

Malaysia

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Malaysia

1.1 Background

The responsibility of ensuring that the level of corporate governance in Malaysia remains high lies with several institutions. The two main laws that contain sections relating to corporate governance (CG) are the Companies Act 1965 (as amended) and the Capital Market & Services Act 2007 (CMSA). The Companies Commission of Malaysia (CCM) plays the chief role in promoting corporate governance by providing the structure, basis and framework of governance that regulate and discipline companies as provided in the Companies Act 1965.

The Companies Act 1965 provides the governance framework for promoting accountability, disclosure and transparency through provisions relating to, amongst others:

- directors' roles and responsibilities;
- investors' protection;
- shareholders' rights (including minority shareholders);
- disclosure of interests by directors;
- integrity of transactions by directors and substantial shareholders;
- protection of whistleblowers;
- keeping of proper accounts and records;
- setting up of internal controls for public companies; and
- lodgment of certain documents and information to the Registrar for public information.

CCM has also introduced two sets of voluntary codes namely the Code of Ethics for Directors and the Code of Ethics for Company Secretaries.

The CMSA, which is the successor law that amalgamated and built upon the Securities Industry Act 1983, the Futures Industry Act 1993 and the fundraising provisions of the Securities Commission Act 1993, regulates the issuance and trading of debt and equity securities and derivatives. The overall objectives of the CMSA are to protect investors and to maintain the integrity of the market for trading of securities and derivatives. The law contains rules for disclosure by securities issuers of material information that investors should know and for fair practices in the trading of securities and derivatives.

The Malaysian Code on Corporate Governance (MCCG) was issued in 2000 pursuant to the recommendations by the High Level Finance Committee on CG reform following the Asian Financial Crisis. The MCCG is a "comply or explain" code that is applicable to all public listed companies (PLCs) on the stock exchange, Bursa Malaysia Securities Berhad (Bursa Malaysia). If a PLC is not in compliance with a provision of the code, it must explain why in its annual report. The MCCG was revised in 2007 (details on the MCCG are provided in 6.1 below).

PLCs are also subject to the Listing Requirements of Bursa Malaysia that include meeting CG standards that are more detailed and stringent than the provisions under the Companies Act. For example, the rules require that a PLC's board of directors have at least one-third independent directors, that independent directors are majority members of an audit committee of the board and that the PLC must have an internal audit function.

The legal framework for corporate governance in financial institutions in Malaysia includes Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, Insurance Act 1996, Takaful Act 1984 and Development Financial Institutions Act 2002. These Acts provide for the observance of prescribed processes and procedures (based on international best practices and standards on corporate governance) by financial institutions. Financial institutions regulated by Bank Negara Malaysia (Central Bank of Malaysia-BNM) are required to observe guidelines issued under the above legislations which set out broad principles and minimum standards on corporate governance in the main areas of board responsibility and oversight, management accountability, risk management and internal controls as well as reporting and disclosures.

1.2 Trends

	2005 (Dec)	2006 (Dec)	2007 (Dec)	2008 (Dec)	2009 (Dec)	2010 (Apr)*
No. of PLCs listed	1,021	1,027	987	977	960	959
No. of IPOs	79	40	26	23	14	6
Total Market Capitalisation (RM million)	695	849	1,106	664	999	1,073
Total market Capitalisation (US\$ million)	184	241	334	192	292	339

**Note: Figure is as of 21 April 2010*

Exchange rate US\$1 = RM3.2250 (as at 18 May 2010) Source: BNM

The number of listed companies has been on a downward trend since 2006 due to a decrease in initial public offerings (IPO) coupled with the increase in privatisation exercises including mergers and acquisitions which resulted in some listed companies being subsumed under other listed companies. Interest in IPOs and equity issuance was also affected by the Global Financial Crisis (GFC). The overall depressed market condition arising from the GFC has resulted in the total market capitalisation of Bursa Malaysia contracting close to 40% in 2008. However, the economy has been recovering strongly since the second half of 2009, resulting in an improvement in market sentiment, pushing up stock prices and market capitalisation.

In line with the improved market sentiment and better outlook for the Malaysian economy, the number of IPOs is expected to increase in 2010. As at 30 April 2010, six new companies had been listed on Bursa Malaysia as compared with zero during the same period in 2009. The improved market sentiment and economy is also expected to attract more sizeable listings onto Bursa Malaysia. In 2009, Maxis Berhad raised RM11.2 billion from the market and added approximately RM39 billion to Bursa Malaysia's total market capitalisation. There is also more interest in secondary fund raising exercises from listed companies via private placements and rights issues in view of the improved market prices and overall better market sentiment.

1.3 Key Corporate Governance Rules and Practices

Please see Key Corporate Governance Rules and Practices in Malaysia, p. 146.

2. Development, Enforcement and Assessment of Implementation of Corporate Governance Rules

2.1 Development of Corporate Governance Rules

CCM, through the provisions of the Companies Act 1965, is responsible for enforcing the corporate governance framework on all companies irrespective of their economic size or whether or not they are publicly traded. In enhancing the corporate governance framework in Malaysia, CCM has embarked on a holistic review of the Companies Act 1965 to be in tandem with international norms and standards. In addition, CCM is also issuing Practice Notes which are aimed at assisting the general public relating to the implementation of corporate governance rules as follows:

- Practice Note 1/2008 – Requirements relating to the lodgment of annual return of companies;
- Practice Note 2/2008 – Change of financial year;
- Practice Note 7/2010 – Guidelines for auditors to inform the Registrar prior to cessation of office under section 172A of the Companies Act 1965;
- Practice Note 8/2010 – Explanation on the application of thresholds provided for under section 132C(1B) of the Companies Act 1965; and
- Practice Note 9/2010 – Application for extension of time: (i) To convene the annual general meeting of a company; and (ii) to lay out the profit and loss accounts of the company

The Securities Commission (SC) is one of the main proponents of reform to Malaysia's corporate governance framework. The SC plays a key role in the development of the MCCG and works closely with Bursa Malaysia in incorporating the salient provisions of the MCCG into the Listing Requirements of the stock exchange. The SC played a key role in the reform of the securities laws which culminated in the enactment of the CMSA in 2007. Recent amendments to the CMSA widen SC's powers to take action on CG-related offences as elaborated in 6.1 below. Bursa Malaysia has also been instrumental in incorporating rules that promote good corporate governance in its Listing Requirements.

