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The Malaysian Code on Corporate Governance 2017

A new Malaysian Code on Corporate Governance 2017 (“**MCCG**”) was released by the Securities Commission Malaysia and takes effect on the 26 April 2017, replacing the 2012 code. The new MCCG introduces substantial changes and recommendations with a view of raising the standards of corporate governance of companies in Malaysia. The MCCG now employs the CARE approach (abbreviated from the term ‘Comprehend, Apply and Report’) by shifting from the ‘comply or explain’ method in the 2012 code to a ‘apply or explain an alternative’ method. This is believed to allow greater flexibility in the application of the best practices.

The new MCCG also adopts a proportionate application to companies depending on size, complexity and suitability. While the MCCG applies to all listed companies in Malaysia, certain practices are only applicable to ‘Large Companies’, which are companies on the FTSE Bursa Malaysia Top 100 Index or companies with market capitalisation of RM2 billion and above at the start of their financial year. In addition, the MCCG now expressly encourages non-listed entities including state-owned enterprises, SMEs and licensed intermediaries to embrace the MCCG to enhance accountability, transparency and sustainability.

Companies are now required to provide a meaningful explanation in their annual reports on the manner in which the practices are applied and, where alternative practices are adopted to meet the Intended Outcome, to provide reasons for such alternatives and where appropriate, the timeframe required for its implementation. The first set of companies required to report on conformance with the MCCG in their annual report are companies with financial years ending 31 December 2017.

The MCCG has 3 key **Principles**, each setting out the **Intended Outcomes** together with recommended **Practices** (including **Step Ups** i.e. encouraged practices) and further explanatory notes in **Guidance** on the implementation of such Practices. Highlights of the new MCCG include:

(1) **Strengthen Independence of the Board**

- (a) The 2012 code required that in cases where the chairman of the company is not an independent director, the board had to comprise of a majority of independent directors. In all other cases, there was no requirement that independent directors should constitute a majority.

The MCCG now provides that at least half of the board must comprise of independent directors and, for Large Companies, there must be a majority of independent directors.

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(b) **Two-Tier Voting Process**

Consistent with the approach under the 2012 code, the MCGG discourages an independent director from serving for more than 9 years. Retention of an independent director above 9 years will require shareholders' approval, whereas retention of an independent director above 12 years will require shareholders' approval through the two-tier voting process:

Tier 1: Voting by Large Shareholder(s)¹; and

Tier 2: Voting by other shareholders.

Large Companies are discouraged from retaining an independent director for more than 12 years. The two-tier voting requirement will be effective only for resolutions to be tabled at general meetings after 1 January 2018.

(2) **Board Diversity**

The board of Large Companies will need to comprise at least 30% women directors. The MCGG also encourages companies in general to include women participation not only at board level but also in senior management.

(3) **Transparency in Directors' Remuneration**

The 2012 code required the board to establish formal and transparent remuneration policies and procedures for directors and for these policies and procedures to be disclosed in the annual report. The MCGG now goes a step further by requiring the company to make available such policies and procedures on the company's website.

The MCGG also requires detailed disclosure on a named basis of the remuneration paid to directors (this includes all fees, salary, bonus, benefits-in-kind and other emoluments), and the remuneration paid to the top 5 personnel in senior management within the bands of RM50,000 (this includes all fees, salary, bonus, benefits-in-kind and other emoluments).

It is also worth noting that the Companies Act 2016 which came into force recently introduced a new requirement for all fees of directors and any benefits payable to directors (including any compensation for loss of employment) of a public company (listed or otherwise) to be approved by the shareholders at a general meeting. The additional disclosure requirement under MCGG reinforces the need for transparency of board remuneration and accountability to the shareholders.

¹ (i) is entitled to exercise not less than 33% of the voting shares in the company; or (ii) largest shareholder of voting shares; or (iii) has the power to appoint a majority of directors; or (iv) has the power to make decisions in respect of the business or administration of the company and to give effect to such decisions.

