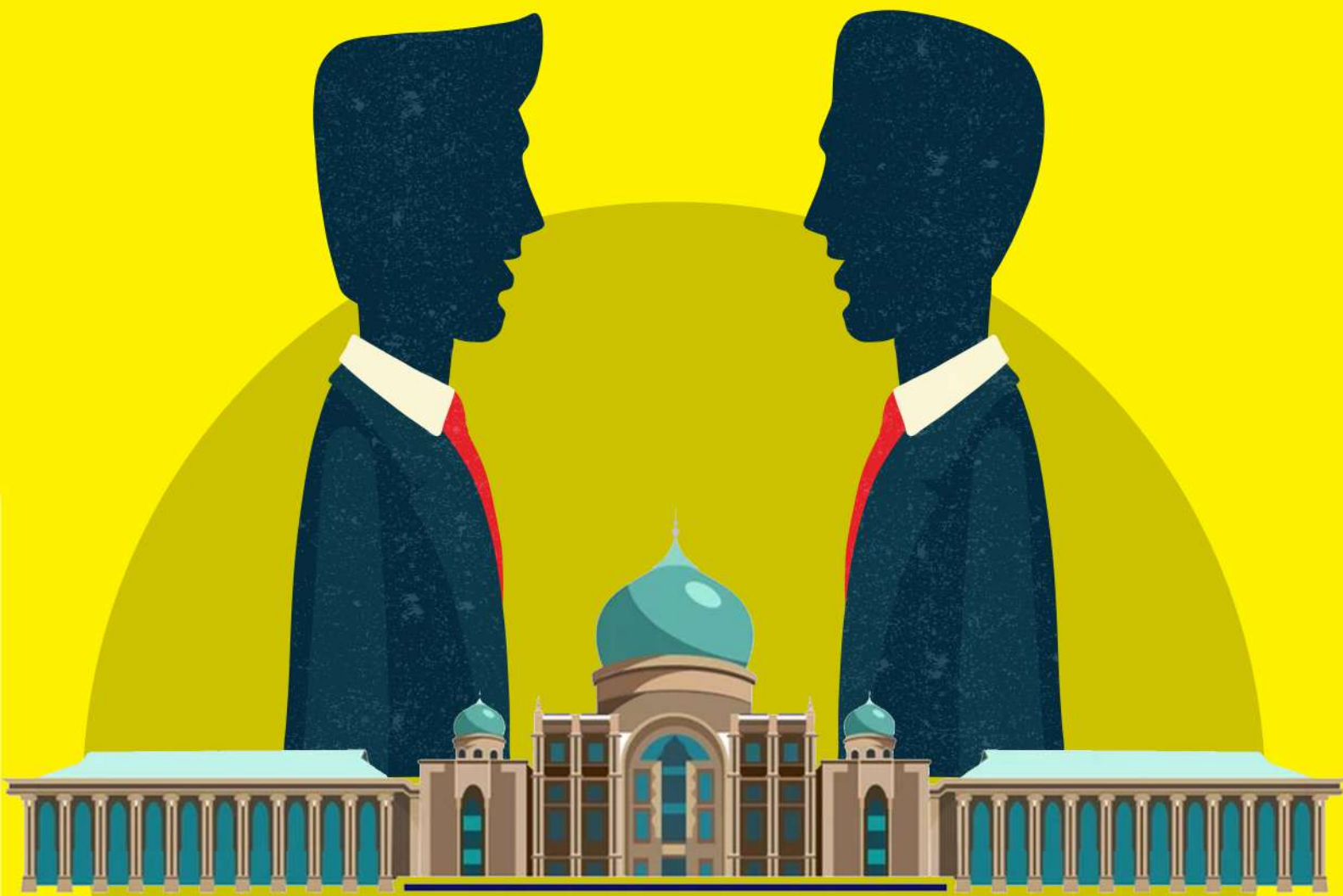


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REFORMING THE APPOINTMENT PROCESS OF DIRECTORS IN GLICS, GLCS AND COMMERCIALY RELATED STATUTE BODIES

Written by Ahmad Fikri Ahmad Fisal



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Related Statute Bodies**

Witten by Ahmad Fikri Ahmad Fisal

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EXECUTIVE SUMMARY

Introduction

A major issue observed under the *Perikatan Nasional* (PN) administration is the high number of elected representatives (MPs and ADUNs) who were appointed as directors of government-linked companies (GLCs) and statutory bodies. While it can be argued that these representatives are safeguarding the state's interest, there is the risk that they prioritise personal or political gains which then creates a conflict of interest.

The lack of institutional check and balance on appointment processes paves the way for potential abuses, or conflicts of interests, which ultimately harms public interest. This study therefore aims to propose policy recommendations that would improve the appointment process of directors in government-linked investment companies and GLCs in order to prevent future abuses that are detrimental to public interest.

Appointment Mechanism

Government-linked Investment Companies Appointment Mechanism

The ownership structure of GLCs in Malaysia is complex.¹ At the federal level, government-linked investment companies (GLICs) and other statutory bodies own companies on behalf of the government. At the state level, state government investment corporation and statutory bodies also own companies respectively.

¹ Although "GLC" is often used as a blanket terminology to refer to government-controlled entities in general, it officially refers only to a specific group of companies that are controlled via majority ownership by one of the seven GLICs.

Table I: Type of federal and state government entities that own subsidiary companies

| Type of Entity | List of Entity | Founding Statute | Subsidiary Company |
|--|--|--|---|
| Federal Level | | | |
| GLIC | Minister of Finance Incorporated (MoF Inc.) Employees Provident Fund (EPF) Retirement Fund Incorporated (KWAP) <i>Lembaga Tabung Haji</i> (LTH) Armed Forces Fund Board (LTAT) <i>Khazanah Nasional Berhad</i> <i>Permodalan Nasional Berhad</i> (PNB) | Founded through respective parliamentary acts (only <i>Khazanah</i> and PNB founded through Companies Act) | Subsidiary companies considered as federal GLCs |
| Non-GLIC Statutory Body | Example: <i>Majlis Amanah Rakyat</i> (MARA) Federal Land Development Authority (FELDA) <i>Petrolia Nasional Berhad</i> (PETRONAS) ² | Founded through respective parliamentary acts | Subsidiary companies considered as federal GLCs |
| State Level | | | |
| State Government Investment Corporation | Example: State Economic Development Corporation (SEDC) Chief Minister Incorporated (CMI/MBI) | Founded through respective state enactments | Subsidiary companies considered as state GLCs |

An overview of GLIC legislation reveals that the Executive has a high degree of power in GLIC director appointments. While appointment power is concentrated with the Executive, there is some separation of power according to specific Ministers depending on the GLIC's mandate.

² *Petrolia Nasional Berhad* (PETRONAS) is founded both as a statutory body through the Petroleum Development Act 1974 and as a company through the Companies Act 1965.

Table II: Overview of GLIC Appointment Mechanism

| GLIC | Minister in Charge | Minister's Appointment Authority | Chairman | CEO |
|---|-----------------------------|---|---|-----------------------|
| Minister of Finance Incorporated (MoF Inc.) | N/A | N/A | N/A | N/A |
| Employees Provident Fund (EPF) | Minister of Finance | All board members | Appointed by Minister | Appointed by Minister |
| Retirement Fund Incorporated (KWAP) | Minister of Finance | All board members except the Chairman | Secretary General of Finance Ministry (ex-officio) | Appointed by Minister |
| <i>Lembaga Tabung Haji</i> (LTH) | Minister of Islamic Affairs | All board members except one representative each from the Prime Minister's Department and Treasury | Appointed by Minister | Appointed by Minister |
| Armed Forces Fund Board (LTAT) | Minister of Defence | All board members except the Deputy Chairman (which is a representative each from the Defence Ministry) and an ex-officio director from the Treasury (Deputy Secretary General) | Secretary General of Defence Ministry (ex-officio); or another person appointed by the Minister | Appointed by Minister |

Non-GLIC Statutory Bodies Appointment Mechanism

Apart from the seven official GLICs, there are other federal statutory bodies which own companies and function similarly to GLICs. Example of such federal statutory bodies are Federal Land Development Authority (FELDA), *Majlis Amanah Rakyat* (MARA) and *Petroleum Nasional Berhad* (Petronas) which are known to own public listed GLCs.³ Similar to GLICs, the Executive has strong authority over appointment of directors in these bodies.

³ FELDA is the largest single shareholder of Felda Global Ventures Berhad (FGV). MARA is the ultimate largest shareholder of MBM Resources Berhad. Petronas is the majority shareholder of Petronas Chemicals Group Berhad, *Petronas Dagangan Berhad* and *Petronas Gas Berhad*.

Table III: Appointment of Directors in non-GLIC Statutory Bodies

| Statutory Body | Founding Statute | Minister in Charge | Appointment of Directors |
|---|--------------------------------------|--|--|
| Federal Land Development Authority (FELDA) | Land Development Act 1956 | "Minister" means the Minister charged with the responsibility for the Federal Land Development Authority | Minister appoints Chairman and between six to twelve board members. |
| <i>Majlis Amanah Rakyat</i> (MARA) | <i>Majlis Amanah Rakyat</i> Act 1966 | Undefined ⁴ | Minister appoints Chairman, Deputy Chairman and between five to nine board members; at least three members must be public officers |
| <i>Petroleum Nasional Berhad</i> (PETRONAS) | Petroleum Development Act 1974 | Prime Minister | Petroleum Development Act 1974 does not contain specific provisions for Board of Directors appointment |

State Government Investment Corporation Appointment Mechanism

At the state level, there is no formal definition of GLICs unlike at the federal level. Instead, there are state government bodies that are observed to play the same function in terms of state GLC ownership and control. The key state government entities are the state economic development corporation (SEDCs) and state investment corporations such as the Chief Minister Incorporated (CMI) or *Menteri Besar* Incorporated (MBI).

Table IV: General Overview of Appointment Mechanism in SEDCs and MBIs

| State Government Investment Corporation | State Economic Development Corporation | Chief Minister Incorporated |
|--|--|------------------------------------|
| Chairman | Chief Minister (except Sarawak and Sabah SEDC) | Chief Minister |
| Formation of Board of Directors | Required | Not Required |
| Authority to Appoint Board Members | State Government and State Monarch | N/A |
| Federal Government Representation | At least three federal government bureaucrats | None |

⁴ Currently, the Minister in charge of MARA is the Minister of Rural and Regional Development.

Government-Linked Companies Appointment Mechanism

GLCs, akin to privately-owned firms, need to comply with the company-related laws such as the Companies Act, which does not contain strict qualitative requirements for director appointments. As controlling shareholders, GLICs have ultimate power to determine director appointments in GLCs.

