1 GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of the corporate governance principles? Is your legal system based on common law, civil law, Islamic law or something else?

The corporate governance framework in Malaysia is built on several interrelated principal and subsidiary legislations and guidelines (see paragraph 2.1 below). The general principles of corporate governance are statutorily codified under the Malaysian Companies Act 1965 (Companies Act). The legal system in Malaysia is substantially based on common law.

Under the Companies Act, every director of a company is under a duty to, at all times, exercise his powers for a proper purpose and in good faith in the best interest of the company. It also describes the manner in which a director is expected to make business judgments. This is further discussed in paragraph 4 below.

The Securities Commission Malaysia (SC) launched the Capital Market Masterplan 2 (CMP2) to expand the role of the capital market in invigorating national economic growth. The SC recognises in the CMP2, that growth is only sustainable if it is underpinned by a proper system of accountability and governance. Strengthening corporate governance therefore represents one of the key thrusts to reinforce investor confidence in the Malaysian capital market.

In 2011, the SC released the Corporate Governance Blueprint 2011 (Blueprint) which provides the action plan to raise the standards of corporate governance in Malaysia by strengthening self and market discipline and promoting greater internalisation of the culture of good governance.

In 2012, the Malaysian Code on Corporate Governance 2012 (MCCG 2012) was issued. All companies are encouraged to adopt the principles and recommendations of MCCG 2012 and make good corporate governance an integral part of their business dealings and culture.

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

The Financial Services Act 2013 (FSA) came into force in 2013 consolidating the regulatory and supervisory framework for Malaysia’s banking industry, insurance industry, payments systems and foreign exchange administration matters. It repealed the Banking and Financial Institutions Act, the Insurance Act, the Payments Systems Act and the Exchange Control Act.
The Islamic Financial Services Act came into effect in 2013 and sets out the regulatory framework for Malaysia’s Islamic financial sector with the principal regulatory objectives of promoting financial stability and compliance with Syariah (Sharia law). This Act repealed the Islamic Banking Act 1993 and the Takaful Act 1984.

In 2014, SC and the Minority Shareholder Watchdog Group (MSWG) launched the Malaysian Code for Institutional Investors (Code), a code and a set of best practices collectively developed by Malaysia’s largest institutional investors namely the Employees Provident Fund (EPF) and others. It aims to set out broad principles of effective stewardship by institutional investors such as their disclosures of stewardship policies, monitoring of and engagement with investee companies and managing conflict of interests. The adoption of the Code’s principles by institutional investors demonstrates their intent towards good corporate governance.

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

Insider Trading
On 29 January 2015, the SC charged five individuals with insider trading offences under section 188(2)(a) of the Capital Markets and Services Act 2007 (CMSA), punishable by a term of imprisonment not exceeding ten years and a fine of not less than MYR1 million. The managing director of the group at the material time, was charged for acquiring 2,766,600 units of the shares of the group whilst in possession of non-public information.

Share Manipulation
The SC took action against seven individuals for the manipulation of shares of an information and communications technology company. The charge against the defendants is that over a one-week period, they actively transacted in the company shares among themselves, causing the price of the shares to artificially rise by MYR0.21. The SC sought a disgorgement of all profits earned by the defendants as a result of the manipulation. The SC also claimed a civil penalty of MYR1 million from each defendant, and barred the defendants from being directors of any public listed company and from trading on the stock exchange for a period of five years.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

Enforcement of corporate governance is jointly undertaken by a number of regulators including the Companies Commission of Malaysia (CCM), the Malaysian Anti-Corruption Commission (MACC), the SC and the Royal Malaysian Police. Financial institutions are further regulated by the Central Bank of Malaysia (BNM). Criminal sanctions may be levied depending on the nature of the infringement.
2. SOURCES OF LAW

2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?

The Companies Act (and its subsidiary instruments) is the primary legislation governing companies in Malaysia. However, there are additional legislations, codes and rules which supplement the Companies Act:

- The Malaysian Code on Corporate Governance 2012 (MCCG).
- The Malaysian Accounting Standards Board’s (MASB) Approved Accounting Standards.
- The Code of Ethics for Company Directors (issued by CCM).
- The Code of Ethics for Company Secretaries (issued by CCM).

Some legislation imposes direct responsibility on directors and officers with respect to the company’s compliance with certain obligations. For example, under the Employees Provident Fund Act 1991 and the Employees’ Social Security Act 1969, the directors of a company are jointly and severally liable for contributions due and payable to the Employees Provident Fund and the Social Security Organisation by such company that remains unpaid.