BNM, as the supervisor of banks (including conventional, investment and Islamic banks), insurance and takaful companies and development financial institutions in Malaysia issues standards in the form of guidelines on corporate governance for these financial institutions. These guidelines on corporate governance cover broad areas of board responsibility and oversight, management accountability, risk management and internal controls as well as reporting and disclosures. Board members, senior management and officers primarily responsible for control functions must also comply with fit and proper requirements both at the time of appointment and on an ongoing basis.

2.2 Enforcement of Corporate Governance Rules

The SC is concerned with the enforcement of the securities laws and regulations on matters such as false and misleading statements or material omissions of disclosures, fraud, market manipulations, etc. The SC also has Investors Affairs & Complaints Department which looks into complaints by the public, including in relation to CG-related matters.

In 2009, the SC brought criminal charges against four individuals (including an auditor) who submitted or were involved in submitting false financial information to the SC. The SC also charged two other individuals for their role in defrauding a PLC. Additionally, in using the

wide range of enforcement tools, the SC has taken administrative action in 56 cases and imposed administrative fines. These administrative actions were taken against PLCs, their substantial shareholders, intermediaries and professional advisers. Bursa Malaysia, as the front-line regulator, has also been taking action against directors and PLCs for breaches of the Listing Requirements.

Enforcement of the Listing Requirements (LR) of Bursa Malaysia is taken against PLCs and their directors arising from letters of undertaking by these persons to comply with the LR.

Number of Enforcement Actions (Excluding Reminders and Warnings) Taken against PLCs and Directors in 2008 and 2009

Enforcement Actions Taken	Listed Companies		Directors	
	2008	2009	2008	2009
Private reprimand/private fine	21	11	19	4
Public reprimand	49	65	17	37
Public reprimand & fine	1	-	53	191
Total	71 (44 listed companies)	76 (34 listed companies)	89 (50 directors)	232 (76 directors)

Generally, the enforcement actions taken are for breaches in the following areas:

- Delay in submission and accuracy of financial statements issued;
- In relation to transactions, failure to disclose the transactions, procure shareholders' prior approval and where it involves related-party transactions, failure to appoint an independent adviser to advise the shareholders; and
- Delay in the announcement of material non-financial information.

In the last two years (2008-2009), only one PLC was de-listed due to its non-compliance of disclosure rules (i.e., delay in making financial reporting). In this regard, the LR prescribes that de-listing proceedings would be initiated against a PLC for delay of six months or more from the prescribed time imposed for the issuance of any prescribed financial statements.

Assessments of financial institutions' observance of corporate governance standards are carried out under BNM's risk-based approach to supervision. Assessments of the quality and robustness of a financial institution's oversight and control functions are both the starting point for supervisory evaluations of how an institution is managing the risks inherent within each of its significant areas of activity, and the basis on which BNM forms an overall view of an institution's resilience, particularly under stress conditions. Based on the supervisory assessments, BNM may direct institutions to take specific measures to improve corporate governance within the institution, including measures to strengthen the independence of the board from management and the control functions within the organisation.

CCM filed a civil action against two substantial shareholders in a public listed company for failure to disclose their acquisitions and disposal of the Company shares in a timely manner. In another civil case, CCM commenced winding-up action against a foreign company operating in Malaysia without approval from the Malaysian authorities.

Number of Cases Charged, Convicted and Compounded for Various Serious Corporate Governance Offences under the Companies Act 1965 from 2008 until March 2010

Offense	Year		
	2008	2009	2010 (Jan-March)
Number of cases charged	48	127	26
Number of cases convicted	2	14	7
Number of cases compounded	4	43	17

2.3 Assessment of Corporate Governance Practices

Malaysia underwent the ROSC assessment in 2006. Below are the summary results:

Observed	Largely Observed	Partially Observed	Materially Observed	Not Observed
1	26	5	-	-

Principle	Description	Malaysia's Position
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK		
IA	Overall corporate governance framework	Largely Observed
IB	Legal framework enforceable and transparent	Largely Observed
IC	Clear division of regulatory responsibilities	Largely Observed
ID	Regulatory authorities have sufficient authority, integrity and resources	Largely Observed
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS		
IIA	Basic shareholder rights	Largely Observed
IIB	Rights to participate in fundamental decisions	Partially Observed
IIC	Shareholders AGM rights	Largely Observed
IID	Disproportionate control disclosure	Largely Observed
IIE	Control arrangements should be allowed to function	Largely Observed
IIF	The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated	Partially Observed
IIG	Shareholders should be allowed to consult with each other	Largely Observed
III. EQUITABLE TREATMENT OF SHAREHOLDERS		
IIIA	All shareholders should be treated equally	Partially Observed
IIIB	Prohibit insider trading	Largely Observed
IIIC	Board/managers disclose interests	Largely Observed
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE		
IVA	Legal rights of stakeholders are to be respected	Largely Observed
IVB	Stakeholder redress	Largely Observed
IVC	Performance-enhancing mechanisms	Largely Observed
IVD	Stakeholder disclosure	Largely Observed
IVE	Whistleblower protection	Largely Observed
IVF	Creditor rights law and enforcement	Largely Observed

Principle	Description	Malaysia's Position
IV. DISCLOSURE AND TRANSPARENCY		
VA	Disclosure standards	Largely Observed
VB	Accounting standards	Observed
VC	Independent audit annually	Largely Observed
VD	External auditors should be accountable to the shareholders	Largely Observed
VE	Fair and timely dissemination	Largely Observed
VF	Research conflicts of interests	Largely Observed
V. RESPONSIBILITIES OF THE BOARD		
VIA	Act with due diligence, care	Partially Observed
VIB	Treat all shareholders fairly	Largely Observed
VIC	High ethical standards	Partially Observed
VID	The board should fulfill certain key functions	Largely Observed
VIE	The board should be able to exercise objective judgment	Largely Observed
VIF	Access to information	Largely Observed

3. Awareness and Advocacy for Good Corporate Governance

3.1 Corporate Directors

The Malaysian Alliance of Corporate Directors (MACD) is a non-profit entity established in 2009. Its mission is to promote good corporate board governance. MACD is actively engaged in:

- Providing a forum for members to network and exchange ideas, for the advancement of business and public affairs;
- Encouraging education and lifelong learning, for the improvement in members' personal competencies;
- Assisting members in improving their board's efficiency and effectiveness as a whole through its services and interventions; and
- Establishing and maintaining contacts amongst business leaders at the highest level, locally and internationally.