To date, parliamentary legislation that is observed to contain qualitative requirements for appointment of board member and CEOs is the Financial Services Act, which governs companies in the financial sector. The Financial Services Act not only includes certain requirements, it also empowers *Bank Negara Malaysia* (BNM) to vet appointment of directors of GLCs in the financial sector.

Several sets of guidelines provide best practices for directorial appointment in GLCs. One identified set of guidelines is the Board of Directors Guidelines published by MoF Inc. in 2014. However, it only applies to companies controlled by MoF Inc. In the case of other major federal GLCs, the Green Book on Enhancing Board Effectiveness contains best practices for appointment of GLC board members.

Public-listed GLCs, as well as public-listed private firms, must comply to a set of rules by regulatory agencies namely the Securities Commission and *Bursa Malaysia Berhad*. Failure to comply could result in the firm's de-listing or suspension. Requirements include mandatory financial reporting, establishing an audit committee and other corporate governance matters.

Major Issues

Widening of the Payroll Vote

When elected representatives are appointed as a director in a GLIC, GLC or statutory body which is within their legislature's supervision, there is a risk of expansion of payroll vote.

Payroll vote is a term which is well established in British politics, whereby it refers to frontbenchers who are required to vote for the government under the doctrine of collective responsibility (Wong, 2020). This means that the Executive's control over the Legislature is strengthened, which hampers the latter's function in preserving the integrity of the separate branches of power and hold the Executive accountable.

Weak Check & Balance Mechanism

GLIC incorporation statutes and parliamentary laws governing GLCs do not spell out stringent requirements on persons to be appointed as directors. At best, there is an ambiguous requirement which states that the Minister-in-Charge should appoint a director who has knowledge in business and finance, for example. Even with such requirements stated in the act, there is no legal or institutional instrument to ensure that the appointments made by the Minister have appropriate qualifications or not.

Lack of Uniform Guideline Framework

While there are no identified guidelines for the appointment of directors at the statutory (GLIC) level, there are some important guidelines that exist at the enterprise (GLC) level. However, these guidelines are not uniform and vary depending on different categories of GLCs. The Green Book on Enhancing Board Effectiveness applies only to major GLCs. Meanwhile, guidelines by regulatory agencies such as Securities Commission Malaysia and *Bursa Malaysia Berhad* are applicable to all public-listed companies which include GLCs. There are currently no identified guidelines related to state-level GLCs' appointment process.

Over-Dominance of the Executive

The concentration of GLC ownership under the GLICs also accorded great authority under the Executive in the appointment of GLC directors. The GLIC statutes accorded authority over appointment of their directors totally to the Executive, namely specific Cabinet Ministers. Even appointment of directors in non-GLIC statutory bodies such as FELDA, MARA and Petronas are dominated by the Executive through several Ministers. The dominance of the Executive is also reflected at the state level.

Convoluting GLC Ownership Structure & Definition

As it stands, the official definition of GLCs comprises only the commercial ones and owned by GLICs. This excludes companies owned by the other statutory bodies. It also excludes government-owned companies that are not commercially oriented. Even the GLC Transformation Programme was focused only on a handful of GLCs, identified as the G20.⁵ Without an encompassing definition, any attempt at holistic reform becomes challenging. The definition may also be modified by the government arbitrarily.

Policy Recommendations

Prohibition of Appointment of Elected Representatives in GLICs, GLCs or Statutory Bodies

Such prohibition may be introduced in the form of a new GLC Act, or amendment of existing relevant laws such as the Companies Act and is crucial in signalling the government's commitment to the separation of power between the Executive and the Legislature. Perhaps in specific cases, allowance is granted for members of the government frontbench to be appointed as GLC directors due to national or strategic importance. However, this practice should not be

⁵ The G20 referred to major GLCs owned by the GLICs which were included in the GLC Transformation Programme such as CIMB Group Berhad, Axiata Group Berhad, Sime Darby Berhad, Tenaga Nasional Berhad, and UEM Group Berhad.

encouraged and must be restricted in number and scope due to the risk of power abuse and conflict of interest.

Establishment of a (or several) Parliamentary Select Committee(s) (PSC) to monitor and vet director nominees of GLICs and GLCs

The appointment of directors in GLICs and GLCs within each ministry must be answerable to specific PSCs. Such PSCs can have the power to scrutinise and approve appointment decisions of directors and top positions in GLICs and GLCs under each ministry. State governments may emulate this initiative and establish a state legislative select committee in respective state legislative assemblies.

Enactment of a well-defined SOE / GLC Act

A SOE/GLC Act should provide a clear definition of GLICs and GLCs that are applicable in both the federal and state levels. Alternatively, given the high political cost of drafting a new act, existing relevant regulations such as the Companies Act may be amended to achieve the same purpose. The proposed Act presents a good opportunity to institutionalise reforms relating to the process and requirements of GLC director appointments. Other state legislatures can be encouraged to table similar enactments to ensure that the GLC structure is streamlined across the federal and state level.

Gradual Removal of Golden Shares from non-strategic GLCs

While golden shares had a strategic purpose in the past, it is timely for the government to gradually move away from this control mechanism, especially in non-strategic GLCs. The existence of golden shares hurts the GLC reform agenda as the government may still veto decisions made by the board of directors. The role of vetting directors can be taken up by specific regulators or by PSCs.

Enhanced Disclosure and Transparency

Public-listed GLCs are already subject to certain disclosure and transparency requirements as required by regulatory entities such as Securities Commission and *Bursa Malaysia Berhad*. A specific body such as the Putrajaya Committee on GLC High Performance should commit itself to produce regular reports on GLICs/GLCs, listed and unlisted, to the public. The report should include important information such as director remuneration, director background, tender bids and other important information. Enhanced transparency will be the first major step towards reform as it spreads awareness of good GLIC/GLC governance to the public.

CHAPTER 1 - INTRODUCTION

1.1 Introduction

A tale of misappropriation

Government-linked investment companies (GLICs) and government-linked companies (GLCs) have a large presence in the Malaysian economy. A study published by the Institute for Democracy and Economic Affairs (IDEAS) estimated that the seven GLICs collectively owned at least 42% of total market capitalisation amongst listed firms in *Bursa Malaysia* and have a minority interest in at least 68,000 companies (Gomez et al., 2018).

The large presence of GLICs and GLCs in the domestic economy raised concerns over the quality and transparency of their directorial appointments. This particular issue gained greater attention following the exposure of the 1Malaysia Development Berhad (1MDB) scandal. 1MDB was formed in 2009 a few months after Datuk Seri Najib Razak became Prime Minister and was put under the ownership of Minister of Finance Incorporated (MoF Inc.), one of the seven GLICs. In a few years 1MDB became involved with several large-scale projects, such as *Bandar Malaysia*, and has raised billions of US dollars through multiple bond issuances.

Soon after the 2013 General Election, rather disconcerting reports regarding 1MDB emerged. Several major concerns relating to its huge debt and business decisions was highlighted by various parties. More disturbing was the exposé made by the US Department of Justice alleging that US\$3.5 billion were misappropriated. The Prime Minister and other key 1MDB personnel were implicated in this allegation. As both Finance Minister and Prime Minister, Najib Razak had considerable control over MoF Inc., and by consequence, 1MDB. The Guardian referred to the 1MDB saga as “the world’s biggest financial scandal” (Ramesh, 2016).

Promise of Reform

The huge public outcry, generated by the abuse of government-owned entities, especially involving 1MDB, was followed by the unprecedented downfall of the *Barisan Nasional* (BN) coalition in the 2018 General Election. Key to *Pakatan Harapan*’s (PH) historic victory was its promise of reforms involving appointment processes in GLCs and other government-controlled entities which was captured in PH’s election manifesto (*Pakatan Harapan*, 2018).⁶ The manifesto affirmed PH’s commitment to adopt international best-practice in terms of appointment in GLCs and other government-controlled entities, based on the Organisation for Economic Cooperation and Development (OECD)’s Guidelines on Corporate Governance of State-Owned Enterprises (2015).

Given high public expectation of institutional reforms, the new administration formed the Institutional Reform Committee in May 2018 to propose reforms in key institutions (Syazwan

⁶ Promise 22 of the PH manifesto stated that all GLC appointments will be based on merit instead of political consideration.

M. Kamal, 2018).⁷ Later in December that year, a bipartisan parliamentary select committee on major public appointments was also formed (Parliament of Malaysia, 2020).⁸ No committee focusing on GLICs or GLCs were formed, however.

Appointments of GLC and government agency directors during the early months of the new administration signalled to the public that PH was consistent in keeping to its reform agenda. Several notable corporate professionals and civil society advocates were appointed as directors of GLCs and other agencies.

Public disillusionment, however, soon emerged as a number of political appointments were reported not long after. Several PH politicians, including some elected representatives (MPs or ADUNs), were appointed as directors of government-controlled entities. Table 1.1 lists down a number of elected representatives who were appointed as directors of government-controlled entities under the PH government. Civil society organisations subsequently criticised the PH government for failing to abide by its promise of ending political appointments in GLCs and key statutory bodies (Augustin, 2019).

Faced with such criticisms, politicians from PH responded that these appointments do not violate their manifesto as they technically involve statutory bodies and not GLCs (Adam Abu Bakar, 2018). According to the then Deputy Minister of Rural Development Sivarasa Rasiah, PH's manifesto did not prohibit politicians from holding GLC directorship, but instead promised that appointment processes be conducted based on merit and professionalism, which did not automatically disqualify politicians (Chung, 2019). The then Finance Minister Lim Guan Eng further said that there were no elected representatives in GLC board of directors, and that the appointment of politicians as directors only happened in few instances (Malaysiakini, 2019).

⁷ The five members of the new committee are: Datuk K.C. Vohrah, a retired judge of the Court of Appeal; Datuk Mah Weng Kwai, a retired judge of the Court of Appeal and a commissioner with the Malaysian Human Rights Commission, or Suhakam; Brigadier-General (Retired) Dato Mohamed Arshad Raji, president of the National Patriots Association; Emeritus Professor Shad Saleem Faruqi, a prominent professor of law at Universiti Malaya; and Datuk S. Ambiga, president of the National Human Rights Society, or Hakam.

⁸ The seven members of the select committee are Selayang MP (PKR) William Leong Jee Keen, Ledang MP (PKR) Syed Ibrahim Syed Noh, Beruas MP (DAP) Ngeh Koo Ham, Bukit Bintang MP (DAP) Fong Kui Lun, Tampin MP (Amanah) Hasan Bahrom, Bera MP (UMNO) Ismail Sabri Yaakob, and Kubang Kerian MP (PAS) Tuan Ibrahim Tuan Man.

