PUBLIC RESPONSE PAPER

No. 1/2012

CORPORATE GOVERNANCE BLUEPRINT 2011
AND
INDEPENDENT CHAIRMAN AND VOTING BY POLL

The Securities Commission Malaysia (SC) issues this Public Response Paper in response to feedback received pursuant to the exposure period on the Corporate Governance Blueprint 2011 which was held from 8 July 2011 to 15 September 2011, and the Public Consultation Paper on Independent Chairman and Voting by Poll dated 15 November 2011.

This Public Response Paper is dated 29 March 2012

Part A: Feedback on the *Corporate Governance Blueprint 2011*

I. Introduction

1.1 On 8 July 2011, the SC introduced the *Corporate Governance Blueprint 2011* (Blueprint). It sets out the strategic direction and specific action plans to be implemented over a five-year period (2011–2016), aimed at promoting greater internalisation of the culture of good governance by strengthening self and market disciplinary mechanisms.

1.2 The Blueprint contains a total of 35 recommendations and is divided into six chapters:

(a) Shareholder rights;
(b) Role of institutional investors;
(c) The board's role in governance;
(d) Disclosure and transparency;
(e) Role of gatekeepers and influencers; and
(f) Public and private enforcement.

1.3 The Blueprint was open for public feedback from 8 July 2011 to 15 September 2011. In addition, the SC also held several post-launch dialogue sessions with industry participants including listed companies, fund managers, brokers, special interest groups, Islamic capital market stakeholders and other relevant professionals.

1.4 The SC received a large number of responses on the Blueprint from individuals, listed companies, as well as local and international associations. The SC would like to thank all respondents for their comments.

1.5 Overall, the feedback received was positive and respondents were generally supportive of the Blueprint and its recommendations.

1.6 Some recommendations, owing to its subject matter, elicited more responses and discussions from the respondents, with a number of respondents opposing or agreeing with the recommendation.

The recommendations are as follows:

(a) Recommendation 1:
Ensure listed companies do not impose any qualitative restrictions on proxy appointment by shareholders and any quantitative restrictions on the number of proxies appointed by shareholders.

(b) Recommendation 13:
Mandate a cumulative term limit of up to nine years for an individual to serve as an independent director.

(c) Recommendation 18:
Mandate disclosures in annual reports of policies and targets on women composition on boards.

(d) Recommendation 20:
Limit the number of listed company directorships held by individual directors to five, and the director to seek approval of the board before accepting any new appointments in other listed companies.

(e) Recommendation 26:
Review the current framework for periodic disclosure of financial and non-financial information, including the shortening of the submission period for quarterly and annual reports.

Respondents provided cogent reasoning to support their respective positions on the above-listed recommendations, and their reasoning will be discussed in the following sections along with the SC's position on each recommendation.

II. Feedback from respondents

2.1 The appointment of proxies

Recommendation 1:
Ensure listed companies do not impose any qualitative restrictions on proxy appointment by shareholders and any quantitative restrictions on the number of proxies appointed by shareholders.

Feedback from respondents:

2.1.1. With regards to qualitative restrictions, some respondents held the view that listed companies should be given the discretion to set qualification restrictions for proxies as it deems fit. If qualitative requirements were removed, there is a risk that the proxies appointed would not be able to discharge their duties effectively.

2.1.2. In terms of quantitative restrictions, some respondents were not in favour of allowing the appointment of multiple proxies citing the following:

(a) It could lead to large number of proxies attending meetings and creating administrative issues for the listed companies.

(b) The ability to appoint multiple proxies could be abused, where numerous proxies may be appointed by the controlling or major shareholders in a board tussle to vote in favour of their respective resolutions in a vote by show of hands.

2.1.3 As for the recommendation to disallow multiple proxies appointed by a shareholder to vote by a show of hands – the respondents who agreed were concerned that it would be difficult to manage and segregate eligible proxies at meetings, especially when there is large number of proxies. Those who outright disagreed with the recommendation also objected owing to difficulty in implementation.