Additional laws may also apply depending on the nature of the company’s business (for example, financial institutions are subject to the Financial Services Act 2013 and the Islamic Financial Services Act 2013).

That said, a distinction must be made between companies incorporated under the Companies Act and companies incorporated under Labuan Companies Act 1990. A company incorporated under the Labuan Companies Act 1990 would be regulated by the said law and not Companies Act 1965. The distinction is a result of the categorisation of Labuan as a mid-shore jurisdiction. As such, a company incorporated under the Labuan Companies Act 1990 would be governed by the Labuan Financial Services and Securities Act 2010 and not CMSA 2007, amongst other legislation.

In addition, public companies listed on the Main Market of Bursa Malaysia, regardless of the legislation they were incorporated under, are bound to observe, among others, Bursa Malaysia’s Listing Requirements (Listing Requirements). Chapter 15 of the Listing Requirements sets out corporate governance requirements that must be complied with by a listed issuer and its directors.

The legislations, codes and rules may be interpreted by the courts, the numerous decisions of which form the collection of case law on this subject.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

The primary legislation regulating capital markets in Malaysia is the CMSA and its subsidiary legislation. The SC also issues guidelines and circulars from time to time to effect the operation of the CMSA. The Listing Requirements apply to companies listed on the stock exchange, which among others, requires listed companies to make continuous disclosures with respect to certain types of information.
In 2015, Securities Commission Malaysia released the Guidelines on Regulation of Markets under Section 34 of CMSA 2007 to introduce new requirements for the registration of equity crowd funding (ECF) platforms and provide governance arrangements for the operator of such platforms. ECF is a new form of fundraising that allows start-ups or other smaller enterprises to obtain capital through small equity investments from relatively large numbers of investors.

2.3 Are there any public interest laws which apply to or influence corporate governance?
The legislative trend in Malaysia leans towards imposing responsibility for compliance on directors and officers of the company. Examples of public interest legislation with corporate governance elements include:
- The Occupational Safety and Health Act 1994.
- The Personal Data Protection Act 2010.

The Whistleblower Protection Act 2010 prohibits the taking of any detrimental action against persons making disclosures of improper conduct in the public and private sectors.

2.4 Have there been any recent developments in any of the above laws? What are the recent changes to the above laws or rules and the reasons for them?
In 2014, the SC launched the Sustainable and Responsible Investment (SRI) Sukuk framework to facilitate the financing of sustainable and responsible investment initiatives. This is in line with the initiative set out under the SC’s Capital Market Masterplan 2 to promote socially responsible financing and investment.

3. SHAREHOLDERS AND THE SHAREHOLDERS’ MEETING
3.1 How are shareholders’ interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders’ meeting?
Shareholders’ rights and interest in the company are provided for under the company’s article of association (articles) and the Companies Act.

In general, shareholders have the right to vote on matters concerning the company. However, where a company has in its articles a provision that delegates the management of the company’s business to the directors, then as a general rule, the shareholders may not usurp such powers.

Ordinary resolutions
That said, even though a company may delegate its management to the directors pursuant to the company’s articles, the Companies Act stipulates that certain transactions would require shareholder approval.
Under Section 132C of the Companies Act, an ordinary resolution of the shareholders is required for disposals by directors of a substantial portion of the company’s undertaking or property, or the acquisition of an undertaking or property of a substantial value.

Section 132E of the Companies Act provides that an ordinary resolution is also required for any substantial property transaction of a non-cash asset of a requisite value with a director or a substantial shareholder. The interested director or substantial shareholder is required to abstain from voting on the resolution in relation to the transaction or arrangement in the general meeting. The Listing Requirements also impose similar restrictions for related party transactions.

Special resolutions
Pursuant to the Companies Act, certain transactions would also require shareholders approval by way of a special resolution (that is of at least 75% of the voting members) in a general meeting. These include proposals such as:

- To alter the memorandum and articles of association.
- To convert a public company to a private company or vice versa.
- To reduce the share capital of a company.
- To pay interest out of capital in certain cases.
- To appoint an inspector to investigate a company’s affairs.
- To effect the winding-up of a company.

3.2 How is the shareholders’ meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

General meetings of shareholders must be convened and conducted in accordance with the articles of the company. The articles may provide for the appointment of the chairman of such general meeting.

The Companies Act provides that a general meeting called the annual general meeting must be held once in every calendar year, and not more than 15 months after the holding of the last preceding annual general meeting. Certain matters must be conducted during such annual general meeting, for example the tabling of the company’s profit and loss account and balance sheet, and the appointment of auditors.