Table 1.1: List of Politicians Appointed as Directors in GLCs/Statutory Bodies during the PH Administration

| No | Name | Party | Profile | Entity | Entity Type |
|----|---|---|---|--|----------------|
| 1 | Wong Tack | Democratic Action Party (DAP) | Bentong MP | Malaysian Timber Industry Board (MTIB) | Statutory Body |
| 2 | Dr John Brian Anthony | Democratic Action Party (DAP) | DAP Central Executive Committee Member | Labuan Port Authority (LPA) | Statutory Body |
| 3 | Datuk Husam Musa | National Trust Party (<i>Amanah</i>) | <i>Amanah</i> Vice President (re-signed on 14 September 2020) | Kemubu Agricultural Development Authority (KADA) | Statutory Body |
| 4 | Ean Yong Hian Wah | Democratic Action Party (DAP) | DAP Selangor Vice Chairman | Port Klang Authority | Statutory Body |
| 5 | Wong Kah Woh | Democratic Action Party (DAP) | Ipoh Timur MP | Sustainable Energy Development Authority (SEDA) | Statutory Body |
| 6 | Alice Lau Kiong Yieng | Democratic Action Party (DAP) | Lanang MP | National Institute of Occupational Safety and Health (NIOSH) | Statutory Body |
| 7 | Charles Santiago | Democratic Action Party (DAP) | Klang MP | National Water Services Commission (SPAN) | Statutory Body |
| 8 | Emeritus Prof. Datuk Dr Sukiman Sarmani | Malaysia United Indigenous Party (PPBM) | PPBM Supreme Council Member | <i>Universiti Teknikal Mara Sdn. Bhd.</i> | GLC |
| 9 | Akramsyah Muammar Ubaidah Sanusi | Malaysia United Indigenous Party (PPBM) | PPBM Supreme Council Member | Mara Corporation Sdn. Bhd. | GLC |

| | | | | | |
|----|------------------------------------|---|---|--|----------------|
| 10 | Datuk Wan Saiful Wan Jan | Malaysia United Indigenous Party (PPBM) | PPBM Supreme Council Member | National Higher Education Fund Corporation (PTPTN) | Statutory Body |
| 11 | Dr Muhammad Faiz Na'aman | Malaysia United Indigenous Party (PPBM) | PPBM Supreme Council Member | Malaysia Co-operative Societies Commission (SKM) | Statutory Body |
| 12 | Muhammad Faiz Fadzil | National Trust Party (<i>Amanah</i>) | <i>Amanah</i> Permatang Pasir ADUN | Fisheries Development Authority of Malaysia (LKIM) | Statutory Body |
| 13 | Datuk Mazlan Aliman | National Trust Party (<i>Amanah</i>) | <i>Amanah</i> Leadership Committee Member | Farmers' Organization Authority (LPP) | Statutory Body |
| 14 | Datuk Wan Abd Rahim Wan Abdullah | National Trust Party (<i>Amanah</i>) | <i>Amanah</i> Kelantan Chairman | National Kenaf and Tobacco Board (LKTN) | Statutory Body |
| 15 | Datuk Junaidah Kiting | Malaysia United Indigenous Party (PPBM) | PPBM Supreme Council Member | <i>Amanah Ikhtiar Malaysia</i> | Statutory Body |
| 16 | Datuk Dr Muhammad Nur Manuty | People's Justice Party (PKR) | PKR Perak Chairman | <i>Universiti Sultan Zainal Abidin</i> | Statutory Body |
| 17 | Datuk Seri Che Zakaria Mohd Salleh | Malaysia United Indigenous Party (PPBM) | PPBM Permas Adun | South East Johore Development Authority (KEJORA) | Statutory Body |
| 18 | Datuk Dr Ismail Salleh | National Trust Party (<i>Amanah</i>) | <i>Amanah</i> Pengkalan Kundar ADUN | Kedah Regional Development Authority (KEDA) | Statutory Body |
| 19 | Dato' Sazmi Miah | Malaysia United Indigenous Party (PPBM) | PPBM Kelantan Deputy Chairman | South Kelantan Development Authority (KESEDAR) | Statutory Body |

| | | | | | |
|----|-----------------------------------|---|---------------------------|---|----------------|
| 20 | Dr Aminuddin Yaacob | Malaysia United Indigenous Party (PPBM) | PPBM Jeli Branch Leader | South Kelantan Development Authority (KESEDAR) | Statutory Body |
| 21 | Mohd Roslan Puteh | People's Justice Party (PKR) | Guchil DUN GE14 candidate | South Kelantan Development Authority (KESEDAR) | Statutory Body |
| 22 | Datuk Zulkifli Mohamad | Malaysia United Indigenous Party (PPBM) | Ladang DUN GE14 candidate | Central Terengganu Development Authority (KETENGAH) | Statutory Body |
| 23 | Datuk Seri Wan Marzuki Wan Sembok | Malaysia United Indigenous Party (PPBM) | Kijal DUN GE14 candidate | Central Terengganu Development Authority (KETENGAH) | Statutory Body |
| 24 | Ir. Zulkifli Ali | National Trust Party (<i>Amanah</i>) | Sura DUN GE14 candidate | Central Terengganu Development Authority (KETENGAH) | Statutory Body |
| 25 | Dato' Ir. Phahrolrazi Mohd Zawawi | National Trust Party (<i>Amanah</i>) | Amanah Alor Mengkudu ADUN | National Farmers Association (NAFAS) | Statutory Body |

Directorships as Political Support Tool

In February 2020, the PH government collapsed due to the exit of *Parti Pribumi Bersatu Malaysia* (PPBM), one of its component party, which prompted Prime Minister Tun Dr Mahathir Mohamad to resign on 24 February 2019. The political conundrum was eventually concluded with the appointment of Tan Sri Muhyiddin Yassin as the 8th Prime Minister of Malaysia on 1 March 2020. Muhyiddin's appointment was decided by the *Yang di-Pertuan Agong* after consulting with every single Member of Parliament.

Faced with uncertain parliamentary majority support, the new *Perikatan Nasional* (PN) government resorted to the widening of "payroll vote" in order to secure sufficient support to maintain its political standing.⁹ The size of the Malaysian Cabinet as announced by Prime Minister Muhyiddin on 9 March 2020 increased to 70 (32 ministers and 38 deputy ministers) from 55 during the PH government. Six non-MPs were appointed as Senators (members of the Upper House) and included in this Cabinet. These Senators do not have power to support the government on vote of confidence and thus, are not part of the expanded payroll vote. However, such appointments may still be viewed as a form of patronage.

A large number of MPs were given directorships in GLCs and other government-controlled entities. Table 1.2 provides a list of parliamentarians and other politicians who have been or were granted directorships in government-controlled entities under the PN government. The overt political appointments had caused an uproar among opposition politicians and civil society organisations.

PN's employment of the payroll vote was much wider than observed during the PH administration. Under the PH government, most of the reported political appointments pertained to statutory bodies and not GLCs. Furthermore, only a small number of elected representatives (MPs or ADUNs) were appointed as directors of statutory bodies. At the federal level, there was no report of any elected representatives being appointed into the boardroom of GLCs.

PN, on the other hand, blatantly widened the payroll vote via the offering of ministerial positions, directorships of GLCs and other government entities as a political support tool. Minister in the Prime Minister's Department Datuk Takiyuddin Hassan admitted publicly that PN's strategy indeed was to reward MPs who were not given ministerial posts with GLC directorships (Muhafandi Muhammad, 2020). Not only that, Prime Minister Muhyiddin himself was purportedly caught on tape outlining PPBM's plan to offer ministerial or GLC positions to UMNO MPs to entice them to support his party prior to the breakup of PH (Malaysiakini, 2020). By 17 August, 33 parliamentarians who supported the Muhyiddin Administration were granted directorships in statutory bodies or GLCs (Wong, 2020).

⁹ The term 'payroll vote' has traditionally been used to describe MPs who hold positions from which they would have to resign in order to oppose the government. This includes paid and unpaid positions. The term can also include roles which do not formally bind MPs to vote with the government, but may have been given out by the prime minister in order to reward or encourage loyalty. This is the wider payroll vote (Zodgekar, 2021 updated).

Table 1.2: List of MPs Appointed in GLCs or Statutory Bodies under the PN Administration

| No | Name | Party | Profile | Entity | Entity Type |
|----|--|--|-------------------|--|----------------|
| 1 | Datuk Ahmad Jazlan Yaakub (resigned on 6 January 2021) | United Malays National Organization (UMNO) | Machang MP | Malaysian Palm Oil Board (MPOB) | Statutory Body |
| 2 | Dato' Hajjah Azizah Mohd Dun | United Malays National Organization (UMNO) | Beaufort MP | <i>Majlis Amanah Rakyat</i> (MARa) | Statutory Body |
| 3 | Dato' Seri Mahdzir Khalid | United Malays National Organization (UMNO) | Padang Teras MP | <i>Tenaga Nasional Berhad</i> | GLC |
| 4 | Dato' Haji Ahmad Nazlan Idris | United Malays National Organization (UMNO) | Jerantut MP | Malaysian Rubber Board (LGM) | Statutory Body |
| 5 | Datuk Mohamad Alamin | United Malays National Organization (UMNO) | Kimanis MP | Intellectual Property Corporation of Malaysia (MyIPO) | Statutory Body |
| 6 | Dato' Haji Salim Sharif | United Malays National Organization (UMNO) | Jempol MP | Rubber Industry Smallholders Development Authority (RISDA) | Statutory Body |
| 7 | Dato' Seri Haji Idris Jusoh | United Malays National Organization (UMNO) | Besut MP | Federal Land Development Authority (FELDA) | Statutory Body |
| 8 | Tan Sri Noh Omar | United Malays National Organization (UMNO) | Tanjung Karang MP | MISC Berhad (resigned after two weeks) | GLC |
| | | | | National Entrepreneurs Corporation Berhad (PUNB) | GLC |
| 9 | Dato' Sri Tajuddin Abdul Rahman | United Malays National Organization (UMNO) | Pasir Salak MP | <i>Prasarana Sdn. Bhd.</i> | GLC |

| | | | | | |
|----|---|--|----------------------|--|----------------|
| 10 | Ramli Mohd Nor | United Malays National Organization (UMNO) | Cameron Highlands MP | <i>Amanah Raya Berhad</i> | GLC |
| 11 | Datuk Seri Jalaluddin Alias | United Malays National Organization (UMNO) | Jelevu MP | UDA Holdings Berhad | GLC |
| 12 | Dato' Haji Hasbullah Osman (died 17 Nov 2020) | United Malays National Organization (UMNO) | Gerik MP | <i>Syarikat Perumahan Negara Berhad</i> | GLC |
| 13 | Datuk Hasan Arifin | United Malays National Organization (UMNO) | Rompin MP | Pengurusan Aset Air Berhad | GLC |
| 14 | Dato' Mohd Nizar Zakaria | United Malays National Organization (UMNO) | Parit MP | National Population and Family Development Board (LPPKN) | Statutory Body |
| 15 | Dato' Seri Shahidan Kassim | United Malays National Organization (UMNO) | Arau MP | PR1MA Corporation Malaysia (PR1MA) | Statutory Body |
| | | | | National Housing Corporation (NHC) | Statutory Body |
| 16 | Ahmad Tarmizi Sulaiman | Pan-Malaysian Islamic Party (PAS) | Bachok MP | Muda Agricultural Development Authority (MADA) | Statutory Body |
| 17 | Nik Mohamed Abduh Nik Abdul Aziz | Pan-Malaysian Islamic Party (PAS) | Bachok MP | South Kelantan Development Authority (KESEDAR) | Statutory Body |
| 18 | Ahmad Fadhli Shaari | Pan-Malaysian Islamic Party (PAS) | Pasir Mas MP | Skills Development Fund Corporation (PTPK) | Statutory Body |

