

## **FREQUENTLY ASKED QUESTIONS ON THE MALAYSIAN CODE ON CORPORATE GOVERNANCE**

(Issued: 26 April 2017)  
(Revised: 23 March 2023)

### **1.0 General**

#### **1.1 What is the effective date of the Malaysian Code on Corporate Governance (MCCG)?**

The revised MCCG is effective from 28 April 2021.

#### **1.2 Is it compulsory for companies to adopt the MCCG?**

The MCCG is a set of corporate governance best practices for companies to adopt. Under paragraph 15.25, *Bursa Malaysia Listing Requirements* (Listing Requirements) listed companies must ensure that its board of directors provide an overview statement of the application of the principles set out in the MCCG, in its annual report. In addition, listed companies must disclose the application of each practice set out in the MCCG during the financial year, to Bursa Malaysia in Corporate Governance Report (CG Report) and announce the same together with the announcement of the annual report. The listed company must state in its annual report, the designated website link or address where such disclosure may be downloaded.

#### **1.3 Is MCCG only applicable for listed companies?**

As stated in MCCG, while the MCCG is applicable for listed companies, non-listed entities including state-owned enterprises, public companies, small and medium enterprises (SMEs) and licensed intermediaries are encouraged to adopt the practices in the MCCG. These non-listed entities should consider applying the practices to enhance their accountability, transparency and sustainability.

#### **1.4 Where can I get a copy of the MCCG?**

The softcopy of the MCCG can be downloaded from the SC's website.  
(Link: [https://www.sc.com.my/general\\_section/cg/](https://www.sc.com.my/general_section/cg/)).

## **2.0 General**

### **2.1 Should a listed company include treasury shares when calculating the market capitalisation of the company to determine whether the company is a Large Company or otherwise?**

No. A listed company should exclude treasury shares in calculating market capitalisation for this purpose.

### **2.2 Should a listed company use the price of its first traded share on the first trading day to determine the company's market capitalisation at the start of the financial year?**

Yes, the listed company should use the price of the first traded share on the first trading day to determine the company's market capitalisation and whether the listed company is considered a 'large company' or 'non-large company' under the MCCG.

### **2.3 How will a listed company know that the alternative practice it adopts is acceptable? Will SC or Bursa release a set of alternative practices deemed approved?**

The SC and Bursa will not be issuing a set of alternative practices that is deemed approved. However, the SC will be closely monitoring the adoption and departures from the MCCG practices through the disclosures made in the Corporate Governance reports (CG reports). Data and observations on the adoption of the Malaysian Code on Corporate Governance as well as quality of corporate governance disclosures are reported in the SC's annual *Corporate Governance Monitor* report. The reports are available on the [SC's website](#).

The SC also encourages stakeholders including shareholders to evaluate these disclosures and engage boards on governance issues including departures from best practices.

### **2.4 What are the implications for a company which departs from a practice in the MCCG and does not disclose an alternative practice?**

The Listing Requirements require listed companies that have departed from a practice in the MCCG to provide an explanation for the departure and disclose the alternative practice it has adopted and how such alternative practice achieves the intended outcomes as set out in the MCCG. If a company fails to do so, it is in breach of the Listing Requirements.

**2.5 Are listed companies required to provide explanation for not adopting the Step-Up practice(s) in the MCCG?**

No, companies are not required to provide explanation for not adopting the Step-Up practice(s), but are encouraged to disclose measures it has taken or plans to undertake to adopt the Step Up practice(s).

**3.0 PRINCIPLE A: BOARD LEADERSHIP AND EFFECTIVENESS**

Practice 1.6

**3.1 What would be deemed as a reasonable period to circulate minutes of board meeting?**

The minutes of meetings should be circulated promptly to enable board members to verify that the minutes accurately reflect deliberations and decisions of the board, including whether any director abstained from voting or deliberating on a matter.

In the CG Report, as part of the company's explanation for Practice 1.6, the company should specify how many days after the meeting are minutes circulated.

Practice 5.3

**3.2 When does the updated two-tier voting process become applicable?**

The updated two-tier voting process will be applicable for resolutions tabled at general meetings held after 1 January 2022.

**3.3 How is the tenure of an independent director calculated?**

The tenure of an independent director of a listed company is calculated based on a cumulative period from the first day the director was appointed to the listed company's board. The calculation will restart after the director has left the board and has served the required cooling-off period.

