

# PART 03 MAINTAINING MARKET INTEGRITY AND GOOD GOVERNANCE

## INTRODUCTION

Maintaining market integrity and good governance remains a priority for the SC as it continues to drive high standards of governance and accountability among all market participants.

In 2020, the SC continued to strengthen its supervision and surveillance approach as well as capabilities, to ensure that the capital market operates in a fair and orderly manner while responding to the COVID-19 pandemic.

The SC also undertook regulatory reforms and initiatives to facilitate digitisation in the capital market, strengthen accountability and integrity, and accelerate the adoption of good corporate governance (CG) practices.

## PROMOTING GOOD GOVERNANCE AND CONDUCT

### Monitoring Adoption of Corporate Governance Best Practices

The SC released the annual *Corporate Governance Monitor 2020* (CG Monitor 2020) report that highlighted, among others, an increase in the adoption of the *Malaysian Code on Corporate Governance* (MCCG). This includes the Step Up practices, the two-tier voting process and board practices to determine the remuneration of directors and senior management.

The CG Monitor 2020 also presented observations on three thematic reviews in relation to the adoption of two-tier voting, board remuneration of listed companies on the FTSE Bursa Malaysia Top 100 Index and the conduct of fully virtual general meetings by listed issuers since the MCO.

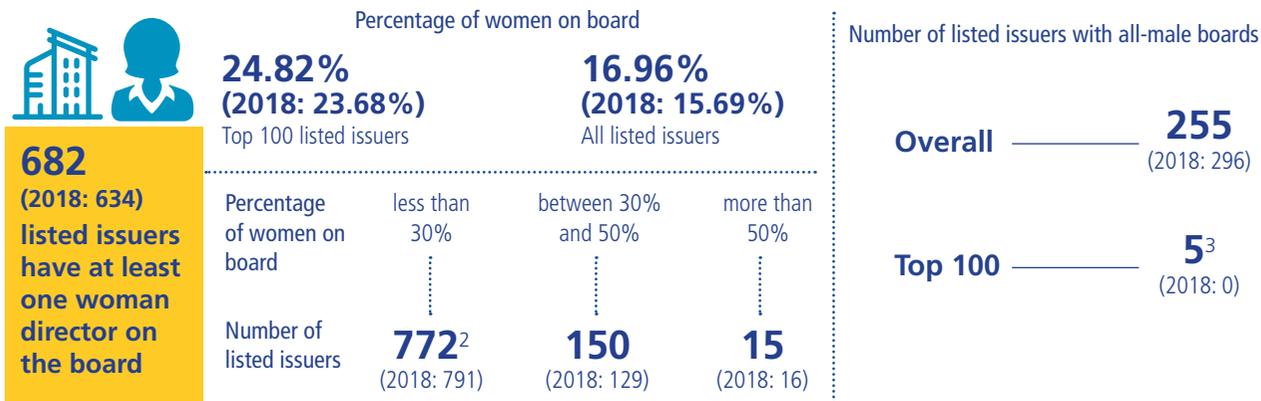
The review on board remuneration shows that the total board remuneration in 2019 decreased by 11.7% compared to 2018 largely driven by the decrease in executive directors' remuneration by 14.5%, while non-executive directors' remuneration increased by 6.2% in 2019.

The report also provided an update in relation to gender diversity on boards. As of 31 August 2020, minor improvements were observed in the participation of women on boards with women holding 24.82% of board positions on the top 100 listed companies, and 16.96% across all listed companies. There were also five companies with all-male boards on the top 100 listed companies, namely Comfort Glove Bhd, Focus Dynamics Group Bhd, Frontken Corporation Bhd, Guan Chong Bhd, and Pentamaster Corporation Bhd. As at 31 December 2020, Guan Chong Bhd had appointed two women directors on its board while the remaining four companies still had all-male boards.

# HIGHLIGHTS FROM THE CG MONITOR 2020

The *Corporate Governance Monitor 2020* reports on the adoption of the MCCG by listed companies based on the disclosures made in their Corporate Governance Reports 2019.