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|----|--|---|------------------|--|----------------|
| 19 | Datuk Nik Muhammad Zawawi Salleh | Pan-Malaysian Islamic Party (PAS) | Pasir Puteh MP | Farmers Organization Authority (LPP) | Statutory Body |
| 20 | Shaharizukirnain Abd Kadir | Pan-Malaysian Islamic Party (PAS) | Setiu MP | <i>TEKUN Nasional</i> | GLC |
| 21 | Che Alias Hamid | Pan-Malaysian Islamic Party (PAS) | Kemaman MP | Kemaman Port Authority | Statutory Body |
| 22 | Wan Hassan Mohd Ramli | Pan-Malaysian Islamic Party (PAS) | Dungun MP | National Water Services Commission (SPAN) | Statutory Body |
| 23 | Sabri Azit | Pan-Malaysian Islamic Party (PAS) | Jerai MP | Malaysian Institute of Translation & Books (ITBM) | GLC |
| 25 | Datuk Shahbudin Yahaya (replaced by Yamani Hafez Tan Sri Musa on 28 July 2020) | Malaysia United Indigenous Party (PPBM) | Teluk Gelugor MP | FELCRA Berhad (resigned to become Deputy Minister on 28 July 2020) | GLC |
| 26 | Yamani Hafez Tan Sri Musa | Malaysia United Indigenous Party (PPBM) | Sipitang MP | FELCRA Berhad (replaced Shahbudin Yahaya on 28 July 2020) | GLC |
| 27 | Datuk Zakaria Mohd Edris | Malaysia United Indigenous Party (PPBM) | Libaran MP | <i>Perbadanan Nasional Berhad</i> (PNS) | GLC |
| 28 | Dato' Haji Mohd Fasih Mohd Fakeh | Malaysia United Indigenous Party (PPBM) | Sabak Bernam MP | Federal Agricultural Marketing Authority (FAMA) | Statutory Body |
| 29 | Dato' Syed Abu Hussin Syed Abdul Fasal | Malaysia United Indigenous Party (PPBM) | Bukit Gantang MP | Fisheries Development Authority of Malaysia (LKIM) | Statutory Body |
| 30 | Dato' Hajjah Azizah Mohd Dun | Malaysia United Indigenous Party (PPBM) | Beaufort MP | <i>Majlis Amanah Rakyat</i> (MARA) | Statutory Body |

| | | | | | |
|----|------------------------------------|--|-------------------|---|----------------|
| 31 | Dato' Sri Hajah Rohani Abdul Karim | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Batang Lupar MP | <i>Padiberas Nasional Berhad (BERNAS)</i> | GLC |
| 32 | Lukanisman Awang Sauni | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Sibuti MP | Sustainable Energy Development Authority (SEDA) | Statutory Body |
| 33 | Datuk Robert Lawson Chuat | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Betong MP | Bintulu Port Authority | Statutory Body |
| 34 | Rubiah Wang | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Kota Samarahan MP | Malaysian Handicraft Development Corporation (<i>Kraftangan Malaysia</i>) | Statutory Body |
| 35 | Haji Ahmad Johnie Zawawi | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Igan MP | <i>Indah Water Konsortium Sdn. Bhd.</i> | GLC |
| 36 | Ir. Yusuf Abdul Wahab | Sarawak United Bumiputera Heritage Party (GPS-PBB) | Tanjung Manis MP | Construction Industry Development Board (CIDB) | Statutory Body |
| 37 | Datuk Wilson Ugak Kumbong | Sarawak People's Party (GPS-PRS) | Hulu Rajang MP | National Institute of Occupational Safety and Health (NIOSH) | Statutory Body |
| 38 | Anyi Ngau | Progressive Democratic Party (GPS-PDP) | Baram MP | Malaysia Cocoa Board (LKM) | Statutory Body |
| 39 | Jugah Muyang | Independent (Pro-PN) | Lubok Antu MP | Malaysian Timber Industry Board (MTIB) | Statutory Body |

Table 1.3: List of Other Political Appointments under the PN Administration

| No | Name | Party | Profile | Entity | Entity Type |
|----|-------------------------------|--|---|---|----------------|
| 1 | Datuk Razali Idris | United Malays National Organization (UMNO) | Senator | Central Terengganu Development Authority (KETENGAH) | Statutory Body |
| 2 | Datuk Nelson Renganathan | Malaysian Indian Congress (MIC) | Former MIC Youth Chief | Human Resource Development Fund (HRDF) | Statutory Body |
| 3 | Mohd Sanusi Mohd Noor | Pan-Malaysian Islamic Party (PAS) | Jeneri ADUN; Kedah Menteri Besar | Malaysian Rubber Board (LGM) | Statutory Body |
| 4 | Nurul Islam Mohamed Yusoff | Pan-Malaysian Islamic Party (PAS) | PAS Wilayah Persekutuan Youth Wing Vice President | Malaysian Rubber Board (LGM) | Statutory Body |
| 5 | Muhammad Ismi Mat Taib | Pan-Malaysian Islamic Party (PAS) | PAS Ulama Council Committee Member | Malaysian Rubber Board (LGM) | Statutory Body |
| 6 | Datuk Tan Teik Cheng | Malaysian Chinese Association (MCA) | MCA Vice President | Penang Port Commission | Statutory Body |
| 7 | Datuk Chong Sin Woon | Malaysian Chinese Association (MCA) | MCA Secretary General | Port Klang Authority | Statutory Body |
| 8 | Dato' Che Zakaria Mohd Salleh | Malaysia United Indigenous Party (PPBM) | ADUN Permas | South Johore Development Authority (KEJORA) | Statutory Body |
| 9 | Dr Azman Ibrahim | Pan-Malaysian Islamic Party (PAS) | Jabi ADUN | National Kenaf and Tobacco Board (LKTN) | Statutory Body |

| | | | | | |
|----|---------------------------|--|---------------------------------|--|----------------|
| 10 | Dato' Osman Sopian | Malaysia United Indigenous Party (PPBM) | Kempas ADUN | Malaysian Palm Oil Commission (MPOC) | Statutory Body |
| 11 | Datuk Md Alwi Che Ahmad | United Malays National Organization (UMNO) | Kok Lanas ADUN | <i>Majlis Amanah Rakyat</i> (MARA) | Statutory Body |
| 12 | Muhtar Suhaili | Pan-Malaysian Islamic Party (PAS) | PAS Sarawak Deputy Commissioner | Malaysian Palm Oil Certification Council (MPOCC) | Statutory Body |
| 13 | Haji Kamaruzaman Mohammad | Pan-Malaysian Islamic Party (PAS) | PAS information chief | Malaysian Timber Certification Council (MTCC) | Statutory Body |
| 14 | Datuk Kamarudin Md Noor | Malaysia United Indigenous Party (PPBM) | PPBM Kelantan Chairman | Kemubu Agricultural Development Authority (KADA) | Statutory Body |

1.2 Identifying the Problem

A major issue observed under the PN administration is the high number of elected representatives (MPs and ADUNs) who were appointed as directors of GLCs and statutory bodies. While it can be argued that these representatives are safeguarding the state's interest, there is the risk that they prioritise personal or political gains which then creates a conflict of interest. Furthermore, the role of safeguarding state interest does not necessitate the appointment of elected representatives as it can be achieved through the appointment of civil servants or non-elected representative politicians.

Apart from that, the appointment of elected representatives as directors of GLCs or statutory bodies contributes to the expansion of payroll vote i.e., enhancing the Executive's control over the Legislature. This incentivises "party hopping" behaviour as observed recently which also leads to conflict of interest in the governance of GLCs and statutory bodies.

Lastly, there is also the issue of competency of politicians who are appointed as directors in these entities. The lack of due diligence process leads to political appointments which does not require a stringent set of qualifications to be present amongst the appointees. Such practice may be harmful to the financial and operational efficiency of GLCs and other government-controlled entities.

The brief timeline of events illustrates the severe institutional weaknesses regarding the appointment process of directors in GLCs and other government-controlled entities. The lack of institutional checks and balances on appointment processes pave the way for potential abuses, or conflicts of interests, which ultimately harm public interest.

Despite the promise of institutional reforms offered by the PH coalition, it is apparent that such manifesto promises are not sufficient and impactful in bringing meaningful change to the existing system. A change in government may undo all progress made in reform initiatives. Impactful and meaningful reforms at the institutional level are needed.

This study therefore aims to propose policy recommendations that would improve the appointment process of directors in GLICs and GLCs in order to prevent future abuses that are detrimental to public interest. After all, GLCs, being under the ownership of government-owned enterprises, are ultimately responsible to Malaysian citizens. It is, hence, vital that the system be improvised to serve the people's best interests.

1.3 Defining GLICs and GLCs

1.3.1 GLICs and Other Bodies with Similar Functions

An analysis of the appointment mechanism of GLICs, GLCs and other similar entities requires an understanding of their institutional structure. The ownership structure of GLCs in Malaysia is highly complex.¹⁰ At the federal level, GLICs and other statutory bodies own companies on behalf of the government. At the state level, state government investment corporation and statutory bodies also own companies respectively.

¹⁰ Although "GLC" is often used as a blanket terminology to refer to government-controlled entities in general, it officially refers only to a specific group of companies that are controlled via majority ownership by one of the seven GLICs.

Table 1.4: Type of federal and state government entities that own subsidiary companies

| Type of Government Entity | List of Entity | Founding Statute | Subsidiary Company |
|---|---|--|---|
| Federal Level | | | |
| GLIC | Minister of Finance Incorporated (MoF Inc.) Employee Provident Fund (EPF) Retirement Fund Incorporated (KWAP) <i>Lembaga Tabung Haji</i> (LTH) Armed Forces Fund Board (LTAT) <i>Khazanah Nasional Berhad</i> <i>Permodalan Nasional Berhad</i> (PNB) | Founded through respective parliamentary acts. Only Khazanah and PNB founded through Companies Act | Subsidiary companies considered as federal GLCs |
| Non-GLIC Statutory Body | Example: <i>Majlis Amanah Rakyat</i> (MARA) Federal Land Development Authority (FELDA) <i>Petroliam Nasional Berhad</i> (PETRONAS) ¹¹ | Founded through respective parliamentary acts | Subsidiary companies considered as federal GLCs |
| State Level | | | |
| State Government Investment Corporation | Example: State Economic Development Corporation Chief Minister Incorporated (CMI/ MBI) | Founded through respective state enactments | Subsidiary companies considered as state GLCs |

As of date, there are seven government-controlled entities that are officially constituted as GLICs by the Malaysian government. They are the Minister of Finance Incorporated (MoF Inc.), *Khazanah Nasional Berhad*, *Permodalan Nasional Berhad* (PNB), Employees Provident Fund (EPF), Retirement Fund Incorporated (KWAP), *Lembaga Tabung Haji* (LTH) and *Lembaga Tabung Angkatan Tentera* (LTAT).