In 2003, BNM launched the International Centre for Leadership in Finance (ICLIF) with the objectives of providing a more focused and coordinated approach towards the development of world-class leaders in the financial services sector in Malaysia and in the region. In its programmes conducted from time to time, ICLIF has always included educational initiatives for Malaysians to value good corporate governance, in its efforts to raise the bar amongst candidates.

Additionally, BNM in collaborative effort with the Malaysia Deposit Insurance Corporation and the International Centre for Leadership in Finance has developed and implemented a Financial Institutions Directors' Education Programme (FIDE) for directors of financial institutions since 2008. FIDE has the objective of strengthening the skill sets and knowledge of directors to effectively discharge their responsibilities and promote excellence in director performance. Through the FIDE Programme, the BNM organises quarterly luncheon talks by

international experts on topics related to corporate governance in the oversight of financial institutions.

Companies Commission of Malaysia Training Academy (COMTRAC) under CCM undertakes efforts to educate stakeholders to enhance public awareness on the need, importance and benefits of complying with the corporate legal provisions. COMTRAC commenced operation in April 2007 to function as the training arm of Companies Commission to elevate and promote ethical business and good governance values to the business and corporate community such as company directors through its Corporate Directors Training Programme (CDTP) which is voluntary in nature. The training programmes being conducted are wide ranging from areas in company law, business law, corporate enforcement and investigations, corporate governance, corporate financial reporting to practice issues and legal procedures, audit and internal control, guidance on how to start a business in Malaysia as well as, labour law and taxation.

On 8 June 2009, Bursa Malaysia issued the “Corporate Governance Guide—Towards Boardroom Excellence” (CG Guide). The CG Guide serves as a reference for PLC directors to better understand their roles and responsibilities as directors of PLCs and the ways in which to enhance CG practices among their boards and committees. The CG Guide contains several recommendations on continuing education for directors and how directors may attain requisite knowledge. These include suggestions on ways in which directors can keep abreast of developments and recommendation as a good practice that the board regularly requests each director to identify appropriate training required to enhance competencies and their contribution to the board.

Since the launch of the CG Guide, Bursa Malaysia has been collaborating with numerous organisations such as the Malaysian Institute of Accountants, the Institute of Internal Auditors Malaysia and the Malaysian Institute of Corporate Governance to hold a series of training programmes on the CG Guide. All directors are recommended to familiarise themselves with the CG Guide and to attend at least one training programme on the Guide.

The SC in collaboration with Bursa Malaysia organised the inaugural “Corporate Governance Week” on 8 June 2009. The SC-Bursa Malaysia CG Week which ended on 11 June 2009 was part of SC and Bursa Malaysia’s initiative in enhancing CG practices amongst PLCs. It is intended to be a platform where all stakeholders involved in the CG process could come together to exchange information, experience and knowledge about best practices in CG. This was achieved through a series of dialogue sessions, seminars, workshops and roundtables involving relevant industry associations. The intention is to make the SC-Bursa Malaysia CG Week an annual event.

The Listing Requirements of Bursa Malaysia incorporate several provisions relating to directors’ continuous training and education. These include the following:

- Paragraph 15.08(1) of the Main Market Listing Requirements mandates that a director of a PLC must ensure that he attends such training programmes as may be prescribed by the Exchange from time to time; and
- Paragraph 15.08(2) of the Main Market Listing Requirements states that the Exchange considers continuous training for directors of PLCs as important to enable the directors to effectively discharge their duties. In this respect, the board of a PLC must, on a continuous basis, evaluate and determine the training needs of its members. The subject matter of training must be one that aids the director in the discharge of his duties as a director. The board must disclose in the PLC’s annual report whether its directors have attended training

for the financial year. Where any of its directors have not attended any training during the financial year, the board must state the reasons thereof in the annual report for each director.

3.2 Media

Bank Negara Malaysia conducts regular and ongoing engagement with the media to educate and provide clarity on issues relating to the governance, management and operations of financial institutions. The SC engages with the media on a regular basis to answer any queries with regard to CG. The media is also often given background briefings which serve as a form of on-the-job training.

The financial press reports periodically on CG issues such as corporate transactions and actions, and contested elections for membership of boards of directors. Reports on CG-related matters are published in the main newspapers quite regularly. There have been instances where corporate governance issues had been exposed as a result of investigative reporting by the financial press. Issues relating to weaknesses in corporate governance are generally heavily scrutinised by the financial press and are widely covered by all media.

An emerging trend in Malaysia is the growing influence and numbers of online news portals and financial blogs which serve as “watchdogs” in monitoring and providing real-time updates on corporate governance issues and developments within public and private sector institutions.

3.3 Educational System

Corporate governance is part of the curriculum in the business and management programmes at the general MBA programmes. Aspects of corporate governance, such as Business Ethics, have been included as components of higher education programmes offered by local and international institutions in Malaysia. For instance, the MBA programme conducted by the Management Centre of the International Islamic University (Malaysia) has offered this programme since 2000 while Universiti Utara Malaysia (UUM) offers Master of Corporate Law.

BNM, in a joint initiative with the Securities Commission of Malaysia, established the Asian Institute of Finance (AIF) in November 2008, to augment human capital development in the financial sector through strengthened institutional arrangements in collaboration with the four training institutions that currently serve the financial services sector, namely Institut Bank-Bank Malaysia (IBBM), Islamic Banking and Finance Institute Malaysia (IBFIM), Malaysian Insurance Institute (MII) and Securities Industry Development Corporation (SIDC). AIF’s mandate includes the provision of training programmes on corporate governance for executives in the financial services industry.

There are training and educational programmes conducted by the SC and ILKAP (i.e., legal and judiciary training institute). Sessions have been conducted for high court judges, sessions court judges as well as deputy public prosecutors on topics such as “Trends in Securities Regulation and Recent Amendments to the Malaysian Securities Law” and “Overview of the Capital Market”.

3.4 Stock Exchange

Bursa Malaysia has mandated training programme for first time directors of PLCs. Under the Listing Requirements, newly appointed directors of PLCs or directors of newly listed companies are required to attend a one-and-half day training programme within four months of being appointed as a director of a PLC or listing of the company. The mandatory accreditation programme is organised by external training providers but the areas covered and the

methodology adopted are subject to Bursa Malaysia's approval to ensure the objectives of the programme are achieved.