Our position:

2.1.4 The recommendation in relation to proxy appointments takes effect through the amendments to the *Bursa Malaysia Listing Requirements* (Listing Requirements) which were issued in September 2011.

The amendments are as follows:

(a) Paragraph 7.21A of the Listing Requirements now expressly disallows any restrictions on a proxy's qualification.

(b) Paragraph 7.21 of the Listing Requirements allows an exempt authorised nominee to appoint multiple proxies for each omnibus account it holds.

2.1.5 Under the Listing Requirements, only an exempt authorised nominee will not be subjected to any quantitative restriction. The removal of quantitative restrictions on the number of proxies appointed is not extended to individual shareholders.

2.2 Term limit on independent directors

Recommendation 13:
Mandate a cumulative term limit of up to nine years for an individual to serve as an independent director.

<u>Feedback from respondents:</u>

2.2.1 The respondents who were not in favour of setting a term limit of nine years cited, amongst others, that:

(a) There is limited number of directors and listed companies may face difficulty in finding suitable independent directors. Further, independent directors who have assumed the position for a long period would have acquired significant knowledge of the business and it may not be easy to obtain replacements with similar experience and knowledge;

(b) It may not always be the case that a director becomes non-independent merely because he has served on the board as an independent director for nine years;

(c) Shareholders had already exercised their vote on the matter and mandating a term limit undermines the contribution of the director in circumstances where the company is performing well; and

(d) The nine-year limit is arbitrary.

2.2.2 Suggestions were also made that, instead of prescribing a term limit, the board should be given the discretion to assess and decide on the tenure of its independent directors on an annual basis.

<u>Our position:</u>

2.2.3 The SC recognises that there is no specific measure of independence. However, it does not mitigate the need to identify an objective measure in order to progress and build a culture of good governance.

2.2.4 After considering public feedback, the SC's position on this recommendation is that the tenure of an independent director should not exceed a cumulative term of nine years. Upon completion of the nine years, the independent director may continue to serve on the board subject to the director's re-designation as non-independent director. The board must justify and seek shareholders' approval in the event it retains as an independent director, a person who has served in that capacity for

more than nine years. This position is set out in the *Malaysian Code on Corporate Governance 2012* (MCCG 2012).

2.2.5 With regards to the supply of independent directors, the Blueprint recommended the creation of an industry driven directors' registry. This directors' registry which will adopt a robust screening criteria for registering and deregistering candidates can contribute towards the supply of suitable independent directors.

2.3 Women Composition on Boards

Recommendation 18:
Mandate disclosures in annual reports of policies and targets on women composition on boards.

Feedback from respondents:

2.3.1 The respondents who agreed with the recommendation cited that the current gender imbalance in Malaysia suggests that companies are not utilising a large proportion of the available talent. A suggestion was also made for more women-friendly policies to be introduced in companies and for the policy on women participation to be extended to the entire employee base, and not confined to board positions.

2.3.2 Those who were not in favour of the recommendation argued amongst others that:

(a) It is better to encourage companies to disclose in annual reports their policies and targets on women composition on boards, instead of mandating companies to do so.

(b) Selection of board members should be based on "fit and proper" criteria instead of "gender proportion" as companies may be pressured to meet the target at the expense of the quality of the board.

Our position:

2.3.3 The SC would like to emphasise that women participation on boards is part of a greater board diversity agenda. As stated in the Blueprint, board diversity is not limited to gender but includes experience, skills, competence, race, culture, nationality and gender.

2.3.4 The SC would also like to stress that the application of this policy will not be at the expense of calibre and substance. Women candidates for board positions must have the same requisite knowledge, experience, and skills as their male counterparts.

2.3.5 The MCCG 2012 encourages the board to establish a policy formalising its approach to boardroom diversity. The board through its Nominating Committee should take steps to ensure that women candidates are sought as part of its recruitment exercise.

The board should explicitly disclose in the annual report its gender diversity policies and targets and the measures taken to meet those targets.

2.4 Limit on number of directorships

Recommendation 20:
Limit the number of listed company directorships held by individual directors to five, and the director to seek approval of the board before accepting any new appointments in other listed companies.