All other general meetings of shareholders that are convened are known as extraordinary general meetings. Extraordinary general meetings may be convened by the board, as it sees fit, or on the requisition of members in accordance with the Companies Act. In addition, the High Court also has the power to order such a meeting of a company. Shareholders’ meetings are typically private to the shareholders and the company. There are no specific provisions in the Companies Act which regulate who may attend a shareholders’ meeting. Advisers may attend at the invitation of the company.
3.3 How are minority shareholders’ rights protected?
Minority shareholders’ rights are protected via the following methods:
1. Supermajority approval (see paragraph 3.1).
2. Remedy for oppression in court: Section 181 of the Companies Act provides judicial relief if: (i) the company’s affairs are conducted or the directors’ powers are exercised in a manner oppressive to one or more of the members or holders of debentures or in disregard of the interests of the member(s), shareholder(s) or holder(s) of debentures or (ii) some act of the company has been done or is threatened or some resolution has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more members or holders of debentures.

When oppression is made out, the court may grant such relief as it thinks fit, including an order to (i) direct or prohibit any act or cancel or vary any transaction or resolution, (ii) regulate the conduct of the affairs of the company in the future, (iii) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself, (iv) in the case of purchase of shares by the company, provide for a reduction accordingly of the company’s capital, or (v) provide that the company be wound up.

Recent cases include Rahya Trading Sdn Bhd v Tong Khin Company Sdn Bhd and another [2014] in which the oppression of a minority shareholder was proven due to the company’s insistence that the minority shareholder remains as a shareholder against his wishes even though the company was no longer involved in any business. As a result, the court granted the relevant protection. This is contrasted with Tan Chong Teck v Gan Seong Chin @ Gan Chin [2014] where plain disagreement with the actions taken by the majority or the board of directors is not a sufficient ground to establish minority oppression.

3. Contractual agreement: Shareholders may contract by way of a shareholders’ agreement as to the rights and benefits of minorities.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?
Shareholder activism is neither encouraged nor discouraged by policy makers in the country. To date, the only form of shareholder activism to be found in Malaysia is the MSWG. The MSWG was established in 2000 as part of a broader capital market framework to protect the interests of minority shareholders.

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders’ meeting? Are they criminally or otherwise publicly sanctioned?
The Companies Act does not distinguish between professional shareholders and other shareholders, nor does it prescribe for different treatment of professional shareholders.
3.6 Are shareholders' benefits given to some of the shareholders by the company without resolution by the shareholders’ meeting prohibited or regulated by the law or other rules?

It is generally not prohibited by any laws or regulations. Provided that the company’s memorandum and articles permits the same, a company’s share capital may be divided into different classes with different rights, whether in regards to dividends, voting, return of capital or otherwise.

In relation to takeovers however, the Malaysian Code on Takeovers and Mergers 2010 (Takeovers Code) requires any person involved in a takeover offer, merger or compulsory acquisition to provide fair and equal treatment to all shareholders, in particular, the minority shareholders.

4. DIRECTORS AND BOARD OF DIRECTORS

4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one or two-tier board system?

What are the outside directors called?

Definition Of directors

Section 4 of the Companies Act defines a director of a company as any person occupying the position of director or an alternate or substitute director regardless of the name given to their position.

Functions of the board

Directors of a company are collectively referred to as the board of directors. Section 131B of the Companies Act states that the business and affairs of a company must be managed by or under the direction of the board, subject to any modification, exception or limitation provided in the Companies Act or the company’s memorandum or articles of association.

Directors’ duties

Directors have duties imposed on them under the Companies Act, common law, the company’s articles and, where applicable, by contract and the FSA.

Duty To act bona fide in the interests of the company

Section 132(1) of the Companies Act states that a director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company. The court in Vision Cast Sdn Bhd v Dynacast (Melaka) Sdn Bhd [2014] 1 LNS 557 has held that:

• The obligations imposed on a director to act bona fide in the interests of the company and to avoid a conflict between their duties and private interest only relate to matters that arise while the director or employee was in office.

• A defaulter could be hauled up even after he has left office but the act complained of must have arisen during his tenure in the office. (obiter)

Disclosure of interests in contracts, property, offices and so on

Section 131(1) of the Companies Act requires a director to declare his interest in a contract or proposed contract with the company to the board.
Interested director not to participate or vote
Section 131A(1) of the Companies Act disallows such director from participating in any discussion while the contract or proposed contract is being considered at the board meeting and from voting on the contract or proposed contract.

