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COMPANY STRUCTURE

EXCOS SHOULD BE AD HOC

THE executive committee (exco) is not alluded to as a necessary structure in the Companies Act 2016, Bursa Malaysia Securities Listing Requirements (LRs) or the Malaysian Code on Corporate Governance (MCCG). While the LRs and MCCG mandate and/or encourage the formation of the audit, remuneration, nominating and board risk committees to provide guidance on the respective areas, there is no mention of the exco. It is neither an advocated nor mandated sub-committee.

Yet some companies set up excos, and they become a permanent feature in the corporate governance structure. Excos should be ad-hoc in nature. They should be set up for a particular purpose and once that purpose is achieved, they should be disbanded.

For instance, an exco may be necessary when the chief executive officer (CEO) position is vacant, and the company is unable to identify an internal candidate to assume the position or the acting CEO position. In such instances, the exco acts as the CEO to manage the company. It is better to identify an internal candidate as an acting CEO and let him manage the organisation with frequent reporting to the board, if necessary. If no such acting candidate is available, then by all means, an exco is justified. And if no such candidate is available, question the effectiveness of your succession planning.

Likewise, a mission-critical task like the switchover to a new IT system may require greater, intense and more frequent board oversight. Then an exco can be set up to oversee the switchover to the new IT system, and on successful switchover, the exco should be disbanded.

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The issues with excos

Excos can be criticised as being a "club of the select" or "board within a board", with the spotlight being cast on incidents where the de facto exco replaces the board as the organisation's apex decision-making body.

Excos, if made a permanent feature, add to the bureaucratic hierarchy. This increases the power distance within an organisation. The preference is for flatter organisations that enhance quick vertical communications and efficient information cascading.

Management by committees are not a preferred approach as accountability is difficult to pinpoint. We all know that work gets done better when an individual is held responsible instead of a committee. Furthermore, with committees, different opinions may complicate decision-making. Decisions again may not be made in a timely manner as it is a committee that is deliberating a potential decision as opposed to an individual.

Excos of a permanent nature may comprise some board members. Here, you have created a mini-board. The need for such a mini-board is telling. Surely, there must be something wrong with how the board operates to necessitate the creation of a mini-board.

Then there are excos comprising both board members and certain management members. In such instances, the opinion that prevails depends on who forms the majority on the exco, as decisions are made based on the members' voting rights. Sometimes, the excos have the power to make commitments and incur expenditures. While responsibilities may be delegated, accountability cannot be delegated. Should something go wrong, the board will be held accountable in law and under the LRs. In such instances, the board may be reduced to merely rubber-stamping the decisions and recommendations of the exco. The real risk lies where the exco conducts its proceedings in a less than transparent manner or wields excessive authority, thereby relegating the board to the "rubber-stamping" role.

In such a situation, the full board may be notified of the exco decisions after the fact. The directors not on the exco lack the means to alter or reverse any of the exco's decisions.

The terms of reference of an exco issued by the board may vary. There is no guidance as to what should come under its remit, unlike the audit, nomination and remuneration committees.

As such, the exco stands out for its influence and the conspicuous absence of guidelines regarding its governance.

Technology

Technology has become a great enabler in communications and conducting meetings. With the advent of virtual meetings, boards can stay abreast of management matters at the click of a button. While excos may have been justified in the era of physical board meetings, especially when some directors lived in faraway locations, it can no longer be justified in the virtual board-meeting era.

The bottom line is that the need for a permanent exco is a reflection of the operations and the effectiveness of the board. And in such a circumstance, it is the board that should come under review. Perhaps, the rejuvenation of the board is timely by introducing new blood. Perhaps, the size and skills matrix of the board should be reconsidered.

The exco should be considered as a quick fix to a pressing need. The exco should be a safety band-aid — once the wound is healed, it should be disbanded.

The writer is chief executive officer of Minority Shareholders Watch Group