Feedback from respondents:

2.4.1 The respondents who disagreed with limiting the number of directorships to five, cited the following reasons:

(a) The director is in a better position to assess his ability to contribute to the company;

(b) The board through its Nominating Committee should assess whether a director is able to allocate sufficient time to perform his duties effectively; and

(c) The demands placed on a person as a director of other boards may not be such that, that person would be unable to effectively carry out his duties as a director of the company.

2.4.2 In addition, there were also respondents who were of the view that it is not necessary for the director to seek the approval of the board before accepting new appointments. It is sufficient that the director informs the board of the new appointment, and to declare that there is no conflict of interest. Based on the declaration, the board should decide whether the director should be retained.

Our position:

2.4.3 Membership on boards is a major time commitment and it is imperative that the right parameters are in place to ensure that directors are able to meet that commitment. Setting a limit will also provide the opportunity for others to serve as board members. Further, the limit of five directorships is in line with trends from the SC Survey on Malaysian Boards 2009.

2.4.4 The MCCG 2012 recommends that the board should set out its expectations on time commitment for its directors including protocols for accepting other external appointments.

2.5 Quarterly reporting

Recommendation 26:
Review the current framework for periodic disclosure of financial and non-financial information, including the shortening of the submission period for quarterly and annual reports.

Feedback from respondents:

2.5.1 The respondents who were not in favour of shortening the submission periods, and doing away with quarterly reporting argued, amongst others, that:

(a) Shortening financial reporting timeframe would inevitably place burden on listed companies as the preparer of the report, as well as imposing time pressure on auditors to complete the audit in a shorter timeframe. This in turn may result in inaccurate reporting;

(b) Quarterly reporting should be maintained as it aids investors in making informed investment decisions, reduces investment risk for investors through frequent periodic financial reporting and enhances transparency amongst companies; and

(c) Instead of reviewing the possibility of doing away with quarterly reporting, stakeholders would be better served by examining the contents of the existing quarterly report, such as improving on the qualitative information in the report.

2.5.2 Concerns were also highlighted that if the requirement for quarterly reporting is removed, this may give rise to the following:

(a) Delayed detection or undetected financial fraud or irregularities; and

(b) Increased possibility of insider trading because management accounts are only available to the management, and officers of the company.

Our position:

2.5.3 A step approach may be adopted, beginning with doing away with the 4th quarter financials and shortening of the submission period for the full-year audited accounts. A taskforce will be formed and this recommendation will be implemented after further consultation with stakeholders.

2.5.4 The MCCG 2012 recommends that companies leverage on information technology for effective dissemination of information, and communication with stakeholders.

2.5.5 Companies are also encouraged to engage shareholders actively through constructive communication. This would provide shareholders with a better appreciation of the company's objectives, quality of its management and challenges. Engagement with shareholders would also make the company aware of the expectations and concerns of its shareholders.

Part B: *Public Consultation Paper on Independent Chairman and Voting By Poll*

I. Introduction

1.1 Following the recommendations of the Blueprint, a *Public Consultation Paper on Independent Chairman and Poll Voting* was issued on 15 November 2011. The consultation period ended on 15 December 2011.

1.2 The SC received a large number of responses from individuals, listed companies as well as local and international associations and fund managers.

1.3 The questions posed in the public consultation paper were as follows:

Independent chairman

1.3.1 Whether or not the chairman of a public listed company needs to be an independent chairman? If yes, should it be made a requirement or a best practice?

1.3.2 Should a chief executive officer (CEO) be allowed to assume the position of chairman? If yes, should there be a cooling off period?

Poll voting

1.3.3 Whether or not poll voting should be mandated for related-party transactions (RPTs) only?

1.3.4 Whether or not after taking into account a suitable time allowance, poll voting should be mandated for all resolutions requiring shareholders' approval?

1.3.5 Whether or not the requirement to conduct poll voting should exclude voting on procedural and administrative matters?

