KPMG Report on Non-Executive Directors' Remuneration 2017

February 2018

KPMG in Malaysia
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Contents

Foreword

Once the exclusive domain of cerebral academics and specialist analysts, directors' remuneration has slowly but surely crept into public consciousness. The importance of corporate governance has since gained traction. It is now fairly common to see directors' remuneration in the spotlight, and the print media periodically publishes studies on directors' salaries and bonuses – with one local publication going as far as to question why directors should be paid when their companies are loss-making.

In terms of absolute numbers, it has been argued that directors' remuneration receive a disproportionate level of attention relative to the actual monetary amounts involved. After all, in the case of a well-known bank in Malaysia, the amount received by all directors is merely 0.03% of its revenue, or if profit is used as a base, it would still amount to only 0.16% of its profit before tax. As for one of Malaysia's largest conglomerates, the remuneration of its Board amounts to also 0.03% of revenue and just 0.5% of profit before tax for the year [1].

So, is the above too much to pay for the stress of leading a successful group of companies? If not, why then does a director's remuneration generate reams of newsprint? Consider the case of an NYSE-listed oil and gas firm, whose chief executive received US$100 million in "severance pay" by stepping down from that role, despite remaining on the board as chairman. Or what of the finding recently reported by a leading Australian consultancy in which chief executives of the ASX100 companies, on average, earn 78 times the amount earned by the average Australian worker.

In summary, whilst in general, remuneration levels are not material, because of these controversies seen in public companies the issue remains high on the public agenda. These pay-outs (whether justified or not) touch a raw nerve amongst employees and other stakeholders. Although the polemics relate mainly to executive directors' remuneration, the ripple effect is increasingly seen to spotlight the remuneration of non-executive directors just as well. Hence, **non-executive directors are finding themselves judged on how the company remunerates the board as a whole**.

KPMG in Malaysia has been producing a series of Reports on the remuneration of non-executive directors of the top public-listed issuers on Bursa Malaysia Securities Berhad. The inaugural edition in 2009 was followed by a 2013 version. With a number of key developments in the last four years, namely the coming into force of the Companies Act 2016, changes to the Main Market Listing Requirements of Bursa Malaysia Securities Berhad ("Listing Requirements"), and the introduction of the 2017-released Malaysian Code on Corporate Governance ("MCCG"), it is timely for KPMG to update the series with a third, 2017 edition.

Datuk Johan Idris
Managing Partner
KPMG in Malaysia

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[1] When the top 30 payers are analysed, the remuneration of the board as a percentage of group revenue stands at 0.15%.

About this Report

This Report on the profile and remuneration of non-executive directors in Malaysia, focusing on the largest market-capitalised public-listed issuers, is undertaken by KPMG on a periodic basis. The data underlying the Report is publicly available and has been sourced mainly from the annual reports of the listed issuers included in the Report. KPMG's approach is further detailed in **Appendix 1** of this publication. If you have any comments or questions regarding this Report, please address them to the designated KPMG contacts whose details are included in this Report.

KPMG's effort in producing this publication is part of its wider agenda to further good corporate governance in Malaysia. KPMG also supports the events pertaining to audit committees, where topical issues in relation to corporate governance are deliberated with board and industry leaders and chairmen of board and audit committees from leading companies.

Whilst every care has been taken to ensure accuracy of the information reported in the Report, KPMG does not warrant the veracity of the information and accordingly, KPMG does not assume responsibility or liability for any reliance placed on this Report. The information included in this Report is limited to the annual reports as disclosed in the methodology section of **Appendix 1** of this publication.

We also highlight that the Report outlines remuneration levels by industry sector, and feedback provided to KPMG by the marketplace in relation to past editions indicated that such information was useful. Nevertheless, we emphasise that care should be taken in considering the numbers outlined in our Report, as it is not KPMG's intent to promote an incessantly upward trend in directors' remuneration (i.e., the "Lake Wobegon effect"). ■

Note: Words importing one gender include the other gender, words importing the singular include the plural and vice versa. Words used to describe an entity (e.g. company, listed issuer) are premised on grounds of its application in the regulatory context.

About KPMG's Board Advisory Services

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Mohd Khaidzir Shahari

Executive Director and Head of Risk Consulting
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Executive Director and Head of Governance and Sustainability
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KPMG's Board Advisory team is made up of governance professionals who can assist boards and board committees to:

- Benchmark and improve current governance frameworks against better practices;
- Undertake board, board committees and individual directors' evaluations that identify areas of strengths and improvement opportunities in areas such as skills, behaviours, board meeting effectiveness, board reporting, board composition, stakeholder engagement, risk and strategy;
- Undertake a remuneration review to help boards determine the competitiveness and risk alignment of existing remuneration structure to attract, retain and motivate the right talent on boards and senior management;
- Assist with development of board support tools including board documents, policies and processes that underpin a robust governance framework of risk management, strategy formulation and monitoring; and
- Undertake tailored board training around risk, strategy and governance to assist boards to meet their fiduciary responsibilities.

About the authors

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Darren and Krishman are part of the Board Advisory team within the Risk Consulting practice of KPMG in Malaysia. They advise clients on corporate governance matters, including structuring of boards, performance evaluation and remuneration issues. Darren was also the author of this study in its 2009 and 2013 versions.

