Take 5 for business

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Fortifying governance

Malaysian Code on Corporate Governance 2021 updates

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Addressing disruptions from the global pandemic and adapting to a stakeholder-focused environment necessitates organizational resilience and agility.

Whilst developing a core environmental, social and governance (ESG) strategy can be the pivot to build long-term value and sustainability, robust dynamics between the board and senior management can help expedite the re-modelling of strategies.

The new and enhanced best practices promulgated in the MCCG 2021 are indeed timely to further guide companies in stepping up their governance strategies, priorities, compliance and processes.

Dato' Abdul Rauf Rashid
EY Asean Assurance Leader
Malaysia Managing Partner
Ernst & Young PLT

Governance, the guiding force towards sustainability

The Securities Commission (SC) has issued an update to the Malaysian Code on Corporate Governance (MCCG), which includes the introduction of new and enhanced best practices to fortify the corporate governance (CG) practices of public listed companies (PLCs).

The MCCG 2021 updates include:

- Board policies and practices on the selection and nomination processes and criteria for directors
- Further guidance on practices with low levels of adoption
- The role of the board and senior management in addressing sustainability risks and opportunities of the company

While the MCCG is targeted at listed companies, non-listed entities can consider applying the MCCG practices to enhance their accountability, transparency and sustainability.

Highlights: MCCG 2021

1 **Periodic refresh of board composition**

- Re-appointment of long-serving independent directors. The two-tier voting process includes:
  - Re-appointment of independent directors with tenure of more than nine (9) years
  - Allowing minority shareholders to vote against retention in the voting process
- Proposed 12 years maximum tenure to be introduced for independent directors in the listing requirements (target Q4, 2021)

2 **Encourage board diversity: at least 30% women directors**

- Participation of women on boards for all PLCs (previously large PLCs)

3 **Urgent need to manage ESG risks and opportunities**

- Need for collective action by boards and senior management
- Sustainability statements by large PLCs have begun to address climate-related risks, but more needs to be done.

Operational timeline for MCCG 2021 application

The timeline for the operational progression and associated regulatory requirements include:

Effective date	Reporting	Two-tier voting
The MCCG is effective from 28 April 2021	The first batch of companies to begin reporting on the adoption of the revised MCCG will be those with financial year ending 31 December 2021	The resolution for the updated two-tier voting process should be tabled to shareholders at general meetings held after 1 January 2022

Sources:
- Malaysian Code on Corporate Governance, SC, 28 April 2021
- Media release – SC updates the Malaysian Code on Corporate Governance to promote Board leadership and oversight of sustainability, SC, 28 April 2021
- Malaysian Code on Corporate Governance (2021 Revision) – Media Technical Briefing, SC, 27 April 2021

MCCG 2021: practices and guidance highlights

The MCCG 2021 updates aim to promote new and enhanced best practices to fortify corporate governance practices and build business resilience and sustainability. Some highlights of the updates include:

Improving board policies and practices

Selection, nomination and appointment of directors

New practices

1.4
- Chairman of the board is not a member of the Audit Committee, Nomination Committee or Remuneration Committee.

5.9
- The board comprises at least 30% women directors - applies to all listed companies (currently only applies to large companies[1]).

Enhanced practices

5.3
- Companies to seek shareholders' approval using the two-tier voting approach to retain independent directors with tenures of more than nine (9) years
- A 12-year tenure limit for independent directors without further extension will be introduced in the listing requirements (targeted issuance in Q4 2021).

G5.5
- State-owned enterprises (SOEs) should be guided by the OECD Guidelines on Corporate Governance of SOEs on board appointments – all board members, including public officials, should be nominated based on qualifications and have equivalent legal responsibilities. The Guidelines recommend that persons linked to executive powers should not serve on boards as this would cast serious doubt on the independence of their judgment.
- A listed company is discouraged from appointing active politicians to the board.

5.10
- The board discloses the company's policy on gender diversity for the board and senior management (currently senior management not included) in its annual report.

Improve effectiveness and functions of the Audit Committee

Enhanced Practices

9.2
- A former partner of the external audit firm[2] of the listed issuer to observe a cooling-off period of at least three (3) years before being appointed as a member of the Audit Committee. (currently applies to only key audit partner with cooling-off period of two (2) years)

G9.3
- In assessing the suitability, objectivity and independence of the external audit firm, the Audit Committee should consider the information presented in the Annual Transparency Report[3] of the audit firm.

Strengthening oversight of sustainability

Five (5) best practices

New practices

4.1
- The board, together with management, takes responsibility for the governance of sustainability in the company, including setting the company's sustainability strategy, priorities and targets.
- Strategic management of material sustainability matters should be driven by senior management.

