

FREQUENTLY ASKED QUESTIONS
GUIDELINES ON CONDUCT OF DIRECTORS OF LISTED CORPORATIONS
AND THEIR SUBSIDIARIES

(Date of Issuance: 12 April 2021)

(Update: 27 May 2021)

1. What is the objective for the issuance of the *Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries* (Guidelines)?

The Guidelines was issued in line with the SC's Corporate Governance Strategic Priorities (2017-2020) which seeks to promote the proper discharge of directors' fiduciary duties, as well as board responsibilities in company groups. The formulation of the Guidelines takes into account the evolving Malaysian corporate governance landscape and lessons learnt from the SC's regulatory work in enforcing corporate governance breaches.

2. When is the effective date of the Guidelines?

The Guidelines came into effect on 30 July 2020, with the exception of Chapter 5 on Group Governance that came into effect on 1 January 2021.

3. What is the consequence for breaching the Guidelines?

SC may impose administrative sanctions against any person who breached the Guidelines under the securities laws administered by the SC.

4. What are the key features of the Guidelines?

The Guidelines reinforces existing obligations on directors' fiduciary duties and outlines some of the fundamental requirements in the exercise of these duties. This includes maintaining a sound understanding of the business, staying abreast with market developments and contributing constructively to board discussions.

The Guidelines also include requirements on maintaining proper record and accounts. Given the importance of the financial statements of the subsidiaries to the consolidated financial statement of the listed corporation, the Guidelines requires a subsidiary of a listed corporation and its directors to ensure that proper accounts are kept and for the subsidiaries to provide the listed corporation with the information it requires to prepare the consolidated financial statements.

The Guidelines also aims to ensure that governance in company groups are implemented holistically through a group governance framework and is not confined to the listed corporation only.

5. Is the Guidelines only applicable to directors of the company?

For purposes of the Guidelines the term "director" include–

- (a) the chief executive, the chief financial officer and any other person primarily responsible for the operations or financial management of a corporation, by whatever name called; and
- (b) in the case of a corporation formed or incorporated or existing outside Malaysia–
 - (i) a member of the corporation's board of directors or governing body; or
 - (ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position.

6. Does the term "director" in the Guidelines include an alternate director?

Yes, it does as the term 'director' has the meaning assigned to it in the Companies Act 2016, which includes an alternate director.

7. Is the Guidelines only applicable to directors of a listed corporation?

The Guidelines apply to directors of not just the listed corporation, but also its subsidiaries. Under the Guidelines, "subsidiary" has the same meaning assigned to it under section 4 of the Companies Act 2016 and includes all other entities whose financial statements are consolidated into the financial statements of the listed corporation according to the Malaysian Financial Reporting Standards 10 (MFRS 10). This is in recognition of the importance of subsidiaries to the performance of listed corporations where majority of listed companies on Bursa Malaysia are investment holding companies with significant business activities undertaken by their subsidiaries. Thus is it critical to promote the effective discharge of fiduciary duties not only by directors on the board of the listed corporations but also their subsidiaries.

8. Does the Guidelines apply to a company that is not a subsidiary as provided for under section 4 of Companies Act 2016?

Yes, it may as “subsidiary” for the purposes of the Guidelines is given an extended meaning. The Guidelines provide that “subsidiary” has the meaning assigned to it in section 4 of the Companies Act 2016 and includes all other entities whose financial statements are consolidated into the financial statements of the listed corporation.

9. Does the Guidelines apply to a non-listed subsidiary?

Yes, it does.

10. In the absence of a constitution, how should matters related to among others, the authority and decision limits within the group be documented and implemented?

*Update
27 May 2021*

The board of the listed corporation should, after taking into consideration the structure and needs of the group, determine the appropriate approach to formalise and implement the group governance framework including its policies and processes. The approach adopted should be agreed to by the listed corporation and its subsidiaries and among others, provide clarity to the relevant stakeholders on the group governance framework.

11. Is a listed company or a director required to submit periodic reports to the SC on the compliance with the Guidelines?

The Guidelines does not impose such requirements on the listed company or a director. However, securities laws as administered by the SC does provide that the SC can require any person to disclose to the SC such information as the SC may specify for the purposes of due administration of the securities laws.