Special appreciation to the following team members who have made this publication possible: Dick Lee Jian Xun, Farith Iskandar Tajuddin and Rissara Khongsuwan.

The headline numbers

The population:

Top 300 listed issuers on Bursa Malaysia

- 16% — 48 are government-linked
- 11% — 34 are foreign-owned
- 73% — 218 are locally-owned

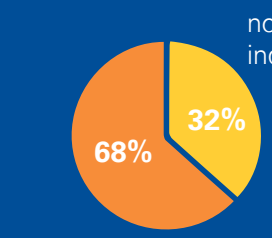
In ringgit, the top 300 Bursa companies are worth

1.5 trillion generated 811 bil in revenue and 116 bil in profits

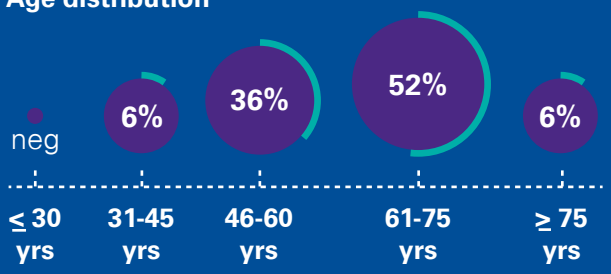
1,815 non-executive directors

86% male

14% female



Age distribution

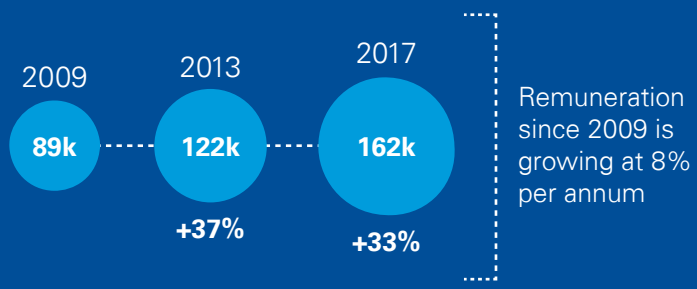


6 Board meetings per annum

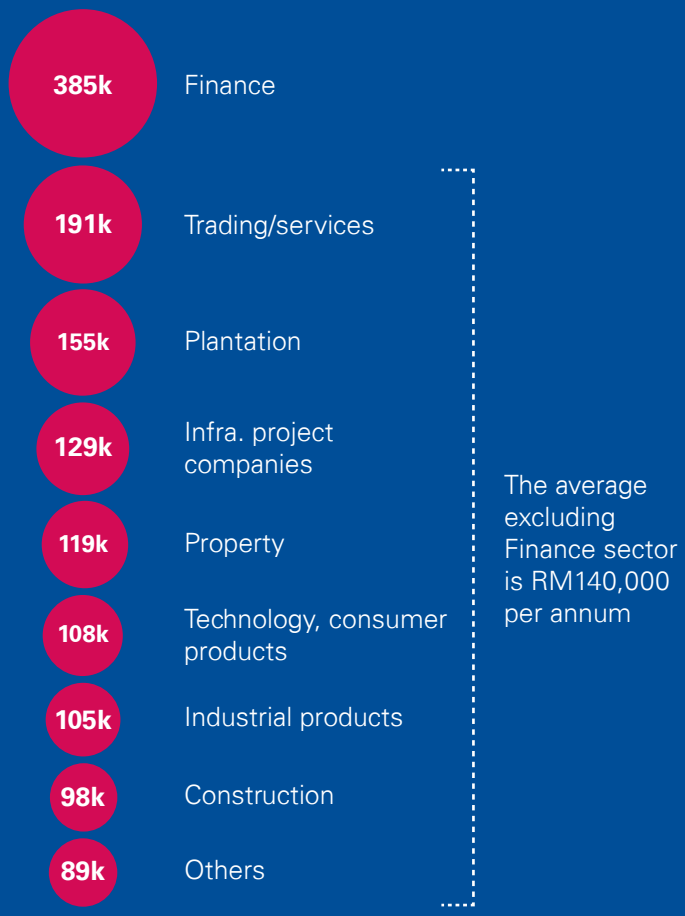
77% of Board chairmen are NEDs

The results (RM):

Remuneration per NED per annum



Sectoral distribution



Typical breakdown of remuneration

78% in fees

19% in allowances and other emoluments

The above headline numbers are highlights from a significant amount of information gathered and trends identified during the review, which for purposes of brevity are not shown in this publication.

The numbers crunched

This Report is the third in a series which kicked off in 2009, followed by a second edition in 2013. In the intervening four years since the 2013 edition, the corporate scene in Malaysia has witnessed a number of significant developments.

In the context of directors of Malaysian listed issuers, the three most notable events have been the introduction of the Companies Act 2016, the latest iteration of the MCCG and amendments to the Listing Requirements in November 2017. Given such developments, it is reasonable to say that expectations on a director of a public-listed company have increased.

> The headline number of this study is RM162,000 per NED per annum, for the top 300 largest companies on Bursa Malaysia by market capitalisation.

