

The Malaysian Disclosure Framework on Executive Directors' Remuneration: A Critical Review and Closing Its Loops

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Abstract

Disclosure of executive directors' remuneration especially on their individual pay continues to be a sensitive issue especially in a country like Malaysia where ownership is tightly held and potential rent extractions are significant. The objective of this paper is to provide a critical review on the existing Malaysian disclosure framework on executive directors' remuneration. It outlines and assesses the current disclosure frameworks in ensuring high level of disclosure on executive directors' remuneration, covering the Malaysian Corporate Governance Code, the Bursa Malaysia Listing Rule and the Malaysian Financial Reporting Standards. The review shows that there are weaknesses in the overall framework and offer suggestions on how to close the loops in order to improve the level of disclosure of executive directors' remuneration. It is suggested that the Malaysian regulators adopt a mandatory and prescriptive approach in dealing with the disclosure of executive directors' remuneration and to step up their enforcement to ensure full compliance to the disclosure framework.

Keywords: Remuneration, disclosure, corporate governance, standards

1. Introduction

Disclosure of remuneration information plays an integral part in an agency relationship between the shareholders and the executive directors especially in assessing the performance of executive directors'. Andjelkovic, Boyle and McNoe (2000) argued that lack of disclosure of remuneration meant that shareholders could not scrutinize remuneration and assess their link to companies' performance. The information gap may create remuneration policies that only benefit the executive directors, at the expense of the principals. Subsequently, in order to boost the level of transparency on the disclosure of executive remuneration, regulatory reforms were introduced.

The landscape in Malaysian capital market of high family and state ownerships make this paper off more significance. Mohd Ghazali and Weetman (2006) found that dominant family and their captive hold on the Malaysian market continued to be a stumbling block in the level of voluntary disclosure post the introduction of the Malaysian Code of Corporate Governance (the MCCG). Disclosure of director's remuneration especially individual pay remained a contentious issue as for the dominant shareholders it is deemed as a sensitive and personal issue. Disclosure of directors' remuneration may reveal personal rent extraction by family-owners, for example through high remuneration, excessive bonuses or non-existent performance threshold. So it is imperative that any regulations or recommendations being introduced in the Malaysian market take this commanding factor into consideration.

The first objective of this paper is to provide a critical review of the Malaysian framework on disclosure of executive directors' remuneration that had gone tremendous changes. It looks into the process of developing the Malaysian corporate governance code, the amendments to the Listing Rule and the harmonisation towards International Accounting Standards. The second objective is to offer suggestions in addressing the shortcoming in the framework especially in compelling companies to disclose more on executive directors' remuneration.

This review of the disclosure framework on executive directors' remuneration will be of interest to Malaysian policy makers and shareholders. They will be able to assess the weaknesses the Malaysian regulatory framework in improving the level of disclosure of executive directors' remuneration. Malaysian regulators may use this study to weigh in on their choice of a 'hybrid approach' and broad based accounting standards. This paper also offers suggestions on closing the loop in the overall disclosure framework especially in achieving the aim of high transparency in reporting of executive directors' remuneration.

This paper will proceed by detailing the development and reforms in the Malaysian regulatory framework. It then addresses the specific recommendations and regulations that cover the disclosure of executive directors' remuneration. It is followed by a review on the weaknesses in the disclosure framework that governs executive directors' remuneration

and suggestions in closing the loops in the framework.

2. The Development and Reforms in the Malaysian Disclosure Framework

In March 1998, as a response to the economic crisis of 1997-1998, the government of Malaysia established a *High Level Finance Committee*. The mission of *the Committee* was to set up a corporate governance framework and best practice guidelines. *The Committee* started off by considering their approaches in the development of the new Malaysian corporate governance code. The first approach was a prescriptive code whereby regulators would prescribe a corporate governance code that specified the expected standards in corporate governance. Companies would be expected to comply with these best standards and to disclose their level of compliance in annual reports. The main concern of *the Committee* was that companies would resort to 'box ticking' of the standards that had been complied with without considering and actively pursuing the substance of each standard. This could mislead shareholders and other users into believing that the companies that ticked most boxes had their corporate governance policies sanctioned by the regulators. *The Committee* took into consideration of their past experience with cases of audit committees that were established merely to conform to the rule, but with appointments of non-qualified persons.

