

THE clarion call has gone out to directors and public listed companies (PLCs) to get their corporate governance in order. The Securities Commission (SC) will move swiftly into enforcement actions to ensure corporate responsibility and accountability.

As to what good corporate governance is all about, many by now would have been alerted that it is not about "ticking boxes". It is about creating a culture of appropriate behaviour and responsible conduct. Only truthful compliance can be effective and persuasive to drive a strong governance attitude within the organisation. PLCs that fail to uphold accountability of their directors for corporate oversight, will find themselves faced with substantial liabilities.

Directors are judged on their performance by the markets and the stakeholders as well as their self-regulation and discipline. It is easier to forgive a director for a company's lack of performance if rules and regulations have been adequately and closely complied with.

Yet, why do companies still fail at times? Is it due to their lack of policy, processes and/or procedures? Or due to their lack of clear corporate conscience or no due diligence? At any rate, it is their attitude that usually lets them down, proving their behaviour and conduct to be out of order.

The SC and Bursa Malaysia will continue to tighten rules and processes under the mantle of compliance. However, this tends to be preventive to curb wrongdoings. It is the directors and management of PLCs working together effectively as responsible individuals who will make compliance with good corporate governance work to make their organisations successful.

However, why certain PLCs have

Effective enforcement



yet to get their act right? Why is there still lip service, empty rhetoric, or all-too-easy attitude for slipshod practices?

The recent revised code has renewed emphasis on non-executive directors' responsibilities and put a concerted effort on PLCs to elect quality directors. At the heart of this effort is to deter dishonest or incompetent directors. With increased responsibilities, the non-executive directors are no longer decorative ornaments when they become more exposed to risk and liability. In reality, not all boards are imperiously callous to the shareholders' interests but only few boards could be if they so wished. In this regard, shareholders must perceive non-executive directors to be truly effective and independent for a check-and-balance on the board.

Although PLCs in Malaysia have thus far witnessed only limited number of directors' liability cases, several factors are now combining in effect to make this a real possibility in the future. These include the recent corporate and securities law reforms to lessen the burden of proof for offences, whistleblowing provisions, the shift from a merit-based to disclosure-based regime for full and appropriate disclosure,

due diligence and increasing activism among minority shareholders. There is a growing multitude of statutory liabilities under the Securities Industry Act, 1983, Securities Commission Act 1993 and the Capital Market and Services Act, 2007 that will expose directors to a greater variety of risk factors than before.

Good governance entails compliance with sound rules and practices. These rules and practices require directors to review results and management's actions appropriately. Although there is no perfect set of rules, truthful compliance is essential to promote vigilance.

Non-executive directors are required to be financially literate. This means that they understand approved financial reporting standards, how such standards and their principles can be applied relating to accounting for estimates, allowances, accruals, impairment, or provisions. They also must understand internal controls and risk management, as well as how audit committees function. All this will increasingly subject the directors concerned to greater personal liability. In-depth checks would be warranted only if they find executive directors incompetent and management corrupt.

The pressure is always on management to play safe by referring any concerns to the board. Management is then led to protect itself by ensuring that the board sees everything, even if the non-executive directors do not fully grasp the issues. How should the

audit committee members including independent directors play their role? They need to be proactively engaging with management and auditors. Their role is to properly monitor financial reporting and review business operations, implement proper controls on management and staff on performance and reporting, and properly understand the nature of business that is being conducted, and the level of risks associated with the particular type of business.

Tighter surveillance from the top level down to areas of risk and sensitivity rests on the non-executive directors to take the lead with their eyes wide open. Most might argue that the devil is in the detail. But, in concentrating on the detail, the non-executive directors must not overlook their role as corporate watchdogs. They need to gauge investors' expectations.

Markets and investors do not like surprises. Even good ones can be detrimental to the company's image and management's reputation. After all, PLCs must avoid surprising the market and management must be able to see ahead, make appropriate announcements to give the right signals to the market and investors. Their awareness of shareholder base is also important. In particular directors need to know who shareholders are and how often, the shareholder base changes.

Inadequate, inappropriate or incomplete disclosures, accounting irregularities, erroneous announcements, false and misleading statements or company law violations

lie at the root of most potential liabilities in shareholder-related claims. Directors may be covered for any wrongful act, such as any actual or alleged breach of duty and breach of trust to minority shareholders. However, they would not be covered for criminal acts if their behaviour and misconduct are deemed to be willful, fraudulent and intentional.