Past editions have outlined the conceptual differences between executive and non-executive directors and deliberated at length the background of non-executive directors in terms of their age, educational background and number of directors. In this Report, such statistics will not be covered in depth as we instead discuss developments and challenges that a non-executive director must face. These issues are divided into four quadrants and explained in a later section of this Report.

The headline number of this Report is RM162,000 per NED per annum, for the top 300 largest companies on Bursa Malaysia by market capitalisation. **This amount is an increase of 33% over the 2013 result of RM122,000 per annum**, which itself is a 37% increase over the first Report's results back in 2009 (RM89,000 per annum).

With the third Report now providing an eight-year horizon, NEDs remuneration has over this eight-year period increased at a compounded annual growth rate of **8% per annum**.

Within the top 30 payers, whilst some shuffling is noted, in general these listed issuers have consistently remained the same, as outlined in the following table:

A literal stake in your company

Whilst share-based remuneration for independent directors is not common in Malaysia, they do hold some levels of equity in the listed issuer. Of the independent directors in our review, a third (31%) hold shares ranging from negligible amounts to 4% of the listed issuer's total equity. Some corporate governance commentators regard independent directors holding shares as a plus point in that the director would tend to be more invested in the long term prospects of the company.

The two strikes health check

Australia remains as one of the few countries that have introduced a mechanism that can enable shareholders to "evict" the board over remuneration matters.

Popularly known as the "two-strikes" rule, listed corporations under this rule are required to table their remuneration report for approval of shareholders.

If 25% or more of the votes are cast against the report for two consecutive years, shareholders would be entitled to vote on a separate resolution and decide if directors need to vacate their office and stand for re-election.

During the 2017 AGM season, around 9% of the Australian Stock Exchange ("ASX") 200 companies had received a "first strike"[1].

[1] *Two strikes rule 2017, Morningstar.*

Top 30 payers

Position	Lister issuer and Bursa Malaysia ranking*	Sector	GLC	2017 study	2013 study	2009 study
				Remuneration per NED per annum	Remuneration per NED per annum	Remuneration per NED per annum
				RM'000	RM'000	RM'000
1	Malayan Banking Berhad (1)	Finance	•	852	650	345
2	Public Bank Berhad (3)	Finance		841	671	463
3	IHH Healthcare Berhad (6)	Trading/Services	•	669	591	^
4	CIMB Group Holdings Berhad (10)	Finance	•	654	448	450
5	Sapura Energy Berhad (34)	Trading/Services		568	338	^
6	Felda Global Ventures Holdings Berhad (51)	Plantation	•	568	269	^
7	Sime Darby Berhad (5)	Trading/Services	•	549	533	353
8	RHB Bank Berhad (21)	Finance	•	540	331	293
9	Allianz Malaysia Berhad (109)	Finance		534	367	167
10	Axiata Group Berhad (8)	Trading/Services	•	511	426	383
11	MNRB Holdings Berhad (215)	Finance	•	510	367	262
12	Hong Leong Financial Group Berhad (25)	Finance		451	216	117
13	Affin Holdings Berhad (62)	Finance	•	441	254	213
14	Bumi Armada Berhad (75)	Trading/Services		429	355	^
15	Tenaga Nasional Berhad (2)	Trading/Services	•	424	238	141
16	AMMB Holdings Berhad (28)	Finance		389	215	171
17	Telekom Malaysia Berhad (19)	Trading/Services	•	386	273	202
18	UMW Holdings Berhad (24)	Consumer Products	•	380	226	124
19	BIMB Holdings Berhad (44)	Finance	•	368	274	101
20	LPI Capital Berhad (55)	Finance		367	312	169
21	MMC Corporation Berhad (42)	Trading/Services		367	491	172
22	Batu Kawan Berhad (41)	Plantation		354	137	110
23	YTL Corporation Berhad (24)	Trading/Services		354	171	-
24	Alliance Financial Group Berhad (50)	Finance		352	303	249
25	Cahya Mata Sarawak Berhad (65)	Industrial Products		344	135	269
26	DRB-Hicom Berhad (98)	Industrial Products		335	287	316
27	Maxis Berhad (7)	Trading/Services		334	313	^
28	Eco World Development Group Berhad (71)	Property		322	^	^
29	Kuala Lumpur Kepong Berhad (17)	Plantation		320	243	166
30	Malakoff Corporation Berhad (43)	Trading/Services		307	-	^
Average for the Top 30 highest remunerating listed issuers (RM'000)				**467**	**350**	**253**

** Ranking according to market capitalisation on Bursa Malaysia Securities Berhad, as at 31 December 2016.*
^ The company was not listed in 2009 when the first study was conducted, or was in the form of another listed issuer prior to its takeover by the current issuer.

Note: Where considered appropriate, the number of NEDs and/or remuneration pertaining to a listed issuer have been adjusted to exclude certain directors who are considered as executive directors in substance (see Item 7 in **Appendix 1** of this publication). In addition, an NED who serves on the board for less than the full financial year is pro-rated accordingly.

