

GOVERNANCE

MALAYSIAN CODE ON CORPORATE GOVERNANCE

On April 28, 2021, the Securities Commission of Malaysia (“SC”) updated the Malaysian Code on Corporate Governance (“MCCG”) to further strengthen the corporate governance culture of Malaysia’s listed corporations (PLC). The updated MCCG “focuses on the role of the board and senior management in addressing sustainability risks and opportunities”, among others.

The MCCG was first introduced in 2000 and has since been reviewed and revised in 2007, 2012, 2017, and 2021. It sets out as globally recognised corporate governance practices beyond the minimum required by stature, or those prescribed by Bursa Malaysia. The MCCG applies to PLCs in Malaysia on an “apply or explain an alternative to achieve the intended outcome” basis (rather than a more common comply or explain” basis, in which corporations can either comply with the requirement or explain any departure).

This means that, if the board of a PLC determines that it is unable to implement the Practices prescribed in the updated MCCG, it should explain the reasons why and disclose the suitable alternative practice adopted to meet the intended outcome as stipulated in the MCCG.

The 2021 Update

The updated MCCG 2021 comprises 12 new Practices, 8 updated Practices and 8 updated Guidance, making a total of 48 Practices, including 5 Step-Ups. The key rationale for the updates is to:

- ✚ Strengthen board oversight and the integration of sustainability considerations in the strategy and operations of companies;
- ✚ Improve board policies and processes, including those related to director selection and diversity, nomination and appointment; and

- ✚ Encourage the adoption of best practices, particularly those found to have relatively lower levels of adoption, as highlighted in the SC’s Corporate Governance Monitor report.

Sustainability and Corporate Governance

At a high level, the 2021 update to the MCCG clarifies the link between sustainability and corporate governance as well.

New practices related to Sustainability/ESG:

1. **Board’s and senior management’s responsibility on sustainability governance by setting strategies, priorities and targets [New Practice]**
The board and the senior management have their responsibilities in setting their strategies, priorities and targets towards ESG as well.
2. **Communication of sustainability strategies, targets, etc. to stakeholders [New Practice]**
The board and the senior management are required to communicate to the internal and external stakeholders of the sustainability targets.
3. **Directors to stay abreast with and understand sustainability issues relevant to company and its business, including climate-related risks and opportunities [New Practice]**
The board to be effective and stay contemporary on sustainability issues that are relevant for their company that they are stewarding, particularly on risks and opportunities related to the climate.
4. **Performance evaluations of Board and senior management include review of their performances in addressing material sustainability risks and opportunities [New Practice]**

The performance evaluations of the board and senior management include not only the financial performance but also performance towards ESG targets as well.

5. Designated Management person to manage sustainability and integration of sustainability considerations in company's operations [Step-Up Practice]

Regardless of whether it is a large or a small, listed issuer the company is considered to have adopted this Step-Up practice if there is a designated person who is of management level is monitoring the targets and monitoring the performance of sustainability and integration of sustainability considerations in the company's operations.

6. Women's Participations in Decision-Making Positions [New Practice]

Board of listed companies comprise at least 30% women Directors and the companies' policy on gender diversity now extends to the senior management. In order to accelerate the progress of women's board participations, the MCCG 2021 recommends 30% women Directors across all boards.

New practices related to Board, Governance and General Meetings

7. No Chairman on Board Committees [New Practice]

Board chairman should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee. The rationale for this is obvious as it limits the influence of the chairman in the deliberation at the board committee levels which provides better checks and balances and ensures objective review.

8. Nomination Committee ensures Board composition is refreshed periodically, including review of tenure, and re-election of Director is based on performance and contribution [New Practice]

The rationale of this is to review the tenure of Director of beyond 9 years. The Independent Director may be deemed too friendly to the executive management and may lose their objectivity. This also means the positions of Independent Directors and the CEO are not permanent basis but is based on merit assessment, particularly towards the environment, social and governance targets.

9. Enable shareholders to make informed decision on appointment, and re-appointment of Directors based on statement of support by Board (with reasons), including any conflict of interest by Director [New Practice]

The owners are on the board, with their rationale for the appointment and re-appointment of Directors.

