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INTEREST OF SHAREHOLDERS, STAKEHOLDERS

STRIKING A BALANCE

WE all have some idea of what corporate governance is. More or less, we can catch the essence of corporate governance when we try to define it.

But there is an official definition of corporate governance — and a Malaysian one at that.

Corporate governance is defined as “the process and structure that are used to direct and manage the business and affairs of the company towards promoting the business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value while taking into account the interest of other stakeholders”.

This is the definition of corporate governance in the High Level Finance Committee Report (1999) which was adopted in the Malaysian Code on Corporate Governance. The definition has not changed to date.

What is interesting is the juxtaposing of shareholders’ interest and stakeholders’ interest. It is about shareholder value while taking into account the interest of other stakeholders.

Shareholders hunger for profits generally while stakeholders’ interest results in costs. So, it is not profit at all costs but profit at a cost.

Striking a balance between shareholders’ interest and stakeholders’ interest can be challenging, especially given the emerging emphasis on environmental,

social and governance (ESG) aspects.

Brutally put, if you want big money institutional investments, you must dance to their tune — prioritise ESG, which is increasingly becoming an important criterion in the investing mandates of local and foreign institutional investors.

Employees’ wellbeing

This is one of the key emerging ESG issues for companies and investors to watch out for.

We often go about chanting the mantra that employees are our dearest assets. But lately, the treatment of employees, especially foreign workers, have drawn negative attention and impacted the profitability of some public-listed companies (PLCs).

Primarily this negative attention relates to forced labour in the glove, component manufacturing and plantation sectors, where there is an abundance of foreign workers.

Recall that the US Customs and Border Protection (CBP) has imposed Withhold Release Orders (WROs) on companies that are deemed to have indulged in forced labour. A WRO allows the CBP to detain the products in question.

The onus then shifts to the importers to prove the absence of forced labour in the production and supply of the detained goods.

There is another pronounce-

ment by the CBP called a “finding”.

A finding is issued by the CBP when it has conclusive evidence on the use of forced labour.

In fact, when there is a finding, the CBP can seize the products in question. The US is an important market for many PLCs involved in glove, component manufacturing and plantation sectors.

It is not in the interest of these PLCs when they cannot export to the US market.

The CBP quoted Top Glove Corp Bhd as a company that clawed its way back from a WRO and a subsequent finding. Top Glove had its finding modified in September last year after it addressed the forced labour issues.

In Top Glove’s case, the WRO was issued in July 2020. The whole process took about 14 months. The lesson to be learned here is where there is a will, there is a way.

PLCs impacted by WROs’ and findings must realise that it is not an insurmountable task to address the issues raised by the CBP. If you want your exports to enter the US, you have no choice but to address these issues.

The sooner the issues are addressed, the better it is for the shareholders, the image and reputation of the PLC.

How long has it been going on?

The forced labour issues must have been lingering for several

years. One must be reminded of the maxim that what can go wrong, will go wrong, one day.

One of the gripes is that of cramped workers’ quarters.

Firstly, the self-discipline should come from the PLC level. The board and management should have realised that they were not abiding by government requirements when it came to workers’ living conditions.

Secondly, there is the internal independent assurance provider within the PLC — the internal audit function.

If foreign labour is considered the backbone of the PLC’s operations, surely an audit of human resources must have been a key audit area.

Internal auditors may have to tweak their audit plan to ensure government requirements for living conditions are met.

Then again, it may have been highlighted by the internal auditors but not addressed by the board.

Finally, there is the government enforcement agencies.

They, too, can play an important role in highlighting non-compliance issues so that problems can be addressed earlier rather than later — especially at an international level.

We do not have to wait for a WRO or a finding.

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