## Gender diversity on boards<sup>1</sup>



## MCCG adoption

**27**  
(2018: 27)  
MCCG best practices were adopted by more than 70% of listed companies

**78%**  
(2018: 74%)  
of listed companies adopted at least one Step Up practice

**37**  
(2018: 12)  
listed companies have adopted at least three Step Up practices

## Best practices with the most improved level of adoption

**↑ 11.6%**  
**Practice 8.2**

Audit Committee policy requiring former key audit partner<sup>4</sup> to observe cooling off period of at least two years before being appointed as a member of the Audit Committee.

**↑ 9.8%**  
**Practice 6.1**

The board has policies and procedures to determine the remuneration of directors and senior management.

**↑ 9.1%**  
**Practice 4.5**

The board discloses its gender diversity policy, targets and measures. For Large Companies, the board comprises 30% women directors.

### Note:

<sup>1</sup> Data as at 31 August 2020.

<sup>2</sup> 772 inclusive of listed issuers with all-male boards.

<sup>3</sup> Comfort Glove Bhd, Focus Dynamics Group Bhd, Frontken Corporation Bhd, Guan Chong Bhd and Pentamaster Corporation Bhd.

<sup>4</sup> The engagement partner, the individual responsible for the engagement of quality control review, and other audit partners, if any, in the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements, which the audit will express an opinion.

## Two-tier voting

498 <sup>6</sup> Independent directors with tenure of more than 12 years	Tenure	Number of directors	Reappointment using <sup>5</sup>	
			Two-tier	Simple majority
	between 13 and 20 years	416	218	148
	between 21 and 30 years	77	50	20
	between 31 and 40 years	3	0	2
	more than 40 years	2	0	2

**41**  
(Total 2018: 164; 2019: 181)  
listed companies used the two-tier voting process for the first time in 2019

**268**  
(2018: 242)  
resolutions were voted using the two-tier voting process

## Board remuneration of FTSE Bursa Malaysia Top 100 Index (FBM 100) companies



Total board remuneration decreased by **11.7%**

### Total remuneration received by

Executive directors

↓ **14.5%**

Non-executive directors

↑ **6.2%**

### Median board remuneration

Overall  
**RM7.4 million**

Industrial Products & Services  
**RM11.0 million**

Telecommunications & Media  
**RM10.8 million**

Property & Plantation  
**RM8.5 million**

Note:

<sup>5</sup> Latest available data as at 31 December 2019.

<sup>6</sup> As at 1 January 2019.

## Implementation of the SC's Corporate Governance Strategic Priorities

The SC continued to implement initiatives identified in the SC's *Corporate Governance Strategic Priorities 2017-2020* (CG Priorities). In 2020, measures were undertaken to strengthen the CG ecosystem and promote shareholder activism.

### Priority I: Strengthening the corporate governance ecosystem

The Corporate Governance Council (Council) was formed to co-ordinate and align CG initiatives among members of the Council and relevant stakeholders. Chaired by the SC, the Council comprises representatives from Bursa Malaysia, Institute of Corporate Directors Malaysia, Institutional Investors Council, Malaysian Institute of Corporate Governance and the Minority Shareholders Watch Group (MSWG). The inaugural meeting of the Council was held in April 2020, and the Council's priorities for 2020/2021 were identified. The Council also formed a sub-working group to review and streamline existing CG assessments and awards for listed companies.

### Priority II: Promoting shareholder activism

An *Annual General Meeting Corporate Governance Checklist for Shareholders* (AGM CG Checklist) was introduced to promote meaningful dialogue between shareholders and the board of directors at AGMs. The AGM CG Checklist was developed in collaboration with the Institutional Investors Council and the MSWG. It guides shareholders on key issues that they may need to consider or raise at an AGM before exercising their voting rights. These relate primarily to resolutions commonly tabled at AGMs such as the appointment of directors, approval of directors' fees and the appointment of auditors.

The AGM CG Checklist also reminds shareholders to engage boards on other critical issues including sustainability and anti-corruption measures.