In terms of the ranking, government-linked companies (GLCs) and the finance sector again lead the way. There is a noticeable gap between the GLCs and finance sector companies and the rest of the pack. Indeed, the top 30 payers is dominated by the said companies. The Report suggests that the renumeration payouts in GLCs and companies in the financial sectors are ahead of the curve on grounds of their highly regulated operating environment and the public interest imperative inherent in them.

In terms of remuneration breakdown, fees and allowances still comprise the bulk, making Malaysia a traditional country when it comes to pay – cash is regarded as the safest form of remuneration. Other more modern forms of remuneration, such as payment in the form of equity, remain rare.

Remuneration breakdown:

78% fees

19% allowances & other emoluments

3% benefits-in-kind

neg% equity

Our Report shows that whilst there is obviously some variation in the breakdown across the different sectors – for example, benefits-in-kind can amount to as much as 10% of the package for plantation companies – by and large fees remain the preferred form of remuneration.

In terms of allowances, these would be for attending meetings. The overwhelmingly preferred form is payment of a fixed allowance to attend meetings, ranging from RM1,500 to RM4,000 per meeting, although one listed issuer has taken the option of reimbursing directors for actual travel expenses.

On the matter of benefits-in-kind, the typical items received by non-executive directors include the following:

- Company car and driver (more common for board chairmen, less common for other non-executive directors);
- Leave passage;
- Insurance (medical, directors' and officers' liability); and
- Club membership.

A listed issuer may choose to augment the above benefits through its core services or products. For example, a well-known petroleum company provides its directors with fuel allowance on top of the typical benefits mentioned above, whilst a utility company is noted to cover the utilities of its directors (such as a telephone line and/or electricity expenses).

Graphically speaking then, a non-executive director of a top 300 Bursa-listed issuer can expect to receive the following:

Add-ons (22%)	**Base** (78%)
Allowance of between - RM1,500 to RM4,000, per meeting	Fees of between **RM70,000 to RM300,000 * per annum**, depending on sector ** Finance Sector*
Benefits-in-kind comprising car, driver, utilities, insurance, leave passage and club membership	

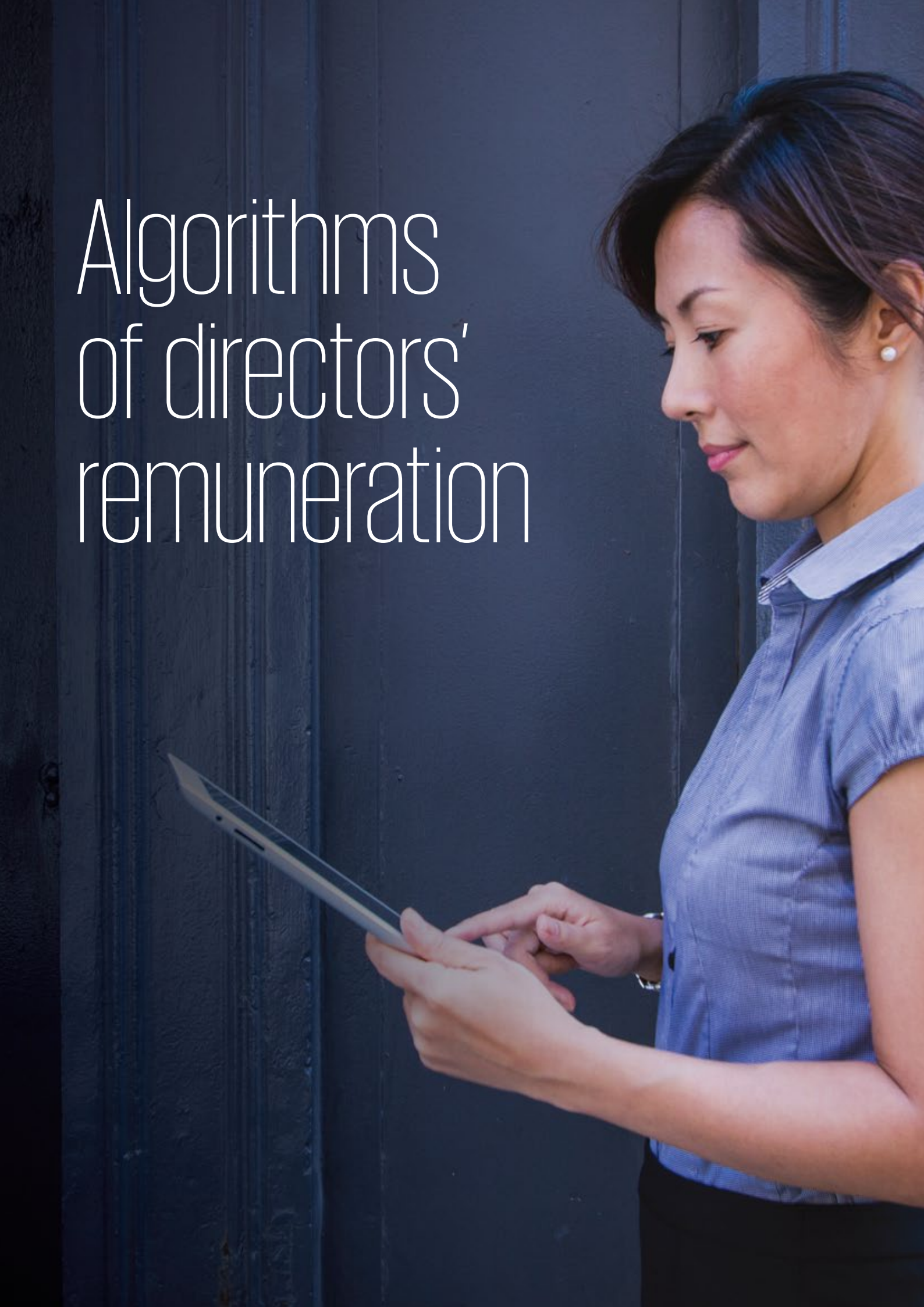
Note: The following is aggregated and averaged, and as such may vary with individual listed issuers

