23 FEBRUARY 2022

Board Composition Requirements For Listed Companies On The Main And ACE Market Of Bursa Securities

Contact Persons:

Chia Loong Thye
Partner
+04 370 1122
ltchia@rdslawpartners.com

Mohd Farizal Farhan
Partner
+603 6206 0400
farizal@rdslawpartners.com

Ong Eu Jin
Partner
+603 6209 5488
eujin@rdslawpartners.com

Ooi Bee Hong
Partner
+603 6209 5401
beehong@rdslawpartners.com

Tan Gek Im
Partner
+04 370 1122
gekim@rdslawpartners.com

Annabel Kok Keng Yen
Senior Associate
+603 6209 5400
annabel@rdslawpartners.com

Lily Lee Zai-Lii
Senior Associate
+603 6209 5400
lily@rdslawpartners.com

This alert summarises on the composition requirements for board of directors (Board) for listed companies pursuant to the listing requirements issued by Bursa Malaysia Securities Berhad (Bursa Securities) in respect of the Main and ACE Markets of the same (collectively, the Listing Requirements). This alert also discusses the best practices as set out in the Malaysian Code on Corporate Governance (MCCG) issued by the Securities Commission Malaysia.

1. What are the board composition requirements for listed companies pursuant to the Listing Requirements?

Pursuant to Rule 15.02(1) of the Listing Requirements, a listed corporation must ensure that at least 2 directors or 1/3rd of the board of directors of the listed corporation, whichever is the higher, are independent directors.*

** If the number of directors of the listed issuer is not 3 or a multiple of 3, then the number nearest 1/3rd must be used.*

The Listing Requirements also state that in the event of any vacancy in the board of directors, resulting in non-compliance with the abovementioned Rule 15.02(1), the listed corporation must fill the vacancy within 3 months.

2. What are the main corporate governance best practices recommended by the MCCG in respect of the composition of the Board?

Practice 5.1 of the MCCG recommends that the Board Composition should be refreshed periodically, and the tenure of each director should be reviewed by the Nomination Committee. The annual re-election of a director should also be contingent on a satisfactory evaluation of the director's performance and contribution to the board.

Practice 5.2 of the MCCG states that at least half of the board should comprise independent directors. For Large Companies (as defined herein), the board should comprise a majority of independent directors.

Pursuant to paragraph 2.7 of the MCCG, 'Large Companies' are:

(a) Companies on the FTSE Bursa Malaysia Top 100 Index; or

(b) Companies with market capitalisation of RM2 billion and above at the start of the companies' financial year.

In respect of the tenure of an independent director, Practice 5.3 of the MCCG states that the tenure should not exceed a term limit of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director. However, if the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

Additionally, it is also best practice that the Board should also comprise at least 30% women directors pursuant to Practice 5.9 of the MCCG.

3. Is it a requirement for listed corporations to follow the Practices set out in the MCCG in respect of the Board composition?

The MCGG serves as a guidance which sets out the best practices for corporate governance derived from various global principles and internationally recognised practices of corporate governance which are beyond the minimum required by statute, regulations or those prescribed by Bursa Securities. It is highly recommended for listed corporations to comply with the Practices.

Listed corporations should also note that in the event that they deviate from the Practices in the MCCG, they are required to make the relevant explanations and disclosures as required by the Listing Requirements.

4. What will be required if the actions taken by the listed corporations deviate from the Practices recommended by the MCCG?

Rule 15.25 of the Listing Requirements states that a listed corporation must make the following corporate governance disclosures:

(a) An overview of the application of the principles set out in the MCCG by its board of directors to be included in its annual report; and

(b) The application of each Practice set out in the MCCG during the financial year to be disclosed to Bursa Securities in a prescribed format (Corporate Governance Report) and announce the same together with the announcement of the annual report.

Paragraph 3.2A of Practice Note 9 and Guidance Note 11 (collectively, the Guidance Notes), released by Bursa Securities in respect of the Main and ACE Market Listing Requirements respectively, further elaborates that in disclosing the application of each Practice in the Corporate Governance Report, a listed corporation must provide a meaningful explanation on how it has applied the Practice and if the listed corporation has departed from a Practice, it must do the following:

(a) Provide an explanation for the departure; and

(b) Disclose the alternative practice it has adopted and how such alternative practice achieves the intended outcomes as set out in the MCCG.

Contact Persons:

Chia Loong Thye
Partner
+04 370 1122
ltchia@rdslawpartners.com

Mohd Farizal Farhan
Partner
+603 6206 0400
farizal@rdslawpartners.com

Ong Eu Jin
Partner
+603 6209 5488
eujin@rdslawpartners.com

Ooi Bee Hong
Partner
+603 6209 5401
beehong@rdslawpartners.com

Tan Gek Im
Partner
+04 370 1122
gekim@rdslawpartners.com

Annabel Kok Keng Yen
Senior Associate
+603 6209 5400
annabel@rdslawpartners.com

Lily Lee Zai-Lii
Senior Associate
+603 6209 5400
lily@rdslawpartners.com

Paragraph 3.2B of the Guidance Notes further states that in explaining the departure from a Practice as required under paragraph 3.2A(a), a listed corporation must not merely state that it has complied with the requirements under the Listing Requirements as the reason for the departure. The listed corporation must still provide an explanation and the disclosure as required under Paragraph 3.2A.

For corporations listed on the Main Market of Bursa Securities, paragraph 3.2C of Practice Note 9 further states that listed corporations defined as Large Companies under the MCCG must also disclose the following if there is a departure from a Practice:

(a) The actions which it has taken or intends to take; and

(b) The time frame required, to achieve application of the Practice.

Authored by Rowena Ng Zhi Ying who is an Associate in the firm's Capital Markets and M&A Practice.