However, it must be noted that Section 131A(1) of the Companies Act stipulates certain exemptions in relation to the above.

Functions of the board in financial institutions
Financial institutions are governed by both the Companies Act and the FSA. Section 56 of the FSA states that business and affairs of a financial institution must be managed under the direction or oversight of its board. The functions of the board include, amongst others, to set and oversee the implementation of business and risk objectives and strategies.

Duties of directors in financial institutions
Section 57 of the FSA provides that the duties of such directors are to:
• Act in good faith in the best interests of the institution.
• Exercise reasonable care, skill and diligence which may reasonably be expected of a director having the same responsibilities.
• Only exercise powers conferred on him for the purposes for which such powers are conferred.
• Exercise sound and independent judgment.

One-tier board system
Malaysia practices a single-tier board system, which means that all the directors (whether executive or non-executive) form one board – the board of directors. The board is permitted to delegate certain functions to a committee of the board.

Types of directors
Below is a list of the various types of directors that can be on a board of directors:
• Executive director: a salaried, full-time working director to whom the board has delegated managerial or executive powers to carry out the day-to-day management of the company’s business.
• Non-executive director: a director who does not hold any salaried appointment within the company.
• Independent director: a director who is independent of management and is free from any business or other relationship which could interfere with his exercise of independent judgement or his ability to act in the best interests of an applicant or a listed company.
• Non-independent director: a director who, amongst other things, is an executive director, or a major shareholder of the company; or a family member of an executive director, officer or major shareholder of the company.
Outside directors
Outside directors are also known as non-executive directors (as defined above).

4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

Civil liability
Section 132(3) of the Companies Act states that a director who is in breach of his duty is guilty of an offence and liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach.

Civil action by the company
If a director is in breach of his fiduciary duty to act bona fide in the interests of the company or fails to exercise a reasonable degree of care, the company has different remedies available depending on the circumstances. These remedies include:

• Legal action against the director for the return of specific property (in misappropriation of property cases).
• Rescission of the director’s contract (in cases where directors fail to disclose their interest in a contract with the company).
• An action for negligence and the recovery of damages for any loss which results (in cases of breach of duty from a failure to exercise reasonable care).
• An application to the court for a declaration that the exercise of power in breach of the director’s duties to the company to be invalid.

Civil action by a financial institution
A financial institution may, by virtue of section 240(1) of the FSA, begin civil proceedings by making an application to the court seeking various orders. These orders include, inter alia:

• Requiring a director to pay an amount which will not exceed three times the gross amount of pecuniary gain or loss avoided as a result of the breach or the amount of money which is the subject matter of the breach.
• Requiring the director to do a certain act.
• Directing the director to take such steps as the court may direct to mitigate the effect of such breach.

Criminal liability
Breach of the statutory duties set out in section 132 of the Companies Act is an offence under the Companies Act, punishable by imprisonment for five years or a fine of MYR30,000.
For financial institutions, section 57 of the FSA states that a director who exceeds his or her conferred powers may be imprisoned for up to eight years, fined up to MYR25 million or both.

Sections 154 to 159 of the FSA further allow banks to issue directions to an institution, its directors and officers; and the institution, its directors and officers may be fined up to MYR50 million, imprisoned for up to ten years or both for failure to comply with such directions.

The FSA also provides in section 248 that making false entries in documents is punishable with imprisonment for up to eight years or a fine of up to MYR25 million or both.

4.3 Does the board of directors have a committee system, for example nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

It is generally common practice that companies set up a committee system as the board is normally allowed to delegate any of its powers. There is, however, a presumption that the directors are responsible for the exercise of such delegated powers. In relation to public listed companies, the Listing Requirements make it compulsory for listed companies on Bursa Malaysia to set up the following committees.

Nominating committee
Paragraph 15.08A of the Listing Requirements requires listed companies to establish a nominating committee comprising exclusively of non-executive directors, a majority of whom should be independent. The nominating committee shall have written terms of reference dealing with its authority and duties which must include the assessment and selection of directors. These requirements are also reflected as recommendations in the MCCG.

Audit committee
Paragraph 15.09 of the Listing Requirements provides that a company must establish an audit committee from amongst its directors. There are certain requirements that must be fulfilled pursuant to the said paragraph.