A nascent but definite trend in directors' remuneration is for companies to seek shareholders' approval for fees, allowances and/or benefits for the current financial year. A number of years ago, it was almost a universal practice that companies would only seek shareholder approval for fees for the immediate past financial year, during its annual general meeting. However, out of the top 300 listed issuers, 22% now seek shareholder approval for fees, allowances and/or benefits for the current financial year. Whilst still rare, some listed issuers have extended this practice by remunerating directors on a monthly basis, in the manner that a typical employee would receive. ■

Of the top 300 market capitalised listed issuers on Bursa Malaysia:

50%	**22%**	**28%**
sought shareholder approval on a retrospective basis (i.e. directors' remuneration for the past financial year)	sought shareholder approval on a prospective basis (i.e. for the current financial year)	sought shareholder approval for both years (i.e. past and current financial years)

Algorithms of directors' remuneration



Whilst the main objective of this Report is to shed light on remuneration levels of non-executive directors in the marketplace, an equally important goal is for KPMG to periodically update directors on issues around remuneration. For all the reasons mentioned at the beginning of this study, directors' remuneration is a topic that will not be going away from the public eye anytime soon, and the more directors know about remuneration fundamentals, the better they will be prepared – whether as remuneration committee members, when negotiating their packages or when facing agitated shareholders.

It should be noted that in the latest iteration of the MCCG, Practice 6.1 of Principle A calls upon the board to put in place policies and procedures to determine the remuneration of directors and senior management and such policies and procedures to be made available on the listed issuer's website. In this regard, NEDs should consider the following four key areas which can potentially shape their remuneration policies and procedures[1].

1 Time commitment and expertise

- Does the NED commit sufficient time in the discharge of his directorship, given that often he sits across a number of boards?
- How will directorship limits in public-listed issuers affect fees?
- How does the demand for niche skill set affect an NED's remuneration?

2 Disclosure

- How has the enhanced disclosure regime affected the remuneration structure/framework?
- What role must the remuneration committee play to meet the enhanced disclosure requirements?

3 Liability

- How is the NED affected from a legal perspective? What impact do changes in certain legislation, e.g. corporate liability clause, increase in penalties, have on remuneration?

4 International and local developments

- Will developments in other economies with regards to directors' remuneration have an impact in Malaysia? Will there be absolute limits on directors' remuneration as a proportion of profits, for example.
- Arising from the developments in the local context, can we expect to see a more robust remuneration structure and framework?

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[1]For the purposes of this Report, reference is made to non-executive directors only instead of directors, as mentioned in the MCCG.

Time commitment and expertise – commit and command

In the United States, a National Association of Corporate Directors (NACD) study over 2015-2016 found that a typical board member in a public company spends around 248 hours or 31 days for boardroom activities, representing an increase of 30% from the year 2005[1] .

Whilst the remuneration of an NED is influenced by a confluence of factors, the responsibilities assumed by an NED stand out as one of the most, if not the most, important determinant of his remuneration package. A natural consequence of assuming such responsibilities is the need to devote time. The intensifying nature of globalisation, emergence of novel technologies and the relentless pressure on companies to innovate have pushed NEDs to expend more time in the quest for a granular understanding of their companies, challenge assumptions underlying the strategies proposed and scrutinise associated risks. In the United States, a National Association of Corporate Directors (NACD) study over 2015-2016 found that a typical board member in a public company spends around 248 hours or 31 days for boardroom activities, representing an increase of 30% from the year 2005[1].

The findings from the NACD study corroborates the Walker Report (UK, 2009)[2], which recommends that an NED of a major financial institution expend between 30 to 36 days for boardroom activities. As Sir David Walker rightly cautioned in his report, we are continuing to witness an increase in time commitment of NEDs in tandem with the changes in the marketplace.

It would be no exaggeration to state that the global scenario is also panning out in Malaysia as our Report indicates that a typical NED is increasingly seen to occupy memberships in two or more board committees of any one single listed issuer (2017 compared to 2013).