However, where a director is appointed as an independent director prior to the company's listing and has not served a cooling-off period, the tenure shall be calculated from the first day the director was appointed as an independent director.

**3.4 Can a former independent director of Company A who has been on the board for 7 years be appointed as an independent director in Company B (a listed subsidiary of Company A) after he has resigned from Company A without serving a cooling off period of 3 years? Does the computation of his tenure as an independent director start fresh in Company B (i.e. Day 1) or continues from Company A?**

Yes, the director may be appointed as an independent director in Company B. The computation of his tenure continues from his previous years of service as independent director from Company A, i.e., the director would be starting in his 8th year (in terms of tenure) as an independent director in Company B.

**3.5 Does the two-tier voting process contradict any provision under the Companies Act 2016 (particularly Section 291) or the Listing Requirements?**

Section 291 of Companies Act 2016 defines the application of ordinary resolution of members or a class of members of a company; that an ordinary resolution is passed by a simple majority of more than half of such members. It does not specifically deals with the appointment or re-appointment of directors.

Section 202(2) of Companies Act 2016 states that the appointment of any subsequent director may be appointed by an ordinary resolution. In this section, the term 'may' is used and it is well settled that the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. Therefore, companies are allowed to determine the manner in which shareholders will exercise their rights in relation to the appointment or re-appointment of directors.

The two-tier voting process is also consistent with the rights and powers attached to shares as accorded in the Companies Act 2016. In exercising the votes under two tier voting process, each shareholder continues to have only one vote for each shares held.

**3.6 Should a company adopt the two-tier voting process in its constitution?**

A company should adopt the two-tier voting process in its constitution to provide clarity on the company's approach and procedure to retain independent directors.

**3.7 Does a company need to table a stand-alone resolution to conduct the two-tier voting process at an annual general meeting (AGM)?**

Yes. The company should table a stand-alone resolution (as special business) to conduct the two-tier voting process. The resolution will decide on retaining an independent director who has served for 9 years or more in the same capacity, which shall be separated from the ordinary business resolution to re-elect a director via 1/3 rotation rule.

**3.8 Scenario: Mr. A, an independent director of XYZ Berhad is subject to retirement by rotation after serving XYZ Berhad's board for 9 years. At the AGM, XYZ Berhad proposes two separate resolutions. The first resolution is to re-elect Mr. A as a director of the company under the 1/3 rotation rule. The second resolution (as special business and by the two-tier voting approach) is to retain Mr. A as an independent director. At the AGM, the first**

**resolution was carried whereas the second resolution was defeated. Is Mr. A allowed to remain on the board as a non-independent director?**

Mr. A will be re-elected to the board as a director by virtue of the first resolution and shall be re-designated as a non-independent director since the second resolution to retain him as an independent director was defeated.

**3.9 Following from the scenario described in Item 3.9, is Mr. A allowed to be re-elected as a director and retained as an independent director if XYZ Berhad only proposed one resolution to re-appoint and retain him as a director and an independent director, and the resolution was defeated?**

No, Mr A is not allowed to be re-elected as a director as the resolution to re-elect him as a director was defeated.

**3.10 Scenario: Mr. B, an independent director of XYZ Berhad, has served the board for 11 years. At the last AGM, shareholders of XYZ Berhad approved two resolutions:**

- a) to re-elect Mr. B as a director of the company under the 1/3 rotation rule; and
- b) to retain Mr. B as an independent director.

**At this year's AGM, XYZ Berhad tabled one resolution to retain Mr. B as an independent director. The resolution was defeated. Is Mr. B allowed to remain on the board as a non-independent director?**

Yes. Mr. B is allowed to remain on the board but the board must re-designate him as a non-independent director since the resolution to retain him as an independent director at this year's AGM was defeated. The position of Mr. B as a director is not affected as the resolution to re-elect him as a director under the 1/3 rotation rule was carried at the last year's AGM.

**3.11 Scenario: Mr. C was appointed in January 2011 as independent director of XYZ Berhad. In January 2021, he would have served the company for 10 years as an independent director and offers himself to be retained as an independent director at the 2021 AGM. However, the company will only be organising the AGM in April 2021. Can Mr. C continue to serve as an independent director until the AGM in April 2021?**

Yes. Mr. C may continue to serve the board as an independent director until the AGM in April 2021. This is based on the concept that a director is appointed by shareholders to serve the board from one AGM to another.