The functions of the audit committee include, amongst others:

- To review the audit plan, audit report and evaluation of the system of internal controls by the external auditor and report the same to the board of directors.
- To review the adequacy of the scope, functions, competency and resources of the internal audit functions and to ensure that it has the necessary authority to carry out its work and report the same to the board of directors.
- To review any related party transaction and conflict of interest situations that may arise within the listed issuer or group including any transaction, procedure or course of conduct that raises questions of management integrity and report the same to the board of directors.
Remuneration committee
The MCCG recommends that the board should establish a remuneration committee which consists exclusively, or comprises a majority of, non-executive directors to establish formal and transparent remuneration policies and procedures.

4.4 Is it a legal requirement to have an independent director or a third party director? If so, how are they appointed? Is it required for listed companies?
Paragraph 15.02 of the Listing Requirements provides that a public listed company must have at least two directors or one-third of its board, whichever is higher, that are independent directors. If the number of directors of the listed company is not three or a multiple of three, then the number nearest one-third must be used.
Independent directors are appointed by the nominating committee of the company.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?
Directors
In the absence of a provision in the articles or a shareholders’ resolution, a director of a company is not entitled to be paid for his services (Tengku Dato’ Ibrahim Petra bin Tengku Indra Petra & Others v Perdana Petroleum Bhd [2013] 8 MLJ 280). However, the articles of a company typically provide for the payment of remuneration of directors to be determined by the company in the general meeting.

Article 70 in Table A of the Fourth Schedule of the Companies Act 1965 also provides that the remuneration of directors shall from time to time be determined by the company in the general meeting.

The Bursa Malaysia Corporate Governance Guide (2nd edition) provides that directors’ remuneration can be recommended by the board as a whole or delegated by the board to the remuneration committee. Smaller companies usually allow the whole board to address the subject of directors’ remuneration. In such instances, a clearly defined process to determine directors’ remuneration must be established. This process is based on many factors, amongst others; tenure of directorship, shareholdings held or capital investments into the company by the director.

The remuneration received by directors purely in respect of their board duties is generally termed as a fee while executive directors will, in addition, receive other emoluments, including a salary for their executive duties. All directors are entitled to reasonable expenses arising from their attendance at board meetings.

For the MCCG recommendation to establish a remuneration committee, see paragraph 4.3 above. Remuneration of the board of directors must reflect
the responsibilities of the board, the level of expertise and complexity of the company’s activities.

The issue of the amount of directors’ remuneration is an internal matter best left to be decided by the members themselves (Guyler Magruder v Creative Software (M) Sdn Bhd & Others [1994] 3 CLJ 450). Unless there is evidence of oppression, it is not the function of the court to question whether payments or remuneration sanctioned by the company are excessive or improper (Low Tien Sang & Sons Holding Sdn Bhd & Others v How Kem Chin & Others [2000] 2 MLJ 334 and Lee Ah Kong @ Lee Muk Sang v Wings Logistic Sdn Bhd & Another [2015] 7 MLJ 408).

**Officers**

See paragraph 9.1 below.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?

There are no specific rules or guidelines detailing how a board should handle a corporate crisis. The MCCG recommends that the board must be responsible to identify principal risks and recognise that business decisions involve taking appropriate risks. The board must ensure the implementation of appropriate internal controls and mitigation measures and establish a sound system to monitor and manage risk. The board should task management to prepare plans to handle such contingencies.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS

5.1 How is the internal accounting and legal audit structured and conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor every five years?

**External audit**

Regardless of whether a company is large or small, section 172 of the Companies Act requires all companies’ accounts to be audited by auditors every year before the annual general meeting (AGM). The appointment of an auditor is made by the board at any time before the first AGM of the company. Subsequently, the company shall appoint the auditor at each annual general meeting of the company, and the auditor will hold office until the conclusion of the company’s next AGM. The board also has the authority to fill any casual vacancy in the office of the auditor. There is no requirement for change of auditor every five years. However, if the client of the auditor is a listed entity, then under the Malaysian Institute of Accountants Byelaws, the lead engagement partner of the audit firm should be rotated every five years.
Internal audit

There is no requirement for a private limited company to set up an independent internal audit function.

The MCCG recommends that the board of a listed company should establish an internal audit function and identify a head of internal audit who reports directly to the audit committee. The head of the internal audit is responsible for providing assurances to the board that the internal controls are operating effectively. Internal auditors must also conduct regular reviews and appraisals of the effectiveness of the governance, risk management and internal controls processes within the company.