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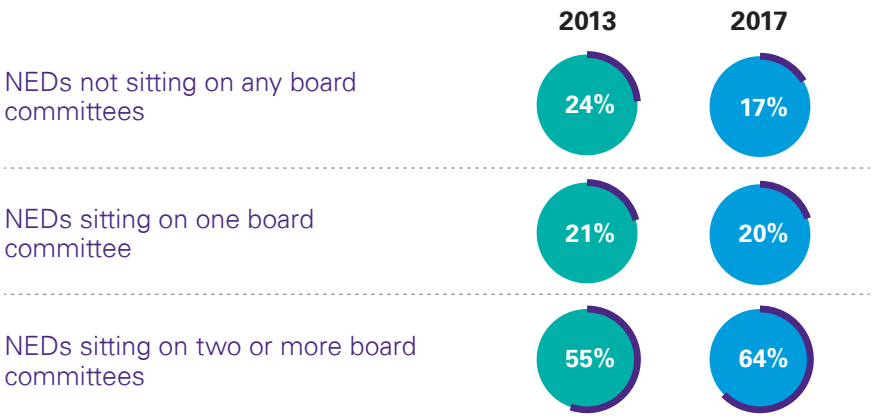
[1] *Public Company Governance Survey 2016, United States' National Association of Corporate Directors.*

[2] *A review of corporate governance in United Kingdom banks and other financial industry entities (Walker Report) 2009*

Responsible yet responsive leadership

Today, more than ever before, helming a company is about challenging convention and driving radical changes. Disruption has become a fact of life for business as the world is continuing to witness a shake-up of the geopolitical status quo and notably, technology-driven disruptive changes are sweeping through industries and economies on a global scale. As the 2017 KPMG Global CEO Outlook reveals, "businesses are seeing disruption as an opportunity – businesses are actively disrupting the sector in which they operate rather than waiting to be disrupted by their competitors". Such market signals were also replayed at the recent World Economic Forum in Davos whereby Bill Thomas, the Chairman of KPMG International noted that "geopolitical risk has risen right to the top of leaders' concerns and businesses today must know the rules of the game to respond to uncertainties, particularly geopolitical risk".

In the face of such market dynamics, NEDs are expected to be more vigilant in the operations and drivers on businesses. They should be able to challenge constructively and evaluate the responses from management even on technical matters or domains that are traditionally regarded as out of their expertise. NEDs who are seeking to play a more constructive and forward-looking role may have to expend more time and engage on-field to have a tangible knowledge of their companies' operations, markets, and competitors.



Given that the MCCG calls upon companies to establish dedicated remuneration and risk management committees for more focused oversight on the relevant matters, it would only be reasonable to expect the responsibilities, resultant time commitment and remuneration of NEDs to increase in the forthcoming years. Against this backdrop of rising expectations in terms of time commitment, it would also be interesting to ascertain if NEDs who hold directorships in multiple (e.g. 3 to 5) listed issuers are able to keep up with these expectations (and possibly an undisclosed number of directorships in non-listed companies, of which there is no cap).

It is also often quipped that an ideal NED is a supernatural person. He not only needs to have the time and passion to commit to the increasing spectrum of responsibilities, but also needs to marry that dedication with a variety of complicated and niche skill sets (acquired through a culmination of professional qualification, industry experience and knowledge). Such NEDs are often able to exercise intelligent reviews of transactions involving management, directors and large shareholders besides proving to be a valuable resource in the arena of strategic planning and risk management by providing insights on trends and forecasts. In light of the shrinking pool of NEDs with specialised skills, it goes without saying that the possession of niche skill sets commonly result in an NED commanding a premium in terms of his remuneration package. ■

Disclosure – publish or perish

Recognising that the benefits from greater transparency outweigh the aforementioned concerns, regulators in Malaysia are driving away from the predecessor regime in which disclosure is in bands of RM50,000, to an enhanced disclosure model.

In a world where transparency is taking prominence, clarity in directors' remuneration has become the order of the day. The unwillingness of listed issuers to disclose remuneration in a detailed manner has often been met with resentment as stakeholders increasingly question the **contradictory action of listed issuers that go public for funding but when it comes to pay of directors, they go private.**

Whilst disclosing directors' remuneration in a detailed manner is straight-forward in practice (with information readily available internally), resistance has been traditionally and jarringly strong. The top argument commonly put forth against detailed disclosures is confidentiality or its corollary - security concerns.

The second most commonly cited reason is to prevent poaching. Even more tenuous are grouses by remuneration committees that they may end up being the "meat in the sandwich" in trying to find a fine balance between directors who are comparing at how much more others are paid and shareholders' concerns that boards are being too generous in remunerating themselves. Clearly, the prevalent barriers are not tangible; rather they are psychological hurdles that boards must overcome.

Recognising that the benefits from greater transparency outweigh the aforementioned concerns, regulators in Malaysia are driving away from the predecessor regime in which disclosure is in bands of RM50,000, to an enhanced disclosure model, i.e. **disclosure on a named basis and by exact amount.**

Overstaying your welcome

Extended tenure is increasingly regarded as a potential indicator of entrenchment. Premised on this, the MCCG has set a general yardstick of 9 years for the tenure of independent directors with an extension beyond the 9th year and 12th year necessitating a single-tier shareholders' approval and two-tier shareholders' approval, respectively.

Many corporate governance advocates also regard tenure cut-off limits on independent directors as an opportunity for companies to refresh their boards, thus, curbing the commonly observed all "male, pale and stale" board syndrome.