## Strengthening Board Governance and Oversight in Listed Issuers and Their Subsidiaries

The SC issued the *Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries* (Guidelines) to strengthen board governance and oversight in listed issuers and their subsidiaries. The issuance of these Guidelines is in line with the SC's CG Priorities, which seeks to, among others, promote the proper discharge of directors' fiduciary duties among corporate Malaysia. The introduction of these Guidelines is one of the measures approved by the Special Cabinet Committee on Anti-Corruption (JKKMAR) in 2019.

The Guidelines also set out guidance on duties and responsibilities of boards in company group structures and requirements for the establishment of a group-wide framework to enable, among others, oversight of group performance and the implementation of CG policies.

## Corporate Governance Watch 2020

The SC held its biennial engagement with the Asian Corporate Governance Association<sup>6</sup> (ACGA) from 14 to 16 July 2020 for purposes of the *Corporate Governance Watch 2020* assessment. It is a regional assessment that evaluates the macro CG quality in 12 Asia-Pacific markets. The SC shared key measures that were implemented to drive good governance in the capital market since the last assessment held in July 2018.

In November, the ACGA announced the outcomes of the *Corporate Governance Watch 2020* assessment at its annual conference, held virtually in Hong Kong. Out of the 12 Asian markets<sup>7</sup> included in the assessment,

<sup>6</sup> The ACGA is an independent non-profit membership organisation based in Hong Kong, which monitors the CG framework and practices of the markets on behalf of its members that comprise leading pension and investment funds, with AUM of more than US\$30 trillion globally.

<sup>7</sup> Australia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Philippines, Singapore, Taiwan and Thailand.

Malaysia ranked fifth (2018: fourth) jointly with Japan. Australia continued to rank first followed by Hong Kong and Singapore at joint second. Despite the drop in ranking, which was largely due to concerns on public governance, Malaysia's total scores increased in 2020, from 58% (2018) to 59.5%, and out of the seven assessment categories<sup>8</sup>, Malaysia recorded improvements in four categories – 'Corporate Governance Rules', 'Listed Companies', 'Investors' and 'Auditors and Audit Regulators'. Further, in three categories, 'Auditors and Audit Regulators', 'Corporate Governance Rules' and 'Listed Companies' Malaysia ranked top two in the region, after Australia.

### Strengthening of Anti-Corruption Policies and Procedures

As part of the SC's support in the implementation of the National Anti-Corruption Plan (2019-2023), several guidelines governing licensed and registered persons were amended to strengthen the anti-corruption measures of intermediaries and registered persons. The amended guidelines include *Licensing Handbook*, *Guidelines on the Registration and Conduct of Capital Market Services Providers*; *Guidelines on*

*the Registration of Venture Capital and Private Equity Corporations and Management Corporations*; *Guidelines on the Registration of Credit Rating Agencies*; *Guidelines on the Registration of Bond Pricing Agencies*; and *Guidelines on Recognised Markets*.

These guidelines were amended in light of the corporate liability provision under section 17A of the *Malaysian Anti-Corruption Commission Act 2009* (MACC Act), which came into operation on 1 June 2020. The provision on corporate liability under the MACC Act establishes a new corporate liability offence of corruption by a commercial organisation. It also deems any director, controller, officer, partner or manager of a commercial organisation to be personally responsible for the same offence if the commercial organisation is found liable.

Pursuant to the amendments, licensed intermediaries and registered persons must have in place policies and procedures on anti-corruption and whistleblowing by 1 June 2020. The policies and procedures should be guided by the *Guidelines on Adequate Procedures* issued under section 17A(5) of the MACC Act.

<sup>8</sup> 'Auditors and Audit Regulation', 'Corporate Governance Rules', 'Civil Society and Media', 'Government and Public Governance', 'Investors', 'Regulators' and 'Listed Companies'.

