

EQUITABLE TREATMENT OF MINORITY SHAREHOLDERS

By

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by

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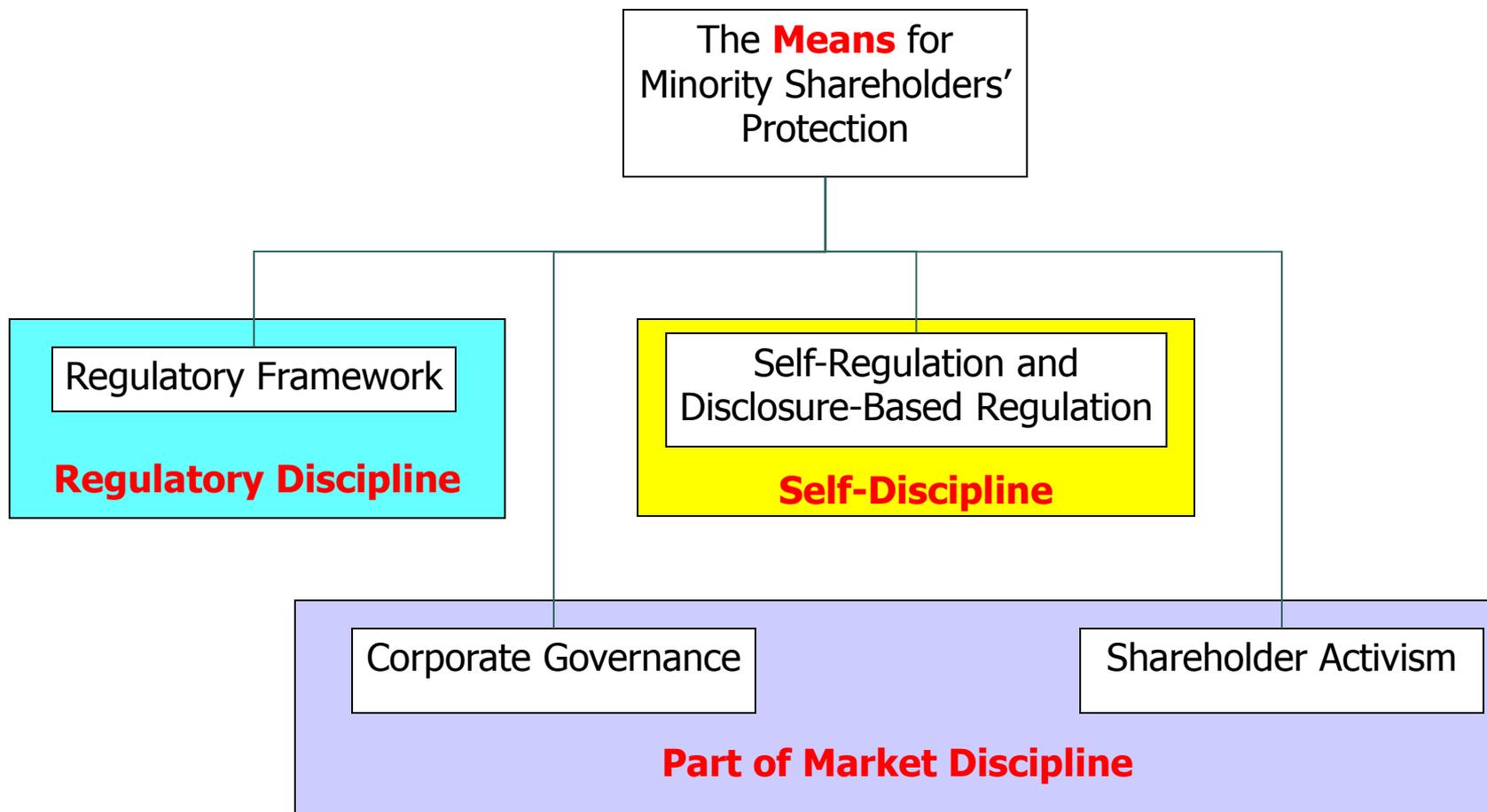
EQUITABLE TREATMENT OF MINORITY SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