As mentioned in 3.1 above, Bursa Malaysia's LR also requires directors to continuously evaluate and determine their own training needs and to disclose the training they have attended for the financial year in the company's annual report. Bursa Malaysia does support credible institute of directors such as the Malaysian Alliance of Corporate Directors.

Bursa Malaysia supports the following programmes in support of good governance:

- Bursa Malaysia collaborates with various industry associations to create awareness and enhance knowledge through the Bursa Malaysia Series of Evening Talks on Corporate Governance. The Evening Talks are aimed at providing a platform for creating awareness, sharing of important CG issues and challenges in the local and international scene with industry professional;
- Bursa Malaysia collaborates with the SC to organise the SC-Bursa Malaysia CG Week which provides an opportunity for stakeholders involved in CG to meet to exchange information, experiences and knowledge about good CG practices. The inaugural SC-Bursa Malaysia CG Week in 2009 attracted a high level of participation from directors and industry professionals and attracted extensive media coverage; and
- To incentivise good CG practices and provide greater transparency on CG practices of PLCs, Bursa Malaysia supports the industry-driven initiative on Corporate Governance Index led by the Minority Shareholders Watchdog Group. This rating index was and will be used to rank PLCs and award those who meet high standards.

4. Corporate Governance of State-Owned and Family-Controlled Enterprises

4.1 State-Owned Enterprises

The federal government of Malaysia holds shares in public listed and unlisted companies through two bodies:

- Minister of Finance (Incorporated) (MOF (Inc.))
- Khazanah Nasional Berhad (Khazanah)

MOF (Inc.) was established as a body corporate under Minister of Finance (Incorporation) Act 1957. This Act empowers MOF (Inc.) to hold, invest, acquire and dispose assets of every description, including shares.

Companies held by MOF (Inc.) that are unlisted are governed by its Memorandum & Articles of Association (M&A) and Companies Act 1965, as well as circulars and directives issued by MOF (Inc.) from time to time. Khazanah, a company formed under the Companies Act 1965, is wholly owned by MOF (Inc.) except one share held by Federal Lands Commissioner. Being the investment arm of the federal government, the companies owned by Khazanah are those which offer growth in share value and dividend payments.

Companies held by Khazanah which are mostly listed companies are governed by its Memorandum & Articles of Association (M&A), Companies Act 1965, Listing Requirements of Bursa Malaysia and Securities Commission Act. Apart from that, the Government-Linked

Company Transformation (GLCT) Programme spearheaded by Putrajaya Committee on GLC High Performance (PCG) that introduces various initiatives, which cover matters relating to governance, shareholder value and stakeholder management that will further enhance performance of GLC companies, also applies to companies held by Khazanah.

The MCCG and Listing Requirements of Bursa Malaysia are applicable to government-linked companies (GLCs) that are listed on Bursa Malaysia. GLCs are expected to be role models on CG, leading the way by displaying exemplary governance.

4.2 Family-Controlled Enterprises

One of the major corporate governance issues for family-controlled companies is adherence to the disclosure requirements under section 132E of the Companies Act 1965. This provision, which has been amended via the Companies Act (Amendments) 2007 and took effect from 15 August 2007, provides stringent disclosure requirements with regard to any transactions or arrangements to be entered into between a company and its directors or shareholders including the requirement for such transactions or arrangements to be first approved by non-interested directors or shareholders at a general meeting.

The provision also requires prior approval from the shareholders before the transactions can be carried out. Mere ratification from the shareholders is not sufficient to regularise the transactions or arrangement entered into by the company with its directors or substantial shareholders. The interested directors or substantial shareholders or persons connected with them are to abstain from voting on the proposed arrangement or transactions. This provision has been regarded as a hindrance by family-owned companies.

CCM views that full adherence to corporate governance requirements should serve as an incentive for a family-owned company to become a listed company as companies which have adopted and implemented good corporate governance principles in their daily operation enjoy greater public confidence. The public will invest in companies that practice good corporate governance as they know that their rights are aptly protected.

5. Role of Professional Service Providers in Corporate Governance

Accounting and auditing firms

Accounting firms play a key role in ensuring that the International Financial Reporting Standards are complied with in companies' financial statements, and auditors are responsible for verifying this. As reporting accountants in relation to securities offerings and corporate transactions such as initial public offerings and mergers & acquisitions, accounting firms are also responsible for the accountant's report on a company's financial performance which is relied upon by investors in making investment decisions.

Since the late 1970s, Malaysia has been adopting accounting standards that are consistent with those issued by the International Accounting Standards Committee (IASC) and now, the International Accounting Standards Board.

The Companies Act 1965 (CA) provides that a company's financial statements must be approved by the annual general meeting of shareholders, and audited by an external auditor prior to its approval. Additionally, the auditors are also required by the CA to state in its audit report whether the financial statements have been prepared in accordance to the Malaysian Accounting Standards Board (MASB)-approved accounting standards. In respect of public

listed companies, the responsibility to comply with the accounting standards rests with the listed corporations, its directors and chief executives. Compliance with the requirements is monitored by the Securities Commission of Malaysia, BNM, the Companies Commissions and Bursa Malaysia for institutions under their respective purview.

To assist better implementation of the Financial Reporting Standards in Malaysia, the Malaysian Institute of Accountants (MIA) establishes the Financial Reporting Standards Implementation Committee (FRSIC). The FRSIC provides guidance on implementation issues. It is expected by the Council of the Malaysian Institute of Accountants that any of its members assuming the responsibilities as independent auditors to observe the Approved Standards on Auditing in the conduct of their audits under all the reporting frameworks as determined by the legislation, regulations, and the promulgations of the MIA. The penalty for non-compliance may result in the revocation of the license by the Ministry of Finance.

Rating agencies

Rating agencies generally do not comment on the quality of CG of companies but they do provide crucial and independent credit opinions that are relied upon by investors in making their investment decisions.

Commercial banks

Commercial and investment banks in their role as corporate advisers to PLCs in relation to corporate transactions (such as securities offerings and mergers & acquisitions) have a duty to undertake due diligence on their corporate clients and the corporate transactions being advised, and ensure that adequate and accurate disclosure are made to investors.

Securities analysts

In their analyses of companies' performance and prospects, securities analysts have increasingly commented on the corporate governance of the companies and their directors.