Section 167A of the Companies Act further states that the directors of a public company or a subsidiary of a public company shall have in place a system of internal controls that will provide reasonable assurance that:

- Assets of the company are safeguarded against loss from unauthorised use or disposition.
- All transactions are properly authorised and recorded as necessary to enable the preparation of true and fair profit and loss accounts and balance sheets and to give a proper account of the assets.

5.2 Are there supervisory auditors? What is the function of the supervisory auditors' board?

Currently, Malaysia does not have supervisory auditors. See paragraph 5.1 above for other details in relation to auditing.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

Companies Act 1965

Both private and public companies are obligated by the Companies Act to disclose information in relation to:

1. Forms lodged with the Registrar of Companies (ROC):
   a company is required to lodge with the Registrar of Companies certain statutory forms reporting the occurrence of certain actions and transactions undertaken by the company (for example the increase of authorised share capital, allotment of new shares, creation and discharge of certain charges, changes to the appointments of directors and secretaries and so on).

2. Annual return:
   pursuant to section 165 of the Companies Act, every company, be it a company having or not having a share capital, shall make an annual return containing the particulars required by the Act (such as information on shares, indebtedness, register of members and so on).
3. Disposal of substantial undertaking and property by the company: pursuant to section 132C, such transactions have to be disclosed to the shareholders and approved by the company before such transactions could be effected.

4. Disclosure of directors’ interest in contracts, property and offices: pursuant to section 131, any director interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors of the company.

5. Removal of a director: pursuant to section 128, the company must furnish shareholders with the representations, if any, made by the affected director in relation to a proposal to remove a director of a public company from office before the natural expiration of his term of office.

6. Removal of an auditor: pursuant to section 172, the company must furnish shareholders with the representations in relation to a proposal to remove an auditor.

7. Proposed scheme of compromise/arrangement: pursuant to section 177, a director has a direct duty to explain to shareholders the effects of a proposed scheme of compromise or arrangement.

**Capital Markets and Services Act 2007**
CMSA provides for disclosure requirements in relation to public listed companies. To begin with, a company intending to issue or offer securities for subscription or purchase can only do so where its prospectus has been registered with Securities Commission pursuant to section 232. Such prospectus would contain information in relation to the company and its group, shareholders and directors and key management, related party transactions, financial information and so on.

**Bursa Malaysia’s Main Market Listing Requirements**
Further, the Listing Requirements imposes on public listed companies a continuous disclosure obligation. Amongst others, a listed issuer must disclose to the public, all material information necessary for informed investing, and take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information in accordance with the Listing Requirements.

In addition to the obligation to make immediate public disclosures of such material information, a listed issuer must also make periodic disclosures of its interim financial report that is prepared on a quarterly basis, its annual reports that include annual audited financial statements together with the auditors’ and directors’ reports on the listed issuer.

**Malaysian Code On Corporate Governance 2012**
In addition, pursuant to the Code, it has been recommended that the board should ensure the company has appropriate corporate disclosure policies and procedures.
6.2 What is the liability or responsibility of the board in relation to the company’s disclosure requirements?
Contravention of the above Companies Act provisions would render the company and every officer guilty of an offence under the Companies Act. This would result in a punishment of a monetary penalty or imprisonment. Contravention of the above laws and regulations would also lead to a punishment of a monetary penalty or imprisonment as the court deems fit.

7. M&A AND CORPORATE GOVERNANCE
7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?
Mergers and acquisitions of public companies in Malaysia (share acquisitions) are regulated by CMSA and the Takeovers Code. These regulations encapsulate the principles that a person who is involved in an offer, merger or compulsory acquisition must observe good standards of commercial behaviour so that minority shareholders are given fair and equal opportunity to consider the merits and disadvantages of the offer, merger or compulsory acquisition.

Capital Markets And Services Act 2007
Sections 222 to 224 of CMSA cover compulsory acquisition and the mandatory obligation to provide notice to any dissenting shareholder, rights of minority shareholders in the event of a takeover and remedies that are available to dissenting shareholders.

Malaysian Code On Takeovers And Mergers 2010
The Takeovers Code on the other hand governs the conduct of parties where takeover offers (be it mandatory or voluntarily) have been made or proposed to be made. It requires an offeror to immediately announce to the public by way of a press notice in at least three main newspapers. Subsequently, the offeror must give a written notice regarding the takeover offer to the board of the offeree, the SC and Bursa Malaysia (if the securities of the offeree or offeror are listed in Malaysia). In turn, the board of the offeree shall make an announcement upon receipt of the written notice from the offeror.