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(4) **Strengthen Independence of Audit Committee**

The chairman of the Audit Committee must not be the chairman of the board. It is also recommended as a Step Up practice for the committee to comprise of independent directors only.

(5) **Risk Management Committee**

Consistent with the approach under the 2012 code, companies should ascertain the risk appetite for the business by setting appropriate risk management and internal control policies. As a Step Up practice, it is recommended that the board should establish a Risk Management Committee which comprises a majority of independent directors to oversee the company's risk management framework and policies and its implementation.

(6) **Participation at General Meetings**

In line with the 2012 code approach in strengthening the relationship between the company and its shareholders, the MCCG has introduced additional requirements to improve shareholders participation and engagement with the board at general meetings:

- (a) Notice of annual general meeting to be given at least 28 days before the date of meeting. The Companies Act 2016 requires only at least 21 days.
- (b) All directors should attend general meetings to engage with the shareholders.
- (c) Companies with large numbers of shareholders or have meetings in remote locations to leverage on technology to facilitate electronic voting and remote shareholders' participation.

While the key principles and recommended practices in the 2012 code are largely retained with enhancements under the new MCCG, the updating of the code is aimed to reflect global principles and internationally recognised standards and practices of corporate governance. As such, adherence by companies to the MCCG will catapult Malaysian companies to be on par with international standards of governance.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

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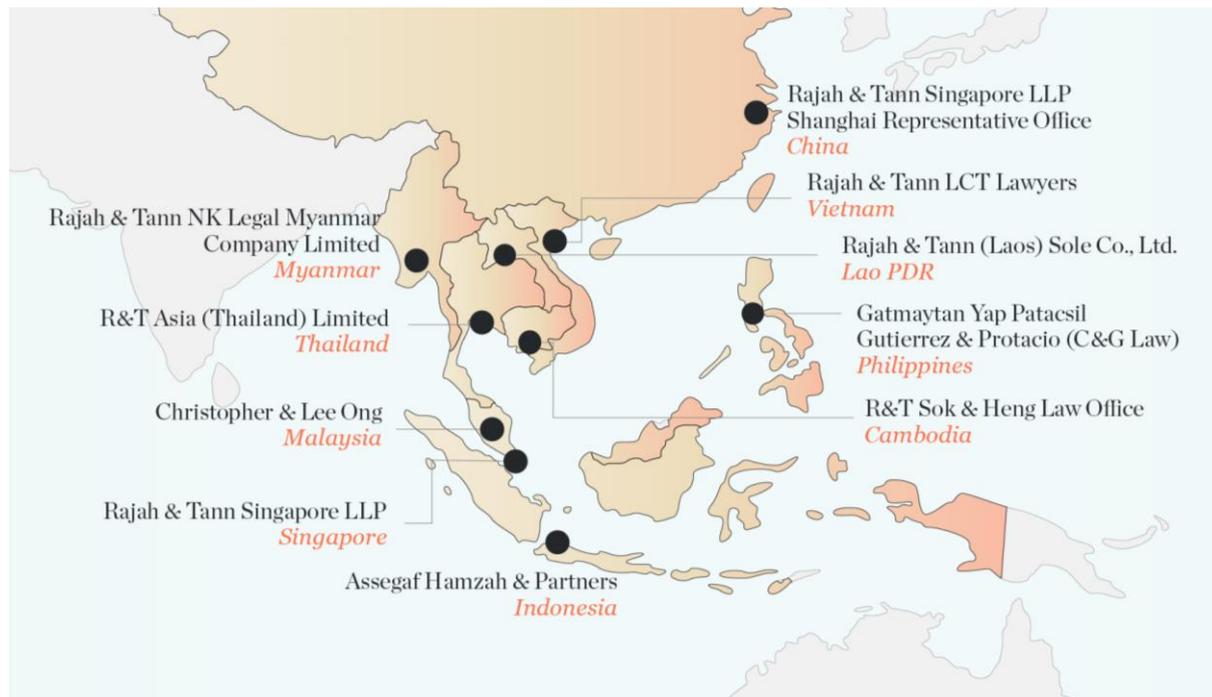
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