Law firms

As legal advisers and solicitors to PLCs, law firms play an important role in advising, preparing and reviewing submissions and filings to the authorities such as the SC, including prospectuses and offering documents that are issued in relation to securities offering and takeovers and mergers. They provide advice to PLCs in ensuring that the submissions and filings are in accordance with laws and regulations.

Corporate governance consultants

CG consultants assist companies in understanding and complying with new corporate governance requirements. They also provide advice on areas such as investor relations.

6. Recent Developments in Corporate Governance

6.1 Corporate Governance Developments

The MCCG introduced in 2000 essentially aims at setting out best practices on structures and processes that companies may use in their operations towards achieving the optimal governance framework. The revision to the MCCG which came into effect on 1 October 2007, strives to strengthen the roles and responsibilities of the board of directors and audit committee, ensuring that they discharge their duties effectively.

To ensure that the board is represented by the right candidates to serve the board, the Nominating Committee which is tasked to nominate the right candidate to the board is required to evaluate the candidates’:

- skills, knowledge, expertise and experience;
- professionalism; and
- integrity.

In case of independent non-executive directors, the Nominating Committee should also evaluate the candidates’ ability to discharge such responsibilities or functions as expected from independent non-executive directors.

Apart from the above, the Nominating Committee is also tasked to evaluate the effectiveness of the board as a whole, the committees of the board and the contribution of each individual director on a continuous basis.

While the provision on composition of the board remains the same as before whereby one-third of the board shall be represented by independent non-executive directors, the revised MCCG strives to strengthen the role of Audit Committee by requiring the Audit Committee to be fully comprised of non-executive directors only. In addition, the financial literacy of the Audit Committee is emphasised whereby all members of the Audit Committee should be able to read, analyse and interpret financial statements so that they will be able to effectively discharge their functions.

The Listing Requirements of Bursa Malaysia were amended to raise the CG standards amongst PLCs and enhance investor confidence. The key amendments are in the following aspects:

- Requiring all Audit Committee members to be non-executive directors;
- Mandating the internal audit function in PLCs and requiring the internal audit function of PLCs to report directly to the Audit Committee;
- Enhancing disclosure in the annual reports of PLCs to include information pertaining to the internal audit function;
- Expanding the functions of the Audit Committee to include the review of the adequacy of the competency of the internal audit function;
- Setting out the rights of Audit Committee to convene meetings with external auditors, internal auditors or both, excluding the attendance of other directors and employees of the PLC;
- Clarifying that Bursa Malaysia may impose such other requirements relating to the financial-related qualifications or experience that must be fulfilled by at least one Audit Committee member and the signatory to the statutory declaration in relation to the accounts; and
- Requiring PLCs to submit a copy of written representation or submission of external auditors’ resignation to Bursa Malaysia as provided under section 172A of the Companies Act 1965.

Amendments to the securities laws that were passed by Parliament late last year are expected to bring about critical enablers in the SC’s continuing efforts to improve the quality and governance standards of PLCs. The establishment of the Audit Oversight Board (AOB) under the auspices of the SC in April 2010 will provide independent oversight of auditors who audit public-interest entities (PLCs, banks, insurance companies and capital market intermediaries).

Now more than ever the accounting industry's role as gatekeeper in terms of auditing public companies is critical to promoting transparency of financial reporting.

The CMSA introduced new provisions which widened the enforcement powers of the SC. Under the CMSA, the SC, through civil actions, can obtain compensation of up to three times the pecuniary gain made or loss avoided for a range of offences including false trading, stock market manipulations and the use of manipulative and deceptive devices. Section 318 empowers the SC to remove from office any chief executive or director or bar such person from being a director if he is unfit to take part in the management of the listed company.

Furthermore, Section 320 of the CMSA imposes a mandatory duty upon auditors and specific employees of listed corporations to report breaches of securities law and the rules of the stock exchange to the authority. Some of these reports have led to enforcement action being taken against the perpetrators who are often the directors and senior management of the company.

Further amendments were made to the CMSA that came into force from April 2010. Under the two new sections of the CMSA, i.e. sections 317A and 320A, the SC is given the power to act against directors and officers of PLCs who cause wrongful loss to their company. The SC also can act against any person who misleads the public through falsification of the financial statements of PLCs. The new provisions provide even more scope and better enforcement tools for the SC to quickly step in and take action where action is needed.

The Companies Act (Amendments) 2007 (The Amendments) has accorded a statutory recognition on the function on the board of directors to manage the business and affairs of the company. Such statutory empowerment is in line with the recommendation of the High Level Finance Committee on Corporate Governance to clarify the functions and powers of the board of directors.

The Amendments also extend the definition of "director" to include the chief executive officer, the chief operating officer, the chief financial controller and any person who is primarily responsible for the operations or financial management of a company. As such, officers holding key management positions especially those who head the operations or financial management of a company are now subject to similar duties and responsibilities imposed on directors.

The Amendments accord better protection to shareholders especially minority shareholder whereby they are allowed to initiate derivative action against the company subject to the new provision under section 181A of the Companies Act 1965. The new provision provides for proceedings to be brought or intervened in on behalf of a company and the persons who are given locus standi to apply to Court to bring an action or intervene in any action on behalf of a company. The Amendments not only give recognition to the principles of common law on derivative actions, it enhances the remedies available to minority shareholders.

The Amendments also widen the requirement for disclosure of interests in contracts/property undertaken by the management of a company to ensure the level of transparency is not compromised. This is to avoid a situation of conflict of interest which may arise, for instance, when a company transacts with directors, major shareholders or connected persons. In this respect, the Amendments have clarified the provision relating to transactions by a director or a substantial shareholder. The new provision retains the prohibition of any arrangements or transactions involving a director or a substantial shareholder or persons connected with the director the substantial shareholder from acquiring or disposing shares or non-cash assets of the requisite value with the company. Such transaction or arrangement is void unless a prior approval has been obtained at a general meeting or by a resolution of the holding company at a

general meeting. This requirement is a departure from the previous practice where ratification at a general meeting was sufficient to regularise the transaction or arrangement.

In relation to corporate social responsibility (CSR), the Prime Minister of Malaysia had announced in his 2007 budget speech that PLCs are required to disclose their CSR activities. Such activities, which are in line with the economy's socio-economic objectives, include providing business opportunities to domestic entrepreneurs, ensuring ethnic diversity in employment; as well as developing human capital.