## THEMATIC REVIEW ON COMPLIANCE WITH ANTI-CORRUPTION POLICIES AND PROCEDURES

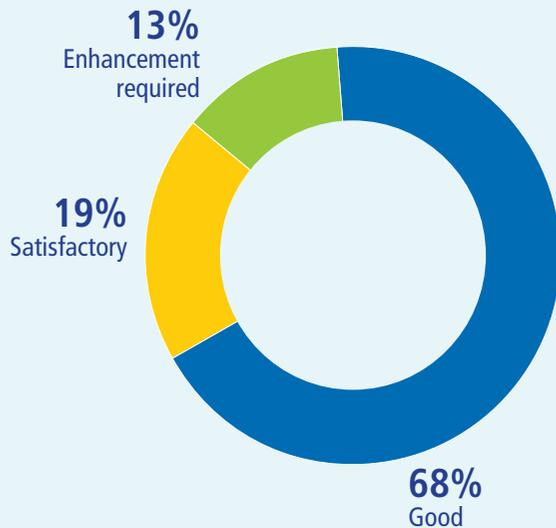
### SCOPE OF REVIEW

The SC undertook a thematic review to assess the level of intermediaries' compliance with requirements on anti-corruption policies and procedures, which was introduced in light of the corporate liability provision under section 17A of the MACC Act, which came into force on 1 June 2020.

The thematic review covered 255 intermediaries supervised by the SC and was conducted via a questionnaire.

CHART 1

Level of overall compliance by intermediaries to s17A MACC Act



### OBSERVATIONS

While the SC's review found that the majority of intermediaries had anti-corruption policies and frameworks in place, there was still room for improvement. These include the adequacy and comprehensiveness of policies and procedures, risk assessment, monitoring and training.

The SC noted that 68% of intermediaries had displayed a good overall level of compliance, having an adequate anti-corruption framework. Meanwhile, 19% of intermediaries had a satisfactory level of compliance and 13% requiring enhancements to their anti-corruption framework.

Following the thematic review, the SC will be taking the following steps in order to communicate the observations to the intermediaries and the industry:

- Issuance of Supervisory Letters to intermediaries, requiring significant enhancements to the framework to ensure relevant gaps are addressed;
- Issuance of communication to the senior management of intermediaries (by regulated activity) to share the specific observations noted from the thematic review; and
- Publication of specific observations and good practices noted from thematic review in the SC's newsletter, *The Reporter*.

## Monitoring Compliance and Resilience of Intermediaries

The SC adopts a multi-pronged strategy to align intermediaries' culture, governance and conduct with its supervisory expectations. In 2020, the SC intensified its supervisory efforts, focusing on governance framework, compliance and risk culture, conduct as well as ensuring that intermediaries were well positioned and remained resilient. Stress testing on operational resilience was conducted to ascertain intermediaries' financial strength and capital adequacy position to absorb potential market stress.

## Increased Use of Off-Site Monitoring Techniques

With the implementation of the MCO, an off-site supervision approach was adopted, with touchpoints achieved through frequent high-level engagements and assurances obtained from intermediaries on key matters in the SC's supervisory checklists. Targeted monitoring of intermediaries had also enabled the SC to obtain current information and data to identify potential risk build-ups.

## Compliance with Anti-Money Laundering / Counter Financing of Terrorism / Proliferation Financing (AML/CFT/PF)

As part of the SC's effort to ensure reporting institutions' compliance with the *Guidelines on Implementation of Targeted Financial Sanctions Relating to Proliferation for Capital Market Intermediaries* (TFS-PF Guidelines), it conducted 14 workshops with Compliance Officers from 113 reporting institutions to convey its expectations on the adoption of best practices by the industry. In view of the updated recommendations<sup>9</sup> issued by the Financial Action Task Force (FATF) on assessment of proliferation financing risk and application of risk-based approach, the SC will provide further guidance and organise continuous awareness programmes focused on supervision and compliance with counter-proliferation financing requirements.

In 2020, the SC also worked with BNM on the National Risk Assessment on Proliferation Financing and the National Risk Assessment on Money Laundering / Terrorism Financing.

## SC's multi-pronged strategy in monitoring intermediaries' compliance and resilience



<sup>9</sup> FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.

