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ENHANCING BOARD QUALITY, INDEPENDENCE

FIT AND PROPER ATTRIBUTES

ON Jan 19, Bursa Malaysia announced some enhancements in the Main and ACE Market Listing Requirements aimed at further strengthening board independence, quality and diversity.

Tenure and diversity

To promote board quality and strengthen board independence, the enhanced Listing Requirements limit the tenure of an independent director to not more than a cumulative tenure of 12 years in a public-listed company (PLC) and its group of companies.

All long-serving independent directors must resign as independent directors by June 1, 2023. If they wish to continue to serve on the board, they must be redesignated as non-independent directors.

Another key requirement is for PLCs with a market capitalisation of RM2 billion as at Dec 31, 2021 to appoint at least one woman director by Sept 1, 2022.

The remaining PLCs will be required to make such appointments by June 1, 2023. The requirement for at least one woman director was announced by the finance minister in the 2022 Budget.

Fit and proper criteria

A third change was the requirement to have in place the fit and proper criteria that addresses

board quality and integrity for the appointment and re-election of directors across the PLC group, which must be published on the PLCs' websites, starting from July 1, 2021.

PLCs are also required to disclose the application of their fit and proper policy in the nomination and election of their directors in their annual reports. Bursa has stated that this is to improve the overall quality of directors and promote greater transparency on the criteria for board appointments.

A subjective requirement

The requirements curtailing long tenure and appointing at least one woman director are objective in nature as they are measurable; it is easy to see if these requirements are met or not.

This makes regulatory oversight that much easier due to their objective nature.

The third requirement, the fit and proper criteria, requires a whole host of subjective evaluations and assessments and this makes the task challenging, both to the boards and the regulators.

The fit and proper criteria is normally imposed by regulators like the Securities Commission (SC) and Bank Negara Malaysia. What Bursa has done is to impose it as a self-discipline requirement on the boards of PLCs.

For Bursa to make such a move, it must have felt that there is a concern on the fitness and

properness of directors of PLCs.

SC's fit and proper test

Through its authority to issue licences, the SC regulates the market by ascertaining the fitness and propriety of companies and individuals applying for licences. In considering whether an applicant is fit and proper to hold a licence, the SC takes into account the following factors:

1. Probity;
2. Ability to perform the licensed functions efficiently, honestly and fairly;
3. Financial status; and,
4. Reputation, character, financial integrity and reliability.

Bank Negara's fit and proper test

Bank Negara states that any person to be appointed as a key responsible person must be assessed to have met all the fit and proper criteria relating to probity, personal integrity and reputation, competency and capability, and financial integrity.

International Organisation of Securities Commissions' (IOSCO) fit and proper test

The IOSCO states that the financial regulator exercises judgment and discretion in assessing fitness and propriety and takes into account all relevant matters including competence and capability; honesty, integrity, fairness, ethical behaviour; and, financial soundness.

Probity

It is uncanny that probity is spelt out as the first attribute by both the SC and Bank Negara.

Interestingly, probity has been defined as the quality of having strong moral principles, honesty and decency. It seems that plain downright decency matters.

Merriam-Webster defines it as adherence to the highest principles and ideals — uprightness. Collins states that probity is a high standard of correct moral behaviour. The Cambridge English dictionary is especially succinct in defining it as complete honesty. These definitions point to a person who is moral, honest, decent and upright.

And that is only when it comes to probity. There is a whole host of other attributes that boards need to look for when trying to decide if a person meets the fit and proper criteria.

Phrasing your own fit and proper criteria like what Bursa has done is to flesh out as a rule what was always a given — that directors must be fit and proper.

By drawing attention to the fit and proper requirement in this way, it is hoped that the boards are in a position to proactively consider the fit and proper attributes as opposed to merely assuming such attributes.

The writer is chief executive officer of the Minority Shareholders Watch Group

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