**3.12 Scenario: Mr. D was appointed in June 2011 as independent director of XYZ Berhad. In June 2021, he would have served the company for 10 years as**

**an independent director. However, the company will be organising the AGM in April 2021. Should the company tabled a resolution to retain Mr. D as an independent director using the two tier voting approach despite him not yet served the board for 10 years (short of 2 months)?**

Companies are encouraged to adopt MCCG best practices despite before the required timeframe.

#### Step up Practice 5.4

**3.13 A company discloses an internal policy which limits the tenure of its independent directors to nine years. However, the policy also states that the company may seek annual shareholders' approvals if the company wants to retain an independent director beyond 9 years. Does the policy qualify for adoption of Step Up 5.4?**

No. In order to adopt Step Up 5.4, a company must have a policy which limits the tenure of independent directors to 9 years without the possibility of immediate re-appointment.

In the CG Report, as part of its explanation for adoption of Step Up practice 5.4, companies should state where such policy is disclosed (e.g. board charter, constitution) and include relevant paragraphs of the policy.

#### Practice 5.9

**3.14 The *Guidelines on Corporate Governance for Capital Market Intermediaries* allows a 'maximum rounding up' of 5% in the calculation of percentage of women directors on a board of directors<sup>1</sup>. Is the 'maximum rounding up' of 5% also allowed for Practice 5.9 of the MCCG?**

No. The MCCG is a set of best practices which goes beyond the minimum required by statute, regulations or guidelines. Thus the 'maximum rounding up' of 5% under the *Guidelines on Corporate Governance for Capital Market Intermediaries* does not apply to Practice 5.9 of the MCCG, as the latter is meant to promote higher corporate governance standards.

For adoption of this practice, the board must ensure that its composition comprises of 30% or more women directors. Illustration to facilitate the calculation of at least 30% are as follows:

---

<sup>1</sup> Refers to the requirement under Paragraph 5.06 where the Board of a CMSL holder must be able to demonstrate "undertaking of necessary measures" to ensure the board comprises at least 30% women directors.

Current	Action	Results	Conclusion
Eight (8) board members with two (2) woman director = 25%	Increase board size to nine (9) and appoint an additional one (1) woman director;  Or  Retain the board size and replace existing male director by appointing one (1) woman director	Nine (9) board members with three (3) women directors = 33.3%;  Or  Eight (8) board members with three (3) women directors = 37.5%	Both situations <b>have met</b> the 30% requirement
Seven (7) board members with one (1) woman director = 14.3%	Increase board size to eight (8) and appoint one (1) woman director  Or  Retain the board size and replace existing male director by appointing one (1) woman director	Eight (8) board members with two (2) women directors = 25%  Or  Seven (7) board members with two (2) women directors = 28.5%	Both situations <b>do not meet</b> the 30% requirement

**3.15 Are alternate directors included in the calculation of the percentage of women directors on the board?**

No. The board should exclude alternate directors in the calculation of the percentage of women directors.

Practice 6.1

**3.16 If a large company carries out an internal evaluation for its board, board committees and individual directors, would the company be deemed to adopt Practice 6.1?**

No. The company must have engaged an independent expert to facilitate the evaluation to be deemed as adopting the practice.

**3.17 Scenario: Company A engaged an independent expert in 2021 to conduct an evaluation of its board, board committees and individual directors. In 2022 and 2023, the company decided to conduct an internal evaluation instead. Would the company be deemed to adopt Practice 6.1 for the year 2022 and 2023?**

The company can report that it has adopted Practice 6.1, as it has engaged an independent expert within the last 3 reporting cycles.

Practice 7.2

**3.18 Must the Remuneration Committee be a stand-alone committee or can it be combined with the Nomination Committee?**

The board is encouraged to establish a stand-alone Remuneration Committee. However, if the Remuneration Committee and Nomination Committee are combined, the board must ensure that the committee provides dedicated attention to discuss on matters relating to remuneration of directors and senior management.

Practice 8.1 and 8.2

**3.19 A listed company discloses in its annual report the remuneration of directors and senior management in accordance to practice 8.1 and 8.2. Should the same disclosure be replicated in the company's CG Report?**

Yes, the remuneration of a listed company's directors and senior management must be disclosed in the CG Report.

