-

volvement from board chairmen, followed by the audit committee.

Although the MCCG 2021 explicitly stipulates the three named committees, logical extrapolation would suggest that this practice should be extended to all other board committees (e.g. risk committee and investment committee).

The risk of self-review and impaired objectivity

In the Asian context, the chairman of the board occupies the very apex of an organisation.

They are persuasive and influential by virtue of this position, especially given the Asian feudalistic backdrop.

There may be a tendency for the board members and management to consider the chairman as the "feudal lord" – they defer to the chairman rather than challenge the chairman.

Therefore, if the chairman of the board is also the member of board committees, there will be a tendency for committee members to defer to the wishes of the chairman.

The same goes for board members who, too, may defer to the wishes of the chairman if they are aware that the recommendation put forth by a board committee is probably a recommendation that has found favour with the chairman. This is particularly likely when the chairman is an executive chairman, a major shareholder or both.

The issue is exacerbated when the chairman of the board is also the chairman of the board committee. Then, we have the unenviable situation where the chairman of the committee will be presenting the committee's recommendations to the chairman of the board (for the boards' deliberation) and both chairmen happen to be the same person.

This is what the MCCG refers to as giving rise to the risk of self-review that may impair the objectivity of the chairman.

A holistic review of corporate governance structures needed

If we agree that the Practice 1.4 advocated in the MCCG 2021 makes sense, then private limited companies (PLCs) that had gone against this practice in the past need to ask themselves what gave rise to the situation where their chairman of the board was also a member of their board committees.

There is a risk that some PLCs do not think through thoroughly on what constitutes good governance.

If it is agreed that the risk of self-review and the risk of impairment of the objectivity of the chairman are real risks, then this should have been addressed before the MCCG 2021 made it a practice.

Surely, it should not take a provision in the MCCG 2021 to bring about this change or the reali-

sation of the risk. After all, the board is supported by company secretaries who are governance experts, internal auditors who provide independent assurance on governance and board members who are expected to have the knowledge and experience on governance.

The risk is that these parties may adopt a compliance approach, in that complying with the practices in the MCCG is the order of the day rather than exploring beyond compliance to achieve the intended outcomes of good governance.

There is a need for holistic evaluation of corporate governance structures and processes based on interrogative, robust, out-of-the-box thought processes.

Those companies that did not have the chairman of the board as a member of any of the three identified committees should give themselves a pat on the back.

In a nutshell, the new Practice 1.4 of the MCCG 2021 will contribute towards better corporate governance.

There will be no risk of self-review that may impair the objectivity of the chairman and the board and there will be checks and balances as well as objective review by the board.

The writer is Minority Shareholders Watchdog Group chief executive officer

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