The Bursa Malaysia CSR Framework for PLCs was launched on 5 September 2006. The CSR Framework provides a guide to Malaysian companies to develop CSR strategies as well as communicate them effectively to stakeholders. The CSR Framework looks at four main focal areas for CSR practice, namely environment, workplace, community and the marketplace. The framework supports the new rules incorporated in Bursa Malaysia Listing Requirements that require reporting of CSR activities by PLCs in their annual reports.

As the regulator for the business and corporate community, CCM has:

- launched the Corporate Responsibility Agenda on 30 June 2009 which outlines the strategic framework of CCM's approach towards corporate responsibility (CR); and
- established collaboration with external parties such as university, United Nations Children's Fund, Malaysian National University and Malaysian Institute of Integrity (IIM) in relation to CR.

A recent development which may contribute to the strengthening of corporate governance in Malaysia is the Whistleblower Protection Bill 2010, which was passed by House of Representative on 20 April 2010 and The Senate on 6 May 2010. The Bill grants protection to a person who makes disclosure of a criminal offense or a disciplinary offense (whistleblower) in the following ways:

- protection of confidential information;
- immunity from being subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action; and
- protection against detrimental action, i.e., no person may take detrimental action against a whistleblower or any person related to or associated with the whistleblower, including actions affecting the whistleblower's employment or livelihood, in reprisal of a disclosure of improper conduct.

6.2 Enforcement of Corporate Governance Rules

The SC uses an array of tools to enforce the securities laws. Criminal charges for example, are preferred in cases involving serious breaches of the law, such as corporate fraud and financial misstatements. In 2009 alone, the SC brought criminal charges against four individuals (including an auditor) who submitted or were involved in submitting false financial information to the SC, and charged two other individuals for their role in defrauding a PLC. The SC also pursues actions using its civil powers particularly where there is a clear need to restitute investors who have suffered loss.

In 2009, for example, a landmark settlement in the amount of RM31 million was reached in the Swisscash investment scam and eligible investors are in the process of being restituted following the court's approval of the eligibility criteria. In addition, the SC has used its civil powers under the securities laws to appoint a receiver over the assets held by a fund manager. Apart from court based enforcement actions, the SC also pursues administrative actions to

achieve swift and effective resolutions. In 2009, for example, the SC meted out 56 administrative sanctions which included the imposition of administrative fines amounting to RM770,000. Administrative actions taken involved PLCs, their substantial shareholders, market intermediaries and professionals.

Bursa Malaysia has also been actively enforcing its Listing Requirements. In the last six months, for example, Bursa Malaysia has publicly reprimanded three PLCs as well as imposed public reprimand and fines on their directors for failure to comply with the listing rules in relation to financial reporting, disclosure and corporate transactions. CCM has prosecuted a significant number of criminal cases under Companies Act 1965 ranging from non-compliances to serious corporate governance offences. Meanwhile, in averting/reducing the risks to financial stability, BNM also has the power to direct financial institutions to take specific measures to improve corporate governance within the institution, including measures to strengthen the independence of the board from management and the control functions within the organisation (also see 2.2).

6.3 Current issues and Challenges for Corporate Governance

6.3.1 Challenges

Minority shareholders are cautious of taking action against the board of directors due to potential implications of legal costs and time required to initiate the legal action. Despite statutory amendments to section 181A-E in the Companies Act 1965, minority shareholders are still wary of invoking their rights, unless they have sufficient resources.

The role and impartiality of independent directors who are supposed to maintain good governance are being questioned. Independent directors seem to remain in office for too long and may be more inclined to support the decisions made by the board of directors without fully discharging their “oversight” responsibilities.

Regulators need to keep abreast of recent changes in corporate practice in order to be “market-friendly”. It is important for regulators to encourage risk taking within the boundaries of the law. Simply put, the regulators need to be more “street smart”.

The issue of form over substance hinders effective board functions. Mere compliance with rules and regulations is a first step but PLCs need to go deeper into embracing the spirit of such rules and regulations, enabling smooth and valuable implementation of processes and functions.

Creating and developing a talent pool of professional directors is another area that needs attention. Diversity of skills among directors provides companies with a varied mix of skill sets to deal effectively with increasingly complex business situations. But many companies in Malaysia rely on directors from a small if not limited talent pool. As more local companies globalise, they will meet different and challenging business environments and standards of conduct. Candidates for board appointment must therefore be suitably skilled, competent, and have the ability to offer fresh perspectives to the board, while ensuring appropriate challenge and enquiry.

A director’s mindset can also sometimes be an impediment. Some directors fail to see the importance of continuous training and to sacrifice a substantial amount of time going through the training. The lackadaisical attitude towards continuous training stems from their ranking experience higher than further education.

Notwithstanding the proactive role played by the Minority Shareholders' Watchdog Group, there is ongoing discussion and debate as to how shareholders activism can be further enhanced. Discussions on this topic include the desire to promote greater institutional shareholder activism as such shareholders have the means to be responsible company owners.

Challenges faced by Bursa Malaysia in its efforts to promote understanding of and compliance with better standards and practices of CG include the following:

- In some of its engagements with institutional investors to promote awareness of how the exercise of shareholders' rights can influence company behavior, some were not too receptive to its proposals. This was due to the following reasons:
 - The organisations are restricted by their current policies in engaging with their investee companies; and
 - Top management are not very receptive.
- In its efforts to place greater emphasis on directors' education to improve professionalism and quality of boardroom, Bursa Malaysia has embarked on various educational and awareness activities such as trainings, dialogues, conferences and direct engagements. The educational efforts are voluntary in nature and as such, Bursa Malaysia faces challenges in getting directors to attend.

6.3.2 Priorities for Reform

The legal and regulatory framework for CG is already in place in Malaysia and it is in line with most international best practices. Notwithstanding this solid foundation, it is a priority for the SC to continuously enhance the CG framework. In addition to strengthening the legal and regulatory framework to ensure enforcement of regulatory discipline, other pillars of CG are also import. The pursuit of high growth must be accompanied by robust governance arrangements, greater shareholder activism, collective market discipline and most importantly greater self-discipline on the part of the PLCs and market intermediaries.

In its efforts to enhance the CG standards/practices in Malaysia, Bursa Malaysia focuses on:

- Strengthening the provisions CG in the Listing Requirements (LR);
- Engaging with companies to adhere to good CG practices;
- Enforcing the LR for any breach of CG requirements; and
- Creating and enhancing awareness by shareholders of their rights and assertion of those rights.