**3.20 Does the disclosure of senior management's remuneration (salary, bonus, benefits in-kind and other emoluments) require the breakdown of each component?**

Yes, the disclosure of senior management's remuneration should include the breakdown of each remuneration component including salary, bonus, benefits-in-kind and other emoluments in bands of RM50,000.

**3.21 Should the remuneration of a CEO who is also a board member be disclosed in both individual directors (Practice 8.1) and top five senior management disclosures (Practice 8.2)?**

The disclosures do not have to be replicated, suffice that the CEO's remuneration is disclosed in detail as part of the disclosure of individual director's remuneration (Practice 8.1), as the CEO is also a board member of the listed company.

**3.22 What are the factors to consider in determining the top 5 senior management?**

The top 5 senior management should refer to the top 5 highest paid senior management members. This means that there are 2 criteria to be fulfilled for purposes of determining the top 5 senior management in Practice 7.2 as follows:

- a. First, the person must be a senior management member i.e. one who generally holds the highest level of management responsibility and decision-making authority within the listed company. This would typically include the



CEO (who is not a director), the other C-suites or persons directly reporting to the CEO; and

- b. Such person must be the highest paid. This criterion is useful as it provides listed company with some objectivity and certainty in determining who the affected senior management members are for purposes of applying the Practice.

#### Step Up Practice 8.3

### **3.23 Does disclosing the detailed remuneration of each member of senior management require companies to provide the breakdown of each component of the remuneration including salary, bonus, benefits-in-kind and other emoluments?**

Yes, companies which adopt Step Up Practice 8.3 must disclose the detailed remuneration of each member of senior management by the respective components.

## **4.0 PRINCIPLE B: EFFECTIVE AUDIT AND RISK MANAGEMENT**

### **4.1 Are there any restrictions for the combination of any board committees?**

The MCCG is a set of best practices and does not impose restrictions **but recommends** the setting up of dedicated committees e.g. the setting up of a Remuneration Committee (Practice 7.2) and Risk Management Committee (Step Up 10.3) to ensure there is dedicated attention and focus on the matters that comes under the purview of these Committees.

#### Practice 9.3

### **4.2 Should the Audit Committee meet with the external auditors twice a year in the absence of management?**

It is a best practice.

#### Practice 11.2

### **4.3 How does a company demonstrate its compliance with a recognised framework?**

The company can do so by explaining how its relevant processes and procedures follow what is prescribed under the recognised framework.

## **5.0 PRINCIPLE C: INTEGRITY IN CORPORATE REPORTING AND MEANINGFUL RELATIONSHIP WITH STAKEHOLDERS**

### Practice 13.1

#### **5.1 Does 28 days refer to business days or calendar days?**

The recommended best practice is to issue the notice for an AGM 28 calendar days prior to the meeting.

### Practice 13.3

#### **5.2 Can SC provide guidance and mechanism for voting in absentia?**

The company and its board should identify the appropriate means to support shareholders in exercising their voting rights without being physically present at general meetings.

#### **5.3 Could SC provide guidance and mechanism to undertake the remote shareholder participation? Are there any service providers which provide solutions which facilitate remote shareholder participation?**

There are technologies including applications available in the market for companies to consider.

#### **5.4 If a company only leverages technology for voting, would the company be deemed to have adopted Practice 13.3?**

The expectation in relation to adoption of Practice 13.3 is the use of technology which enables shareholders to participate in general meetings remotely (online), including casting votes. A company is not considered to have adopted Practice 13.3 if shareholders are not able to participate in the meeting remotely (online).

### Practice 13.6

#### **5.5 Will be company be considered adopting Practice 13.6 if it publishes the key matter discussed on Bursa's website?**

No. The company must circulate to all shareholders the complete and accurate minutes of meeting at least 30 business days after the conclusion of the meeting.

#### **5.6 If a company publishes the minutes of meeting on its website or on Bursa Malaysia's website, will it be deemed to have circulated the minutes of meeting to its members?**

Yes. Companies must ensure that the platform used to publish the minutes of meeting is accessible to its shareholders. This include the company's website.