¹¹ *Petroliam Nasional Berhad* (PETRONAS) is founded both as a statutory body through the Petroleum Development Act 1974 and as a company through the Companies Act 1965.

All of the GLICs, except for *Khazanah* and PNB, are statutory bodies which were founded through respective parliamentary legislation. *Khazanah* and PNB, in contrast, were founded as companies under the Companies Act and do not have their own parliamentary legislation. *Khazanah* is a wholly-owned subsidiary of MoF Inc. while PNB is a wholly-owned subsidiary of *Yayasan Pelaburan Bumiputera* (Bumiputera Investment Foundation, YPB).

Table 1.5: Type and Incorporating Statutes of GLICs in Malaysia

| GLIC | Purpose | Incorporating Statute | Type |
|----------------------------------|--------------------------------|--|----------------------------------|
| Minister of Finance Incorporated | Investment Holding | Minister of Finance (Incorporation) Act 1957 | Statutory Body |
| Employees Provident Fund | Savings Fund – Private Workers | Employees Provident Fund Act 1991 | Statutory Body |
| Kumpulan Wang Amanah Persaraan | Savings Fund – Public Workers | Retirement Fund Act 2007 | Statutory Body |
| Lembaga Tabung Haji | Savings Fund – Hajj Pilgrimage | Tabung Haji Act 1995 | Statutory Body |
| Lembaga Tabung Angkatan Tentera | Savings Fund – Armed Forces | Tabung Angkatan Tentera Act 1973 | Statutory Body |
| Khazanah Nasional Berhad | Sovereign Wealth Fund | Companies Act 1965 | Company (subsidiary of MoF Inc.) |
| Permodalan Nasional Berhad | Fund Management | Companies Act 1965 | Company (subsidiary of YPB) |

The GLICs have various functions. Four of them – KWAP, EPF, LTH and LTAT – function as pension or savings funds. MoF Inc. functions as an investment holding company for the federal government. *Khazanah*, owned by MOF Inc. and a GLIC by itself, acts as the country's sovereign wealth fund. PNB focuses on wealth creation for the *Bumiputera* community and is currently one of the largest fund management companies in Malaysia.

1.3.2 GLCs and Other Bodies with Similar Functions

The government own numerous GLCs through these seven GLICs. According to the official definition of GLCs:

GLCs are **companies with a primary commercial objective and are controlled by a GLIC**. A GLIC has control over a GLC when it is the majority shareholder or single largest shareholder and when it has the ability to exercise and influence major

decisions such as appointment of board members and senior management and so on (Putrajaya Committee on GLC High Performance, n.d.).

Officially, GLCs are commercial-oriented companies owned and controlled by GLICs. All GLCs are companies which are incorporated under the Companies Act and not by individual parliamentary laws. Statutory bodies, in contrast, are founded by respective parliamentary laws, are not considered as GLCs.¹²

This definition is limited and does not encompass several types of government-controlled companies. First, the official GLC definition only includes companies with a “primary commercial objective.” However, there are many government-owned companies whose primary objective is social rather than commercial, hence, technically do not fit in this definition. One example is *Prasarana Sdn Bhd*, a subsidiary of a GLIC (MoF Inc.), which was founded to manage urban public transportation and not to undertake commercial activities. This study, however, shall include such companies as GLCs for simplicity.

Second, while the government officially recognises only seven GLICs, there are other statutory bodies which similarly own companies for commercial reasons. Statutory bodies such as FELDA, Petronas and MARA are known to own subsidiary companies – including public-listed enterprises such as Felda Global Ventures Berhad, Petronas Gas Berhad and MBM Resources Berhad. The official GLC definition technically does not include such companies as the parent entity is not one of the seven GLICs. This study, however, shall include commercial-oriented companies owned by non-GLIC statutory bodies as GLCs for simplicity.

The third point is that the official definitions of GLICs and GLCs do not include companies owned by respective state governments in Malaysia. Each state government has ownership in various companies through respective state government statutory bodies and investment holding companies. One example is public-listed *Kumpulan Perangsang Selangor Berhad*, which is ultimately owned by state government investment arm, *Menteri Besar Selangor Incorporated* (MBI Selangor). This study, however, shall consider companies owned by state government entities as GLCs for simplicity.

Therefore, this report shall expand the category of GLCs to include companies owned by non-GLIC statutory bodies (such as MARA, FELDA and PETRONAS) and GLIC subsidiaries which do not have a primary commercial objective (such as *Prasarana Sdn Bhd*.) Subsidiary companies of state government entities are included as GLCs in this study.

¹² The book *Minister of Finance Incorporated: Ownership and Control of Corporate Malaysia* (2018) published by IDEAS follows the official definition of GLICs. As for GLCs, the book defines companies whose at least 20% of its shares owned by GLICs, individually or collectively.

Chapter 2 - HISTORY

2.1 1960s-70s: Early Public Enterprises

The use of public enterprises, or state-owned enterprises (SOEs), has been well recorded in many countries. Traditionally, SOEs have been employed mainly in strategic sectors such as transportation, mining, oil and infrastructure. SOEs in developing countries play an especially crucial role in undertaking public investment for the sake of long-term development. Public investment may overcome problems associated with market failure and increase the country's industrial capacity, which is vital for "catch up" growth.

The history of GLCs in Malaysia goes back as early as the pre-Independence era. The British colonial government had established several public enterprises as early as the nineteenth century to manage public services – such as electricity supply, telecommunications, postal and railway transportation. There were 23 public enterprises in existence at the time of Independence (Ismail & Osman-Rani, 1991).

The use of public enterprises accelerated as government intervention in the economy intensified following the introduction of the New Economic Policy (NEP) in 1970. The NEP's main objectives were poverty eradication and equitable wealth redistribution among Malaysia's multiracial population. One of NEP's core strategies entails accumulating corporate wealth and creating a managerial and professional class within the Bumiputera community.

Of the 82 public enterprises that had been created as of 1974, 67 were established after 1965. Other public enterprises that were instrumental in the NEP's objectives include the Urban Development Authority (UDA), Federal Agriculture Marketing Authority (FAMA), Federal Land Consolidation and Rehabilitation Authority (FELCRA) and Rubber Industry Smallholder Development Authority (RISDA).

The use of public enterprises extended beyond the federal level. State-level corporations, namely, State Economic Development Corporations (SEDCs) were founded in each state throughout the 1960s and early 1970s to achieve the NEP's agenda. Accompanying the SEDCs were State Agricultural Development Corporations (SADCs), State Land / Resource Development Corporation and various state education and social foundations. Some of these corporations would own GLCs on behalf of the state government. By 1985, SEDCs and SADCs were reported to have an interest in 337 companies (Ismail & Osman-Rani, 1991).

Table 2.1: Year of Incorporation of SEDCs

| SEDC | Year |
|---|------|
| Selangor State Development Corporation (PKNS) | 1964 |
| Terengganu State Economic Development Corporation (PMINT) | 1965 |
| Pahang State Development Corporation (PKNP) | 1965 |
| Kedah State Development Corporation (PKNK) | 1965 |
| Kelantan State Economic Development Corporation (PKINK) | 1966 |
| Perak State Development Corporation (PKNPk) | 1967 |
| Johor State Economic Development Corporation (PKENJ) | 1968 |
| Negeri Sembilan State Development Corporation (PKNNS) | 1969 |
| Penang Development Corporation (PDC) | 1971 |
| Melaka State Development Corporation (PKNM) | 1971 |
| Sabah Economic Development Corporation (SEDCO) | 1971 |
| Sarawak State Economic Development Corporation (SEDC) | 1972 |
| Perlis State Economic Development Corporation (PKENPs) | 1973 |

Source: SEDC enactments

2.2 1980s - Early 2000s: Privatising State-Owned Enterprises

By the 1980s, in response to the underperformance of SOEs in many countries, privatisation gained popularity as a solution to improve performance and economic development. Many countries were persuaded by multilateral institutions namely the World Bank and the International Monetary Fund to adopt economic liberalisation.

The Mahathir Administration likewise introduced privatisation as a key policy with the aim of improving economic growth. Guidelines on privatisation was created in 1985, which eventually led to the privatisation master plan in 1991. Privatisation was justified as the best way to create national champions as government assets were transferred to individuals who were supposed to be adept at generating wealth.

Privatisation was undertaken through the divestment of shares in state-owned enterprises and through the contracting out of projects to private parties. Numerous public enterprises were allowed to be privatised precipitating an unprecedented boom in the stock market. The government, however, retained majority ownership over many of these privatised companies. A report in 1993 disclosed that MoF Inc. and PNB alone collectively owned about one quarter of the local bourse's total market capitalisation of RM300 billion (Gomez et al., 2017).

As the government privatised and listed various state-owned enterprises, it resorted to the use of golden shares as a control mechanism over those firms. The golden share allows the government to have veto powers over important decisions that involve strategic companies. Given the weak regulatory mechanism in existence then, golden shares can prevent a hostile takeover of strategic national assets such as *Tenaga Nasional Berhad* and *Telekom Malaysia*

Berhad from foreign investors. More importantly, golden shares enable the government to intervene in the appointment of top positions in privatised and corporatised public enterprises.

The large-scale privatisation exercise succeeded in nurturing a new class of *Bumiputera* corporation captains, which was the aim of the Bumiputera Commercial and Industrial Policy (BCIC). However, the advent of the 1997 Asian Financial Crisis resulted in many of these companies going into financial distress. The government had to intervene and re-nationalize many firms, causing a sudden increase of underperforming government-linked companies (GLCs).

2.3 2004-2015: Reforming GLICs and GLCs

Despite the large-scale privatisation in the 1980s and 1990s, SOEs continue to be prevalent in many countries. SOEs constitute roughly 10 percent of the world's largest firms measured by market capitalisation or asset valuation. The OECD countries alone have more than 2,000 SOEs (Sanchez, 2016)

Similarly, GLCs continued to have a large presence in the Malaysian economy. As of 2005, 57 listed firms were GLCs with RM260 billion in market capitalisation equivalent to 36 percent of *Bursa Malaysia*. Many of these GLCs were then marked by lack of focus, ambiguous responsibilities, ineffective boards and poor talent supply among other things.

