

GUIDELINES ON CONDUCT OF DIRECTORS OF LISTED CORPORATIONS AND THEIR SUBSIDIARIES

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**GUIDELINES ON CONDUCT OF DIRECTORS OF LISTED CORPORATIONS
AND THEIR SUBSIDIARIES**

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Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries* (Guidelines) are issued pursuant to section 158 and subsection 15(1)(q) of the *Securities Commission Malaysia Act 1993* (SCMA).
- 1.02 These Guidelines apply to directors of a listed corporation and directors of subsidiaries of a listed corporation whether incorporated in Malaysia or otherwise.
- 1.03 These Guidelines are in addition to and not in derogation of the requirements under the securities laws or other written law, guidelines issued by the Securities Commission Malaysia (SC) imposed by the stock exchange.
- 1.04 To assist with the interpretation of the requirements under these Guidelines and their application, Guidance have been provided, where appropriate. Any action or conduct which departs from the Guidance will be taken into account by the SC in determining compliance with these Guidelines.

Chapter 2

DEFINITIONS

2.01 Unless otherwise defined, all words used in these Guidelines have the same meaning as defined in the *Capital Markets and Services Act 2007* (CMSA) or SCMA. In these Guidelines, unless the context otherwise requires–

approved accounting standards has the meaning assigned to it in the *Financial Reporting Act 1997*;

corporation means–

(a) a listed corporation; or

(b) a subsidiary of a listed corporation;

director has the meaning assigned to it in the *Companies Act 2016* and includes–

- (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;

group means a listed corporation and its subsidiaries;

third party means a person other than the listed corporation, a subsidiary of the listed corporation or associated body corporate of the listed corporation;

SC means Securities Commission Malaysia; and

subsidiary has the meaning assigned to it in section 4 of the *Companies Act 2016* and shall include all other entities whose financial statements are consolidated into the financial statements of the listed corporation.

Chapter 3

CONDUCT REQUIREMENTS FOR DIRECTORS

Conduct of directors

- 3.01 A director of a corporation must exercise his powers for a proper purpose and in good faith in the best interest of the corporation in which he sits as a board member.
- 3.02 A director who is appointed by virtue of his position as a representative of a shareholder, must act in the best interest of the corporation in which he sits as a board member. In the event of any conflict between his duty to act in the best interest of the corporation and his duty to his nominator, he must not subordinate his duty to act in the best interest of the corporation to his nominator.
- 3.03 In directing or managing the business and affairs of the corporation, a director must exercise reasonable care, skill and diligence by—
- (a) applying the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
 - (b) applying any additional knowledge, skill and experience which the director has.
- 3.04 A director is required to among others—
- (a) maintain a sound understanding of the business, and keep abreast of relevant developments to ensure he is able to discharge his duties and responsibilities effectively;
 - (b) prepare for board meetings, contribute constructively to board discussions and decision-making, and conduct due inquiry before approving a matter;
 - (c) ensure key transactions or critical decisions are deliberated and decided on by the board in a meeting; and
 - (d) ensure his decisions and the basis for those decisions, including any dissenting views are made known and properly minuted.

Managing conflict of interest

3.05 A listed corporation and its directors must establish policies and procedures to manage potential conflict of interest situations including potential conflict of interest between–

- (a) any director and the corporation; and
- (b) the listed corporation and its subsidiaries.

3.06 A director of a corporation must not accept a benefit from or provide a benefit to a third party by reason only of–

- (a) him being a director; or
- (b) him doing something or refraining from doing anything as a director;

unless he is permitted to do so by the corporation's constitution or the corporation's code of conduct and it is not contrary to any written law.

Chapter 4

MAINTAINING PROPER RECORDS AND ACCOUNTS

- 4.01 A listed corporation and its directors must cause to be kept the accounting records and other records to—
- (a) sufficiently explain the business, transactions and financial position of the listed corporation and its subsidiaries;
 - (b) enable the preparation of true and fair financial statements; and
 - (c) enable the accounting and other records of the listed corporation and its subsidiaries to be conveniently and properly audited.
- 4.02 A subsidiary of a listed corporation and its directors must cause to be kept the accounting and other records to—
- (a) sufficiently explain its business, transactions and financial position;
 - (b) enable the preparation of true and fair financial statements; and
 - (c) enable the accounting and other records to be conveniently and properly audited.
- 4.03 Where the financial statements of a subsidiary are required to be consolidated into the financial statements of a listed corporation, the subsidiary and its directors must provide the listed corporation with all information and record necessary to enable the preparation of the consolidated financial statements in accordance with the approved accounting standards.
- 4.04 A corporation must ensure that it retains all records referred to in paragraph 4.01 and paragraph 4.02 above for not less than seven years from the completion of the transactions or operations to which the entries or records relate.
- 4.05 If any accounting and other records referred to in paragraph 4.01 and paragraph 4.02 above are kept at a place outside Malaysia, the SC may direct the directors of a corporation to produce any of those records at a place in Malaysia and how those records are to be kept in Malaysia. The directors of a corporation must comply with the direction issued under this paragraph.