**5.7 What is the difference between Practice 13.6 and the requirement under Section 342(4) of Companies Act 2016?**

Section 342(2) of the Companies Act 2016 provides for the rights of a shareholder to request for the minutes of meeting within 14 days after the shareholder has made the request. Practice 13.6 recommends companies to voluntarily circulate to its shareholders on complimentary basis the minutes within 30 business days after the meeting to promote greater transparency on the conduct of the meeting.

**6.0 MCGG Reporting****6.1 Where can the requirement for listed companies to report on the adoption of MCGG practices be found?**

Paragraph 15.25 of the Listing Requirements requires listed companies to report on adoption of MCGG practices annually.

Listed companies must also refer to the Frequently Asked Questions issued by Bursa Malaysia in relation to this requirement.

(Link:[http://www.bursamalaysia.com/misc/system/assets/5925/QA\\_MainChap15\\_CIS\\_9Apr2018.pdf](http://www.bursamalaysia.com/misc/system/assets/5925/QA_MainChap15_CIS_9Apr2018.pdf))

**6.2 When will the reporting requirement for listed companies be enforced?**

The first batch of companies that is required to report their application of the MCGG will be companies with financial year ending 31 December 2021.

To illustrate further, where a company's financial year ends on 31 December 2021, disclosure will be required for activities from 1 January 2021 to 31 December 2021 and should be made in the annual report published in 2022.

Where a company's financial year ends on 30 June 2021, disclosure will be required in relation to activities from 1 July 2021 to 30 June 2022 and should be disclosed in the annual report published in 2022. Listed companies are encouraged to make an early transition to the principles and practices recommended in the MCGG.

**6.3 Can a listed company use the same CG Report template to report on adoption of the revised MCGG?**

No. A listed company must use the updated CG Report template which will be announced by the Exchange in Q3, 2021.

**6.4 If a shareholder requests for a hard copy of the annual report from a listed company, must the listed company send a hard copy of the CG Report together with the annual report to the shareholder?**

No, there is no obligation for the listed company to send a hard copy of the CG Report together with its annual report to the shareholder. Under paragraph 15.25(2) of the Listing Requirements, the listed company is only required to state in its annual report, the designated website link or address where the CG Report can be downloaded.

**6.5 Can a listed company modify the prescribed format for the CG Report?**

No. The listed company must strictly comply with the prescribed format of the CG Report with no exception whatsoever. In this regard, the listed company must ensure that each applicable field in the prescribed format relating to each Practice is completed before announcing the CG Report to the Exchange.

**6.6 Can a listed company disclose the application of each Practice set out in the MCGG during the financial year in the annual report instead of in a prescribed format?**

No, a listed company must disclose the application of each Practice set out in the MCGG during the financial year in a prescribed format.

**6.7 If a listed company has adopted and disclosed Step Up practice 5.4 or 8.3 of the MCGG in its CG Report, is the listed company still required to disclose the application of Practice 5.3 or 8.2?**

No. The listed company is only required to select the dropdown option "Not applicable – Step Up 5.4 adopted" for Practice 5.4 or "Not applicable – Step Up 8.3 adopted" for Practice 8.2, as the case may be, in the CG Report.

**6.8 In explaining the departure from a Practice and the adoption of an alternative practice for such departure as required under paragraph 3.2A in Practice Note 9 of the Main LR, can a listed company state the adoption of another Practice in the MCGG as the justification or its alternative practice?**

No, the listed company must still provide an explanation for the departure and disclose its alternative practice (other than the adoption of another Practice in the MCGG) and how the alternative practice achieves the Intended Outcome as required under paragraph 3.2A of Practice Note 9.

**6.9 Can a listed company insert the CG Overview Statement (as referred to Practice Note 9) in its directors' report in the annual report?**

Yes, a listed company may insert the CG Overview Statement in its directors' report in the annual report. However, a listed company must ensure that the said statement is prominently and clearly set out.

**6.10 Must the CG Overview Statement and CG Report be signed by the directors of a listed company in the same manner as the directors' report?**

No. Directors are not required to sign off on the CG Overview Statement and CG Report. However, the listed company must ensure that the CG Overview Statement and CG Report are approved by its board of directors.

**6.11 Is it mandatory for a listed company to comply with the Corporate Governance Guide issued by the Exchange when it prepares its CG Overview Statement and CG Report?**

Whilst it is not mandatory, a listed company is strongly encouraged to refer to the Corporate Governance Guide when preparing its CG Overview Statement and CG Report.