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MCCG Updates By The SC

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On 28 April 2021, the Securities Commission Malaysia ("**SC**") issued an update on the Malaysian Code on Corporate Governance[1] ("**Updated MCCG**") to strengthen the corporate governance culture of public listed companies ("**PLC**").[2] The following updates were introduced:

1. Chairman of the board of directors ("Board") should not be a member of the Audit, Nomination or Remuneration Committees

(a) The Malaysian Code on Corporate Governance 2017 ("**2017 MCCG**") states that the Chairman of the Audit Committee and the Chairman of the Board should not be the same person.

(b) The Updated MCCG further stipulates that the Chairman of the Board of a Malaysian PLC should **not** be a member of the Audit, Nomination or Remuneration Committees as well.[3]

2. Two-tier voting process for re-appointment of independent directors with tenures of more than 9 years

(a) The two-tier voting process was first introduced under the 2017 MCCG for re-appointment of independent directors with tenures of more than 12 years.

(b) Under the two-tier voting process, shareholders' votes will be cast during the shareholders meeting, whereby only the large

[1] MCCG (as at 28 April 2021) < Malaysian Code on Corporate Governance (sc.com.my)>

[2] SC (2021), 'SC Updates the Malaysian Code on Corporate Governance to Promote the Board Leadership and Oversight of Sustainability' (28 April 2021) <SC Updates the Malaysian Code on Corporate Governance to Promote Board Leadership and Oversight of Sustainability - Media Releases | Securities Commission Malaysia>

[3] Paragraph 1.4, MCCG (as at 28 April 2021)

shareholders[4] of the company will vote under Tier 1, while the rest of the shareholders will vote under Tier 2. The decision for any resolutions to be passed will be determined based on simple majority votes of Tier 1 and Tier 2. The resolution is deemed successful only if both Tier 1 and Tier 2 votes support such resolution.

(c) To encourage periodic refresh of Board composition, the Updated MCCG suggests that the two-tier voting process be implemented for re-appointment of independent directors with tenures of more than 9 years instead.[5]

3. No 'active politician' on Board

(a) The Updated MCCG discourages the appointment of 'active politician' as a director of a PLC to allow the exercise of objective and independent judgment which are in line with global best practices.[6]

(b) Pursuant to the Updated MCCG, a person is considered 'politically active' if he is a Member of Parliament, State Assemblyman, or holds a position at the Supreme Council, or division level in a political party.

4. Board to have at least 30% women directors

(a) Under the 2017 MCCG, only large companies[7] are required to have at least 30% of women directors on their Board.

[4] Large shareholder is defined as amongst others, a person who owns no less than 33% of the voting shares in the company or a person who is the largest shareholders of voting shares in the company.
[5] Paragraph G5.3, MCCG (as at 28 April 2021)
[6] Paragraph G5.5, MCCG (as at 28 April 2021)
[7] Large companies are companies on the FTSE Bursa Malaysia Top 100 Index or companies with market capitalisation of RM2 billion and above, at the start of the companies' financial year.

(b) However, the 2021 MCCG recommends for all PLC to have at least 30% of women directors on their Board to support the participation of women.[8]

5. Cooling off period of at least 3 years before being appointed as a member of an Audit Committee

(a) The 2017 MCCG required a former key audit partner to observe a cooling-off period of at least 2 years before being appointed as a member of the Audit Committee.

(b) However, the Updated MCCG recommends for a former partner of an external audit firm of a PLC[9] to observe a cooling-off period of at least 3 years before being appointed as a member of the Audit Committee.[10]

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[8] Paragraph 5.9, MCCG (as at 28 April 2021)
[9] This applies to all former partners of the audit firm and/or the affiliate firm (including those providing advisory services, tax consulting etc.)
[10] Paragraph 9.2, MCCG (as at 28 April 2021)