



**MINORITY SHAREHOLDERS WATCH GROUP**

*Shareholder Activism and Protection of Minority Interest*

**BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD**

(Incorporated in Malaysia . Registration No: 200001022382 (524989-M) )

# **MSWG** Key Principles and Voting Guidelines 2020

## **MINORITY SHAREHOLDERS WATCH GROUP**

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Nothing in this **MSWG Key Principles and Voting Guidelines 2020** should be regarded as conclusive or authoritative in any legal aspect or for any particular situation or case. Those who propose to use this publication are advised to adapt the same for their own use where necessary and to obtain legal advice on its applicability to any specific situation.

Published in November 2020.

## **ABOUT US**

Minority Shareholders Watch Group (MSWG) was set up in the year 2000 as a Government initiative to be part of a broader Capital Market framework to bring about awareness primarily on minority shareholders interest and corporate governance matters through shareholder activism and engagement with stakeholders.

MSWG is a professional body licensed under the Capital Markets & Services Act 2007. It is a self-governing and non-profit body, funded predominantly by the Capital Market Development Fund (CMDf). It is an important channel of market discipline, encouraging good governance with the objective of creating sustainable value.

Since incorporation, MSWG has evolved into a respected and independent corporate governance research and monitoring organisation in the capital market. It highlights and provides independent views and guidance to investors.

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## FOREWORD

I am pleased to present the **MSWG Key Principles and Voting Guidelines 2020**, being an updated edition of our policy statement on corporate governance and voting guidelines which was first issued in 2009.

The document sets out MSWG's views on key principles and voting guidelines on matters related to resolutions commonly tabled at annual shareholders' meetings and will be applied on or after 1 November 2020.

As a key capital market institution promoting shareholder activism, our voting guidelines reflect the expectations of high standards of corporate governance being practiced by public listed companies (PLCs) in Malaysia, above and beyond the minimum required by statute, regulations, codes or those prescribed by Bursa Malaysia. The key principles set out also includes aspirational standards by which we hope PLCs would adhere to in terms of disclosures and best practices to facilitate more informed decision making by the shareholders. We drew upon the best practices set out in the Malaysian Code on Corporate Governance as well as other similar corporate governance documents, including our experiences in attending close to 300 general meetings on an annual basis, which contributed to the publication of this document.

We welcome your feedback for improvement.

**Devanesan Evanson**  
**Chief Executive Officer**  
**MSWG**

# KEY PRINCIPLES AND VOTING GUIDELINES FOR ANNUAL GENERAL MEETING OF PUBLIC LISTED COMPANIES IN MALAYSIA

## SECTION A – ORDINARY BUSINESS

### A.1 ADOPTION OF AUDITED FINANCIAL STATEMENTS, DIRECTORS' REPORT AND AUDITORS' REPORT

The abovementioned Reports do not require shareholders' approval. They are presented for shareholders to comment on and to seek clarification from the Board and auditors on any of the statements and financial results in the Reports. Shareholders are recommended to actively participate in giving their comments and seeking clarification.

#### Key Principles

- It is the responsibility of the Board to prepare the financial statements for each financial year in accordance with the Companies Act 2016 and the applicable accounting standards set out by Malaysian Accounting Standards Board.
- The Board should ensure disclosure in the annual report of the Company of both financial and non-financial information/details as required by the Listing Requirements.
- The external auditors should express their opinion on the financial statements, highlight key audit matters and related going-concern matters in the auditors' report.
- The Company is encouraged to disclose 5-year statistics on key parameters e.g. revenue, earnings per share, dividends, share price, net assets per share, profit after tax.
- Besides the financial statements, the Company is to publish its Corporate Governance Report and Sustainability Report.
- The Board is encouraged to present a visual presentation of the operations for the financial year under review, and on the Company's outlook and prospects.

- The Chairman is expected to allow shareholders reasonable time to ask questions, to provide comments and to seek clarification.

## **VOTING GUIDELINE**

The audited financial statements do not require approval of the shareholders. Hence the financial statements are not put forward for voting.

