

25 APRIL 2022

Bursa Malaysia Takes Another Step Towards Enhanced Board Effectiveness

Contact Persons:

Chia Loong Thye
Partner

+04 370 1122
lthchia@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

In line with the aspirations towards board independence, quality and diversity in listed companies, Bursa Malaysia Berhad (the Exchange) recently announced amendments to the Main and ACE Market Listing Requirements (the Listing Requirements).

1. Tenure Of An Independent Director

The amended Listing Requirements limits the tenure of an independent director in a listed issuer or any of its related corporations to not more than a cumulative tenure of 12 years from the date of his first appointment (Maximum Tenure). The 12-year period will only be refreshed after such person has left the board and observed a cooling off period of at least 3 years. As a result of this amendment, all independent directors serving more than the Maximum Tenure must resign or be re-designated as non-independent directors by 1 June 2023.

It is worth noting that this amendment runs parallel with the recommendation of the Malaysian Code on Corporate Governance issued by the Securities Commission Malaysia (MCCG) for the tenure of an independent director to not exceed a tenure of 9 years.

As a rule of thumb, the eligibility of any person to be an independent director of a listed issuer depends on whether the said person is able to exercise independent judgment and act in the best interests of the listed issuer in his capacity as a director. Notably, the Maximum Tenure in the Listing Requirements seeks to tackle the issues of entrenchment, familiarity and dependency of any long-serving independent directors with any listed issuer or their related corporations, which may compromise such director's independence in one way or another.

**REIMAGINING
LEGAL
SOLUTIONS**

2. Appointment Of Women Director

Back in April 2021, the revision to the MCCG recommended as best practice for board of directors to have at least 30% women directors. If the 30% women composition is not achieved, the board should disclose the action it has or will be taking to achieve such composition and the expected timeframe to achieve it i.e. 3 years or less.

The amendments to the Listing Requirements went a step further by making it compulsory for listed issuers with a market cap of RM 2 billion as at 31.12.2021 to appoint at least one woman director on their board of director by 1.9.2022. For the remaining listed issuers, this requirement must be complied with by 1.6.2023. This was announced by the Minister of Finance in his Budget 2022 speech on 29.10.2021.

3. Fit And Proper Policy

Effective from 1 July 2022, listed issuers must implement a fit and proper policy that addresses board quality and integrity for the appointment and re-election of directors of the listed issuer and its subsidiaries. This policy must aid the listed issuer to ensure that each of its directors has the character, experience, integrity, competence and time to effectively discharge his role as a director of the listed issuer. The policy must also be published on the respective listed issuer's website.

In addition, listed issuers are required to disclose the application of their fit and proper policies in the nomination and election of their directors in their annual reports. In this regard, the listed issuer must ensure that such disclosure provides sufficient clarity to shareholders and investors in respect of the selection and appointment criteria for directors i.e. generic statements that do not add value to the shareholders should be avoided. Such disclosure should include:

- a) The overall desired board composition which encompasses, among others, the combination of skill sets, diversity, tenure etc as reflected in the fit and proper policy.

OUR EXPERTISE:

Anti-bribery and Anti-corruption

Banking & Finance (Conventional & Islamic)

Competition Law

Corporate & Commercial

Capital Markets (Debt & Equity)

Energy, Infrastructure & Projects

Fintech

Foreign Direct Investments

Mergers & Acquisitions

Personal Data Protection

Real Estate Transactions

Regulatory Compliance

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



About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

- Appellate Advocacy
- Banking & Finance (Conventional and Islamic)
- Capital Markets (Debt and Equity)
- Civil & Commercial Disputes
- Competition Law
- Construction & Arbitration
- Corporate Fraud
- Corporate & Commercial
- Personal Data Protection
- Employment & Industrial Relations
- Energy, Infrastructure & Projects
- Construction & Arbitration
- Fintech
- Government & Regulatory Compliance
- Intellectual Property
- Medical Negligence
- Mergers & Acquisitions
- Real Estate Transactions
- Shipping & Maritime
- Tax, SST & Customs
- Tax Incentives
- Trade Facilitation

- b) The specific justifications for appointing or re-electing each individual director during the financial year by taking into account the desired board composition, as well as factors justifying the nomination or re-election of a director, including the qualification and relevant work experience (in the case of a nomination) or the past contribution or performance of the director (in the case of re-election).

As a guide to formulate the fit and proper policy, listed issuers may refer to the Corporate Governance Guide (4th Edition) for the relevant criteria and considerations. The guide is accessible here:

<https://bursa-malaysia.s3.amazonaws.com/reports/Binder-Bursa-CG-Guide.pdf>

Conclusion

It goes without saying that a dynamic board lays the groundwork for the success of a company. As such, the amendments to the Listing Requirements by the Exchange are welcomed following the 2021 revision to the MCCG as these are fundamental for the promotion of board quality, diversity and independence in listed issuers.

Our previous alert in relation to the public consultation for the amendments to the Listing Requirements can be read here:

<https://www.rdslawpartners.com/post/public-feedback-sought-appointments-and-independence-of-directors>

This alert is authored by Diane Ngu Dai En, an Associate from the firm's Capital Markets and M&A practice.

**REIMAGINING
LEGAL
SOLUTIONS**