Recognising the importance of reforming the underperforming GLCs, the Abdullah Administration launched the 10-year GLC Transformation Programme (GLCTP) in May 2004. The Putrajaya Committee on GLC High Performance (PCG) was established in January 2005 as a steering committee to transform GLCs into high-performing entities. Khazanah was tasked to spearhead this initiative.

GLCTP encompassed five GLICs – namely *Khazanah*, EPF, LTH, LTAT and PNB – and a group of GLCs under their control referred to as the G20.¹³ The G20 were selected as proxy for the performance of GLCs as they constitute the larger GLCs under these GLICs. There was an estimated 445 GLCs in total in 2010 (Putrajaya Committee on GLC High Performance, 2015). GLCTP had three underlying principles: greater performance, contribute to national development agenda, and improved governance structure and stakeholder management.

By the end of the programme in 2015, several positive outcomes were observed. Market capitalisation of the G20 grew almost three times from RM134 billion to RM386 billion from 2004 to 2015. G20 net profit grew from RM9.9 billion to RM26.2 billion with a rate of 10.2% p.a. while total shareholder return increased at 11.1% p.a. within the same period. A total of RM108.6 billion in dividends were paid by the G20 from FY2004 to FY2014. By 2017, about half of the top 50 listed firms ranked by market capitalisation were considered GLCs.

One key aspect of GLCTP is improving the board governance of GLCs. This is most visible through the release of the Green Book on Enhancing Board Effectiveness, which includes recommendations for appointment process of GLC board members. The Programme recognises

¹³ The G20 referred to major GLCs owned by the GLICs which were included in the GLC Transformation Programme such as CIMB Group Berhad, Axiata Group Berhad, Sime Darby Berhad, Tenaga Nasional Berhad and UEM Group Berhad.

the need to have more professionals on GLC boards and management teams instead of regulators and bureaucrats.

Within the first two years of the programme, 58 board members of the G20 were replaced with qualified professionals from the private sector. The government also instituted the Malaysian Directors' Academy (MINDA) in 2006 to train high-performing GLC directors and increase the supply pool of qualified director candidates. An assessment framework was also formulated to evaluate the performance of GLC board of directors.

CHAPTER 3 - APPOINTMENT MECHANISM

As highlighted in Chapter 1, there are multiple types of government entities that own GLCs at the federal and state levels: GLICs, non-GLIC statutory bodies and state government investment corporations. Each category contains a distinct legislative framework governing the appointment process of board members. This chapter analyses the legal and regulatory framework governing the appointment of board members in each of these categories.

3.1 GLIC Legislative Framework

It is imperative to understand how GLIC directors are appointed as they are able to influence the operations of GLCs, which are their subsidiaries. Except for *Khazanah* and PNB, the GLICs are statutory bodies which were formed through unique parliamentary laws. These laws govern a number of areas concerning the GLICs including the appointment process of their directors.

According to the existing regulation, the Minister responsible varies according to each GLIC. The Minister of Finance has appointment powers over EPF and KWAP. The Minister in charge of Religious Affairs has appointment powers over LTH. Interestingly, there is no definition of Minister in the LTAT statute. However, it is sensible to assume that the Minister of Defence is responsible over LTAT.

It can be observed from Table 3.1 that the Executive, through specific Cabinet Ministers, wields strong authority in appointing key members in GLICs. The extent of each Minister's appointment power varies slightly. While most board members are appointed by the specific GLIC's Minister-in-charge, there are some ex-officio board members who are appointed by virtue of their position in the civil service. Some board members who are representatives of other public institutions are also not appointed by the GLIC's Minister-in-charge.

A major point of interest is that almost all of the GLIC's Chairman and CEO of the GLICs are appointed by their respective Minister-in-charge. Only KWAP's Chairman is an ex-officio board member by virtue of his position as Secretary-General of the Finance Ministry. While LTAT's Chairman is also an ex-officio member which is the Secretary-General of the Defence Ministry, the Minister-in-charge may override that provision and appointment any other person.

Table 3.1: Overview of GLIC Appointment Mechanism

| GLIC | Minister in Charge | Minister's Appointment Authority | Chairman | CEO |
|-------------|-----------------------------|---|---|-----------------------|
| MoF Inc. | N/A | N/A | N/A | N/A |
| EPF | Minister of Finance | All board members | Appointed by Minister | Appointed by Minister |
| KWAP | Minister of Finance | All board members except the Chairman | Secretary General of Finance Ministry (ex-officio) | Appointed by Minister |
| LTH | Minister of Islamic Affairs | All board members except one representative each from the Prime Minister's Department and Treasury | Appointed by Minister | Appointed by Minister |
| LTAT | Minister of Defence | All board members except the Deputy Chairman (which is a representative each from the Defence Ministry) and an ex-officio director from the Treasury (Deputy Secretary General) | Secretary General of Defence Ministry (ex-officio); or another person appointed by the Minister | Appointed by Minister |

While the GLIC laws require representation from other ministries or government bodies in their board of directors, it is uncertain if the Minister-in-charge has an influence in their appointments. Regardless, the presence of representatives from other bodies may function as a form of check and balance.

Another point to note is that while appointment power is concentrated with the Executive branch of the government, there is some separation of power according to Ministers. This mechanism prevents power being concentrated under the Prime Minister. However, this system does not prevent conflict of interest in the case where the Prime Minister is also the Finance Minister,

which has happened in several instances. The 1MDB scandal, for instance, happened when the Prime Minister also holds the Finance portfolio.

Table 3.2: Laws Relating to Appointment of GLIC Directors

| Legislation and GLICs | Minister in Charge | Appointment of Directors & CEO |
|---|--|---|
| Minister of Finance (Incorporation) Act 1957 (MoF Inc.) | Minister of Finance | No provision for Board of Directors or CEO |
| Employees Provident Fund Act 1991 (EPF) | "Minister" means the <u>Minister</u> charged with responsibility for matters relating to the Employees Provident Fund Board; i.e. <u>Minister of Finance</u> | <p>Power of Minister to appoint directors</p> <p>4. (1) <i>The Board shall consist of:</i></p> <ul style="list-style-type: none"> (a) <i>a Chairman;</i> (b) <i>a Deputy Chairman to be appointed from amongst the persons referred to in subparagraph (d)(i);</i> (c) <i>the chief executive officer, who shall be an ex-officio member; and</i> (d) <i>not more than eighteen other members of whom -</i> <p>(2) <i>Where the Chairman is not a representative of the Ministry of Finance, the Minister shall appoint a representative of the Ministry of Finance to be a member of the Board under subparagraph (1)(d)(i) who shall also be appointed the Deputy Chairman.</i></p> <p>(3) <i>Members of the Board shall be appointed by the Minister and, subject to sections 6 and 7 shall, unless they sooner resign or their appointment is sooner revoked, hold office for such term as the Minister may determine.</i></p> <p>30. (1) <i>The Minister shall appoint a fit and proper person, on such terms and conditions as he may determine, as chief executive officer, who may be designated by any name as determined by the Board.</i></p> |

| | | |
|---------------------------------|--|--|
| Retirement Fund Act 2007 (KWAP) | "Minister" means the <u>Minister</u> charged with the responsibility for finance; i.e. <u>Minister of Finance</u> | <p>Power of Minister to appoint Directors</p> <p>4. The Board shall consist of the following members who shall be appointed by the Minister:</p> <ul style="list-style-type: none"> a) a Chairman who shall be the Secretary General of the Ministry of Finance; b) a representative from the Central Bank of Malaysia; c) a representative from the Ministry of Finance; d) the Chief Executive Officer who shall be an ex-officio member; e) three representatives of the Government of Malaysia; f) three other persons from the private sector with experience and expertise in business or finance; g) a person who, in the opinion of the Minister shall fairly represent the contributories to the Fund other than representatives of the Government of Malaysia. <p>9. (1) Subject to the approval of the Minister, the Board shall appoint a Chief Executive Officer on such terms and conditions as the Board may deem fit.</p> |
| Tabung Haji Act 1995 (LTH) | "Minister" means the Minister charged with the responsibility for pilgrimage control; i.e. <u>Minister in charge of Islamic Affairs, Prime Minister's Department</u> | <p>6. (1) the Lembaga shall consist of the following members:</p> <ul style="list-style-type: none"> a) a Chairman who shall be appointed by the Minister; b) a representative of the Prime Minister's Department; c) a representative of the treasury; d) not more than seven other members who shall be appointed by the Minister. <p>12. (1) The Minister may appoint any member of the Lembaga to be the Chief Executive Officer of the Lembaga upon such terms and conditions as the Lembaga may, with the concurrence of the Minister, determine.</p> |

| | | |
|---|----------------------------------|--|
| <p><i>Tabung Angkatan Tentera Act 1973 (LTAT)</i></p> | <p>"Minister" is not defined</p> | <p>(3) <i>The Lembaga shall consist of:</i></p> <ul style="list-style-type: none"> a) <i>a Chairman who shall be the Secretary General of the Ministry of Defence or such other person as may be appointed by the Minister;</i> b) <i>a Deputy Chairman who shall be a representative of the Ministry of Defence;</i> c) <i>the Deputy Secretary General to the Treasury;</i> d) <i>the Chief Executive who shall be an ex-officio member;</i> e) <i>four members to be appointed by the Minister to represent the contributors, one of whom shall be the Chief of the Armed Forces Staff;</i> f) <i>such other members not exceeding four in number to be appointed by the Minister.</i> <p>19. (1) <i>Subject to the approval of the Minister, the Lembaga may appoint on such terms as the Lembaga thinks fit a Chief Executive and a Deputy Chief Executive.</i></p> |
|---|----------------------------------|--|

Source: Laws governing respective GLCs

Apart from the board of directors, the laws governing EPF, LTAT and KWAP also require the creation of an investment panel and the manner of its members. The investment panel is mainly responsible for matters pertaining to investment of assets owned by respective GLICs. Similar to the appointment of GLIC Directors, the appointment of GLIC investment panels is highly dependent on the Minister-in-charge (see Table 3.3). Interestingly, the LTH statute does not contain any provision for an investment panel although LTH did form an investment panel in 2001 (Lembaga Tabung Haji, 2013).