The second approach that was considered was a self-regulated corporate governance code whereby companies would voluntarily disclose their actual corporate governance practices. It allowed companies to develop their own corporate governance framework to suit their specific needs. However, *the Committee* argued that the current level of self-regulated corporate governance practices and disclosures in Malaysia were very weak. This was evidenced by the East Asian economic crisis. There was a need to 'start from scratch' and to develop and introduce a corporate governance standard.

The Committee then relied heavily upon the evidence and recommendations of the UK's Hampel report in assessing the final approach, the 'hybrid' approach. The Hampel report was a review of UK existing corporate governance codes (the Cadbury and Greenbury Codes) and was incorporated into the London Stock Exchange. The Hampel report found that the current codes had been applied against in a way that was contrary to their original intentions, which were to provide benchmarks for good practice in corporate governance. However, they allowed companies to adopt another alternative, if it better represents the circumstance. The detailed guidelines provided by the Cadbury and Greenbury codes were treated by UK companies as prescriptive rules instead of adapting the best practices that would suit their specific needs (Finance Committee on Corporate Governance, 2000, p. 10). This resulted in 'box-ticking' of the established guidelines, the same scenario that the Malaysian regulators want to avoid.

The Hampel report argued that there is no universal corporate governance guideline that applies to all different companies at all times. Hence, there was a need to put the emphasis on principles rather than detailed rules of corporate governance. It tried to differentiate between principles and guidelines on corporate governance. It stated that, "With guidelines, one asks 'How far are they complied with?'; with principles, the right question is 'How are they applied in practice?'" (Finance Committee on Corporate Governance, 2000, p. 16).

One of the major recommendation of the Hampel report was that, "the current requirement for companies to confirm otherwise compliance with Cadbury will be superseded by a requirement to make a statement to show how they (i) apply the principles and (ii) comply with the combined code and in the latter case to justify any significance variances (Finance Committee on Corporate Governance, 2000, p. 14)." The narrative disclosure requirement is, was argued would mitigate the problem of 'box-ticking' as companies would now have to provide arguments to explain why each relevant principle was or was not applied.

Eventually, the Malaysian High Level Finance Committee adopted the 'hybrid' approach in their proposed corporate governance code for Malaysia. The proposed code incorporated the requirement for a narrative statement on the extent of compliance to the recommendations of the code. However, companies are provided leeway in that they can depart from the code as long as they provide justifications behind any non departure. The findings and recommendations by *the Committee* were published in February 1999. This was partly incorporated in the Malaysian Code on Corporate Governance (the MCCG) which was issued in March 2000. They were further revised in 2007 and 2012.

Although the Malaysian Committee drew considerably from the Hampel report, the Malaysian code was more regulatory driven than the UK's code. Ow-Yong and Guan (2000) in their comparative review of both countries' corporate governance codes highlighted the fact unlike the reform in the UK's code, the implementation of the MCCG was reinforced by major revamps in Malaysian regulations. This may be attributed to the difference in ownership dispersion between the two countries. The MCCG and other recommendations from the High Level Finance Committee have been continuously implemented through revisions of the regulations (changes in the Listing Rules and securities laws), reforms to institutions (the introduction of the Minority Shareholders Working Group), the issue of best standard guides (the issue

of Best Practices in Corporate Disclosure by a task force consisting of industry and regulatory representatives) and the latest is the issuance of the Malaysian Code for Institutional Investors 2014.

3. Disclosure Framework on Executive Directors' Remuneration

Disclosure of directors' remuneration is addressed in Part 1(B) and Part 4(B) of the MCCG. It recommends that companies link executive directors' remuneration to company and individual performance. In addition, they are also required to disclose details of remuneration for each director. These recommendations are enforced by paragraph 15.26 of the Listing Rules of Bursa Malaysia. However, companies have the flexibility in applying them, provided that they justify the reasons for any departure.

In addition to the MCCG, the then Kuala Lumpur Stock Exchange Listing Rule was also amended as part of the corporate governance reforms. Appendix 9C (Paragraph 9.25) of the Listing Rule required that publicly listed companies to disclose remuneration executive and non-executive directors by successive bands of RM 50,000. They should be aggregated into relevant components (director fees, salaries, percentages, bonuses, commission, compensation for loss of office, benefits in kinds). Unlike the MCCG, this requirement is not flexible, whereby companies really do have to disclose as per the requirements. Thus, it is mandatory in nature.