4.2
- Board ensures company's sustainability strategies, priorities, targets and performance are communicated to its internal and external stakeholders.

4.3
- Board takes appropriate actions to ensure it stays abreast and understands sustainability issues relevant to the company and its business, including climate-related risks and opportunities.

4.4
- Performance evaluations of the board and senior management include reviews of their performance in addressing the company's material sustainability risks and opportunities.

4.5
Step up
- Board identifies a designated person within management to provide dedicated focus to manage sustainability strategically.

Promoting meaningful engagement between company and stakeholders

Introduction of new practices on the conduct of general meetings, including e-AGMs

New practices

13.4
- Chairman should ensure that general meetings support meaningful engagement between the board, senior management and shareholders, including on matters relating to company's financial and non-financial performance.
- Shareholders should be given the opportunity to ask questions during general meetings and all questions should receive meaningful responses.

13.5
- The board must ensure the conduct of virtual general meetings (fully virtual or hybrid) support meaningful engagement. Questions by shareholders should be made visible to all meeting participants.

13.6
- Minutes of general meetings should be circulated to shareholders no later than 30 business days after the meetings.

Enhanced practices

13.3
- Listed companies should leverage technology to facilitate:
  - Voting, including voting in absentia[4]
  - Remote shareholders' participation at general meetings
- Listed companies should also take the necessary steps to ensure good cyber hygiene practices are in place, including data privacy and security, to prevent cyber threats.

Improving adoption of best practices and quality of CG Report disclosures

Strengthen guidance on disclosures of gender diversity policies and targets, and communication on board evaluation outcomes

Enhanced practices

G5.10
- Non-numerical objectives such as "introducing a diversity policy" and aspirational statements such as "achieving a culture of inclusivity", while worthwhile, are unlikely to be effective in improving gender diversity, unless they are supported by appropriate measures and numerical targets.

6.1
- For large companies, the board should engage independent experts[5] to conduct board evaluations at least every three years.

G6.1
- Board evaluations should not focus entirely on historical assessments of directors' performance but should also include forward-looking considerations, such as mapping current board's competencies against those required to drive the company's future strategies.
- Sparse and/or vague disclosures on the evaluation methodology and outcomes should be avoided.

Notes:

G - Guidance notes of the Malaysian Code on Corporate Governance (28 April 2021)
OECD – Organisation for Economic Co-operation and Development

[1] Large companies are companies on the FTSE Bursa Malaysia Top 100 Index or companies with market capitalization of RM2b and above at the start of the companies' financial year.

[2] Applies to all partners of audit firms and/or affiliate firms (including those providing advisory services, tax consulting)

[3] Audit firms registered with the Audit Oversight Board (AOB), with more than 50 public interest entity (PIE) audit clients whose total market capitalization is above RM10b at the end of the calendar year for two consecutive years, are *required* to issue an Annual Transparency Report beginning 2020. For other AOB-registered audit firms that do not meet the above criteria, they are *encouraged* to issue an Annual Transparency Report.

[4] Shareholders exercising their voting rights without being physically present at the general meeting

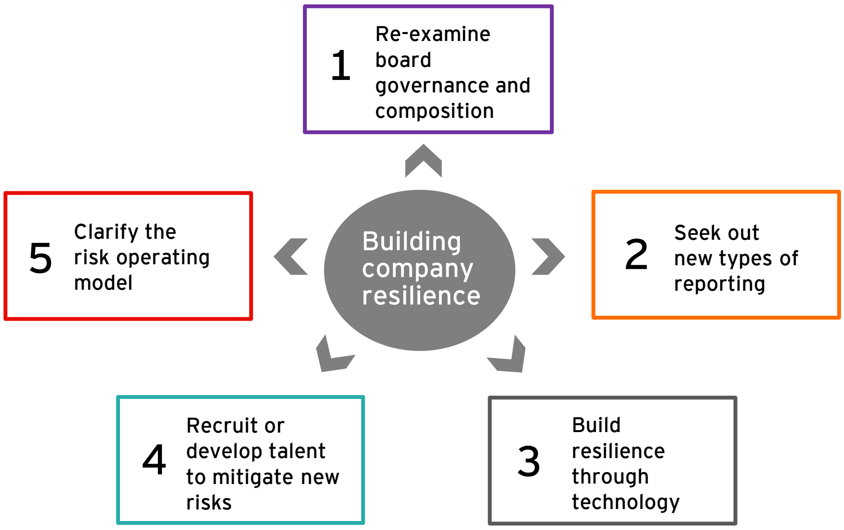
[5] "Independence" in this context means no connection with the company, directors or major shareholders.