Table 3.3: Appointment of Investment Panel in GLICs

| Legislation and GLICs | Appointment of Investment Panel |
|---|---|
| Minister of Finance (Incorporation) Act 1957 (MoF Inc.) | No provision for Investment Panel |
| Employees Provident Fund Act 1991 (EPF) | <p><i>“Minister” means the <u>Minister</u> charged with responsibility for matters relating to the Employees Provident Fund Board; i.e. <u>Minister of Finance</u></i></p> <p>18. (1) An Investment Panel responsible for matters pertaining to the investments of the Fund and which shall consist of the following members is established:</p> <ul style="list-style-type: none"> (a) the Chairman, or any other person to be appointed by the Minister, who shall be the Chairman of the Investment Panel; (b) the Deputy Chairman who shall be a representative of the Ministry of Finance; (c) (Deleted by Act A1611); (d) the chief executive officer, who shall be an ex officio member; and (e) four other persons who shall have knowledge or experience in finance, business, economy or other relevant knowledge or experience, to be appointed by the Minister. <p><i>(2) The Investment Panel shall be subject to such directions issued by the Board and approved by the Minister, from time to time.</i></p> |
| Retirement Fund Act 2007 (KWAP) | <p>(2) The Investment Panel shall consist of the following members who shall be appointed by the Minister:</p> <ul style="list-style-type: none"> (a) Chairman who shall be the Chairman of the Board or such other person as may be appointed by the Minister; (b) (Deleted by A1496); (c) a representative from the Ministry of Finance; (d) the Chief Executive Officer who shall be the secretary; and (e) four persons from the public or private sector with experience and expertise in business, investment, banking or finance. |
| Tabung Haji Act 1995 (LTH) | No provision for investment panel |

| | |
|--|---|
| <i>Tabung Angkatan Tentera</i> Act 1973 (LTAT) | (2) The Investment Panel shall consist of— (a) a Chairman who shall be appointed by the Minister on the advice of the Lembaga; (b) (Deleted by Act A1506); (c) the Chief of Defence Forces; (d) the Deputy Secretary General to the Treasury; (e) two other members with business or financial experience to be appointed by the Minister. |
|--|---|

MoF Inc., unlike the four statutory GLICs, is not required by its statute to form a board of directors or an investment panel. The Ministry of Finance administers companies owned by MoF Inc. through its Government Investment Companies Division (GIC). There is no information regarding the governance structure of GIC. However, as the Minister of Finance (Incorporation) Act 1957 functions as a body corporate representing the Minister of Finance, it is highly likely that the Minister has the ultimate authority in appointing directors of GLCs controlled by MoF Inc.

Unlike the other GLICs, Khazanah and PNB are not statutory bodies but were incorporated under the Companies Act. As companies, such appointment process should be included in their Memorandum and Articles of Association (M&A), which are not publicly accessible. However, based on past reports, it is indicated that the Prime Minister is by convention the Chairman of *Khazanah* and *Yayasan Pelaburan Bumiputera* (YPB), the owner of PNB (*Permodalan Nasional Berhad*, 2018). Several key Ministers such as Finance are also usually appointed as directors of both entities.

3.2 Golden Shares

One powerful control mechanism that applies exclusively to MoF Inc., and not the other GLICs, is the golden share. A golden share enables the government to veto strategic decisions made by the board of a GLC, such as overruling the appointment of key personnel within the company. The golden share empowers the government to exercise its right to control over major decisions, including appointment matters, if needed. The most recent data provided by the Ministry of Finance reveals that there are 32 companies in which the government has a golden share (see Table 3.4).

Table 3.4 Companies with MoF Inc. Golden Shares

| | |
|-----|---|
| 1. | Aerospace Technology System Corporation Sdn. Bhd. |
| 2. | Bintulu Port Holdings Berhad |
| 3. | Bintulu Port Sdn. Bhd. |
| 4. | Boustead Naval Shipyard Sdn. Bhd. |
| 5. | Commerce Dot Com Sdn. Bhd. |
| 6. | FGV Holdings Berhad |
| 7. | HICOM Holdings Berhad |
| 8. | Johor Port Berhad |
| 9. | <i>Konsortium Pelabuhan Kemaman Sdn. Bhd.</i> |
| 10. | Kuantan Port Consortium Sdn. Bhd. |
| 11. | Malaysia Airports (Sepang) Sdn. Bhd. |
| 12. | Malaysia Airports Holdings Berhad |
| 13. | Malaysia Airports Sdn. Bhd. |
| 14. | Malaysian Airlines Berhad |
| 15. | Malaysian Maritime Academy Sdn. Bhd. |
| 16. | MARDEC Berhad |
| 17. | Medical Online Sdn. Bhd. |
| 18. | MISC Berhad |
| 19. | National Aerospace & Defence Industries Berhad (NADI) |
| 20. | National Feedlot Corporation Sdn. Bhd. |
| 21. | Northport (Malaysia) Berhad. |
| 22. | <i>Padiberas Nasional Berhad (BERNAS)</i> |
| 23. | PDX.Com Sdn. Bhd. |
| 24. | <i>Pelabuhan Tanjung Pelepas Sdn. Bhd.</i> |
| 25. | Penang Port Sdn. Bhd. |
| 26. | Pos Malaysia Berhad |
| 27. | <i>Projek Lebuhraya Usahasama Berhad</i> |
| 28. | Sabah Electricity Sdn. Bhd. |
| 29. | Senai Airport Terminal Services Sdn. Bhd. |
| 30. | <i>Telekom Malaysia Berhad</i> |
| 31. | <i>Tenaga Nasional Berhad</i> |
| 32. | Westport Malaysia Berhad |

The use of golden shares has come under intense debate recently. In January 2020, *Khazanah* Managing Director Shahril Ridza Ridzuan suggested that the government move away from the use of golden shares and employ laws and regulations instead to govern companies. According to him, there are now effective legislations in place overseeing strategic sectors such as telecommunications, power and aviation. Malaysian Aviation Commission (Mavcom) COO Azmir Zain supported the proposal calling for the abolishment of golden shares in aviation companies such as Malaysia Airports Holdings Berhad (MAHB) in order to establish a fair and competitive commercial environment (Emir Zainul, 2020).

On the other side of the debate, golden shares are argued to be vital in protecting national and social interests. According to Prime Minister Mahathir, golden shares are important to prevent mismanagement in strategic companies, citing the case of 1MDB as an example of a firm that requires administrative control. He conceded, however, that golden shares can be removed if there are no longer purposeful. Yet, it has to be evaluated on a case-by-case basis (Alifah Zainuddin, 2020).

Historically, golden shares were widely employed in the 1980s and 1990s during privatisation of large state-owned companies such as *Tenaga Nasional Berhad* and *Telekom Malaysia Berhad*. One important use of golden shares is to ensure that such firms do not fall victim to hostile takeovers, which may not be in the best interest of the country. Apart from that, golden shares enable the government to have a strong say in tariff and pricing changes, and in appointment of top managerial positions.

3.3 Non-GLIC Statutory Body Legislative Framework

While the government officially recognises only seven GLICs, there are other statutory bodies who own companies which can be considered as GLCs. This study shall include three statutory bodies – Federal Land Development Authority (FELDA), *Majlis Amanah Rakyat* (MARA) and *Petroleum Nasional Berhad* (Petronas) – as they are reported to own public listed GLCs on the stock market. FELDA is the largest single shareholder of Felda Global Ventures Berhad (FGV). MARA is the ultimate largest shareholder of MBM Resources Berhad. Petronas is the majority shareholder of Petronas Chemicals Group Berhad, *Petronas Dagangan Berhad*, and Petronas Gas Berhad.

Similar to the GLIC legislation, the specific Minister in charge of FELDA and MARA has total authority in appointment of their board of directors. However, there is unclarity in terms of which Minister holds that power. The Land Development Act defines “Minister” as the Minister charged with the responsibility for FELDA. The *Majlis Amanah Rakyat Act* did not define the word “Minister.”

In the case of Petronas, there is no provision for a board of directors under the Petroleum Development Act. It should be noted that Petronas, while incorporated as a corporation through the Petroleum Development Act, is also incorporated through the Companies Act. Hence, it is highly probable that the appointment process of its board of directors is described in its M&A, which is not publicly available. The Act, however, accorded the Prime Minister with huge power over Petronas. Section 3(2) of the Act states that “the Corporation shall be subject to the control of the Prime Minister who may from time to time issue such direction as he may deem fit.”

Table 3.5 Appointment of Directors in non-GLIC Statutory Bodies

| Legislation and GLICs | Minister in Charge | Appointment of Directors |
|--------------------------------------|--|---|
| Land Development Act 1956 | "Minister" means the Minister charged with the responsibility for the Federal Land Development Authority | (2) The Authority shall consist of— (a) a Chairman, who shall be appointed by the Minister and shall hold office during his pleasure; and (b) not more than twelve or less than six members, who shall be appointed by the Minister and shall, subject to this Act, hold office for such term not exceeding three years and subject to such conditions as the Minister shall determine. |
| <i>Majlis Amanah Rakyat Act 1966</i> | Undefined | (3) The Majlis shall consist of the following members to be appointed by the Minister : (a) a Chairman; (b) a Deputy Chairman; and (c) not less than five nor more than nine other members of whom not less than three shall be public officers. |
| Petroleum Development Act 1974 | Prime Minister | No provision for Board of Directors |

3.4 State Government Investment Corporation Legislative Framework

The ownership structure of GLCs at the state level is more convoluted. One, there is no official definition of "GLICs" or "GLCs" at the state level, unlike at the federal level. However, as mentioned in Chapter 1, state GLCs are owned by various state investment corporations.

Most prominent amongst them are the State Economic Development Corporation (SEDC) and Chief Minister Incorporated or *Menteri Besar Incorporated* (CMI or MBI). There are other state government entities that own companies albeit at a much smaller scale and thus, will not be covered in this study. This study will focus only on the major GLC-owning state government entities i.e. SEDC and MBI.

SEDC Enactments

Like other state statutory bodies, all SEDCs are required by their respective statutes to have a board of directors. SEDC directors consist of a large number of ex-officio directors. For most of them, the Chief Minister is automatically the Chairman (except for Sabah and Sarawak SEDC). Other ex-officio directors, depending on which SEDC, include the Deputy Chief Minister, the State Secretary or the State Financial Officer.

In contrast to the GLIC director appointments, authority over appointment of directors in the SEDCs is not concentrated within the Executive but with multiple stakeholders. The state Executive, through the office of the Chief Minister, has authority to appoint directors in several SEDCs. The Perak SEDC enactment, for instance, empowers the Chief Minister to appoint eight directors.

Apart from the Chief Minister, power to appoint directors in SEDCs is held by the state Ruler-in-Council in some states. This is observed in the SEDCs of Terengganu, Kedah, Perlis, Kelantan, and Selangor. For instance, the Terengganu SEDC enactment empowers the state Ruler-in-Council to appoint the Deputy Chairman and four other directors. It is uncertain, however, that under the country's constitutional monarchy whether the Ruler-in-Council acts upon advice of the Chief Minister or upon his sole discretion.

The Federal Government also holds authority over the appointment of certain directors in the SEDCs. All the SEDC enactments that were available in this study state that three representatives from the Federal Government, appointed by the "Minister", shall be appointed as directors in the SEDC. The "Minister" here is defined as the Prime Minister or such Minister as may be appointed by him.