On the other hand, critics argue that a quantitative limit is arbitrary and akin to the proverbial saying of "one day a peacock, the next day a feather duster". It is however important to note that such quantitative limits are not arbitrary but rather based on well-founded empirical studies[1].

The strong position taken by MCCG on tenure would result in many independent directors choosing not to remain designated as such beyond the 9th year. This would represent a drastic shift from the current state. For the record, our study indicates that the longest serving independent director has been around for 38 years!

[1] *For example, a research study undertaken by a distinguished scholar from INSEAD Business School in 2013 highlighted that objectivity and performance of independent directors commonly reach a turning point between the seventh to eleventh year of their tenure in the same company.*

This is reflected in both the MCCG and amendments to the Listing Requirements in November 2017, which now mandate the disclosure of directors' remuneration on a named basis and by exact amount for the listed issuer level and group level.

Our Report indicated that only 21% of listed issuers in our pool have voluntarily provided detailed directors' remuneration disclosures. Given that the amended Listing Requirements is now in place, the percentage is expected to rise to 100%.

The enhanced transparency regime will certainly help to reduce information asymmetry in the market and encourage a culture whereby remuneration is anchored to performance and therein commensurate with contribution stemming from skill sets and industry knowledge.

It also helps to allay concerns that obscured disclosures by way of bands, which are not tagged to individual directors, could be a means to disguise oversized remuneration that is not commensurate with the market benchmarks. This is in effect an extra "dividend" that other shareholders are not entitled to (typically observed amongst founder-controlled and family-owned companies, as explained by Item 7 in Appendix 1 of this publication). ■

Directors and officers' insurance – with great responsibility, comes great liability

Purchasing insurance policies for corporate directors and officers ("D&O") can no longer be deemed as a luxury or an "add-on".

With the Companies Act 2016 placing heightened accountabilities on directors, the attendant exposures to liabilities for directors have also increased accordingly. The one-hundred fold spike in fines payable from RM30,000 under the superseded Companies Act 1965 to RM3 million in respect of various breaches under the Companies Act 2016 is a cogent case in point.

In such a setting, purchasing insurance policies for corporate directors and officers ("D&O") can no longer be deemed as a luxury or an "add-on". Recognising the challenges and intricacies involved in a quicksilver business environment, the Companies Act 2016 has also slightly opened up the potential for indemnification when compared to the predecessor Companies Act 1965.

For example, Section 289(5) of the Companies Act 2016 adds another opportunity for reimbursement (with prior approval of the board), to cover civil liability for acts or omissions done in one's capacity as a director or officer where the proceedings are discontinued or not pursued. It is, however, pertinent to note that companies are not allowed to provide an indemnity or effect insurance in respect of any civil or criminal liability arising from a breach of a director's duty to exercise his powers for a proper purpose and in good faith in the best interest of the company.

One can only expect that following the coming into force of the Companies Act 2016, an increasing number of companies in Malaysia may pursue to purchase D&O coverage or commensurately increase their coverage. As D&O insurance policies usually cover the entire board and key officers, it certainly represents a sizeable cost to companies. It will take the years to come to ascertain if companies will discount the pay packages of their directors and key officers to factor in the D&O premium cost that is vicariously incurred by the company. Alternatively, there may also be shift in the bearer of the cost with directors and key officers contributing their portion of the premium payment for the D&O insurance policy. In such a case, it would inevitably result in a rise in the quantum of remuneration awarded to directors and key officers. ■

International and local developments – a roundup

As international developments on directors and executives' remuneration continue to go mainstream, it would be interesting to see how these regulatory waves will continue to evolve and if companies will keep up with the Joneses.

India – alleviating the "profits without prosperity" conundrum

The Indian government vide the Companies Act 2013 has **introduced a cap on the remuneration of directors** and CEO of a public company to 11% of its net profit for any financial year. Any breach in the limit on remuneration would have to be approved by shareholders through a special resolution.

The move is designed to reduce the distribution chasm between the leadership team vis-à-vis other stakeholders, particularly shareholders and employees. Detractors have nevertheless argued that the relentless focus on how much directors and CEOs are paid diverts public attention from the real issue — how they are paid.

As structural "pay for performance" mechanisms such as deferred remuneration and vesting conditions continue to gain traction globally, the jury is still out on whether public companies in India are able to complement "absolute remuneration caps" with the said mechanisms.

United Kingdom – minding the gap

The United Kingdom government in 2017 has affirmed in its response to the Corporate Governance Green Paper Consultation that it will require quoted companies to **report annually the ratio of CEO pay to the average pay of the workforce in the country**. This will be augmented with a narrative to explain the changes to that ratio from year to year and setting the ratio in the context of pay and conditions across the wider workforce.

Commentators are eagerly awaiting to see if the increased reporting obligations will narrow the "pay-gap" and have spill-over effects to the boardroom or whether it will result in increased competition between companies to retain their key executives.

Switzerland – "Golden parachutes" put to still

Following a referendum in 2013, Switzerland in the immediate ensuing year had introduced a **prohibition of contractually agreed severance payments** (also known as "golden handshakes") for board members and executives. This has been dubbed as the toughest pay rule in the world given that severance payments are totally inadmissible and may even result in criminal liability.