Sources:
- Malaysian Code on Corporate Governance (2021 Revision) – Media Technical Briefing, SC, 27 April 2021
- Malaysian Code on Corporate Governance, SC, 28 April 2021

Five ways boards can help improve resilience

With the emergence of new and complex risks, boards need to find new ways of thinking about risk and transformation. Disruptions from the COVID-19 pandemic and climate change require robust strategies and actions across three horizons: now, next and beyond.

Under this challenging risk environment, C-suites can consider five areas to strengthen organizational resilience.



1
Re-examine board governance and composition

- Ensure sufficient time at board meetings to discuss emerging and existing risks.
- Consider assigning responsibility for risk oversight to a new risk committee.
- Alternatively, split risk oversight duties, with full board responsibility for strategic risks and audit committee overseeing financial and compliance risks.
- Review current board composition and recruit new skills. Consider diversity of background, opinion, gender and relevant experiences.

2
Seek out new types of reporting

- In times of heightened uncertainty, it is vital that boards receive insightful reporting promptly.
- Consider new reporting metrics relating to liquidity management, talent, culture, climate change, supply chain, cyberattacks and data breaches.
- Source data and insights from people or functions that do not traditionally report to the board.
- Acquire more external data for a wider perspective of new and emerging threats and traditional risks (e.g. change in customer preferences).
- Ensure reporting of company's material sustainability risks.

Source:
- Take 5 - COVID-19: Five ways boards can help improve resilience, EY, May 2020

> Amid the pandemic, cybersecurity risk is intensifying, particularly with widespread remote working and increased online interactions. In this environment, remaining cyber-resilient and building stakeholder trust in the company's data security and privacy practices are strategic imperatives. Public disclosures can help build trust by providing transparency and assurance around how boards are fulfilling their risk oversight responsibilities.

Susanna Lim
Partner, Business Consulting
Ernst & Young Advisory Services Sdn Bhd

3 Build resilience through technology

- Challenge whether risk teams effectively use technology to draw real-time insights from data that can aid crisis response decision-making.
- Use workflow automation technology to digitize risk management tasks (e.g. data collection and processing).
- Technology allows risk professionals to spend more time on analysis and impact assessments to counter new risks.
- Ensure good cyber hygiene practices, including data privacy and security, to prevent cyber threats.

4 Recruit or develop talent to mitigate new risks

- Develop workforce and pipeline within the risk function, capable of adapting to disruptions (including COVID-19 and climate change).
- Acquire capabilities that are different to those managing traditional threats (e.g. competencies in digital technology, geopolitics, talent or HR issues, data science or analytics and-cybersecurity).
- Obtain skills required to get the most out of new automation and analytics technologies within the risk function.

5 Clarify the risk operating model

- Review whether the risk operating model is fit for purpose and capable of effectively identifying and mitigating new and emerging threats.
- Clarify ultimate responsibility across business managers, risk and compliance functions and independent assurance.
- Gaps in responsibility can lead to new important risks being overlooked.
- Consider appropriate actions to stay abreast with sustainability issues, including climate-related risks and opportunities.

Source:
- Take 5 - COVID-19: Five ways boards can help improve resilience, EY, May 2020

EY contacts

Dato' Abdul Rauf Rashid
EY Asean Assurance Leader
Malaysia Managing Partner
Ernst & Young PLT

abdul-rauf.rashid@my.ey.com

Chow Sang Hoe
EY Asean Consulting Leader
Malaysia Consulting Managing Partner
Ernst & Young Advisory Services Sdn Bhd

sang-hoe.chow@my.ey.com

Susanna Lim
Partner, Business Consulting
Ernst & Young Advisory Services Sdn Bhd

susanna.lim@my.ey.com

Philip Rao
Partner, Business Consulting
Ernst & Young Advisory Services Sdn Bhd

philip.rao@my.ey.com

Terence Tan
Partner, Climate Change and Sustainability Services
Ernst & Young PLT

terence-sj.tan@my.ey.com

APAC no. 07002692

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References

- Malaysian Code on Corporate Governance (2021 Revision), Securities Commission, 28 April 2021
- Malaysian Code on Corporate Governance (2021 Revision) – Media Technical Briefing, Securities Commission, 27 April 2021
- Guidance and FAQs on the Conduct of General Meetings for Listed Issuers, Securities Commission, 5 March 2021
- Take 5: Five ways boards can help improve resilience, EY, May 2020
- Take 5: Responsible governance, EY, April 2019