10. Chairman to ensure General Meeting supports meaningful engagement between Board, senior management, and shareholders on financial and non-financial performance and long-term strategies, including opportunities for Q & A [New Practice]

The rationale of this is to enable shareholders to ask questions on the spot and have their questions responded.

11. Conduct of virtual General Meeting (fully virtual or hybrid) supports meaningful engagement between Board, senior management, and shareholders, with infrastructure and tools for smooth broadcast and interactive participation by shareholders [New Practice]

The requirement to leverage on technology for voting and remote participation is now applicable to all listed companies instead of companies with large members/having meetings in remote areas. The smooth broadcast and interactive participation by shareholders can be achieved when the infrastructure and tools are safe and secured in addressing key issues and glitches faced during meetings.

12. Minutes of General Meeting should be circulated to shareholders no later than 30 business days after the meeting [New Practice]

The rationale is for the Company Secretary to have the minutes completed, accurate before it is approved and uploaded on the website within 30 days after the meeting.

Key Implications of the New Practices:

- ✚ Provides a robust platform for shareholders engagement as if it is a physical meeting for participants to speak.
- ✚ Written questions can too be posed via query box.
- ✚ Depends on stability of participants' internet connection.
- ✚ Difficult to validate identity of participants who ask questions or even those who attend the virtual meeting.

Updates were made to 8 existing Practices and 8 existing Guidance to provide better clarity on how to adopt the Practices more effectively.

The Updated Practices are as follows:

1. Independent Directors [Updated Practice]

Two-tier voting is now required to appoint independent Directors beyond 9 years tenure. First introduced in 2017, the two-tier voting process provided shareholders and boards with a forum to critically review the decision to retain independent board members beyond their 12-year tenure and

also allowed minority shareholders to have a say on such decision at the second-tier voting stage.

MCCG 2021 also recommends a step-up practice requiring the board of listed companies to have a policy limiting the tenure of their independent Directors to just 9 years without any further extension.

2. Appointment of Director and senior management based on merit, skills, experience, age, cultural background, diversity [Updated Practice]

Director are expected to devote time serving on the board, i.e., board to consider existing position of Director, including his/her commitment to non-listed companies. Appointment of Director that may cast doubt on the integrity and governance of the company should be avoided.

3. If selection of Director was based on recommendations made by the existing Directors, management or major shareholders, Nominating Committee should explain why these source(s) suffice and other external sources were not used [Updated Practice]

The owners are on the Nomination Committee. The Nomination Committee must now disclose on the Corporate Governance Report the basis of Director's selection especially when there is a new appointment during the year.

4. Board discloses in Annual Report the company's policy on gender diversity for board and senior management [Updated Practice]

The listed companies are required to disclose the senior management's policy on gender diversity in addition to the disclosure on the board's gender diversity policy in their Annual Reports.

5. Board to disclose how assessment was carried out, its outcome, actions taken and how it has or will influence board composition [Updated Practice]

For Large Companies, board engages independent experts (i.e., with no connection with the company,

Directors or major shareholders) to conduct board evaluations at least every 3 years. Appropriate measures and numerical targets need to be supported, in improving diversity. The board evaluations should include forward-looking considerations, such as mapping current board's competencies against those required to drive the company's future strategies. Vague disclosures on the evaluation methodology and outcomes should be avoided.

6. Remuneration policies and practices should appropriately reflect different roles and responsibilities of Non-executive Directors, Executive Directors and senior management [Updated Practice]

The rationale of the changes in remuneration policies and practices are due to the inclusion of the monitoring of ESG as part of the criteria for the differing roles and responsibilities of the abovementioned positions.

7. Cooling off period of at least 3 years before being appointed as a member of an Audit Committee [Updated Practice]

The MCG 2017 required a former key audit partner to observe a cooling-off period of at least 2 years before being appointed as a member of the Audit Committee.

However, MCG 2021 recommends for a former partner of an external audit firm of a PLC to observe a cooling-off period of at least 3 years before being appointed as a member of the Audit Committee.

Former partner applies to all former partners of audit firm and/or affiliate firm, including partners in advisory services, tax consulting, etc.