These reforms were complemented with the harmonisation of Malaysian accounting standards to international standards. To date, MASB has adopted all the IAS into the Malaysian financial reporting framework. However, the transitional period has been slow, with most of the revisions done by 2005 and applied for fiscal periods after January 2006. Off relevance to this study, are the MFRS 124 'Related Party Disclosure' and FRS 2 'Share Based Payments'. MFRS 124 was first issued in Malaysia in 1999, and revised in 2004 to incorporate the recommendations of the IAS. However, interestingly, the revised MFRS 124₂₀₀₄ did not incorporate the recommendations of IAS 24 (the equivalent international accounting standard for related party disclosure) for disclosure of key management personnel compensation. Only in 2005, all of the recommendations by IAS incorporated into the MFRS 124, including the disclosure of key management personnel compensation, effective from 1 January 2006.

Another applicable accounting standard for disclosure of executive directors' remuneration is MFRS 2 '*Share-based Payment*'. The Malaysian standard was first issued in 2005 and is consistent with IFRS 2, its equivalent IAS standard. Companies now have to disclose and expense the value of option grants to executives over their maturity period. MFRS 2 applied for equity based payment transactions that were granted after 31st December 2004 and had not been vested at the date. As part of the disclosure requirements detailed in MFRS 124, companies who issued option grants have to provide information on the valuation model and assumptions in determining the option price (Malaysian Accounting Standard Board, 2004).

4. Weaknesses in the Disclosure Framework of Executive Directors' Remuneration

There appeared to be weaknesses in the overall disclosure framework on disclosure of executive directors' remuneration. Firstly, there had been a mismatched in how the framework was structured. Rather than being complementary to each other, the regulations appeared to be conflicted. This is especially true for the disclosure of individual remuneration, arguably the most important information in assessing the performance of an agent. The Bursa Malaysia Listing Rule mandatorily requires companies to disclose the details of remuneration by bands of RM50,000, whilst the MCCG recommends companies to disclose on individual remuneration. The MFRS on the other hand, required disclosure of total '*key management personnel*' remuneration. It is not surprising that studies and corporate governance reports had found that Malaysian companies continued to withhold information on individual remuneration of executive directors (Aripin, Salim, Kamardin, & Che Adam, 2012; Malak, 2014, 2015; The Minority Shareholders Watchdog Group, 2013, 2014; The Minority Shareholders Watchdog Group & The University of Nottingham (Malaysia), 2007, 2008; The Minority Shareholders Watchdog Group & Universiti Teknologi Mara, 2007)

In one study, Malak (2015) continuously tracked the disclosure of Malaysian individual executive directors' remuneration from 2000 until 2008 of 200 Malaysian listed companies. It found that on average over the nine years period, only 11.66% of the companies disclosed on their executive directors' individual remuneration. However, on average, almost all of them complied with the disclosure of remuneration by bands as per the requirement of the Listing Rule. The study also noted that the level of disclosure of individual remuneration peaked up at 16.45% in 2002, but went down after that with only 9.55% of the sample companies disclosing on individual pay in 2008. Aripin et al. (2012) in their study of 2009 annual reports, found only 6.65% of their 376 sample of Malaysian listed companies disclosed on individual remuneration.

These findings were also consistent with what were reported by the Minority Watchdog Shareholder Group (the MSWG) in their annual corporate governance survey reports. Over the years, since their inception in 2000 as part of the initiative of corporate governance reforms by the Malaysian government, the MSWG has produced multiple reports of the state of Malaysian corporate governance. In their latest 2014 report, they showed that only 8% of the 873 companies listed in the Bursa Malaysia provided disclosure of remuneration of individual directors. The figure dropped from 9% that was reported in 2013 (The Minority Shareholders Watchdog Group, 2014).

