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INDEPENDENT DIRECTORS

BE 'PROFESSIONAL SCEPTICS'

SCEPTICISM, in Western philosophy, is the attitude of doubting knowledge claims set forth in various areas.

Sceptics challenge the adequacy or reliability of claims by asking what principles they are based upon or what they actually establish.

Scepticism is an essential attribute for a director. The phrase “Western philosophy” is deliberate — Asians find it uncomfortable to be sceptical at the boardroom. They find it uncomfortable to challenge.

The Malaysian concept of saving face is good but at what expense? Worse still, directors hesitate to speak truth to power. This is especially so when there is a dominating board member or a director who is also a major shareholder or even when the nominee of such a major shareholder sits on the board.

In this context, rather than challenge, independent directors may be inclined to give the benefit of the doubt to the chief executive officer (CEO) and senior management.

This happens as the tenure of the CEO and senior management is often longer than that of the independent director. These independent directors probably rationalise (and resign themselves to the mistaken fact) that since the CEO has been around longer, the CEO probably knows what he/she is talking about.

It is always uncomfortable to speak first. It is easier to nod in agreement after someone else has spoken. Professional directors should exercise professional scepticism, as irritating and uncomfortable as it may.

They do not have to believe what is said “hook, line, and sinker”. Their fiduciary duty demands that they be a professional sceptic.

In this context, Securities Commission (SC) executive chairman Datuk Seri Dr

Awang Adek Hussin said some independent directors seemed to be under-prepared and over-reliant on the management, which should not be the case as it could lead to the management being in control of the board.

He went on to say the “independent directors’ role is to provide a check and balance to the executives (directors), and they must take audit findings, particularly on risk assessment, to better manage any possible disruptions to the business”.

“I encourage independent directors to work and share views among themselves. This will allow them to be in a position to influence the board in the best interest of the company,” he said.

Companies’ board members must maintain their independence in terms of mind and position in order to exercise their roles and responsibilities effectively.

Awang Adek said this in his opening remarks at the International Directors Summit, organised virtually by the Institute of Corporate Directors Malaysia last month.

He said board members were not decorative pieces and should not view the position as a privilege or perk. Instead, they should act responsibly, lest they become a liability to the company.

The use of the phrase “decorative pieces” is reminiscent of the judgment in the Transmile Group Bhd, when in handing down sentence, Sessions Court judge Datuk Jagjit Singh said: “A director or audit company member is not a decorative piece of a company.

“He is a vital organ of the company, in particular when it comes to corporate governance. They have specific duties, functions and responsibilities and investing public shareholders rely on them.”

Since 2019, the SC has taken 104 administrative actions against 39 individual directors, including non-executive direc-

tors, for various breaches of securities law, including furnishing false and misleading information to the stock exchange.

Sanctions are increasingly being made against directors in their personal capacity, and rightly so.

Imposing fines on the corporation is deemed unfair as the corporation is a legal person — not a natural person, unable to exercise due care, skill and diligence. The directors are the natural persons who manage the corporation — the alter ego of the legal person.

Anyway, imposing fines on the corporations only shrinks the bottom line, leading to the innocent shareholders suffering.

Meanwhile, Awang Adek said boards also needed diversity in terms of age, experience, ethnicity, and gender.

He noted that in terms of women’s participation on companies’ board of directors, 80 per cent of listed companies now had at least one woman director, compared with only 7.7 per cent in 2011. However, companies should strive to achieve the target of 30 per cent women’s participation on boards.

As of Sept 1, 282 women directors were appointed to the boards, accounting for 34 per cent of all new appointments this year, compared with 17 per cent last year.

He said 79 per cent of the appointments were for independent non-executive directors.

Companies must strive to appoint women directors who are independent directors rather than resorting to appoint those who are not independent directors.

Only then can boards harness their full potential including the independent benefit of professional scepticism.

The writer is chief executive officer of Minority Shareholders Watch Group.

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