

# PROTECTING MINORITY SHAREHOLDERS DURING TIMES OF FINANCIAL TURMOIL

By

Abdul Wahab Jaafar Sidek

CEO

Minority Shareholder Watchdog Group

---



**The 13<sup>th</sup> Malaysian Capital Market Summit 2008**

*Organised by:*

**ASIAN STRATEGY & LEADERSHIP INSTITUTE (ASLI)**

4-5 December 2008

Prince Hotel & Residence

Kuala Lumpur



# Introduction

---

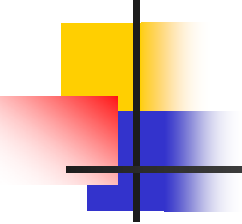
- Directors are legally bound to act in the best interest of shareholders.
- In times of financial turmoil, the biggest challenge facing directors is that in their struggle to thrive/survive, they should not cut corners and compromise on the corporate governance standard.
- As the global economy plunges into recession, there is a real danger that the credit crunch will provoke companies to freeze with enlightened self-interest.



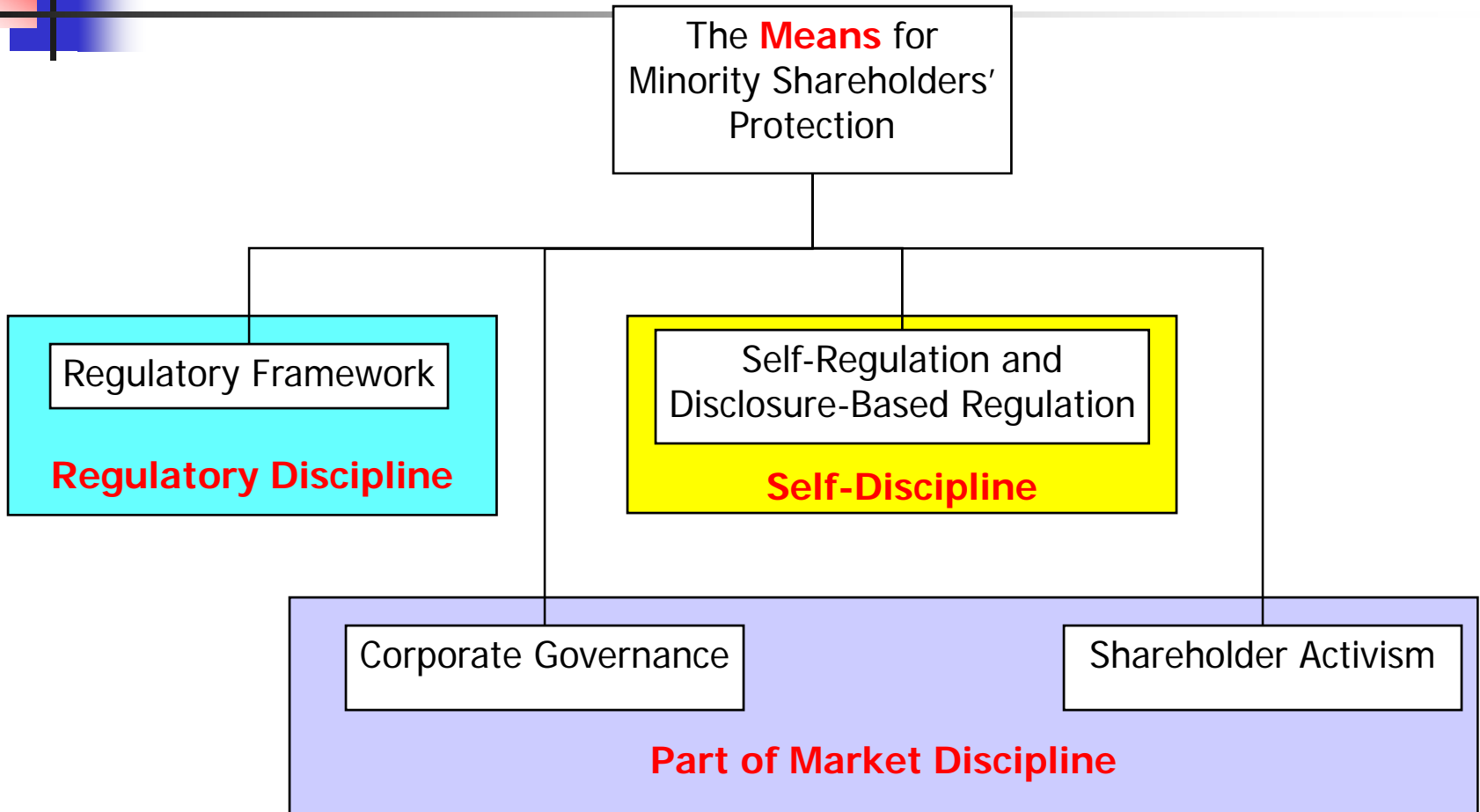
# Directors have a duty to:

---

- Avoid situations which might conflict with their duties as directors;
- Avoid the abuse of position or information gained through their position as directors;
- Avoid trading in the company's securities while making use of privileged information;
- Avoid entering into transactions with the company without proper approval;
- Act honestly in exercising their powers; and
- Take reasonable care and diligence in exercising their powers.

- 
- 
- As directors of listed companies, they must also comply with Bursa Securities Listing Requirements which govern, among other things, continuing obligations on disclosure, related party transactions, reporting requirements, and restrict on number of directorships which can be held by a director of a listed company.

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





# Regulatory Discipline

---

Important recent changes/enhancements to regulatory framework:

- Capital Markets & Services Act 2007 (CMSA)
- Revision of the Malaysian Code on Corporate Governance
- Proposed establishment of a Public Accounting Oversight Board to help monitor auditors of Public Listed Companies and improve investor confidence
- Enhanced disclosure requirements under the Listing Requirements
- New Due Diligence Guidelines for Corporate Proposals



# 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



# Minority Shareholders' Rights

---

Minority shareholders have the right to speak, ask questions and raise issues or vote on resolutions affecting the company. Company AGMs should not fall short of shareholders' expectations which legally entitle them:

- To inquire about any matter pertaining to the company, which has been reported in the annual report;
- To raise issues relating to the strategic and financial management, future direction, goals and objectives of the company;
- To engage the company's directors in open discussions about the company's performance and concerns that they may have;
- To exert pressure on directors to be more accountable and transparent on the company's affairs.



---

Directors can make minority shareholders happy if they are able to:

- improve levels of doubtful debt and bad debt provisions, thus protecting the company's balance sheet
- keep gearing within borrowing powers to safeguard the company's earnings and cash flows
- increase revenue and earnings of the company for cash flows given the difficult times
- mitigate foreseeable risks and enforce tighter discipline across the company's group structure, internal control and risk management
- facilitate information and control measures to more efficient overheads/expenses optimization and internal financing for the company's operations
- pay dividends



# Key Roles

---

In the current financial crisis, important roles have to be played by:

- Regulators
- Auditors
- Directors
  - Audit Committee
  - Independent Non-Executive Directors
- Institutional Shareholders
- Market Institutions



# Role of Regulators

---

- Protecting small investors
- Enforcing corporate and securities regulations
- Disciplining directors and market participants



# Role of Auditors

---

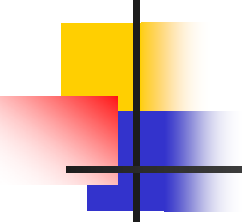
While there is much talk about laws to protect whistleblowers in general, to what extent are external auditors required to whistleblow on companies they audit, based on current legislation and regulations, and to what extent are they protected?