### **A.2 APPROVAL FOR FINAL DIVIDEND**

#### *Key Principles*

- Companies are encouraged to establish a dividend policy and disclose its dividend policy in the Annual Report.
- While declaration of an interim dividend is at the discretion of the Board of Directors (with the final dividend being subject to the approval of shareholders at a general meeting), this discretion should be exercised with prudence. The directors must satisfy that the Company will be solvent in the near future after the distribution is made.
- Under the Companies Act 2016, the Company is regarded as solvent if the Company is able to pay its debts as and when the debts become due within twelve months immediately after the distribution is made.

## **VOTING GUIDELINE**

1. MSWG will vote **FOR** a resolution for payment of a final dividend if it is deemed to be in the best interest of the Company and the collective interest of all shareholders.
2. MSWG will request for an explanation from the Board if, as a result of the dividend payment, the solvency of the Company is questionable based on the financial position of the Company or if there are reasons to believe that the dividend is to be paid out of borrowings. If there is no satisfactory explanation from the Board, MSWG will vote **AGAINST** the payment of the dividend.

## A.3 APPOINTMENT AND RE-ELECTION OF DIRECTORS

### *Key Principles*

#### **A.3.1 Board Members/Board Composition**

- The positions of Chairman and CEO are held by different individuals.<sup>1</sup>
- The tenure of an independent director should not exceed a cumulative term limit of nine years.
- The Executive Director should not hold an executive position in another PLC.
- All directors should objectively discharge their duties and responsibilities at all times as fiduciaries in the interest of the shareholders and other stakeholders.
- Active politicians should not be on the Board.
- At least half of the Board comprises independent directors.<sup>2</sup>

### **VOTING GUIDELINE**

1. MSWG will vote **AGAINST** the election of a person who has been the Chairman and CEO unless there is evidence that the person is prepared to relinquish one of such positions.
2. MSWG will vote **AGAINST** independent director who has served as an independent director for more than 9 years to continue to act as an independent director.
3. MSWG will vote **AGAINST** directors who are over-committed, for example, an Executive Director who holds another executive position in another PLC.

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<sup>1</sup> Practice 1.3 – Malaysian Code on Corporate Governance

<sup>2</sup> Practice 4.1 – Malaysian Code on Corporate Governance

4. MSWG will vote **AGAINST** the election of an independent director who was the former officer of the Company and has been re-designated to non-executive director before being appointed as an independent director unless there is a cooling-off period of 3 years.
5. MSWG will vote **AGAINST** the election of a director who has been sanctioned by any regulator in the last five years.
6. MSWG will vote **AGAINST** the election of an active politician. (An "active politician" is defined as an individual who is a member of any national or state legislative body, or who is an office bearer of, or holds any similar office or position in, a political body).
7. MSWG will vote **AGAINST** the election of new non-independent non-executive directors if the Board does not comprise at least 50% independent directors.
8. MSWG will vote **AGAINST** the election of a new male director if there are no women directors on the Board.

#### **A.3.2 Attendance at AGM, Board meetings and Board committee meetings**

- The Directors should be committed to attend the Board meetings and Board Committee Meetings.
- Directors who are standing for re-election should be present at the AGM.

#### **VOTING GUIDELINE**

1. MSWG will vote **AGAINST** the re-election of a director who is not present at the AGM unless there are acceptable reasons.
2. MSWG will vote **AGAINST** the re-election of a director who has attended less than 70% of the Board meetings or Board Committee meetings

## A.4 DIRECTORS' REMUNERATION

### *Key Principles*

1. Any substantial increase in directors' fees in the current financial year, compared to the previous financial year, should be justified.
2. Separate resolutions for the fees and benefits, including meeting allowance are encouraged.
3. The details and the monetary value of the benefits provided to directors must be disclosed. The benefits should be justified and appropriately valued.
4. The Board should provide explanation for any substantial differences between the executive directors' remuneration and the company's performance.
5. Tabling of advance directors' fees for approval prior to the closing of the relevant financial year is not recommended.

### **VOTING GUIDELINE**

1. MSWG will vote **AGAINST** the resolution on directors' fee if the increase in quantum is not in line with the performance of the Company and the increase in quantum is not adequately explained by the Company.
2. MSWG will vote **AGAINST** advance directors' remuneration if the financial performance of the Company has not been satisfactory for the past 3 years, or company undergoing restructuring, or the company has going-concern issues, etc.
3. MSWG will request for breakdown of the benefits payable to the directors and vote **AGAINST** the resolution if it is not justifiable.
4. MSWG will vote **AGAINST** the resolution on directors' fees if MSWG is of the opinion that the Board has been ineffective or there are past decisions that have caused financial distress to the Company.

