Governance must be substance over form

Inside Insights
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TIME and again we are reminded how important corporate governance is for listed companies as they companies are judge by stakeholders on actual practices and in line with what is laid out in the Malaysian Code of Corporate Governance 2017 (MCCG 2017).

According to the Securities Commission's (SC) website, MCCG 2017, which was introduced in April 2017, comprise 34 standard practices to support three key main principles, which are board's leadership and effectiveness; effective audit, risk management, and internal controls; and corporate reporting and relationship with stakeholders.

In addition, the MCCG 2017 has laid out two additional practices meant for large corporations and four step-up practices to encourage companies to adopt even higher governance standards. Last year, the MCCG 2017 got a little boost from the SC with the introduction of "Conduct of Directors of Listed Issuers and Their Subsidiaries". With the exception of Chapter 5 on Group Governance, which was effective from Jan 1 this year, the rest of the guidelines were already effective since July 30 last year.

In essence, under the guidelines, a director must exercise his/her powers for a proper purpose and in good faith in the best interest of the company.

A director, who is appointed by virtue of his/her position as a representative of a shareholder, must act in the best interest of the company in which he/she sits as a board member and not his/her nominator. Hence, for example, if a director is sitting in a company's board as a representative of the substantial shareholder, his/her actions at board meetings must be in the best interest of the company that he/she is sitting on and not the company that he/she is representing.

The introduction of this guidelines by the SC is a welcome move as we see time and again where directors who sit on the board of listed companies in actual fact are representing certain key shareholders of a company.

Hence, the duty of care that is required from these directors is to the company that they are sitting on as a board member and not on the whims and fancies of the shareholder whom he/she represents.

In addition, the previously established MCCG 2017 also sets out guidelines in terms of adoption of the 36 practices that are clearly spelt out.

While we continue to see corporates improving their governance score by higher level of adoption of these practices, there are instances where companies continue to find reasons as to why they are not meeting the expected practices.

Key lapses we see is in the area of independence of directors, both in terms to tenure and numbers as a percentage of total number of directors. Lapses are also seen in number of women directors on the board of companies while in terms of disclosure of remuneration, some companies are still shying away from disclosing salaries of their top five personnel of their senior management.

The MCCG 2017 also encourages Integrated Reporting (IR), which we are seeing increasingly being adopted by almost all listed companies, in depth and in breadth. Investors who read these annual reports are given clear messages that are being communicated by these listed companies, which is generally always on a positive note, with far reaching claims of what a corporate has done over the past financial year.

In today's business world, where corporates are also trying to score on Environment, Social and Governance (ESG) angle, we also see how companies provide meaningful and detail disclosures on their ESG practices in order to gain traction amount investors who are increasingly demanding greater governance and transparency.

In addition, as corporates move with times and new standard practices introduce, some are also beginning to disclose issues related to climate change and what they are doing to help global warming.

While all the IR, ESG and climate change reporting is good and we definitely welcome the openness that a corporate is trying very hard to communicate, how far are some of the claims that corporates make in their respective annual reports are truthfully reported?

From hard labour practices to deplorable living conditions, from fake marketing to misrepresentation, from accounting issues to claims of being environmentally friendly, from unsubstantiated customer friendly approaches to even bribery allegations, there are companies out there who still, despite violating some of these key stakeholders' concern, are proudly recognising that they adopt the best practices.

Clearly, stakeholders who have engagements with the corporate(s) would know whether if it is the truth or otherwise. In the era of social media, a corporate cannot run away from the truth as these issues will eventually catch-up on them. As stakeholders today are bold and daring, some may even take these unscrupulous companies to court and a guilty verdict definitely will be far more damaging to a corporate.

Some corporates are also good at collecting awards from various organisations but there are allegations too that some of these awards may actually be "bought" by the corporates themselves in order to gain "market recognition".

This is rather rampant is certain industry and it is very hard for the ordinary man on the street to actually evaluate whether these awards are based on merits or otherwise.

We have also seen in the corporate world today internal politics taking centre stage and more and more people are actually stressed out due to office politics than anything else.

This unproductive behaviour only drives talents away from a company and in the long run, sooner or later, those who are left in the organisations are mere office politicians who are only interested in apple polishing their bosses without realizing that their actions have in actual fact left the company nothing but with rotten apples.

Fraud too is beginning to show up among some corporates, more so during current economic environment where doing business is challenging.

We see cases of how accounting figures or even projections are bumped up just to please lenders or investors on the hope of getting a buy-in from these stakeholders either in the form of new investment or for new banking facilities.

In some cases, corporates are hard pressed for business due to Covid-19 and they find ways to cut cost especially those related to staff cost or even overheads. But at the same time, the same companies are spending millions either buying back their own shares in the market or in some cases, the major shareholders themselves are wasting their company's resources for their own personal enjoyment.

Of course these are isolated cases and by

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