Bursa Malaysia’s Main Market Listing Requirements
Further, pursuant to the Listing Requirements, a listed company involved in a takeover must disclose information relating to the acquisition and disposal of assets by a listed company or its subsidiary. Upon completion of such an offer, a listed company must furnish information in relation to its shareholding structure to ensure its compliance with the shareholding spread requirement.
8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or anything else? How is it regulated under the company law or market regulations?

Section 149 of the Companies Act provides that a shareholder shall be entitled to appoint another person or persons as his proxy to attend and vote on his behalf at a members’ meeting.

That said, there are restrictions when it comes to appointment of proxies and the exercise of its power. Firstly, if the proxy is not a member, the shareholder can only appoint a person who is an advocate, an approved company auditor or a person approved by the Registrar. Secondly, a proxy can only vote on a poll and not by a show of hands. Thus, to effect voting by poll, a proxy would have to demand for a vote by poll system.

Proxy fighting however is not specifically regulated in Malaysia.

9 OFFICERS’ REMUNERATION RULES

9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders’ meeting? Is there any mechanism for an independent body to review and evaluate them?

The remuneration of officers including salary, allowances and benefits is usually determined in the contract of service. Officers can also be remunerated with bonuses or via profit sharing schemes the rate of which differs from year to year.

The role of the shareholders’ meeting in determining the remuneration rate of officers is limited. There is no known existing mechanism for independent review and evaluation.

However one of the recommendations made in the second edition of Bursa Malaysia Corporate Governance Guide, is that remuneration of the CEO and senior management should be recommended by the remuneration committee to ensure that the rewards are in line with the following key objectives:

(a) The offer is sufficient to attract and retain the best candidate in the short term.

(b) The incentives offered are appropriate to motivate the CEO and senior management to perform at their maximum on a continuous basis.

(c) The CEO’s and senior management’s remuneration are aligned with shareholder value whilst creating an effective “golden handcuff” in the long term.

9.2 Is the mechanism of officers’ remuneration publicly debated?

With the highest payout to chief executive officers exceeding MYR110 million a year, there has been increasing public debate in Malaysia on the exorbitant rate of officers’ remuneration in recent years.
10. DIRECTORS’ LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION

10.1 What are the directors’ responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?

See paragraphs 4.1 and 4.2 above for directors’ responsibilities and liabilities under the law.

Section 140(1) of the Companies Act provides that any provision which allows a company to indemnify any officer (which includes directors) or auditor against any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust, is null and void. A company may, pursuant to its articles or otherwise, indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted.

The civil liabilities of a director may be covered by directors’ and officers’ liability insurance.

11. SHAREHOLDERS’ DERIVATIVE SUITS

11.1 Is a shareholder’s derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?

The right of shareholders to bring a suit on behalf of the company is provided for by the Companies Act and by common law.

Statutory Derivative Action Under The Companies Act

Pursuant to section 181A of the Companies Act, a shareholder, present or past, director and/or Registrar of Companies is entitled to bring, intervene in or defend an action on behalf and in the name of the company.

Leave of court is however necessary and section 181B of the Companies Act prescribes for the procedure for obtaining leave. In deciding whether or not leave shall be granted, the court shall take into account whether:

• The complainant is acting in good faith.
• It appears prima facie to be in the best interest of the company that the application for leave be granted.

Shareholders’ Derivative Actions Under Common Law

Notwithstanding section 181A of the Companies Act, the right to bring a shareholders’ derivative action under common law is not abrogated. Under common law, a shareholder may bring action against a director who is in breach of his fiduciary duty in the following instances (Tan Guan Eng v Ng Kweng Hee [1992] 1 MLJ 487):

• The act in question is ultra vires.
• It is fraud against the minority.
• The act in question was a proposal or transaction which required the shareholders to resolve by special resolution, but failed to obtain such resolution.
Malaysia

- Where the personal and individual rights of the shareholders have been violated.
- When the circumstances of the case require it.

11.2 Have there been any recent relevant court cases on the subject?
Reported decisions in Malaysia which deal with the statutory derivative action provisions in the Companies Act are as follows:

_Dato’ Suhaimi Ibrahim & Others v Hi-Summit Construction Sdn Bhd & Another_ [2013] 1 LNS 203: the plaintiff, a minority shareholder in the defendant company, had applied for leave to continue on behalf of the defendant company in an ongoing legal proceeding. The High Court refused the application for leave and held that the management of the company must be in the control of wrongdoers and thus prevented the company from taking legal action. This forms one of the requisite elements for bringing a derivative action. Further, the court will also take into account whether the applicant acted in good faith.