## A.5 APPOINTMENT OF AUDITOR

### Key Principles

1. Any change of auditors should be adequately explained in the annual report or at the AGM.
2. The outgoing auditors should be present at the AGM and should respond to the questions raised by the shareholders in relations to their resignation.
3. MSWG encourages PLCs to disclose the date when the external auditor was first appointed or the tenure of the auditor.
4. The Company shall disclose the non-audit remuneration paid (or payable) to the external auditor and details of services provided in respect of such non-audit remuneration.

The external auditor should declare that they are, and have been, independent throughout the conduct of the audit engagement in accordance with the terms of all relevant professional and regulatory requirements.

### **VOTING GUIDELINE**

1. MSWG will vote **AGAINST** the re-appointment of the auditor where the non-audit fees are greater than the audit fees for two (2) consecutive years without any explanation.
2. MSWG will vote **AGAINST** the re-appointment of the auditor where there is reliable information that the auditor has currently, or had within the past 3 years, a significant 'connection' with the audited company.
3. MSWG will vote **AGAINST** the re-election of the director who was the Audit Committee Chairman if MSWG has voted **AGAINST** the re-appointment of the external auditors.

4. MSWG will vote **AGAINST** the re-election of the director who was the Audit Committee Chairman if the out-going auditors seemed to have been “forced” to resign or there is no satisfactory explanation for the change of auditors.

## **SECTION B – SPECIAL BUSINESS**

### **B.1 GENERAL MANDATE FOR DIRECTORS TO ALLOT AND ISSUE SHARES PURSUANT TO SECTION 75 & 76 OF THE COMPANIES ACT 2016**

#### *Key Principles*

The right to issue shares is vested in the shareholders. However, Sections 75(1) and 76(1) of the Companies Act 2016 allows the shareholders to “delegate” this right to the directors via a resolution at an AGM. Bursa Malaysia’s Listing Requirements limit the issuance of such shares to ten percent (10%) of the nominal value of the company’s issued and paid up share capital, excluding treasury shares.

Shareholders should take note that, where a general mandate is sought, the proposed resolution must be accompanied with the following information:-

- (a) Whether such mandate is new or a renewal;
- (b) If a renewal, to specify the proceeds raised from the previous mandate (if any) and to give the details and status of the utilisation of proceeds; and

#### **VOTING GUIDELINE**

MSWG will vote **FOR** the resolution on general mandate unless the company is “cash rich” and there are no plans /projects identified to utilise the cash accumulated.

## **B.2 SHAREHOLDERS' MANDATE FOR RECURRENT RELATED PARTY TRANSACTION OF REVENUE OR TRADING NATURE**

### *Key Principles*

1. All material Recurrent Related Party Transactions (RRPTs) should be disclosed in a transparent, accurate and timely manner.
2. The disclosure should include the name, relationship, nature of the transaction and value of each RRPT.
3. All material RRPTs should be reviewed by the Audit Committee.
4. The Board should disclose details of dissension to any RRPT, if any.
5. It is the responsibility of the Board to ensure that all RRPTs are at arm's length and conducted in the best interest of the Company. A statement to that effect by the Board should be made in the circular to shareholders.

### **VOTING GUIDELINE**

MSWG will vote **FOR** the resolution on RRPTs unless there is reason to believe the transactions are not at arm's length and are detrimental to the interest of minority shareholders.

## **B.3 SHARE BUY-BACK AUTHORITY**

### *Key Principles*

1. MSWG believes that the buying and selling of shares is not the main business of the Company. The Company should concentrate its efforts on ensuring the business that they are in is profitable.
2. Before deploying excess cash for share buy-back, the Board should weigh between other alternatives for the excess cash such as reinvestment for future profit or returning the cash to shareholders in the form of dividends.

3. Though there are no restrictions on the types of funds which can be utilised for the share buy-back under the Listing Requirements, MSWG is of the view that the share buy-back should not be funded by borrowings.

