

FREQUENTLY ASKED QUESTIONS ON THE MALAYSIAN CODE ON CORPORATE GOVERNANCE

(Issued: 26 April 2017)

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1.0 General

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

The MCCG is effective from 26 April 2017.

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 a prescribed format (Corporate Governance 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 targeted for listed companies?

As stated in MCCG, while the MCCG is targeted at listed companies, non-listed entities including state-owned enterprises, 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 Is MCCG available in other languages?

Yes. The MCCG is available in Bahasa Malaysia and Mandarin. Both versions can be downloaded from the SC's website.

(Link: https://www.sc.com.my/general_section/cg/)

1.5 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/).

Printed copies of the MCCG can be purchased from the Securities Industry Development Corporation (SIDC) Bookshop located on the Ground Floor of the Securities Commission Malaysia building.

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).

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 1.5

3.1 What would be deemed as a reasonable period to circulate meeting materials and circulate minutes?

The timeline should be set and agreed between the Chairman and the Company Secretary. The guiding principle is that the Chairman and board members should have sufficient time to review meeting materials ahead of the meeting. The minutes of meetings should also 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 1.5, the company should specify how many days in advance (prior to the meeting) are meeting materials circulated, and how many days after the meeting are minutes circulated.

Practice 4.2

3.2 When should the resolution for two-tier voting be tabled for shareholders' approval?

The resolution for two tier voting should be tabled to shareholders at general meetings held after 1 January 2018.

3.3 Is the calculation of the tenure of an independent director based on cumulative or consecutive years that the said director has served on a particular board?

The tenure is calculated on a cumulative basis starting from the first day the director was appointed to the board as an independent director. The calculation will restart after the director has left the board and served a reasonable cooling off period.

3.4 Can an independent director of Company A who has been on the board for 7 years be appointed as a director in Company B (a subsidiary of Company A) after he has resigned from Company A? Does the computation of his tenure as an independent director start fresh in Company B (i.e. Day 1) or continues from Company A?

The tenure of an independent director starts from the first day of the director's appointment to that particular board. However, in this situation, Company B should be mindful and apply the test of whether the said director is still able to exercise independent judgment and act in the best interest of the company, given that the individual has served on the board of Company A (the holding company) for 7 years.

Note:

Paragraph 2.1, Practice Note 13, Listing Requirements.

3.5 Scenario: An independent director retires from a board after serving on it for 9 consecutive years. After leaving the company for a number of years, the individual is appointed to the same board as an independent director. What is considered an appropriate cooling off period before appointing the same individual as described in the scenario as an independent director?

The board must decide on the appropriate cooling off period before appointing the individual as an independent director, given that he has served in the same capacity before. The cooling off period should be long enough to address any factors that may interfere with the individual's exercise of independent judgment. The cooling off period should not be brief; to avoid the period from being a cosmetic "break" before the individual continues to serve in the same capacity.

3.6 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.

3.7 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.

3.8 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 12 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.

3.9 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 ordinary resolution) 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.

3.10 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.

3.11 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.

3.12 Mr. C, an independent director of XYZ Berhad is subject to retirement after serving the board for 12 years. At the AGM, XYZ Berhad proposes two separate resolutions. The first resolution is to re-elect Mr. C as a director of the company under the 1/3 rotation rule. The second resolution (as special business) is to retain Mr. C as an independent director by way of two tier voting. At the AGM, the first resolution was carried whereas the second resolution was defeated. Is Mr C allowed to remain on the board as a non-independent director?

Yes. Mr. C can 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 was defeated.

3.13 Following from the scenario described in Item 3.12, can Mr. C be re-appointed as a director and retained as an independent director if XYZ Berhad only proposes one resolution (as ordinary business) and the resolution was defeated?

No, Mr C may not be re-elected as a director as the resolution to re-elect him as a director was defeated.

Step up Practice 4.3

- 3.14 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 4.3?**

No. In order to adopt Step Up 4.3, 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 4.3, companies should state where such policy is disclosed (e.g. board charter, constitution) and include relevant paragraphs of the policy.

Practice 6.2

- 3.15 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 7.1 and 7.2

- 3.16 A listed company discloses in its annual report the remuneration of directors and senior management in accordance to practice 7.1 and 7.2. 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.

- 3.17 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.

3.18 Should the remuneration of a CEO who is also a board member be disclosed in both individual directors (Practice 7.1) and top five senior management disclosures (Practice 7.2)?

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 7.1), as the CEO is also a board member of the listed company.

3.19 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 7.3

3.20 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 7.3 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 6.2) and Risk Management Committee (Step Up 9.3) to ensure there is dedicated attention and focus on the matters that comes under the purview of these Committees.

Practice 8.1

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 10.2

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 12.1

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 12.3

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 12.3?

No. Companies must leverage technology for voting including voting in absentia and remote shareholders' participation at general meetings.

6.0 MCCG Reporting

6.1 Where can the requirement for listed companies to report on the adoption of MCCG practices be found?

Paragraph 15.25 of the Listing Requirements requires listed companies to report on adoption of MCCG 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)

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 MCCG will be companies with financial year ending 31 December 2017.

To illustrate further, where a company's financial year ends on 31 December 2017, disclosure will be required for activities from 1 January 2017 to 31 December 2017 and should be made in the annual report published in 2018.

Where a company's financial year ends on 30 June 2017, disclosure will be required in relation to activities from 1 July 2017 to 30 June 2018 and should be disclosed in the annual report published in 2018. Listed companies are encouraged to make an early transition to the principles and practices recommended in the MCCG.

6.3 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.

6.4 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.

6.5 Can a listed company disclose the application of each Practice set out in the MCCG 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 MCCG during the financial year in a prescribed format.

6.6 If a listed company has adopted and disclosed Step Up practice 4.3 or 7.3 of the MCCG in its CG Report, is the listed company still required to disclose the application of Practice 4.2 or 7.2?

No. The listed company is only required to select the dropdown option "Not applicable – Step Up 4.3 adopted" for Practice 4.2 or "Not applicable – Step Up 7.3 adopted" for Practice 7.2, as the case may be, in the CG Report.

6.7 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 MCCG 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 MCCG) and how the alternative practice achieves the Intended Outcome as required under paragraph 3.2A of Practice Note 9.

6.8 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.

6.9 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.

6.10 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.