These suggested that companies appeared to apply the 'opt out clause' provided by the MCCG in not disclosing on individual pay. However, they are more likely to disclose if it is made mandatory, as per their conformation of the Bursa Malaysia Listing Rule disclosure of remuneration by bands. It is also important to note that the MCCG does not fix the form or content of the disclosure requirements. It merely suggest to companies to disclose on individual remuneration and to link pay and performance. It is up to companies to determine the extent and form of disclosures of executive remuneration. Hence, it remains at the discretions of the companies on what and how much they would disclose. For example, MSWG (2014) showed that only 11.11% of 873 listed companies provide details behind the remuneration policies and practices in 2014.

The Malaysian accounting standards on the other hand do provide some guidance on what should be disclosed. The MFRS 124 required remuneration to be categorised into short term employee benefits, post-employment benefits, other long-term employee benefits, termination benefits and share based payments. However, it is still very broad in that the disclosure is required for 'key management personnel'. It is defined as, "*those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity* (Malaysian Accounting Standard Board, 2005, p. 9)." It does not required companies to provide disaggregated figure of each of the personnel and to disclose on details behind remuneration structures or bonuses plans.

The MFRS 2 required companies that issued executive stock option schemes (ESOS) to disclose the details of their plans (scheme policies, valuation models and assumptions) in the annual reports. However, Malak (2012) have shown that the level of compliance to this rule is very lacking. After its effective date of 31 December 2004 until 31 December 2008, on average only 26% of the 112 sample companies who had ESOS disclosed fully to the standards and none of the companies who did not comply fully were issued qualified audits. It appears that the Malaysian companies and their external auditors did not take the full disclosure requirements of the accounting standards seriously albeit that it is mandatory. The mandatory requirement of the MFRS 2 (disclosure of ESOS) does not translate into the same conformity that was seen in the Bursa Malaysia Listing Rule (disclosure of remuneration by bands). This may imply that Malaysian companies perceived the threat of potential penalty by the Bursa Malaysia as more significant compared to non-compliance of the MFRS.

The discussion above shows that the current Malaysian disclosure framework on disclosure of executive directors' remuneration is not adequate in ensuring a comprehensive disclosure. These is not surprising given that prior studies outside of Malaysia had also shown than corporations were resistant to the introduction of requirements to disclose details of executive remuneration especially on individual remuneration and pay performance linkage in a broad based setting (Andjelkovic, et al., 2000; Chizema, 2008; Clarkson, Van Bueren, & Walker, 2006; Jinghui & Dennis, 2008). The regulators in setting up the framework on disclosure of executive directors' remuneration in Malaysia also appeared to downplay the socio landscape in the Malaysian capital market. Chizema (2008) argued that introduction of an Anglo-American corporate governance code into a culture of high collectivism and uncertainty avoidance would mean resistance. A high concentration of family ownership and prevalent of nominee shareholders meant that potential rent extraction is higher by non-independent executive directors. They could potentially award themselves higher remuneration and get away with it, if disclosure was not made. Additional disclosures would mean that their controls over the companies are encroached.

5. Suggestions in Closing the Loops Disclosure Framework of Executive Directors' Remuneration

Although it goes against the overall spirit of the MCCG of being principle based, the 'opt out' clause in the MCCG for disclosure of remuneration need to be removed. Discretionary policy choices on executive remuneration may not work especially in improving the disclosure of individual remuneration. The MCCG cannot adopt a blanket approach in dealing with various disclosure items. The regulators should also remove the conflict between the MCCG and the Bursa Malaysia Listing Rules. The mandatory requirements of the Listing Rule to disclose remuneration according to bands provided an 'escape route' for companies not wanting to disclose individual executive director's remuneration as it was only voluntary under the MCCG. The disclosure of individual remuneration would provide more information to investors than disclosure

by bands. This is especially important in assessing the performance of the executive directors as agents for the shareholders. The broad nature of MFRS 124 '*Related Party Transactions*' would need to be replaced by a more detailed and prescriptive requirements. The term '*key management personnel*' in the MFRS 124 should be substituted by a term that is more clearly defined and specifies the requirements for the disclosure of individual remuneration.

The regulators should look at the experiences of other countries that had sought to improve the level of disclosure of executive directors' remuneration. A country that adopted a similar framework to Malaysia on the disclosure of executive directors' remuneration is Germany. The Germany capital market shared similar traits to the Malaysian market in that institutional and family ownerships are very significant. The Deutscher Corporate Governance Kodex that was introduced in 2005 shared the same spirit as the MCCG in that it allows German companies to depart from recommendations of the Code so long as they justify it. Chizema (2008) showed that the level of compliance to the recommendation of the Kodex was lacking and companies may need to be made to disclose for the level of reporting to improve.