# Role of Directors

---

- Disclosure is no substitute for good accounting and quality auditing. Financial reporting should reflect the economic reality of transactions in the company's affairs for a true and fair view.
- The revised Code on Corporate Governance encourages listed companies to develop a code of conduct that goes beyond laws and regulations. Guidelines for good boardroom conduct, corporate ethics and disclosure would help directors set a company straight before questionable practices turned into legal cases.
- Preventive measures are more effective than taking errant directors to court. Chances are that investors, shareholders and stakeholders are already hurt.

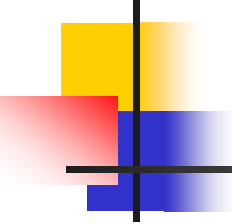
- 
- 
- Inexorably linked with the above, are the demands for financial transparency, quality auditing and accountability for fulfilling statutory and moral obligations to present a true and fair view of all their business operations.
  - Given the adverse effects of global financial turmoil, high profile cases of accounting scandals and reporting irregularities have resulted in growing concerns about the effectiveness of corporate governance, company performance and stability of management.



# Role of Audit Committee

---

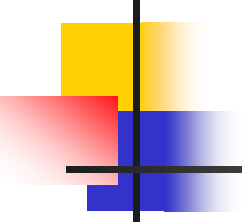
- The revised Code, amended listing rules and revised due diligence guidelines have put pressure on Audit Committee members to understand all the intricate workings of listed companies.

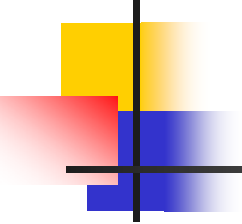


---

When considering times of financial turmoil, Audit Committee should perform effectively:

- As a catalyst for improving risk management and oversight;
- To closely monitor management's processes for ensuring adequate appropriate disclosures;
- Up to mark on fair value accounting, IFRS and other key financial reporting issues and developments;
- To make sure that the CFO and the finance/accounting team have what they need to succeed and be effective;
- To ensure that there is a shared vision for internal audit and internal control system;
- To encourage frequent informal communications with the audit engagement partner;
- To be prepared for the crisis;
- To make sure that the board is aware of the Audit Committee's activities and needs;
- To assess the tone at the top and throughout the organization; and
- To take a hard look at the audit committee's performance.

- 
- 
- An effective Audit Committee composed of all non-executive directors of whom a majority must be independent directors should be able to communicate well with directors, internal auditors and external auditors in order to compile information for decision making.
  - Non-executive directors are urged to add real value to the Boards. They are expected to provide more support to executive directors and find time to meet increasing demands from retail shareholders and institutional investors.

- 
- 
- Some claim that there is a shortage of qualified directors. It has led to criticism that boards of certain listed companies are characterised by overworked members, cross directorships and ineffective board performance.
  - Directors' training should be on-going and supported as it is an important factor influencing board effectiveness.



## Role of INEDs

---

- 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 Institutional 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



# Role of Market Institutions

---

## MSWG

- Continue to help minority shareholders to raise issue of concerns to the board of directors
- Organising educational programmes, particularly for retail shareholders



# Conclusion

---

In the current financial crisis:

- Board of directors responsibilities will intensify
- Oversight role of Audit Committee and INEDs to ensure proper governance of companies will become more important
- Enhanced role to be played by regulators, auditors and market institutions
- Ongoing reforms will enhance minority protection to ensure that they are treated fairly; nonetheless, minority shareholders must be educated and well-informed on their rights for them to be heard and exert influence



# Thank you

---

## **Minority Shareholder Watchdog Group**

Tingkat 11, Bangunan KWSP

No. 3, Changkat Raja Chulan

Off Jalan Raja Chulan

50200 Kuala Lumpur

Tel: 03-2070 9090

Fax: 03-2070 9107

Email: [watchdog@mSWG.org.my](mailto:watchdog@mSWG.org.my)

Website: [www.mSWG.org.my](http://www.mSWG.org.my)