### **VOTING GUIDELINE**

MSWG will vote **FOR** the resolution on share buy-back unless the financial position of the Company indicates that it would be to the detriment of the Company to carry out the share buy-back or MSWG is of the view that other options, i.e. investment or dividend payment for shareholders is more beneficial to the shareholders or the Company in the long term.

## **B.4 EMPLOYEES SHARE SCHEMES (ESS)**

### *Key Principles*

1. Non-executive directors, especially independent directors should not participate in any form of share options or share grants.
2. The ESS, either as a grant without any purchase price consideration or as an option to purchase the shares of the Company at a price to be determined, should be performance-based, which includes both individual Key Performance Indicators (KPIs) and the Company's financial performance.
3. There should be a vesting period for the ESS to be exercised.

### **VOTING GUIDELINE**

1. MSWG generally supports ESS as a form of reward for the employees of the Company and as a measure to retain talents in the Company.
2. MSWG will vote **AGAINST** ESS granted to independent directors.
3. MSWG will vote **AGAINST** ESS that could be vested immediately or if there is no claw back provisions.

## **B.5 GRATUITY PAYMENT TO RETIRED DIRECTORS**

### Key Principles

1. Non-executive directors especially independent directors should not be entitled to retirement gratuity.
2. The basis used in determining the gratuity amount should be transparent and clearly disclosed.
3. The amount should be reasonable and justified against the long-term performance of the Company and value-creation for the minority shareholders.
4. No gratuity should be paid to the estate of a deceased director.

### **VOTING GUIDELINE**

1. MSWG will vote **AGAINST** gratuity payment to non-executive directors.
2. MSWG will vote **AGAINST** gratuity to retired executive directors unless the Company can justify value creation to the shareholders.
3. MSWG will vote **AGAINST** gratuity payment to the estate of a deceased director.

## **SECTION C – SPECIAL RESOLUTION**

### **C.1 ADOPTION OF NEW CONSTITUTION OF THE COMPANY**

#### *Key Principles*

1. Any changes proposed to the Company's constitution should be clearly explained.
2. The Company is encouraged to publish its Constitution on its corporate website.
3. All amendments to the Constitution must not compromise the shareholder rights.

#### **VOTING GUIDELINE**

MSWG will support changes to the Constitution provided that the Board clearly demonstrates that such changes will not detract from the enhancement of long-term shareholder value or materially reduce shareholder rights.

**SUMMARY OF MSWG VOTING POLICY AT SHAREHOLDERS' MEETING**

	<b>RESOLUTION</b>	<b>VOTING</b>
1.	<p><b>APPROVAL FOR FINAL DIVIDEND</b></p> <ul style="list-style-type: none"> <li>▪ If it is deemed to be in the best interest of the Company and the collective interest of all shareholders.</li> <li>▪ If there is no satisfactory explanation from the Board whereby the solvency of the Company to pay the dividend is questionable based on the financial position of the Company or there are reasons to believe that the dividend is paid out of borrowings.</li> </ul>	<p>FOR</p> <p>AGAINST</p>
2.	<p><b>APPOINTMENT AND RE-ELECTION OF DIRECTORS</b></p> <ul style="list-style-type: none"> <li>▪ Re-election of a person who has been the Chairman and CEO unless there is evidence that the person is prepared to relinquish one of such positions.</li> <li>▪ Re-election of independent director who has served as an independent director for more than 9 years to continue to act as an independent director.</li> <li>▪ Re-election of directors who are over-committed, for example, an Executive Director who holds another executive position in another PLC.</li> <li>▪ Re-election of an independent director who was the former officer of the Company and has been re-designated to non-executive director before being appointed as an independent director unless there is a cooling-off period of 3 years.</li> <li>▪ Re-election of a director who has been sanctioned by any regulator in the last five years.</li> <li>▪ Re-election of an active politician.</li> </ul>	<p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p>

