

MINORITY SHAREHOLDER WATCHDOG GROUP

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HAVING survived several global financial crises, Corporate Malaysia is realising that practising good governance brings with it many benefits. These include attracting long-term investors, raising capital for growth at lower cost, being more resilient to uncontrollable external shocks and better positioning itself for the longer term.

As such, we can already see some of Malaysia's biggest corporates readily undertaking serious corporate governance (CG) reforms at a higher cost.

It was thus that the Securities Commission formulated and announced the new Corporate Governance Blueprint, which is expected to introduce meaningful reforms in Malaysia's capital markets over the next five years, taking off from the first green book on the Malaysian Code of Corporate Governance launched in 1999.

The blueprint outlines strategic initiatives aimed at strengthening self and market discipline while at the same time, reinforcing regulatory mechanisms. It can only be described as ambitious as it anticipates all players in the corporate governance ecosystem to be equally responsible in promoting a culture of good practices for the benefit of companies and the integrity of the capital market.

Implicit to this is that it expects to integrate human principles of ethics and discipline in the decision-making process.

There is a total of 35 recommendations, sufficiently robust and neatly stacked-up into buckets,

Shared responsibilities in corporate governance

based on international best practice principles. Most of the recommendations will be implemented through a new Malaysian Code on Corporate Governance, assorted changes to Bursa Malaysia's listing requirements and via legislative changes.

The recommendations are outlined below:

Shareholder rights

The principle is that a company's shareholders have the right to be sufficiently informed on fundamental decisions, such as the appointment of directors, amendments to a company's governing documents and transactions such as the transfer or sale of company's assets.

Yet we have seen that while these rights are sufficiently enshrined in the law, there are many constraints in their exercise.

To this end, the blueprint recommends that:

□ Proxy voting should be facilitated and any impediments be lifted to encourage discussions at general meetings.

VIEW POINT

By Rita Benoy Bushon

□ Poll voting should be mandated for related-party transactions. This could later be extended to other corporate proposals in line with the principle of one-share one-vote as opposed to voting by show of hands, which is currently the default way of voting at general meetings.

Role of institutional investors

By virtue of the significant investments they hold in companies, institutional investors are normally minority shareholders with substantial stakes. And by the sheer of their stakes, they would have the ability to seek meetings with senior management to discuss issues and strategies to achieve company objectives.

In this regard, they have a critical stewardship role to play in the governance and performance of their investee companies for the ultimate interest of their beneficiaries which include you and me.

By extension, fund managers that manage funds on their behalf would also need to abide by the same principles. And equally important in the stewardship code are the underlying principles associated with responsible ownership.

Hence, the recommendation is for institutional investors to create an umbrella body whose overarching commitment is for sustainable bottom line numbers through good practices.

Board's role in governance

The board as a guardian of the company's assets must ensure that it acts in the best interest of the company and ensures good governance standards are adhered to. The recommendations include:

□ The formulation of ethical standards and a system of compliance through a code of conduct delineating the roles and responsibilities of the board, chairman and CEO. It also recommends a nine-year tenure limit for independent directors and a limit of five directorships in PLCs.

□ Mandating a nominating com-

mittee where recruitment, assessment, training and diversity policy (including gender) to be given due focus.

Disclosure and transparency

Disclosure and transparency are critical elements of a robust corporate governance framework, since they provide the basis for informed decision making by all stakeholders with respect to capital allocation, corporate transactions and financial performance. In line with this, the recommendations include:

□ Moving beyond minimum reporting, where the new CG code makes explicit the requirement for shareholders to be provided with quality and timely information including earlier notices and documents for general meetings.

□ Adopting an "apply or explain" approach on how the principles and practices have been applied.

Role of gatekeepers and influencers

The effectiveness of a company's

■ TURN TO B7, COL. 2

'Market discipline can complement regulatory discipline'

■ FROM B6

board is significantly augmented by professionals. These professionals approve financial statements, interpret and advise on governing laws, assess the company's internal controls and state of compliance, advise on reliability and quality of disclosures and provide corporate finance expertise.

Naturally, the independence, integrity and professionalism of these advisers are critical in ensuring that decisions made by the

board are in the best interest of the company.

To ensure that these professionals carry out their responsibilities, the recommendations include expanding the coverage of whistleblowing provisions, enhancing the role of company secretaries in corporate governance, having a code of conduct for internal auditors and establishing the sharing of responsibility for corporate advisers and other influencers to prevent the abuse of market-sensitive information.

Public and private enforcement

The efforts of regulators in strengthening the legal and regulatory framework and ensuring effective supervision and enforcement are just one part of the overall measures required to strengthen corporate governance.

In this context, it is expected that market discipline can complement regulatory discipline to ensure integrity, confidence and fairness in the markets. With this in mind, the

recommendation is to study the feasibility of litigation funding to facilitate private enforcement actions such as for oppression and unfair prejudice.

The journey is a challenging one. It presupposes the participation of all stakeholders and anticipates radical changes, not just how we think, but also what we do.

When we succeed, Malaysia will be a choice destination for investors for all the right reasons.

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