



The Observer

06.08.2021

The Minority Shareholders Watch Group is now on Twitter. The presence at Twitter is the first step for us to create strong social media presence and engage with our stakeholders more effectively. Do follow MSWG's Twitter account at @MSWGMalaysia and share your thought on our tweets from time to time.

❖ Proposed Amendments to the Main Market and Ace Market Listing Requirements in relation to Director Appointment and Independence

Bursa Malaysia has issued a consultation paper on 21 July 2021 to solicit views on the proposed amendments to the Main Market and ACE Market Listing Requirements in relation to director appointments and their independence.

The SC, when releasing the Malaysian Code on Corporate Governance on 28 April 2021, had stated that a 12-year tenure limit for independent directors, without further extension, will be introduced in the Listing Requirements. Thus the 12-year tenure forms the backdrop for some of the questions in the consultation paper.

The consultation paper asks six pertinent questions. Respondents may either 'Agree', 'Disagree' or have 'No Comment' to these questions. The consultation paper also requests for further reasons and/or suggestions to support the answers given.

We reproduce the six questions (duly paraphrased) along with our comments for each question.

1. Do you agree that the computation of 12 years should take into account the service as an independent director (ID) in the related corporations of an applicant/listed issuer?

MSWG's comment:

Under the Listing Requirements, a related corporation means a corporation which is –
a) the holding company of another corporation;
b) a subsidiary of another corporation; or
c) a subsidiary of the holding company of another corporation.

Our comment on this question revolves substantially on the question of substance over form.

A simple example may shower light on the type of scenario that the regulator is envisaging. Let's say a director is an ID (independent director) for a listed subsidiary

company for 12 years. Let us then say that after this tenure of 12 years, he is appointed to be the ID of the holding company for another 12 years. In both appointments, the ID has material influence at the subsidiary - first as an ID of the listed subsidiary and then as an ID of the holding company of the subsidiary.

Thus, in substance, he would have served 24 years as an ID who can substantially influence the affairs of the subsidiary.

2. Do you agree that a cooling-off period of 3 years is appropriate for a long-serving ID before such person can be re-appointed as an ID? If not, what is your recommended cooling-off period?

MSWG's comment: Under the Listing Requirements, an ID must not have been, within the last 3 years, an officer (which includes EDs and employees) of the said corporation.

Furthermore, pursuant to the Malaysian Code on Corporate Governance 2021, an audit committee should have a policy that requires a former partner of the external audit firm to observe a cooling-off period of at least 3 years before being appointed as a member of the audit committee.

Thus, the 3 years cooling-off period is accepted as the norm where there may be conflicts of interest due to independence.

3. Do you agree that a grace period of 12 months is sufficient for a listed issuer to comply with the proposed enhancements by the Exchange to the definition of "independent director" under the Listing Requirements by specifying that an ID is one who has not served as an ID of an applicant/listed issuer or its related corporations for a cumulative period of more than 12 years from the date of his first appointment as an independent director?

MSWG's comment: The question hinges on whether 12 months is adequate for listed issuer to search for replacement IDs to comply with the new amendment.

There are many avenues to search for good directors. These include directors' registers, head-hunters, advertisements and word-of-mouth. Generally, where there is a will, there is a way.

4. Do you agree with the proposal which requires a listed issuer to do the following:

- a) put in place a fit and proper policy for the appointment and re-appointment of directors of the listed issuer and its subsidiaries;
- b) ensure the policy addresses board quality and integrity;
- c) make available the policy on its website; and
- d) disclose the application of the fit and proper policy in the Nominating Committee Statement?

MSWG's comment:

The proposal is primarily on the need for listed issuer to do three things;

- have a fit and proper policy
- disclose the policy on the website

- disclose application of fit and proper policy, under the activities of the nominating committee in the Annual Report

All three things can be easily done by listed issuers. Such policy and disclosures will enhance the process and awareness of the importance of directors' appointment and re-appointment, given the pivotal role that directors play in CG and performance of listed issuers.

5. Do you agree that a listed issuer should be given the flexibility to formulate the fit and proper policy, guided by the Proposed Aspects which will be set out in the Corporate Governance Guide ("CG Guide")?

The "Proposed Aspects" refers to among others:

- a) Character and integrity
 - Probity
 - Personal integrity
 - Financial integrity
 - Reputation
- b) Experience and competence
 - Qualifications, training and skills
 - Relevant experience and expertise
 - Relevant past performance or track record
- c) Time and commitment
 - Ability to discharge role having regard to other commitments
 - Participation and contribution in the board or track record

MSWG's comment: The Proposed Aspects should be set as the minimum criteria used for conducting assessments of appointment or re-appointment of directors. Hence, listed issuers should adopt the Proposed Aspects as minimum assessment factors to formulate their fit and proper policy. This will also ensure consistency in the fit and proper policy as they would be a minimum standard of the policy to be adopted by all listed issuers.

Given that there is no one size fits all policy, listed issuers may also include additional criteria for assessment which they may deem relevant to assess current and potential directors.

6. Do you agree with the proposed aspects of fit and properness of directors which will be set out in the CG Guide? Do you have any other recommended aspects for fit and properness of directors?

MSWG's comment: The Proposed Aspects will have better traction if they are set out in the Listing Requirements rather than in the CG Guide.

Conclusion

The consultation paper deals with many contemporary issues and it is good that Bursa Malaysia is engaging with its stakeholders to solicit their comments.

The SC's statement that a 12-year tenure limit for independent directors, without further extension, will be introduced in the Listing Requirements will avoid the awkward instances of unduly long-serving independent directors.

Devanesan Evanson
Chief Executive Officer

MSWG AGM/EGM Weekly Watch 9 – 13 August 2021

For this week, the following are the AGMs/EGMs of companies which are in the Minority Shareholders Watch Group's (MSWG) watch list.

The summary of points of interest is highlighted here, while the details of the questions to the companies can be obtained via MSWG's website at www.mswg.org.my.

Date & Time	Company	Quick-take
11.08.21 (Wed) 10.00 am	Asdion Bhd (EGM)	<p>Asdion seeks shareholders' approval for the proposed settlement of debts amounted to RM3.89 million owing to creditors, which will be fully satisfied via the issuance of approximately 59.88 million ICPS at 6.5 sen each. It also proposes to amend the Constitution to facilitate issuance of the ICPS.</p> <p>It is also re-seeking shareholders' approval for the proposed placement of not more than 20% of Asdion's total number of issued shares. As the placement approved by shareholders under the General Mandate, renewed at Asdion's 18th AGM on 10 March 2021 was not able to be undertaken due to the on-going take-over offer and the requirement requires Asdion to obtain shareholders' approval if it intends to undertake the Proposed Placement during the offer period.</p>

One of the points of interest to be raised:

Company	Points/Issues to Be Raised
Asdion Bhd (EGM)	The Proposed Debt Settlement will facilitate the emergence of Million Saint Credit Sdn Bhd ("Million Saint") as the new substantial shareholder of Asdion (up to 18.10% equity interest under the maximum scenario) (Section 10.3, page 22 of the Circular dated 16 July 2021 ("Circular")). What are Million Saint's plans for the Company, going forward?

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DISCLOSURE OF INTERESTS

•With regard to the companies mentioned, MSWG holds a minimum number of shares in all these companies covered in this newsletter.

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