	<ul style="list-style-type: none"> <li>▪ Re-election of new non-independent non-executive directors if the Board does not comprise at least 50% independent directors.</li> <li>▪ Re-election of a new male director if there are no women directors on the Board.</li> <li>▪ Re-election of a director who is not present at the AGM (unless there are acceptable reasons).</li> <li>▪ Re-election of a director who has attended less than 70% of the Board meetings or Board Committee meetings.</li> </ul>	<p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p>
3.	<p><b>DIRECTORS' REMUNERATION</b></p> <ul style="list-style-type: none"> <li>▪ The increase in quantum for directors' fee is not in line with the performance of the Company and the increase in quantum is not adequately explained by the Company.</li> <li>▪ Approval for advance directors' remuneration if the financial performance of the Company has not been satisfactory for the past 3 years, or company undergoing restructuring, or the company has going-concern issues, etc.</li> <li>▪ Benefits payable to the directors is not justifiable.</li> <li>▪ Approval for resolution on directors' fee if MSWG is of the opinion that the Board has been ineffective or there are past decisions that have caused financial distress to the Company.</li> </ul>	<p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p>

4.	<p><b>APPOINTMENT OF AUDITOR</b></p> <ul style="list-style-type: none"> <li>▪ Re-appointment of the auditor where the non-audit fees are greater than the audit fees for two (2) consecutive years without any explanation.</li> <li>▪ Re-appointment of the auditor where there is reliable information that the auditor has currently, or had within the past 3 years, a significant 'connection' with the audited company.</li> <li>▪ Re-election of the director who was the Audit Committee Chairman if MSWG has voted AGAINST the re-appointment of the external auditors.</li> <li>▪ Re-election of the director who was the Audit Committee Chairman if the out-going auditors seemed to have been "forced" to resign or there is no satisfactory explanation for the change of auditors.</li> </ul>	<p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p>
5.	<p><b>GENERAL MANDATE FOR DIRECTORS TO ALLOT AND ISSUE SHARES PURSUANT TO SECTION 75 &amp; 76 OF THE COMPANIES ACT 2016</b></p> <p>Where the company is "cash rich" and there are no plans/projects identified to utilise the cash accumulated.</p>	<p>FOR</p> <p>AGAINST</p>
6.	<p><b>SHAREHOLDERS' MANDATE FOR RECURRENT RELATED PARTY TRANSACTION OF REVENUE OR TRADING NATURE</b></p> <p>Where there is reason to believe the transactions are not at arm's length and are detrimental to the interest of minority shareholders.</p>	<p>FOR</p> <p>AGAINST</p>

7.	<p><b>SHARE BUY-BACK AUTHORITY</b></p> <p>Where the financial position of the Company does not support its affordability for share buy-back or MSWG is of the view that other alternatives, i.e. reinvestment or dividend payment for shareholders is more beneficial to the shareholders or the Company in the long term.</p>	<p>FOR</p> <p>AGAINST</p>
8.	<p><b>EMPLOYEES SHARE SCHEMES (ESS)</b></p> <ul style="list-style-type: none"> <li>▪ ESS as a form to reward the employees of the Company and as a measure to retain talents in the Company.</li> <li>▪ ESS granted to independent directors.</li> <li>▪ ESS that could be vested immediately or if there is no claw back provisions.</li> </ul>	<p>FOR</p> <p>AGAINST</p> <p>AGAINST</p>
9.	<p><b>GRATUITY PAYMENT TO RETIRED DIRECTORS</b></p> <ul style="list-style-type: none"> <li>▪ Gratuity payment to non-executive directors.</li> <li>▪ Gratuity to retired executive directors where the Company cannot justify value creation to the shareholders.</li> <li>▪ Gratuity payment to the estate of a deceased director.</li> </ul>	<p>AGAINST</p> <p>AGAINST</p> <p>AGAINST</p>
10.	<p><b>ADOPTION OF NEW CONSTITUTION OF THE COMPANY</b></p> <p>MSWG will support changes to the Constitution provided that the Board clearly demonstrates that such changes will not detract from the enhancement of long-term shareholder value or materially reduce shareholder rights.</p>	<p>FOR</p>

## REFERENCES

- Bursa Malaysia Listing Requirements  
[https://www.bursamalaysia.com/regulation/listing\\_requirements/main\\_market/listing\\_requirements](https://www.bursamalaysia.com/regulation/listing_requirements/main_market/listing_requirements)
- Malaysian Code on Corporate Governance (Issued on 26 April 2017)  
<https://www.sc.com.my/api/documentms/download.ashx?id=70a5568b-1937-4d2b-8cbf-3aefed112c0a>
- Companies Act 2016  
[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/Act%20777%20Reprint.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/Act%20777%20Reprint.pdf)

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