Cross-Border Listings Guide - Bursa Malaysia

Corporate governance

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# Corporate governance

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Before a foreign or domestic company's IPO, the SC takes into account the company's corporate governance practices when considering its proposal for listing on the Main Market of Bursa Malaysia. Factors include whether any previous actions have been taken against the company for any breach of relevant laws, guidelines or rules issued by the SC and Bursa Malaysia. Where the SC is not satisfied with the company's corporate governance record or the integrity of any of the company's directors, it may reject the corporate proposal for listing or approve the proposal subject to conditions. These conditions may include prohibiting (or imposing a moratorium on) any trading or dealing in securities, requiring the company to take appropriate measures to improve its governance structure or requesting that the director in question step down from the board of directors or refrain from participating in the proposal.

Upon the listing of a foreign or domestic company on the Main Market, the company must:

Ensure that at least two directors (or one-third of its board of directors, whichever is higher) are independent directors and at least one director is female. The Malaysian Code on Corporate Governance 2021 (MCCG 2021) requires that half of the board of a listed company must comprise of independent directors, and for large companies, there should be a majority of independent directors. The MCCG 2021 also requires that at least 30% of the board members should also be women directors.

Ensure that no person is appointed or allowed to act as a director if the person has been convicted by a court of law:

Whether within Malaysia or elsewhere, of an offense, involving bribery, fraud or dishonesty or where the conviction involved a finding that he acted fraudulently or dishonestly;

Whether within Malaysia or elsewhere, of an offense in connection with the promotion, formation or management of a corporation; or

Of an offense under the securities laws or corporation laws of the company's place of incorporation,

within a period of 5 years from date of conviction or if sentenced to imprisonment, from the date of release from prison, as the case may be.

Ensure that no director is of unsound mind or bankrupt or has been absent from more than 50% of the total board meetings held during a financial year and if the director is appointed after the commencement of a financial year, only the board of directors' meetings held after that director's appointment will be taken into account.

Ensure that each director holds no more than five directorships in listed issuers (including the company).

Appoint an audit committee (consisting of at least three directors) to review, among other issues:

The audit plan.

Internal audit functions and controls.

Quarterly results and year-end financial statement.

Related party transactions.

Conflicts of interest.

At least one member of the audit committee must be a member of the Malaysian Institute of Accountants or have at least three years' working experience and must have passed the requisite examinations specified by the First Schedule of Accountants Act 1967 or be a member of one of the associations of accountants specified in that Act.

Appoint a suitable accounting firm to act as its external auditors (considering, among other factors, the adequacy of the experience and resources of the firm).

Establish an internal audit function that is independent of the activities it audits, and that reports directly to the audit committee.

 To promote better corporate governance in Malaysia, the SC has issued the MCCG 2021. Among other things, the MCCG 2021 introduces best practices and guidance to improve board policies and processes, including those related to director selection, nomination and appointment, and to strengthen board oversight and the integration of sustainability considerations in the strategy and operations of companies.

Additionally, the MCCG 2021 provides that:

Effective board leadership and oversight require the integration of sustainability considerations in corporate strategy, governance and decision-making as sustainability and its underlying environmental, social and governance (ESG) issues become increasingly material.

The Chairman of a board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

The Nomination Committee should ensure that the composition of the board is refreshed periodically.

All boards are required to have at least 30% women directors. The board should disclose in its annual report the company's policy on gender diversity for the board and senior management.

The general meetings conducted by the company (be they physical, hybrid or fully virtual) must support meaningful engagement between board, senior management and shareholders. Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

Although the MCCG 2021 is cast as a voluntary code, listed companies are required to disclose their application of each practice during the financial year to Bursa Malaysia and announce the same together with the announcement of annual report. This includes a disclosure of any non-compliance with the MCCG 2021, including an explanation for the non-compliance and the alternative practice to achieve the principles under the MCCG 2021. Failure to do so would be a breach of the listing requirements.

A listed foreign or domestic company must also ensure that its board of directors states in the company's annual report:

An overview of the application of the principles set out in the MCCG 2021.

An explanation of the board's responsibility for preparing the annual audited financial statements.

A statement of the state of internal controls and risk management of the company's corporate group.

The company's policy on gender diversity for the board and senior management.

The annual report issued to Bursa Malaysia by a foreign or domestic company with a primary listing in Malaysia must also contain a narrative statement by the company's management of the material economic, environmental and social risks and opportunities and the governance structure in place to manage these sustainability matters. The statement must contain information that is balanced, comparable and meaningful by reference to the Sustainability Reporting Guide issued by Bursa Malaysia. This would include a statement by the company on material sustainability matters, how these sustainability matters are identified, why they are important to the company and how they are managed (for example, disclosing details in the annual report of the policies in place and measures or actions taken to manage these sustainability matters).

Additional requirements relating to the governance of a company may be imposed by sectoral regulators. For instance, based on the Corporate Governance policy document issued on 3 August 2016 by the Central Bank of Malaysia, the chairman of the board must not be an executive (that is to say, the chairman must be an independent director).

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