8. General Meetings [Updated Practice]

The requirement to leverage on technology for voting and remote participation is now applicable to all listed companies instead of companies with large members/having meetings in remote areas in MCG 2017.

MCG 2021 introduces further practices in relating to general meetings such as conduct of meetings, good cyber practices, rights of shareholders and responsibilities of the company, chairman and board.

The 8 Updated Guidance are as follows:

1. For Board to discharge its responsibilities, all Directors should understand financial statements and form a view on information presented [Updated Guidance]

This refers to all Directors of the board regardless of their background expertise to understand financial statements.

2. Where Executive Directors are on the Board, Non-executive Directors are encouraged to meet annually to discuss strategic, governance and operational issues [Updated Guidance]

Need for a named Chairman of Board to ensure accountability on execution of Chairman's role and roles of board.

3. Chairman to set Board meeting agenda and ensure adequate time is allocated for discussion of issues tabled for deliberation [Updated Guidance]

Directors to ensure dissenting views are adequately recorded in the minutes of meeting. Board committee meetings should not be combined with board meeting.

- 4. Directors who are shareholders and controlling shareholders with nominee or connected Director on Board should abstain from voting on resolution to approve Directors' fees at General Meeting [Updated Guidance]**

Resolutions on the approval of the fees of each non-executive director should be separately tabled instead of bundling them all into one single resolution.

The rationale is to allow the minority shareholders to have a better say on the director's fees, as they can decide on whether the fees tabled are appropriate and thereafter, to approve or reject such fees.

- 5. Nomination Committee leads succession planning, appointment of Directors and oversees development of diverse pipeline for Board and management succession, including future Chairman, Executive Directors and the CEO [Updated Guidance]**

The roles of Nomination Committee have expanded and has now included management succession and Executive Directors.

- 6. Assessment of external auditor to consider information in Annual Transparency Report (ATR) of audit firm [Updated Guidance]**

If the firm is not required to issue ATR, the Audit Committee to engage firm on matters such as firm's governance and leadership structure and measures to uphold audit quality and manage risks.

The Audit Committee to approve non-audit services before they are rendered by the external auditor and/or its affiliates, considering nature and extent of non-audit services and appropriateness of the level of fees so that their independence and objectivity are not compromised.

- 7. Internal Audit function to extend its scope from governance, risk and control processes to include anti-corruption and whistle-blowing [Updated Guidance]**

The coverage of internal audit function's scope is now inclusive of anti-corruption and whistle-blowing.

- 8. PLC to establish channels for stakeholders to provide their views and feedback, including complaints [Updated Guidance]**

The communication channel to be available at all times and PLC to acknowledge and address stakeholders' views, feedback or complaints appropriately.

The MCCG 2021 takes effect on 28 April 2021, and the first batch of companies to begin reporting on their adoption of these practices will be those with financial years ending 31 December 2021. The two-tier voting process will be applicable for resolutions tabled at general meetings held on or after 2 January 2022.

What Chief Audit Executive (CAE) should do?

The issuance of MCCG 2021 would enable internal auditors to understand how an assessment of the broader governance process at the Board level may be conducted, in conforming with Standard 2110 of the IPPF 2017 Edition.

CAEs are required to relook at the Scope of Internal Audit Activities within the Internal Audit Charter for the expansion of scope. Within the Internal Audit Charter, CAEs are to ensure the Authority is inclusive of the access to the board minutes of meetings of the deliberations that took place. The CAEs are to incorporate the MCCG 2021 updates as part of the Internal Audit Plan to provide assurance to the board particularly in the following areas:

- ✚ Review of anti-corruption framework for its design effectiveness and whistle-blowing process efficacy.
- ✚ Review of Board Charter, Corporate Governance Statement, Statement of Risk Management & Internal Control, and Terms of References of Audit Committee and Nomination Committee incorporate the MCGG 2021 updates.
- ✚ Review if the ESG plan was incorporated into the board's strategic plan and assess if they are carried out by the relevant oversight committee.
- ✚ Review if the ESG plan was incorporated into the company's risk management and review the control design effectiveness.