MSWG is of the view that it is particularly important for directors to have relevant and timely information. Effective accountability depends crucially on the supply of information. Often, conscientious non-executive directors are constrained in their role by information available. They are as productive and useful as the Chief Executive Officer or executive directors will allow them to be. Yet, why have few directors resigned when they were denied access to information they felt they needed? The relevance and timeliness of information can never be over-emphasised. It is often the lack of the understanding of this requirement that undermines directors' performance and their conformance to best practice.

PLCs must move beyond compliance to thrive on governance dimension that will lead to better financial performance. In this regard, independent and non-executive directors need to be professional to oversee not only the risks of the plc but also the risks of their own performance or otherwise.

● Wahab is CEO of Minority Shareholder Watchdog Group

LONDON: British Transport secretary Ruth Kelly warned last Wednesday that failure to expand Heathrow will hurt the economy and do nothing to combat global warming, as the government prepares to launch the campaign for a third runway at Britain's largest airport.

The British government started a lengthy battle with environmental campaigners and local residents on Thursday when it published a consultation on building a new runway and increasing the number of flights from existing runways. Speaking at a meeting of London business leaders, Kelly said abandoning expansion plans would save green consciences in Britain but have no impact on the environment or a global appetite for air travel that is growing at 5% a year.

"If Heathrow is allowed to become uncompetitive, the flights and routes it operates will simply move elsewhere. All it will do is shift capacity over the (English) Channel. It will make us feel pure, but with no benefit to the rest of the planet."

Kelly backs the British government's case for a third runway with the publication of data outlining severely crowded conditions at Heathrow, which was designed to handle 45 million passengers a year but now processes 67 million annually.

According to the Department for Transport study, a flight from Heathrow to Frankfurt lasts 90 minutes but the total journey time, including travel from the office and going through security gates, takes nearly five hours.

Battle to expand Heathrow runway



Greenpeace activists hang a banner from St Pancras Station stating their approval of the new high-speed rail-link but calling for a stop to runway expansion plans at London's Heathrow airport - Bloomberg

One-in-two aircraft has to spend 10 minutes in a holding pattern - or "stacking" - prior to landing because the airport is so congested, with 98.5% of landing and take off slots being booked.

As well as stating the case for a third runway, and how it can be built within noise and air pollution guidelines, the consultation will outline the argument for alternating take off and landing on the existing runways in a procedure known as "mixed mode". Mixed mode would increase the number of annual Heathrow flights from 480,000 to around 550,000, ending the current arrangement which gives west London residents some

respite from aircraft noise by alternating which runways are used for take-off and landing approaches.

Serge Lourie, leader of Richmond council, whose residents live directly under the Heathrow flight path, says expanding the airport would be "devastating" for the area. Local councils claim that 2 million people will be affected by a bigger Heathrow.

"It would destroy the quality of life for a lot of people. Ruth Kelly's behaviour this week has been disgraceful. She has pre-judged the result of the consultation. We will resist a third runway and mixed mode."

About 700 homes, one church

and eight Grade II listed buildings would have to be demolished to make way for a third runway. BAA, the owner of Heathrow airport, hopes to have a new runway operating by 2017 if it wins planning permission for the project.

Greenpeace has released British government documents, obtained under the Freedom of Information Act, which underlined the close co-operation between the Department for Transport and BAA, which is conducting the tests that will underpin the consultation. BAA has rejected allegations of collusion and has argued that the owner of Heathrow will have to co-operate with government

officials in order to supply data on noise and air pollution from the airport.

The British government has stated that it backs a third runway and mixed mode at Heathrow provided the projects can meet noise and air pollution standards. The consultation documents show that expanding the airport will meet European Union guidelines for limiting nitrogen dioxide emissions, which will be introduced by 2010. The government has also stated that the noise footprint covering a 127km square area around Heathrow must be no greater than 57 decibels. Local residents and green groups have criticised the noise pollution limit and have argued that the 57 decibel level applies to Heathrow noise tests in 2002, when Concorde was still flying, and the minimum level should be 50 decibels.

Stephen Joseph, executive director of the Campaign for Better Transport, said the British government and BAA should focus on running Heathrow better rather than pushing through expansion plans, amid reports that airlines have been forced to fly empty planes from Heathrow under "use it or lose it" rules that order all take off slots to be used by airlines.

"There has not been an effective look at whether we can use Heathrow better in the short term, particularly in terms of who gets the slots and how they are allocated," he says. - Guardian