In another example, the Australian regulators had a similar experience with companies taking advantage of broad disclosure requirements and ambiguous terms. They started off with the same spirit as the Malaysian and Germany regulators in that they did not want companies to just be ticking the boxes. However, specific to disclosure of directors' remuneration, they came to realise that they should adopt a more black letter approach. The Australian disclosure requirements, especially their AASB 124 '*Related Party Disclosures*' (equivalent to the MFRS 124) and CLERP 9 (equivalent to the MCCG), are very comprehensive and spell out clearly the 'required' disclosures of executives' remuneration. Australian studies had shown that only after the prescriptive regime kicked in that the level and extent of disclosure on directors' remuneration improved (Clarkson, et al., 2006; Coulton & Taylor, 2002; Jinghui & Dennis, 2008; Merhebi, Pattenden, Swan, & Zhou, 2006). The Malaysian regulators may want to embrace this by setting up the form and content of the disclosure of executive directors' remuneration.

Similar to Malaysia, prior to 1997, New Zealand also did not have any policy of disclosure of executive directors' remuneration. However, their approach in introducing the disclosure requirement was different. When Section 211(g) of the New Zealand Companies Act came into place in July 1997, companies were mandatorily required to disclose the remuneration of executive directors' individually and by bands. Andjelkovic, Boyle and McNoe (2002) showed that only after the introduction of mandatory disclosure requirement that companies that the quality of disclosure improved and remuneration policies were linked to performance. Unsurprisingly, the mandatory disclosure requirement was initially met with significant resistance from influential groups such as the New Zealand Employers Federation, the New Zealand Business Roundtable and New Zealand Privacy Commissioner.

Closer to home, Singapore that had adopted a similar 'hybrid' and non-mandatory approach in their corporate governance codes, also suffered from the same low disclosure of details on executive directors' remuneration (Thompson & Hung, 2002). In a discussion conducted by the Centre for Financial Market Integrity with Singaporean and Hong Kong investors, investors lamented the poor presentation of disclosure, the non-disclosure of identities of the pay recipients, the lumping up of remuneration and the lack of explanation on pay and performance linkage. One statement in the discussion stood up in relation to this review, "*As long as disclosure remains non-prescriptive, you can say confidently that it's not going to have any favourable impact. People are going to be shy of disclosing. In Asia, many owner-managers forget that they took their companies public to solicit funds, and they're using those funds to pay themselves* (Asia Pacific Office of the CFA Institute Centre for Financial Market Integrity, 2008, p. 9)." It is not surprising if the same sentiment is shared by the Malaysian minority shareholders.

These different countries experiences suggested that the Malaysian regulators need to step back and reflected upon their decisions of giving the powers to Malaysian companies in determining the nature and extent of disclosure of remuneration. It may appear that only a mandatory and prescriptive disclosure regime that would make companies disclose on information that is deemed personal and sensitive to them such as remuneration of executive directors' remuneration. However, as the case of low compliance towards MFRS 2 suggest, adopting a mandatory and prescriptive disclosure regime does not necessarily meant full compliance. The Malaysian regulators need to step up their enforcement of all the regulations and educate all the parties involved to embrace the full disclosure framework on executive directors' remuneration.

6. Conclusion

The limitations in the current disclosure framework on executive directors' remuneration need to be improved. The regulators cannot adopt only one approach in setting up the disclosure framework given that they are dealing with different area of disclosures. This review has shown that companies would have to be pushed for disclosure of executive

directors' remuneration. The tight and captive held by families in the Malaysian capital market further add to the resistance in disclosing more on executive directors' remuneration. To leave it at their discretion, will only limit the effectiveness of the disclosure framework. In order to achieve a high level of transparency on executives' remuneration, the Malaysian regulators may have to adopt a prescriptive approach. It is suggested that for disclosure of executive directors' remuneration, the regulators should provide a comprehensive guideline on the form and extent of disclosures and ensure adequate enforcement. Then only, would Malaysian companies provide adequate disclosure.

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