Through a "balanced enforcement approach", CCM is actively encouraging continuous learning opportunities for directors and other officers of the company. CCM offers courses and seminars through the Training Academy (COMTRAC), which include courses on corporate governance, anti-money laundering, company secretarial practice and insolvency. Action is also taken to reform the law and presently, CCM is drafting a new Companies Act.

6.3.3. Financial Crisis

Following the Asian financial crisis in 1997, strengthening corporate governance has already been a central focus of capacity building measures aimed at providing a strong foundation for a stable and more resilient financial system. A strong corporate governance framework, supported by sound governance practices, was also identified as an imperative for the transition from a prescriptive, rule-based regulatory regime to a more principle-based regime with greater reliance placed on the internal oversight functions within financial institutions to manage and

control risks. The resulting standards on corporate governance adopted by financial institutions in Malaysia are built on the following key tenets:

- Clear separation of management and oversight functions;
- Adequately competent and committed boards;
- Presence of a strong independent element on the board;
- A clear, explicit and dedicated focus on the oversight responsibilities of the board for risk, internal controls, remuneration, and directors and management performance and succession;
- Rigorous fit and proper assessments for key functionaries;
- Incentive structures that are aligned with long-term performance and the interests of Depositors and policyholders, in addition to shareholders;
- Explicit responsibilities of the board for related party transactions; and
- Sufficient reporting and disclosures on corporate governance practices.

While financial institutions in Malaysia have made significant advances in the area of corporate governance, governance practices will need to continue to evolve to take into account the changing environment. In the immediate to medium-term, pertinent developments include the greater use of and reliance on sophisticated risk management tools to identify, measure and manage risks with the implementation of the Internal Ratings-Based Approach under Basel II and the Risk-Based Capital Framework for Insurers. In addition, higher volatility and potential contagion exists as more financial institutions expand across borders and financial markets become more integrated while uncertainties remain in the pace and strength of global recovery.

Other developments include the changing regulatory landscape which envisages more stringent capital requirements, more discretionary accounting practices and more explicit expectations of financial institutions to manage capital resources using through-the-cycle approaches. The development of Islamic finance will gain further momentum leading to an increasing array of new Islamic products and instruments, thus posing unique Shariah challenges. Intense competition in certain market segments has also restored the appetite for financial innovation, while competition for talent will similarly intensify.

Challenges faced in the financial sector as a result of these developments include the following:

- Designing processes and structures for effective oversight at the group level and on a cross-border basis;
- Applying appropriate controls over the use of models and the exercise of management discretion and judgment;
- The effective integration of risk management and internal control functions how these should interact to support the ongoing oversight of risk;
- Continuing and sustained oversight of how incentive structures within the institution are responding to risk, competition and innovation;
- Approaches for more effective engagements with stakeholders as part of efforts to manage expectations and preserve confidence particularly in times of stress;
- Effective design of programmes for board members to be continuously kept abreast of the latest developments in the financial industry; and

- In Islamic finance, the need to account for the unique features of Shariah principles in risk management and governance.

In preparing for the challenges faced in dealing with crisis in the financial sector, particularly governance issues in the supervisory framework, the new Central Bank of Malaysia Act 2009 has put in place a mechanism for facilitating inter-agency collaboration where financial stability powers need to be invoked that are beyond the regulatory reach of the Bank. The decision to exercise such powers is taken by the Financial Stability Executive Committee (FSEC) which is made up of Bank Negara Malaysia, Ministry of Finance and other relevant supervisory authorities to enhance the efficacy of decision making.

Key Corporate Governance Rules and Practices in Malaysia

Element	Yes	No	Source(s) of Rule	Comments
RIGHTS OF SHAREHOLDERS				
Do shareholders add items to the agenda for shareholders' meetings?	X		CL	Section 151 of the CA allows a certain proportion of shareholders to require the company to circulate their proposed resolutions or statements to be considered at the company's AGM. It states that it is the duty of company, on the requisition in writing of a member or members representing not less than 5% of the total voting rights or 100 shareholders holding shares on which there is an average paid-up capital per member of not less than RM500 at the expense of the requisitionists: (i) to give to members of the company entitled to receive notice of the next annual general meeting, notice of any proposed resolution which may properly be moved and is intended to be moved at the meeting; and (ii) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at the meeting. Section 151(4)(a) of the CA stipulates that a company is not required to give notice of any resolution or to circulate any statements unless a copy of the requisition signed by the requisitionist is deposited not less than six weeks prior to the meeting in the case of a requisition and in the case of any the requisition, it should be deposited not less than one week before the meeting.
Do shareholders ask questions of directors at shareholders' meetings and do they receive answers?	X		GP	Shareholders are becoming more proactive in asking questions of directors at shareholders' meetings and they do receive some answers. The Minority Shareholders Watchdog Group plays a proactive role during company AGMs/EGMs.
Must company transactions with its insiders be on a Non-preferential basis	X		CL, SLR	Section 132E of the Companies Act 1965 prohibits a company from entering into a transaction with a related party unless prior approval is obtained from the shareholders at a general meeting. Section 132E(93) states that only disinterested shareholders can participate in the discussion and vote on the resolution. Where any one of the percentage ratios of a related party transaction is 5% or more, the listed issuer must appoint an independent adviser who must comment as to: • whether the transaction is fair and reasonable so far as the shareholders are concerned; and • whether the transaction is to the detriment of minority shareholders; • and such opinion must set out the reasons for, the key assumptions made and the factors taken into consideration in

