

Test for corporate governance

GOOD governance is a subject that evokes a myriad of opinions depending on one's understanding of this topic. One thing, however, is clear: Good governance is necessary in all walks of life, be it in the political, commercial or social spheres.

On the commercial front, the Malaysian Code of Corporate Governance (MCCG) was first introduced in 2000, revised in 2007 and 2012, culminating in the new supercharged 2017 version.

The 2017 MCCG reflects global principles and internationally recognised practices of corporate governance which are above and beyond the minimum required by statute or regulations. It is meant to be a significant tool for corporate governance reform.

However, the jury is out on whether it has influenced corporate governance practices of companies positively, given the recurrences of corporate scandals, shareholder activism and the like.

It has been reported that "as most of these GLCs are incorporated under the Companies Act 2016, the way they are governed brings to question whether the spirit, form and substance of the MCCG, which covers a broad area in terms of board composition, diversity, internal controls and risk management, among others, is practised or otherwise", "Governance goes beyond corporates" (*The Star*, Sept 22).

This is where "the rubber hits the road". Is the MCCG only an excellent and beautifully bound publication or is there more to it? At the end of the day, shareholders in public listed companies want their investments and interests to be protected.

One of the biggest issues on corporate governance is the independence of the independent directors. It is in this context that there is the pro-

vision that the Audit Committee, which among others examines the financials prior to reporting, should comprise independent directors.

It is in this light that the resignation of the Audit and Risk Committee chairman of a listed company from its board, as reported in the financial news portals, is most disconcerting.

The reasons for resigning were stated specifically as opposed to the routine meaningless regurgitation by most directors that it was due to the proverbial "personal reasons".

This should ring alarm bells for the regulators if it believes in its own brainchild, the MCCG and the Listing Requirements, specifically Chapter 15.

Simplistically put, an Audit Committee (AC) chairman had resigned over a trade receivables dispute. The external auditors advised on impairments which the AC chair had duly escalated to the full board as unanimously agreed to by the AC members. The board had then taken a decision, which was well within its rights, not to book in the impairments as its view differed from the opinion of the AC and the external auditors.

It must be highlighted that from a legal perspective, the audit committee is but a committee appointed by the board (similar to other committees) and hence serves at the pleasure of the board. However, as the regulatory and legal framework stands, the board is not obliged to take on the advice of any committee of the board.

This is where the quandary lies. If the full board decides not to take the advice of the AC, then why the need for independent directors? Surely their independence must account for something!

One can't help but recall a judgement by

Datuk Jagjit Singh on an air freight company some years ago. The learned judge stated that "a director or audit committee member is not a decorative piece of a company. He is a vital organ of the company in particular when it comes to corporate governance. They have specific duties, functions and responsibilities and the investing public shareholders rely on them."

Have we learnt nothing?

The other aspect of this case that is of interest is the role of external auditors. On impairments, which have an effect on the financials, on whose opinion are the investing public to place their trust – the AC, external auditors or the board? Surely the element of independence is now thrust into the forefront?

This is an acid test as to the actualization of the MCCG. How far the regulators would go and to what extent stakeholders would participate in promoting good governance are key outcomes.

Regulators need to re-examine their role in instances such as these, which compromise the integrity of corporate governance moving forward.

Doing nothing is not acceptable as it sends the wrong signal to independent directors as to the reality of them being appointed for their perceived "independence" and their consequential influence on boards.

The regulators obviously have their work cut out for them to put things in perspective and to educate those who need to be educated on not only the law but also the spirit behind the capitulations as contained in the MCCG. Failure to do so would relegate the MCCG into nothing but a useful bookend.

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