MAIN CHALLENGES IN ENSURING EQUITABLE TREATMENT OF MINORITY SHAREHOLDERS IN SOEs

- Ensuring that the Board adopts a shareholders' perspective when making decisions and ensuring minority shareholders' interests are protected
- Improvements to the governance of SOEs
- Concerns of stakeholders at large vs shareholders of the Company
- Improving communications and interactions between minority shareholders, Board members and management
- Ensuring the minority shareholders are duly accorded with their three basic rights:-
 - The right to seek information
 - The right to voice opinion
 - The right to seek redress

Key Mechanisms for Minority Shareholders' Protection Under The Capital Market Framework



Regulatory Discipline

- Disclosure requirements under Bursa Malaysia Listing Requirements
- Shareholders' approval required for Related Party Transactions (RPTs) and major acquisitions/ disposals
- Take-over and merger transactions regulated under Malaysian Code on Take-overs and Mergers
- Important recent changes to regulatory framework:
 - Capital Markets & Services Act 2007 (CMSA)
 - Revision of the Malaysian Code on Corporate Governance (MCCG) to strengthen the role of Independent Non-Executive Directors in general and of Audit Committee in particular
 - Proposed establishment of a Public Accounting Oversight Board to help monitor auditors of Public Listed Companies and improve investor confidence

Self Discipline

- Integrity and ethical values of board and top management
- Requires commitment for transparent, credible and timely reporting from the Board of Directors and management
- The greater the self discipline, the less the need for regulatory discipline
- It will lead to a more efficient and competitive capital market

Market Discipline

- Pre-requisites for an effective market discipline:
 - Disclosure
 - Transparency
 - Governance
- The disclosure based regulation (DBR) in Malaysia promotes all these three key pillars
- Shareholder activism is an important aspect of market discipline
- Minority Shareholder Watchdog Group (MSWG) established on 30 August 2000. Its basic role is to enhance shareholder activism and the protection of the minority interests as an integral part to the development of the capital market
- Shareholder activism is achieved via continuous education of minority shareholders about their rights

Shareholders' Rights

- Essentially shareholders have three (3) basic rights :-
 - The right to seek information
 - The right to voice opinion
 - The right to seek redress

The right to seek information

- Right to know about the price sensitive information of the company, fair to all shareholders irrespective of each individual's shareholdings.
- Right to inspect the Register of Members, Directors, Charges, Debenture Holders, etc and get copy thereof
- Right to receive Notice of General Meetings (the AGM or the EGM)
- Rights to receive annual report and audited accounts
- Right to receive quarterly, half yearly and annual accounts
- Right to inspect the Minutes of General Meetings (the AGM or the EGM)
- Right to be kept fully informed of what is happening in the company.

The right to voice opinion

- Right to attend general meetings (the AGM or the EGM)
- Right to requisition for a general meeting
- Right to get the court to direct the company to call a general meeting
- Right to appoint proxies to attend and vote at a general meeting
- Right to be heard and make proposals at shareholders' meeting
- Right to vote and elect directors and fix their remuneration
- Right to nominate director
- Right to appoint auditors and fix their remuneration
- Right to receive dividends, if declared

The right to seek redress

- Section 181 of Companies Act, 1965
- Common law derivative action
- Representative action (under Rules of High Court)

Circumstances under which s181 of the Companies Act 1965 provides protection:-

- The company's affairs are being conducted in a manner deemed to be oppressive to members of minority shareholders;
- The directors have exercised their powers in a manner deemed to be oppressive to members of minority shareholders;
- The company's affairs are being conducted in total disregard to the interests of members of minority shareholders;
- The directors have exercised their powers in total disregard to the interests of members of minority shareholders;
- Certain act of the company has been done or has threatened the interests of members of minority shareholders or unfairly discriminated against the members of minority shareholders or prejudicial to the interests of members of minority shareholders; and
- Certain resolution of the members (or any class of them) has been done or has threatened or prejudicial or unfairly discriminated against the interests of members of minority shareholders

Circumstances cover a multitude of possible situations of abuses for which the common law has evolved specific remedies. In place of common law rules, s181 enacts all embracing situations for redress of grievances brought forth for court action by members of minority shareholders.