Chapter 5

GROUP GOVERNANCE

- 5.01 A listed corporation and its directors must ensure there is an adequate group wide framework for co-operation and communication between the listed corporation and its subsidiaries to enable it to discharge its responsibilities including oversight of group financial and non-financial performance, business strategy and priorities, risk management including material sustainability risks, and corporate governance policies and practices.
- 5.02 A listed corporation and its directors must establish and ensure the group wide framework on corporate governance include a code of conduct and ethics, policies and procedures on anti-corruption, whistleblowing, managing conflict of interest, managing material sustainability risks, and board diversity including gender diversity.
- 5.03 A subsidiary of a listed corporation and its directors must provide the listed corporation with any information requested by the listed corporation to enable the board of the listed corporation to oversee the performance of its subsidiaries effectively, including assessing non-financial performance of the group.

Appendix A

GUIDANCE ON GROUP GOVERNANCE

NOTE: This Guidance serves as a **guide** for a listed corporation, its subsidiaries and their directors in establishing a group governance framework. This Guidance highlights salient features of the group governance framework such as setting the tone for leadership, alignment of strategies and establishing policies and procedures of the group. The information provided in this Guidance is not exhaustive and corporations are reminded to ensure that all aspect of group governance have been taken into consideration in developing the framework and in making disclosure.

A. Introduction

1. The *Guidelines on Conduct of Directors of Listed Issuers and Their Subsidiaries* (Guidelines) was issued to strengthen board governance and oversight in listed corporations and their subsidiaries. Based on the SC's review, a significant number of corporations listed on Bursa Malaysia are investment holding corporations, whose business activities are undertaken by their subsidiaries. Given the significance of such subsidiaries to the long-term performance of listed corporations, it is critical that the board of a listed corporation have line of sight of the financial and non-financial performance of its subsidiaries, including the adoption of good corporate governance practices.
2. A proactive approach to the governance of the group (a listed corporation and its subsidiaries) is needed to promote the adoption of good corporate governance culture and to minimise the risk of governance failures in any of the entities within the group, which can potentially cause significant financial and reputational harm to the entire group. The board of a listed corporation must establish a group governance framework that is appropriate to the nature, size and complexity of the group, and is implemented consistently throughout the group.
3. The establishment of a group governance framework, however, does not advocate a listed corporation 'micro managing' or 'micro governing' subsidiaries, which can be impractical given the complexity of company groups, and may undermine the separate legal entity status of the subsidiaries. The board of a listed corporation should be mindful to respect the roles and boundaries of a subsidiary and its directors.
4. The board of a listed corporation should also formulate its approach to group governance with consideration of the nature of its subsidiaries, which may vary based on their ownership structure, business activity, financial significance as well as risk profile. For example, the approach may differ based on whether the subsidiary is wholly owned or not. In the latter, engagements with other shareholders may be required to set expectations and agreement on the corporate governance policies and practices.

B. Elements of a group governance framework

5. A group governance framework should among others–

- (a) ***Set the tone for leadership and culture of the group.*** The group's values and expectations in relation to behaviour and conduct should be communicated through a group-wide *Code of Ethics and Conduct* (Code). For example, the tone and direction set by the listed corporation in relation to the potential risk of corruption by refusing the payment of facilitation fees can go a long way towards establishing the required values and culture throughout the group.
- (b) ***Align the strategy and priorities across the group.*** This will require discussions between the listed corporation and its subsidiaries, the board of the listed corporation regularly reviewing the business plans and budgets of its subsidiaries as well as monitoring the performance of the entire group;
- (c) ***Set out the group governance structure as well as policies and processes.*** This will include setting out the roles and responsibilities of key persons in implementing the policies on group governance for example the group Chief Executive Officer (CEO), the CEO of subsidiaries, and the company secretaries of the group as well as the subsidiaries.

The group governance policies and processes should also address board related matters such as diversity, selection and nomination of directors, board and director performance evaluations, and tenure of directors. Attention should also be given to policies and processes applicable group-wide for example conduct, risk management, anti-corruption, whistleblowing and sustainability.

- (d) ***Identify the authority and decision limits within the group.*** This includes identifying matters that may need to be reserved for the approval of the listed corporation. Matters that the listed corporation wishes to reserve for its decision-making (shareholder-reserved matters) should be clearly set out in the subsidiary's constitutive documents. The shareholder-reserved matters should be limited to what is reasonably necessary, considering the balance of interests required.
6. The formulation and implementation of the group governance framework should be guided by the *Bursa Malaysia Listing Requirements* as well as the corporate governance principles and best practices recommended in the *Malaysian Code on Corporate Governance*.

C. Disclosure of information

7. The group governance framework should include clear policies and processes on the disclosure of information internally within the group, to ensure the appropriate flow of information, including reports from the subsidiaries to the listed corporation on their performance. The policies and processes should also address the handling of price sensitive information, particularly where any of the subsidiaries of the listed corporation is also listed and is subject to strict regulation. This is of particular importance in situations where information flow has to be strictly controlled and confidentiality maintained to limit the risk of insider trading.

8. Conflicts may also arise when a director on the board of a listed corporation is also serving as a director on one or more boards of the listed corporation's subsidiaries. Such director would have access or possess information that other directors on the board may not have. Policies and processes should be in place to manage the handling of information in such situations. Directors should also exercise due care in handling information, mindful of their duty to act in the best interest of the corporation in which he sits as a board member.