Implementation of Corporate Governance - Malaysia’s Experience

Submitted by: Malaysia
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APEC ECONOMY EXPERIENCES – Implementation of Corporate Governance

Agenda

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2. Key CG Components in Malaysia
3. Regulatory Framework for CG in Malaysia
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5. Development of the Malaysian Corporate Governance Framework
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Key Success Factors for Enhancement of Corporate Governance Practices

- Buy In from Government
- Comprehensive regulatory framework
- Continuous education on CG
- Presence of relevant regulatory agencies to monitor and enforce the compliance of CG
- Presence of market institutions and shareholders activism to promote CG
- The right mindset
Key Corporate Governance Components in Malaysia

- Buy In from Government
  - High Level Finance Committee on CG

- A comprehensive regulatory framework on CG
  - Malaysian Code on CG ("CG Code")
  - Companies Act 1965 ("CA")
  - Listing Requirements ("LR")
  - Capital Markets & Services Act 2007 ("CMSA")

- Education
  - Mandatory education programme and continuous education programme for listed companies' directors

- Adequately staffed and resourced regulatory agencies to monitor compliance and enforce CG
  - For e.g. Securities Commissions ("SC"), Companies Commissions of Malaysia ("SSM") & Bursa Malaysia Securities Berhad ("Bursa")

- Presence of market institutions & Shareholders' activism
  - For e.g. Malaysia Institute of Corporate Governance ("MICG") & Minority Shareholder Watchdog Group ("MSWG")
Regulatory Framework for Corporate Governance in Malaysia

Hybrid approach

- Mandatory: Securities laws, Companies Act 1965, Bursa Securities Listing Requirements (LR)
- Voluntary: Malaysian Code on CG
Key Players in CG Regulatory Framework

- **High Level Finance Committee on Corporate Governance**
- **Securities Commission**
- **Bursa Malaysia Securities Berhad**
- **Companies Commission of Malaysia**

**Regulatory Framework for CG in Malaysia**

Formed on 24 March 1998 to establish a framework for CG and to set best practices for the industry.

- Members: Balance representations from the regulatory and industry - ensuring good standards while not stifling entrepreneurship
- The initial work of the Committee was carried out through 2 working groups:
  - Working group on best practices in corporate governance and training and education (JPK1)
  - Working group on law reform issues in corporate governance - (JPK 2)
- Report on CG in February 1999 - 3 main recommendations:
  1. Introduction of the Malaysian Code on CG
  2. Identifies the education & training needs to raise the level of awareness among directors, company secretaries, audit committee members and investors
  3. Identifies areas of reform of laws, regulations and rules
- Most of the recommendations in the Report on CG have been implemented
Regulatory Framework for CG in Malaysia

Key Players in CG Regulatory Framework (cont’d)

Securities Commission

- SC has authority and enforcement power over all public companies
- Administers and reviews the securities laws including the requirements relating to CG -
  - Capital Markets & Services Act 2007
    - Mandating whistle blowing duty on auditors and provide protection against retaliation for specific persons (CEO, company secretaries, internal auditors and chief financial officers)
    - Mandating full and frank disclosure obligations for proposals submitted to SC for approval
    - Regulating market misconduct & other prohibited conducts (e.g. false trading, market rigging, and insider trading)
  - SC Guidelines on the Offering of Equity and Equity-Linked Securities - requires applicants to have good CG record

Key Players in CG Regulatory Framework (cont’d)

CG Code

- CG principles & best practices for -
  - Directors
  - Shareholders
  - Accountability & Audit
- Part 1 Principles of good CG
- Part 2 Best practices in CG
- Part 3 Principles & best practices for other corporate participants (i.e. investors & auditors)
Bursa conducts front-line monitoring of the compliance by public listed companies with their obligations under the LR

Provide and regulate CG requirements under the LR such as -

- Directors
- Audit committee
- Internal audit function
- Disclosure of compliance with the CG Code in annual report
- Disclosure of statement of internal control in annual report

Regulates all matters relating to Malaysian companies

Administers and reviews the companies laws including the requirements relating to CG

Companies Act 1965 – Regulates the following aspects of CG:
- Directors' Duties
  - scoping of Board’s functions/powers;
  - defining scope of duties of care, skill and fiduciaries duties
  - defining disclosures of conflict of interest
  - duty to set up internal controls
- Business judgment defense
- Related Party Transactions
- Shareholder remedies
- Meetings procedures & notices requirements
- Minority shareholders protection/Statutory derivative action

Spearheading the Corporate Law Reform Programme ("CLRP") – CG reform is a high priority of the CLRP
Regulatory Framework for CG in Malaysia

NO ONE SIZE FITS ALL

Government Link Companies Transformation Programme
Government Linked Companies (GLCs) have significant impact on the Malaysian economy because of its substantial contribution to the market capital.

As at 11.8.2008, 37 out of 858 (or 4.31%) companies listed on the Main & Second Board of Bursa are GLCs contributing 32.23% of the total market capitalisation of Bursa (i.e. RM274,449.20 million out of RM851,541.84 mil).

29.7.2005: Malaysia launched the GLC Transformation Manual which contained five Policy Guidelines and 10 Initiatives that are targeted to drive and enhance GLC performance.

Development monitored by the Putrajaya Committee on GLC High Performance (“PCG”).