Element	Yes	No	Source(s) of Rule	Comments
				forming that opinion; • advise minority shareholders on whether they should vote in favour of the transaction; and • take all reasonable steps to satisfy itself that it has a reasonable basis to make such comments and advice.
Is a super majority vote required for major company acts affecting shareholder rights?	X		CL	Section 65 of the Companies Act 1965 states that the rights of different classes of shares may be varied in accordance to the provisions of the articles or memorandum authorizing such variation. In addition, holders of 10% of the issued shares of a particular class may apply to Court to cancel any variation of rights and the variation shall not have effect until confirmed by the Court
COMPOSITION AND ROLE OF BOARD OF DIRECTORS				
Must boards have independent directors?	X		SLR	A listed issuer must ensure that at least two directors or one-third of the board of directors of a listed issuer, whichever is the higher, are independent directors. If the number of directors of the listed issuer is not three or a multiple of three, then the number nearest one-third must be used.
Do independent directors oversee (i) internal and external audit and (ii) executive compensation?	X		SLR MCG	The audit committee oversees the internal and external audit and both the listing requirements and Code requires the audit committee to consist of non-executive directors, a majority independent. The remuneration committee consisting wholly or mainly of non-executive directors oversees the executive compensation.
Does an independent director decide what information the board receives from management?	X		MCG	The chairman of the board should undertake primary responsibility for organising information necessary for the board to deal with the agenda and for providing this information to directors on a timely basis. The chairman is in most cases independent.
Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	X		MCG	There should be a clearly accepted division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.
Are all board members elected annually?		X	CL	Article 63 of Table A of the Companies Act 1965 states that at the first general meeting, all directors shall retire from office and at the AGM in every subsequent year, 1/3 rd of the directors shall retire from office. A retiring director shall be eligible for re-election.
Does the board oversee enforcement of a company code of conduct?	X		SLR	In Malaysia, most public listed companies will comply with the Code on Corporate Governance as the Code is also supported by a mandatory reporting of compliance requirement. Hence, companies in Malaysia do not normally develop their own internal code of conduct for directors.
TRANSPARENCY AND DISCLOSURE OF INFORMATION				
Do financial statements comply with IFRS?	X		CL	Section 166A of the Companies Act 1965 requires financial statements to be prepared in accordance with the approved accounting standards. The setting of accounting standards is under the purview of the Malaysian Accounting Standards Board.
Are the identities of the five largest shareholders disclosed?	X		CL/SR	The Companies Act 1965 requires information pertaining to shareholders be lodged with the Registrar through the company's annual return. For listed companies, the annual report will disclose the list of substantial shareholders as well as the names of the 30 securities account holders having the largest number of securities from each class of equity securities and convertible securities according to the Record

Element	Yes	No	Source(s) of Rule	Comments
				of Depositors. To disclose in the annual report: The names of the 30 securities account holders having the largest number of securities from each class of equity securities and convertible securities according to the Record of Depositors (without aggregating the securities from different securities accounts belonging to the same person) and the number and percentage of equity securities and convertible securities of each class held. In the case of securities account holders which are authorised nominees as defined under the Securities Industry (Central Depositories) Act 1991, information in the account qualifier field of the securities account must also be stated.
Is the compensation of company executive officers disclosed?	X		SLR	To disclose in the annual report: The remuneration of directors of the listed issuer for the financial year and in the following manner: (a) the aggregate remuneration of directors with categorisation into appropriate components (e.g. directors' fees, salaries, percentages, bonuses, commission, compensation for loss of office, benefits in kind based on an estimated money value) distinguishing between executive and non-executive directors; and (b) the number of directors whose remuneration falls in each successive band of RM50,000 distinguishing between executive and non-executive directors.
Are extraordinary corporate events disclosed?			LR	The following are some examples of events which may require immediate disclosure by the listed issuer under paragraph 9.04 of the Listing Requirements: a) the entry into a joint venture agreement or merger; b) the acquisition or loss of a contract, franchise or distributorship rights; c) the introduction of a new product or discovery; d) a change in management; e) the borrowing of funds; f) the commencement of or the involvement in litigation and any material development arising from such litigation; g) the commencement of arbitration proceedings or proceedings involving alternative dispute resolution methods and any material development arising from such proceedings; h) the purchase or sale of an asset; i) a change in capital investment plans; j) the occurrence of a labor dispute or disputes with sub-contractors or suppliers; k) the making of a tender offer for another corporation's securities; l) the occurrence of an event of default on interest, principal payments or both in respect of loans; [Cross reference: Practice Note 1] m) a change in general business direction; n) a change of intellectual property rights; o) the entry into a memorandum of understanding; or p) the entry into any call or put option or financial futures contract.
Are risk factors disclosed in securities offering materials?	X		SL	Under SC's Prospectus Guidelines, risk factors which prospective investors should consider need to be disclosed.
Are transactions of a company with its insiders disclosed?	X		SLR/ CL	Related party transactions (1) Where any one of the percentage ratios of a related party transaction is 0.25% or more, a listed issuer must announce the related party transaction to the Exchange

Element	Yes	No	Source(s) of Rule	Comments
				as soon as possible after terms of the transaction have been agreed, unless: (a) the value of the consideration of the transaction is less than RM250,000; or (b) it is a Recurrent Related Party Transaction. The listed issuer must include the information set out in Appendices 10A and 10C in the announcement. (2) Subject to subparagraphs (9) and (10) below, where any one of the percentage ratios of a related party transaction is 5% or more, in addition to subparagraph (1), a listed issuer must: (a) send a circular which includes the information set out in Appendix 10B and Appendix 10D to the shareholders. The draft circular must be submitted to the Exchange together with a checklist showing compliance with Appendices 10B and 10D; (b) obtain its shareholder approval of the transaction in general meeting; and (c) appoint an independent adviser who is a corporate finance adviser within the meaning of the SC's Principal Adviser Guidelines, before the terms of the transaction are agreed upon. (3) The independent adviser must, in relation to the transaction: (a) comment as to: (i) whether the transaction is fair and reasonable so far as the shareholders are concerned; and (ii) whether the transaction is to the detriment of minority shareholders, and such opinion must set out the reasons for, the key assumptions made and the factors taken into consideration in forming that opinion; (b) advise minority shareholders on whether they should vote in favour of the transaction; and (c) take all reasonable steps to satisfy itself that it has a reasonable basis to make the comments and advice in subparagraphs (a) and (b) above. (a) Subject to subparagraph (9) below, for a related party transaction where any one of the percentage ratios is 25% or more, in addition to subparagraph (2) above, the listed issuer must, before the terms of the transaction are agreed upon, appoint a main adviser, who is a Principal Adviser. The Principal Adviser must ensure that such transaction: (i) is carried out on fair and reasonable terms and conditions, and not to the detriment of minority shareholders of the listed issuer; and (ii) complies with the relevant laws, regulations or guidelines where applicable, ensure full disclosure of all information required to be disclosed in the announcement and circular; and (iii) confirm to the Exchange after the transaction has been completed and all the necessary approvals have been obtained, that it has discharged its responsibility with due care in regard to the transaction.

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory