

MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Registration No.: 200001022382 (524989-M))

New Straits Times, Business Times – Thursday, 22 December 2022



**DEVANESAN
EVANSON**

TERMINATION OF POLITICAL APPOINTMENTS

MOVE BACKED BY GUIDELINES

“Most importantly, the OECD guidelines recommend that persons linked directly with the executive powers, such as heads of state, heads of government and ministers, should not serve on boards as this would cast serious doubt on the independence of their judgment.”

THE government is said to have terminated the contracts of all political appointees in government-linked companies (GLCs), government-linked investment companies (GLICs), statutory bodies and Minister of Finance Inc (MoF Inc) companies. GLCs refer to companies that the government controls directly through Khazanah Nasional Bhd, MoF Inc, Retirement Fund Inc (KWAP) and Bank Negara Malaysia, or where GLICs and/or other federal government-linked agencies collectively have a controlling stake. Within the realm of GLCs come the public-listed companies (PLCs), a subset of the GLCs where minority shareholders invest.

There are currently six GLICs which have investments in PLCs — Employees Provident Fund, Khazanah, Lembaga Tabung Angkatan Tentera, Lembaga Tabung Haji, Permodalan Nasional Bhd and Social Security Organisation (Perkeso).

MCCG GUIDELINES

Support for the move to do away with political appointments at PLCs which are also GLCs can be found in the Malaysian Code on Corporate Governance (MCCG) issued by the Securities Commission. Though primarily targeted at PLCs, this code is generic enough for consideration by any organisation.

The MCCG reminds boards to be mindful of the recommended best practices in relation to board appointments.

It goes on to say that the Organisation for Economic Coop-

eration and Development (OECD) guidelines on corporate governance of state-owned enterprises (SOEs) recommend that the SOE board composition should allow the exercise of objective and independent judgment. The guidance continues that all board members, including public officials, should be nominated based on qualifications and have equivalent legal responsibilities.

Most importantly, the OECD guidelines recommend that persons linked directly with the executive powers, such as heads of state, heads of government and ministers, should not serve on boards as this would cast serious doubt on the independence of their judgment.

Additionally, the MCCG states that a listed company is discouraged from appointing an active politician as a director on its board.

Under the MCCG, a person is considered politically active if he is a member of parliament, state assemblyman or holds a position at the supreme council or divisional level in a political party.

There must be a distinction between political appointees and politically active persons. A politically active person is a subset of political appointees as not all political appointees fulfil the definition of a politically active person.

The guidance in relation to politically active persons is not intended to cast aspersions on politically active persons but to merely acknowledge that they are in a position where they may face serious challenges to their

independence.

Politically active persons as directors have conflicting interests in relation to four stakeholders: the shareholders, the rakyat, the government and their own (and their political party's) political ambitions and needs. What the MCCG guidelines seek to do is to acknowledge this challenge to independence and to address it by discouraging active politicians from sitting on the boards of GLCs. And the MCCG finds support from the OECD guidelines which are considered international better practices.

MCCG PRACTICE

MCCG provides guidelines as to how the advocated practices in the MCCG may be applied. And when it comes to practices, the PLC must “apply or explain” an advocated practice.

When it comes to directors' appointment or reappointment, Practice 5.7 of MCCG states that the board should ensure shareholders have the information they require to make an informed decision on the appointment and reappointment of a director. This includes details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the listed company as a whole.

Furthermore, the board should also provide a statement as to whether it supports the appointment or reappointment of the candidate and the reasons why. Here, the practice puts the onus

on the board to provide the relevant information to shareholders when it comes to the appointment and reappointment of a director. Additionally, it is incumbent upon the board to highlight to shareholders anything “that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgment”.

This practice requires sufficient information to be provided by the board to enable shareholders to make their informed decision as to whether a director should be appointed or reappointed to the board.

LISTING REQUIREMENTS

The above MCCG exhortations are code-based. But the relevant code-based MCCG is supplanted by rule-based requirements under the Listing Requirements.

Under the Listing Requirements, which applies to all PLCs, the board, chief executive officer and chief financial officer must possess the character, experience, integrity, competence and time to effectively discharge their role effectively.

Active politicians may be hard pressed for time given their many political and social responsibilities. They may not have enough time to focus on corporate matters.

On that note, the announcement by the prime minister is to be welcomed. Now comes the implementation.

The writer is chief executive officer of Minority Shareholders Watch Group