II. Independent Chairman

Feedback from respondents

1. Whether or not the chairman of a public listed company needs to be an independent chairman? If yes, should it be made a requirement or a best practice?

1.1. Most of the respondents were supportive of an independent chairman and were of the view that it should be made a best practice.

The respondents cited that:

1.1.1. Listed companies should have an independent chairman to ensure integrity, transparency and accountability.

1.1.2. An independent chairman would be in a better position to oversee the performance of the CEO and its management team.

1.2. Respondents who were not in favour of requiring an independent chairman argued that:

1.2.1. Imposing an independent criteria on a company's chairman could lead to more box ticking.

1.2.2. Most listed companies in Malaysia are either family-controlled or majority state-owned; hence it is very likely that any 'independent chairman' will be loyal to the majority shareholder.

1.2.3. If an independent criteria is enforced, it may lead to listed companies going private, as some chairman may feel that they have lost influence over the companies they have built over the years.

2. Should a chief executive officer be allowed to assume the position of chairman? If yes, should there be a cooling off period?

2.1. A significant number of respondents were in favour of allowing the CEO to assume the position of chairman, as the company would be able to benefit from the experience and expertise of the former CEO, especially for family-owned companies.

2.2. Most of the respondents felt that there should be a cooling off period before the CEO assumes the position of chairman, with the cooling off period ranging between two to three years.

2.3. Some respondents were not in favour of allowing the CEO to assume the position of chairman arguing that it is extremely unlikely that a former employee would ever be completely free of their loyalty to the company, and it could also undermine the power of the current CEO.

Our position:

2.4. The MCCG 2012 recommends that the position of chairman and CEO should be held by different individuals, with the chairman being a non-executive member of the board. Separation of the positions of the chairman and CEO promotes accountability and facilitates division of responsibilities between them.

2.5. Where the chairman of the board is not an independent director, the MCCG 2012 recommends that the board must comprise a majority of independent directors.

III. Poll voting

Feedback from respondents

1. Whether or not poll voting should be mandated for RPTs only?

1.1. Majority of the respondents were of the view that poll voting should not be mandated for RPTs only but should also be mandated for other resolutions. This is because it is in line with the 'one share one vote principle', and increases the accountability of the voting process and outcome.

2. Whether or not after taking into account a suitable time allowance, poll voting should be mandated for all resolutions requiring shareholders' approval?

2.1. Majority of the respondents were of the view that after taking into account a suitable time allowance, poll voting should be mandated for all resolutions requiring shareholders' approval.

2.2. The few respondents who were not in favour of mandating poll voting for any resolution cited the following reasons:

2.2.1. Poll voting should be made optional to provide flexibility to the shareholders and for it to be exercised only when there is a demand for it.

2.2.2. Poll voting is costly, cumbersome and time consuming especially for listed companies with a large number of shareholders.

2.2.3. In relation to RPTs, the rights of non-interested shareholders' are already adequately protected as the Listing Requirements prohibits interested directors and/or shareholders from deliberating and voting on such transactions.

3. **Whether or not the requirement to conduct poll vote should exclude voting on procedural and administrative matters?**

3.1. Majority of the respondents were of the view that the requirement to conduct poll vote should not exclude voting on procedural and administrative matters. Respondents argued that listed companies should vote by poll on all agenda items, including the seemingly non-contentious issues. Such exclusion should not be made since the definition of 'procedural' or 'administrative' may be subjective. Once the voting systems are in place to facilitate poll voting, it shouldn't be an additional burden to extend poll voting to all resolutions

3.2. Some respondents were of the view that there should be an exclusion and suggested to adopt the approach taken by Hong Kong where procedural and administrative matters are defined as those which:

3.2.1. do not appear on the agenda of the notice of general meeting or any supplementary circular to shareholders; and

3.2.2. relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all shareholders a reasonable opportunity to express their views.

Our position

The MCCG 2012 recommends that the board should encourage poll voting. The board is encouraged to put substantive resolutions to vote by poll and make an announcement of the detailed results showing the number of votes cast for and against each resolution. Companies are also encouraged to employ electronic means for poll voting.

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