_Lembaga Tabung Angkatan Tentera v Prime Utilities Bhd_ [2013] 7 MLJ 831: the plaintiff, a minority shareholder in the defendant company, filed a leave application to commence proceedings on the defendant’s behalf to recover the balance of a substantial sum of money it had given to a foreign asset-management company (Boston) for investment purposes. The High Court granted leave and held that the plaintiff’s complaints were not without basis or substance and that the plaintiff as minority shareholder has the right to bring a derivative action to protect the interests of the company.

_Celcom (M) Bhd v Mohd Shuaib Ishak_ [2011] 3 MLJ 636: the Court of Appeal stressed that it was crucial for the shareholder applying for leave to make a claim in a shareholder’s derivative action under the Companies Act to show that he was acting in good faith. The onus of proof is on him on a balance of probabilities; he must show an honest belief on his part and the application must not have been brought for a collateral purpose.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR
12.1 How is a company in your country expected to deal with the following issues: corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?
As a bare minimum, companies are expected to comply with all applicable laws and regulations.

Corporate social responsibility (CSR)
All public listed companies (PLC) in Malaysia, including their subsidiaries, are required by the Listing Requirements (Part A, Appendix 9c) to disclose their CSR practices and to report on CSR activities in their annual report, including a statement even if there is no CSR activity.

Government-linked companies (GLC) in particular are expected to observe the three objectives set out in The Silver Book, published by the Putrajaya Committee for GLC Transformation (PCG) in September 2006, which applies in particular to GLCs. The three objectives include
expectations/obligations of GLCs in terms of their contributions to society (which are well beyond normal private sector CSR practices), evaluation of GLC’s starting position in contributing to society and the resources provided to help GLCs contribute proactively to society.

Companies can also voluntarily follow the Bursa Malaysia CSR Framework 2006 (the Framework) for public listed companies in which guidance is given on the development of CSR strategies as well as effective communication of these strategies to stakeholders. The Framework covers four main areas namely environment, workplace, community and the marketplace.

As a side note, the government of Malaysia has introduced tax incentives to businesses that implement broad CSR programmes. Moreover, state-owned investment funds will include CSR as a criterion in connection with future investments of state funds.

**Gender, racial and social diversification**

The MCCG published by the SC recommended that companies’ board of directors establish policies formalising their approach to boardroom diversity. For example, the nominating committee of the board should take steps to ensure women candidates are sought as part of its recruitment exercise. Boards, especially those of listed companies, should explicitly disclose in their annual reports their gender diversity policies and targets and the measures taken to meet those targets.

**Environmental and ecological issues**

Environmental and ecological issues are part of CSR, especially in Bursa Malaysia’s CSR Framework. Note that tax incentives are available for reductions in greenhouse gas emissions.

**Corruption**

Companies are to observe the laws on corruption in Malaysia: chiefly the Malaysian Anti-Corruption Commission Act 2009 which covers both private and public sector corruption practices and the Whistleblower Protection Act 2010 which provides necessary protection for whistleblowers of corruption practices.

The government also encourages companies to sign the Corporate Integrity Pledge (CIP) under the Economic Transformation Programme (ETP). By signing the pledge, a company makes a unilateral declaration that it will uphold the Anti-Corruption Principles for Corporations in Malaysia in the conduct of its business.
13. REGULATORY FRAMEWORKS FOR PROFESSIONAL INVESTORS

13.1 How are professional investors (like pension funds or investment funds) required or encouraged to exercise their power for the good corporate governance of the company? Are they required to comply with rules like the Stewardship Code?

The Malaysian Code for Institutional Investors 2014 was published jointly by the SC and the MSWG in June 2014 as a response to the recommendation made under the Corporate Governance Blueprint 2011 (CG Blueprint) to reinforce self and market discipline. Similar to the Stewardship Code in the UK, the Code is a voluntary code which sets out the broad principles of effective stewardship by institutional investors. The six main principles of the Code are as follows:

(i) Institutional investors should disclose the policies on their stewardship responsibilities.

(ii) Institutional investors should monitor their investee companies.

(iii) Institutional investors should engage with investee companies as appropriate.

(iv) Institutional investors should adopt a robust policy on managing conflicts of interest which should be publicly disclosed.

(v) Institutional investors should incorporate corporate governance and sustainability considerations into the investment decision-making process.

(vi) Institutional investors should publish a voting policy.

Though the Code is voluntary, institutional investors are encouraged to be signatories to demonstrate their commitment to adopt these best practices.