One of the strong focus of the GLC Transformation Programme is to enhance the CG standards. For this purpose, a Green Book was issued in April 2006.

The Green Book provides guidelines for GLCs on the following:

- Three main components of an effective board
- Structuring a high-performing board
- Ensuring effective board operations & interactions
- Fulfilling fundamental board roles & responsibilities
- Practical suggestions for GLC boards on how to raise their overall effectiveness, including examples of practices that GLC boards can adopt.
- Guide for GLC boards on how to conduct an assessment of GLC board effectiveness and develop an actionable improvement program.
Significant improvement in financial results

Economic Profit ("EP2") improvement of RM5bn in FY2007

G-20* aggregate net profit grew by 87% Year-on-Year ("YoY") in FY2007

Most GLCs met their Headline KPIs

GLCs have made significant progress in GLCT initiative implementation.

Source: GLC Transformation Programme Progress Review, MARCH 2008 UPDATE by Putrajaya Committee
## Development of Malaysian CG Framework - Year 1993 - 1999

- **1993:** Bursa requires all listed issuers to have audit committee (“AC”) under the LR

### 1998 – Major Milestone
- Establishment of the Finance Committee with the purpose of setting up a framework for CG and best practices for the industry.
- Establishment of the Malaysian Institute of Corporate Governance

- **1999:**
  - LR introduced restriction on directorships on directors of listed companies - not more than 10 directorships in listed companies, & not more than 15 directorships in non-listed companies
  - LR mandating quarterly reporting of financial statements
  - Issuance of Finance Committee Report

## Development of Malaysian CG Framework - Year 2000

- **2000:**
  - Development of the Code of Conduct for Market Institutions which sets out the Principles of Conduct & Best Governance practices
  - Corporate Awards launched
  - The 1st CG Code was issued – consists of 4 parts:

  - Part 1 Principles of good CG for M’sia
  - Part 2 Best practices in CG
  - Part 3 Exhortations to other participants
  - Part 4 Explanatory notes & ‘mere best practices’
Development of Malaysian CG Framework
- Year 2001 – Major Milestone

- 2001: Revamp of LR – Key CG requirements made mandatory

- Statement of Internal Control
- Statement on CG
- Composition of the board, rights & duties of directors
- Independent director
- Composition & functions audit committee (“AC”)
- Enhancing transparency
- Mandatory one-off & continuing training programmes for directors

Development of Malaysian CG Framework
- Year 2001 - Present

- 2001 (cont’d):
  - Industry Taskforce issued Guidance for directors of listed companies in preparing the statement of internal control
  - Capital Market Masterplan issued by the SC, incorporating 10 recommendations on CG
  - Minority Shareholders Watchdog Group established by major Malaysian institutional investor groups

- 2002:
  - Institute of Internal Auditors Malaysia issued guidelines on best practices for the internal audit function in the CG Code;
  - Taskforce on Corporate Disclosure Best Practices established

- 2006: Issuance of Green Book – provides guidelines for all government linked listed companies (“GLCs”) boards for main challenges to raise board effectiveness

- 2007: SC issued CG Code (Revised) 2007 & SSM introduced various amendments to the CA

- 2008: Further enhancements under the LR relating to CG
Development of Malaysian CG Framework
- Year 2008-2009 Enhancements under the LR

Enhancing independence & quality of the audit committee
Enhancing requirements for internal audit function
Enhancing disclosure

Corporate Governance Performance – Malaysia’s Experience
CG Performance – Malaysia’s Experience

- Report on the Observance of Standards and Codes (ROSC) conducted by The World Bank shows that Malaysia has largely observed majority of the OECD CG Principles

- PriceWaterCooper 2004 Survey (an update from the 2001 Survey) -

  The results of this survey generally point towards a positive response on the part of Boards in Malaysia to comply with the requirements of the CG Code. There is also greater awareness of the roles and responsibilities as well as liabilities of Boards, and a greater appreciation of Board effectiveness as the ultimate goal of CG activity.

CG Performance – Malaysia’s Experience (cont’d)

Performance, not just Conformance

The main challenge faced by Malaysia is to ensure that in implementing the CG practices, companies and their directors truly embrace the spirit of CG instead of merely complying for conformance’s sake.
CG Performance – Malaysia’s Experience (cont’d)

To promote & enhance CG standard -

✓ Regulators & government play very important roles – the Malaysian government has been very supportive and committed in promoting the CG standards in Malaysia (for e.g. through the establishment of the High Level Finance Committee & the GLC Transformation Programme)

✓ Education - educate & create awareness among the listed issuers of the importance & benefits of a good CG

✓ Inculcate the right mindset – it is important to have the right mindset

✓ Shareholders must take the responsibility by exhausting their CG expectations on the investee companies

✓ Strong institution of directors or other industry associates for the promotion of CG

Conclusion

✓ Malaysia as a developing capital market in Asia, is and has always been committed to be part of the current global debate on CG

✓ Effective CG and increased transparency have in recent years been a subject of focus by the Malaysian government as part of its objectives to promote a conducive business environment for an efficient capital market

✓ Besides regulating the CG practice by the listed companies vide the LR, Bursa has taken various initiatives to improve the standard of CG among the Malaysian listed companies

✓ As CG is a evolving subject matter, Bursa will continue to monitor the development in other markets, and to promote and enhance its CG framework
Thank You