Additional Measures For Minority Shareholders' Protection

- Mandatory shareholder approval of major transactions – to protect against insider abuses of major transactions
- Mandatory independent board committees - to protect against insider abuses with board committees composed of an independent chairman and independent directors
- Mandatory reporting of transactions by substantial shareholders – to protect against insider abuses with disclosure of transactions by substantial shareholders
- Mandatory shareholder approval of interested transactions – to protect against squandering of company's assets by insiders
- Pre-emptive rights on issuance of new shares – to protect against dilution of minority shareholders and to prevent insiders altering ownership structure
- Prohibition of loans to directors- to protect against insider abuses, making use of the company's funds for personal benefits
- Penalties for insider trading – to protect against insider abuses of information at the expense of current and potential shareholders
- Provisions on take-overs – to protect against violation of minority shareholders' rights

How To Encourage Minority Shareholders Representation in Boards

- Independent Non-Executive Directors (INEDs) to play important role in protecting minority shareholders' rights
- Shareholders can nominate candidate for directorship
- INEDs need to be easily accessible for minority shareholders to convey their concerns

Role of the Ownership entity in ensuring the equitable treatment of minority shareholders

- Malaysian Government taking proactive steps to catalyse transformation of Government-Linked Companies (GLCs) into high performing entities
- GLCs : Companies that have a primary commercial objective and in which the Malaysian Government has a direct controlling stake
- GLC Transformation Programme was launched in May 2004 and now entering into the third phase of implementation
- Reform initiatives are undertaken and tasked by Khazanah, an investment holding arm of Malaysian Government
- Some other prominent ownership entity includes Employees Provident Fund (EPF), National Equity Corporation, Armed Forces Provident Fund, Pilgrimage Provident Fund and Social Security Organisation.

Role of the Ownership entity in ensuring the equitable treatment of minority shareholders

- By exerting their influence on setting up guidelines and policy towards equitable treatment of minority shareholders. E.g. procedures for the general meeting and board nomination
- Oversight the corporate governance conducts of the Board and institute accountable attitudes towards their performance and the performance of the Companies. E.g. Performance is assessed objectively and appraised in accordance to benchmark

Ongoing Reform Efforts

- Proposed revision to the Malaysian Code on Takeovers & Mergers
- Related party transactions – enhanced disclosures & approval requirements
- Corporate Law Reform – Corporate Law Reform Committee tasked with the role to modernise the current regulatory framework

Common law and statutory remedies are continuously enhanced

Existing common law & statutory protection

- Directors fiduciary duties
- One share one vote rule
- Shareholder rights at AGM
- Related and substantial party transactions
- Oppression remedy
- Common Law Derivative Action

- Related party & substantial property transactions – enhanced disclosure & approval requirements
- Proposed revision of Malaysian Code on Takeovers & Mergers
- Proposed codification of directors fiduciary duties

Publication of “A Guide of Best Practices for Institute Shareholder” by **MSWG**

Corporate Law Reform

- Remedy for oppression
- Statutory Derivative Action
- Variation of Class Rights
- Class Action
- Statutory Injunction
- Minority Buy-Out Rights & Exit-Out Clause

Conclusion

- Ongoing reforms will enhance minority protection to ensure that they are treated fairly
- Minority shareholders must be educated and well-informed on their rights for them to be heard and exert influence
- Shareholder activism is a powerful tool to ensuring a vibrant and efficient capital market as well as appropriate corporate conduct

Thank you

Minority Shareholder Watchdog Group

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