IIA Malaysia offers a wide variety of dynamic seminars and training focused on emerging issues in internal auditing. Check out our [training or conferences](#) on this assessment and implementation of the subject above.



Reference:

<https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215bdb776>

[VIETNAM'S MINISTRY OF FINANCE AND IIA INKS MOU FURTHERING INTERNAL AUDIT MISSION \(BY THE STAR\)](#)

On April 13, 2021, The Institute of Internal Auditors (IIA) has signed a Memorandum of Understanding (MoU) with the Vietnam Ministry of Finance (MOF) Accounting and Auditing Supervisory Department for cooperation and collaboration in establishing and advancing the internal audit profession in Vietnam.

Among key benefits, internal auditors in Vietnam will have the ability to:

- Gain access to The IIA's global *Standards*, guidance, resources, and tools.
- Participate in training programmes across career levels.
- Gain access to global internal audit certifications, such as the premier Certified Internal Auditor (CIA), as well as the Internal Audit Practitioner programme
- Collaborate with local partners in developing and delivering training for internal auditors in the public and private sectors.

In 2018, The IIA formed the IIA-Vietnam Network to support the profession by organising a wide range of services dedicated to the education and advancement of internal auditors.

The Vietnam MOF had issued an Internal Audit Decree on April 1, 2019, which provides a legal framework for the establishment and implementation of internal audit under globally accepted standards as expressed by *The IIA's International Standards for the Professional Practice of Internal Auditing*.

What Internal Auditors should do?

Internal auditor should aim the goal to raise the profile of internal audit in Vietnam, strengthen stakeholders' understanding of the value that internal audit brings to organisations, and advance the profession in Vietnam and globally.



Reference:

<https://www.thestar.com.my/aseanplus/aseanplus-news/2021/04/13/vietnam039s-ministry-of-finance-and-iaa-inks-mou-furthering-internal-audit-mission>

MACC ACT SECTION 17A ADEQUATE PROCEDURES BEST PRACTICE HANDBOOK (BY BUSINESS INTEGRITY ALLIANCE)

The Adequate Procedures Best Practice Handbook was developed to complement the existing Guidelines on Adequate Procedures published by the Prime Minister's Office of Malaysia in December 2018. This handbook is intended to assist commercial organisations in understanding what is required for the adequate procedures in more detail, based on industry practices that can be implemented to help prevent the occurrence of corrupt practices.

The Guidelines were structured based on five 'TRUST' principles which may be used as reference points for the anti-corruption programme implemented by the company:

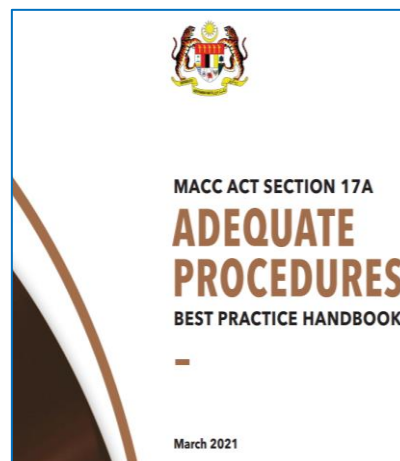
1. Top Level Commitment
2. Risk Assessment

3. Undertake Control Measures
4. Systematic Review, Monitoring and Enforcement
5. Training and Communication

The Guidelines were designed to be high-level rather than detailed and prescriptive, suitable for any size of company while leaving room for adaption and innovation by individual enterprises. This new handbook is designed to help companies achieve that end, using the experience of those directly involved in setting up and running anti-corruption systems for Malaysian companies.

What Internal Auditors should do?

The issuance of MCGG 2021 would enable internal auditors to understand how an assessment of the governance process based on the five 'TRUST' principles may be conducted, in conforming with Standard 2110 of the IPPF 2017 Edition.



Reference:

https://4ac85255-0823-44a6-80bb-05c72c77c46e.filesusr.com/ugd/28f972_4e421fb_d36c8422a97695b10b1a0adc8.pdf

If you missed out the previous issues of e-techline, you may visit our website at <https://www.iam.com.my/etechline/>.