## Supervisory Assessments and Thematic Reviews

In 2020, the SC carried out 416 assessments comprising 56 targeted pre-emptive assessments and three thematic reviews involving 282 intermediaries on identified areas of risk. Additionally, the SC carried out 78 assessments arising from concerns, complaints and referrals received on misconduct. Where instances of poor control environment in the intermediary were identified in the assessment and thematic reviews, the SC took supervisory actions to ensure adequate measures were put in place to rectify the gaps.

Thematic reviews enable the SC to assess trends, emerging risks and compliance lapses across intermediaries. The thematic review conducted by the SC in 2020 included the reviews of intermediaries' compliance with anti-corruption policies and procedures requirements, and oversight of their licensed representatives.

## Strengthening the Effectiveness of FIMM's Enforcement, Surveillance and Investor Protection

The supervision of FIMM as an industry self-regulatory organisation (SRO) continues to be a vital supervisory emphasis for the SC.

In 2020, FIMM's supervision focused on strengthening the effectiveness of its enforcement, surveillance and investor protection efforts to deter the possibility of increased misconduct during the prevailing challenging conditions. In particular, FIMM is expected to leverage its digital marketing efforts, and intensify its investor education and awareness programmes to educate vulnerable investors on the possibility of increased misconduct during the current conditions and promote ethical industry practices.

# SUPERVISORY ASSESSMENTS AND THEMATIC REVIEWS



## Capacity Building in Upholding Audit Quality

Given the importance of continuous professional education to build capacity and uphold audit quality, the SC introduced a one-off training subsidy for Small and Medium Practices (namely existing registered audit firms of the AOB with less than 10 audit partners), of up to RM30,000 per firm for Approved Training Programmes conducted by the Malaysian Institute of Certified Public Accountants (MICPA).

## Clarifying Regulatory Parameters on Investment Advice Activities

The MCO period saw an increase in trading activity by retail investors. The situation also gave rise to dissemination of investment advice by members of the public on various social media platforms. As the provision of investment advice is a regulated activity under the CMSA, the SC issued the *Guidance Note on Provision of Investment Advice* on 30 December 2020, to clarify the types of activities that may amount to investment advice, and thus require a licence from the SC.

## ENSURING MARKET INTEGRITY AND TRANSPARENCY

### Reinforcing Bursa Malaysia's Regulatory Independence, Governance and Operational Resiliency

In 2020, the SC continued its efforts to facilitate the establishment of an independent wholly-owned Bursa Regulatory Subsidiary (Bursa RegSub) to assume the regulatory functions currently undertaken by Bursa Malaysia. The establishment of the Bursa RegSub was announced in February 2020. Efforts were made to put in place the necessary governance structure and regulations, and facilitate amendments to Bursa Malaysia's rules to support the function at the Bursa RegSub.

The clear segregation of the regulatory function from the commercial or business objectives of Bursa Malaysia will address the perception of potential conflicts of interest between these two competing objectives. A board of directors, a majority of whom will be independent of Bursa Malaysia, will govern the Bursa RegSub and the Chairman of Bursa RegSub will be appointed from among the independent board members. In this regard, Bursa Malaysia remains accountable to the SC to ensure that Bursa RegSub is sufficiently funded and resourced, to enable its regulatory functions to be discharged effectively. The SC will continue to regulate Bursa Malaysia directly as a PLC as well as a market operator and a central counterparty while maintaining oversight of the regulatory functions performed by Bursa RegSub. The target schedule for Bursa RegSub to be operational is in 2021.

Additionally, the SC's oversight and supervision of Bursa Malaysia, as an integrated exchange operator, is aimed at ensuring continued functioning of the equity and derivatives markets to support the real economy. These markets provide access to funding and the ability to hedge risks.

To meet these objectives, the SC's supervision on Bursa Malaysia is focused on:



Strengthening the management of perceived conflicts of interest in the discharge of its regulatory obligations;



Operational and financial resilience of its market infrastructures, namely Bursa Clearing Houses; and



Operations of its markets with continued flow of information to these markets.