The raison d'être for the ban on severance payments is that they are made ex-gratia, i.e. without any specific consideration or performance rendered by the affected executive. Notwithstanding the strong regulation and enforcement, there remains to be instances whereby companies get around the spirit of the law by repackaging these unwelcome payments, just as the saying goes - "behaviour cannot be coerced by regulation".

United States – claw-back on track

The United States government in 2010 passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") in the aftermath of public angst following the watershed financial crisis in the years 2008-2009. The Dodd-Frank Act amongst others included a mandate for the Securities Exchange Commission ("SEC") to require exchanges to adopt listing requirements for companies to **recover incentive-based** compensation that were erroneously awarded.

Against this setting, the SEC in 2015 proposed rules that will require all companies listed on a national securities exchange to have a policy that will enable the said recovery mechanism to be operated. The recovery mechanism which is dubbed by the moniker **"clawback"** would prevent both current and former executives from retaining incentive-based compensation that they have received due to material errors in the companies' financial reporting. Another stand-out feature from the proposed set of rules is that there is no need to prove executive misconduct in the course of effecting clawback.

Many authorities, particularly banking regulators in advanced countries have since followed suit and legislated clawback provisions as part of their law of the land. It is also not unusual for authorities to cast a wider net in the applicability of clawback provisions, covering not just executives but also directors.

Malaysia – moving the needle

In tandem with these global regulatory developments, regulators in Malaysia have also "moved the needle" by introducing a slew of reform measures relating to remuneration in recent years. Some of the key measures which were introduced in the last two years are summarised below:

Listing Requirements

The contents of the annual report should include: The remuneration of directors of the listed issuer (including the remuneration for services rendered to the listed issuer as a group) for the financial year on a named basis, stating the amount received or to be received from the listed issuer and on a group basis respectively.

The disclosure must include the amount in each component of the remuneration (e.g. directors' fees, salaries, percentages, bonuses, commission, compensation for loss of office, benefits-in-kind based on an estimated money value) for each director. – **Paragraph 11, Part A, Appendix 9C**

Companies Act 2016

The fees of the directors, and any benefits payable to the directors including any compensation for loss of employment of a director or former director of a public company or of a listed company and its subsidiaries shall be approved at a general meeting. – **Section 230(1)**

Malaysian Code on Corporate Governance

The board has in place policies and procedures to determine the remuneration of directors and senior management, which takes into account the demands, complexities and performance of the company as well as skills and experience required. The policies and procedures are periodically reviewed and made available on the company's website.
– **Practice 6.1**

The board has a Remuneration Committee to implement its policies and procedures on remuneration including reviewing and recommending matters relating to the remuneration of board and senior management. The Committee has written Terms of Reference which deals with its authority and duties and these Terms are disclosed on the company's website.
– **Practice 6.2**

Bank Negara Malaysia's Policy Document on Corporate Governance

Remuneration payout schedules must reflect the time horizon of risks and take account of the potential for financial risks to crystallise over a longer period of time.

As such, a financial institution must adopt a multi-year framework to measure the performance of members of senior management and other material risk takers. Such a framework must provide for adjustments to the vested and unvested portions of variable remuneration (through malus, clawbacks and other reversals or downward revaluations of awards) in the event of bad performance of the business unit or institution attributable to the individual or if he commits serious legal, regulatory or internal policy breaches. – **Standard 19.7(c)**

Appendix 1: Methodology and assumptions

1. This Report is based on publicly available information of the top 300 listed issuers on Bursa Malaysia, by market capitalisation as at 31 December 2016. If necessary, further information was obtained from the websites of the relevant listed issuer.

2. The analysis of remuneration received by non-executive directors is limited to the most recent annual report of the listed issuer, made available on the website of Bursa Malaysia, up to July 2017.

3. Whilst the Companies Act 2016 does not mandate the following categories, we have defined the remuneration of non-executive directors into four main categories for consistently with past versions of this Report. The four categories are:

- Fees;
- Allowances and other emoluments;
- Non-cash remuneration such as equity; and
- Benefits-in-kind.

4. If an NED has served for less than a year, his tenure of service is pro-rated accordingly. For example, a director who served six months of the financial year in question is counted as 0.5, not 1.

5. Where information was ambiguous or unavailable, we have not used the data or information in the Report. Clarity of data was pivotal to the accuracy of our Report.

6. Where remuneration between the financial statements and the corporate governance statement differed, a judgement call is made to use the data set that the authors deemed to be the more accurate of the two.

7. For some listed issuers, the remuneration of certain non-executive directors was high relative to their peers on the same board. This could be due to one or a combination of the following factors:

- founders who remain with the company as non-executive directors are able to command significant levels of remuneration; or
- non-executive directors are family members of executive directors and they may receive remuneration that is comparatively higher than their fellow directors; or
- there are Directors who are classified as non-executive at the holding company level, but serve as chief executives, executive directors or executive advisors of the listed issuer's principal subsidiary(ies), where the core activities/operations of the group reside in.

For reasons outlined above, these directors are regarded as "de-facto Executive Directors" and accordingly are excluded from our Report.

8. Alternate directors were not considered in our Report unless there is a clear indication that they too receive remuneration for their service on the board.

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