Table 3.6: Enactment of Selangor and Kelantan SEDCs

| SEDC Enactment | Appointment |
|--|---|
| Selangor State Development Corporation Enactment 1964 | <p>(1) The Corporation shall consist of-</p> <p>(a) a Chairman, who shall be the person for the time being holding the office of <i>Menteri Besar</i>, Selangor;</p> <p>(b) a Deputy Chairman, who shall be the person for the time being holding the office of State Secretary, Selangor;</p> <p>(c) two ex officio members, who shall be the persons for the time being holding the offices of State Financial Officer and State Engineer, Selangor;</p> <p>(d) not more than five other members to be appointed by the Ruler in Council from amongst persons appearing to him to be qualified as having wide experience of and proven capacity in matters relating to banking, manufacturing, housing, commerce, finance, professional or administration, or to be otherwise suitable for appointment by virtue of their special knowledge and experience; and</p> <p>(e) three representatives of the Federal Government appointed by the Minister.</p> |

| | |
|---|---|
| Kelantan State Economic Development Corporation Enactment 1966 | <p>(1) The Corporation shall consist of-</p> <p>(a) a Chairman, who shall be a person for the time being holding the office of <i>Menteri Besar</i>, Kelantan;</p> <p>(b) a Deputy Chairman, who shall be a person for the time being holding the office of <i>Timbalan Menteri Besar</i>, Kelantan;</p> <p>(c) two ex-officio Members, who shall be the persons for the time being holding the offices of State Secretary and State Financial Officer;</p> <p>(d) not less than three and no more than five other members who may be deemed fit to be appointed by the Ruler-in-Council.</p> <p>(e) three members representing the Federal Government appointed by the Minister.</p> |
|---|---|

MBI/CMI Enactments

Another key state government investment corporation is the MBI (or CMI). MBIs are highly similar to MoF Inc. in the sense that they were formed simply as a body corporate to represent the state government and to hold shares in various companies on behalf of the state government. MBIs have no board of directors, according to their founding enactments, and are totally controlled by the state government. There is no authority given to the Federal Government or the state Ruler-in-Council according to their founding enactments.

Table 3.7: Founding date of State CMI/MBI

| Investment Arm | Year of Enactment (Year of Amendment) |
|--|--|
| Chief Minister Sabah (Incorporated) | 1949 (1998) |
| <i>Menteri Besar Kelantan</i> (Incorporated) | 1950 |
| <i>Menteri Besar Terengganu</i> (Incorporated) | 1951 |
| <i>Menteri Besar Perlis</i> (Incorporated) | 1951 (1997) |
| <i>Menteri Besar Perak</i> (Incorporated) | 1951 (2011) |
| State Secretary Johore (Incorporated) ¹⁴ | 1953 (1988) |
| <i>Menteri Besar Kedah Darulaman</i> (Incorporated) | 1988 |
| Chief Minister Malacca (Incorporated) | 1993 |
| <i>Menteri Besar Negeri Sembilan</i> (Incorporated) | 1993 |
| <i>Menteri Besar Selangor</i> (Incorporated) | 1994 |
| Chief Minister of Penang (Incorporated) | 2009 |
| State Secretary, Penang (Incorporated) ¹⁵ | 1988 |

MBIs, are not required by their enactments to form a board of directors, although it is observed that some MBIs do have one. Only MBI Selangor and MBI Kelantan are known to have formed a board of directors, while it is not certain whether other MBIs do so due to lack of available data. This indicates that the MBI falls completely under the control of the *Menteri Besar*.

Incorporating enactments for MBIs across Malaysia are extremely thin, and usually contain no more than 3 pages; it merely turns the office of the person known as the *Menteri Besar* into a body corporate (a legal entity separated from the actual *Menteri Besar* himself) that can sue and be sued, enter into contracts, have perpetual succession acquire and deal with property, and hold a corporate seal like any other corporate body.

As MBIs do not have Federal Government representation, in contrast to SEDCs, there may be lack of check and balance mechanism in the former. SEDCs are required to have several federal government representatives as board members, and to report to the federal government. Policy alignment may also be achieved between the federal and state governments through this arrangement. MBIs, on the other hand, do not have any federal government representation or oversight. Yet, given the situation where appointment of state GLC directors is transparent and contains proper vetting, then federal oversight is not necessary.

¹⁴ There is no evidence of a *Menteri Besar Incorporated* (MBI) in Johor. In contrast, State Secretary Johore (Incorporated) actively owns GLCs for the state government.

¹⁵ State Secretary, Penang (Incorporated) holds controlling ownership in several companies including public-listed PBA Holdings Berhad.

3.5 GLC Legislative Framework

Companies Act 2016

There is currently no parliamentary law that pertains to GLCs specifically. GLCs are essentially companies incorporated under the Companies Act. They are bound, much like regular companies in Malaysia, to the Companies Act 2016 as well as their own Memorandum and Articles of Association or Constitution (M&A) and other internal policies.¹⁶ They are generally not bound by parliamentary laws in terms of appointment of board members.

Section 202(2) of the Companies Act 2016 states that “all subsequent directors of a company may be appointed by ordinary resolution.” This means that regardless of the provisions of a shareholders’ agreement, the Companies Act 2016 will always maintain the right of shareholders to appoint subsequent directors by way of ordinary resolution. Therefore, GLICs, acting individually or collectively as controlling shareholders of GLCs, have ultimate power to appoint the directors of GLCs within their control. It is unclear whether the GLC board of director retains any limited discretion to reject the appointment of such directors. However, the board will still retain its power to appoint, at any time, additional directors under Section 202 (3).

Company M&A and internal policies are not publicly available documents and, so, could not be explored extensively in this study. However, media reports have revealed some company internal policies that contain restrictions or criteria in terms of director’s appointment process. For instance, it was reported FELDA’s FGV Holdings Berhad’s Board Nomination and Election Policy and Procedures states that an active political person – defined as an MP, state assemblyman, supreme council member of a political party or a member who holds a position at a divisional level in a political party – cannot be appointed to the board (Barrock, 2020). It would appear likely that MSM Malaysia Holdings Berhad, in turn a subsidiary of FGV, also has the same rules in place preventing a political person from being appointed.

However, the main problem is that unlike most GLICs, GLCs are not held up to strict statutory controls because they are not creatures of statute. Therefore, much like any other corporate body, the shareholders with a controlling stake are free to appoint whoever they like. Rules regarding the appointment of a director usually deals with prohibitions (who cannot become a directors), as opposed to qualificative standards.

The Companies Act 2016 does not contain stringent qualificative requirements in terms of directorial appointments of GLCs. Section 198 of Companies Act 2016 only includes the general provisions disqualifying certain individuals from being appointed as director: [1] an undischarged bankrupt (in Malaysia or overseas), [2] has been convicted of an offence relating to the promotion, formation or management of a corporation (in Malaysia or overseas), [3] has been convicted of an offence involving bribery, fraud and dishonesty (in Malaysia or overseas) [4] has been convicted of an offence under Section 213, 217, 218, 228 and 539 of Companies Act 2016 (in Malaysia or overseas), [5] has been disqualified by the Court under Section 199 of Companies Act 2016 (in Malaysia). Five years after his conviction; or if he is sentenced to imprisonment, after his release from prison, the period of disqualification will end.

¹⁶ Company M&A and internal policies are not publicly available documents and could not be discussed in this report.

Financial Services Act 2013

The Financial Services Act 2013 imposes certain qualificative restrictions on the appointment of directors for commercial financial institutions. These restrictions apply to GLCs in the financial sector namely CIMB, Maybank, RHB Bank, Bank Islam, and Affin Bank. Appointments of all directors, including chairmen and CEOs, of companies that are governed by the FSA are regulated by *Bank Negara Malaysia* (BNM).

Section 54 of the Financial Services Act clearly states that a written approval by BNM is required before any appointment of chairman, directors, or CEO can be made. The reappointment of these individuals also requires BNM's written approval. Section 55 and 59 provide further requirements of individuals who may or may not be appointed as chairman, directors, or CEO of a financial institution. These include personal insolvency, convictions for criminal offences involving dishonesty or fraud, being subject to an order of court prohibiting being a director of a company or being subject to a detention order or bond of restriction or supervision.

Table 3.8: Regulation on Appointments according to the Financial Services Act

| | |
|--------------------------|---|
| Appointment of Directors | 54. (1) Every institution shall at all times have a chief executive officer. (2) Except with the prior written approval of the Bank— (a) no licensed person shall appoint or elect, or reappoint or re-elect any person as its chairman, director or chief executive officer; and (b) no person shall accept any appointment or election, or reappointment or re-election as a chairman, director or chief executive officer, of a licensed person. (3) The licensed person shall submit an application in writing to the Bank together with such documents or information as may be specified by the Bank for the purposes of an approval under subsection (2). (4) An approved person or operator of a designated payment system shall notify the Bank in writing of the appointment, reappointment, election or re-election of its chairman, director or chief executive officer and in the case of an approved financial adviser, its representative, within seven days or such other period as may be specified by the Bank together with such documents or information as may be specified by the Bank. |
| Requirement of Directors | 55. (1) An institution shall not appoint or elect, reappoint or re-elect any person as a chairman, director, chief executive officer or senior officer of the institution, unless such person— (a) is an individual; (b) is not disqualified under subsection 59(1); and (c) has complied with the fit and proper requirements as may be specified by the Bank under section 60. (2) No person shall accept any appointment or election, reappointment or re-election as a chairman, director, chief executive officer or senior officer of an institution, unless such person— (a) is not disqualified under subsection 59(1); and (b) has complied with the fit and proper requirements as may be specified by the Bank under section 60. (3) Unless the Bank otherwise approves, a chief executive officer of an institution shall have his principal or only place of residence within Malaysia and devote the whole of his professional time to the service of the institution. |

| | |
|----------------------|---|
| Discretionary Powers | 60. (1) Without limiting the generality of section 47 and for the purposes of paragraphs 55(1)(c) and 55(2)(b), the Bank may specify fit and proper requirements to be complied with by a chairman, director, chief executive officer or senior officer of an institution or a financial adviser's representative, which may include minimum criteria relating to— (a) probity, personal integrity and reputation; (b) competency and capability; and (c) financial integrity. (2) Where an issue arises as to whether a chairman, director, chief executive officer, senior officer or financial adviser's representative has complied with the fit and proper requirements as specified under subsection (1), the Bank shall have full discretion to determine the issue. |
| Disqualification | 59. (1) A person is disqualified from being appointed or elected, reappointed or re-elected, accepting any appointment or election, or holding office, as a chairman, director, chief executive officer or senior officer of an institution if— (a) he is an undischarged bankrupt, has suspended payments or has compounded with his creditors whether in or outside Malaysia; (b) a charge for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia, has been proven against him; (c) he is prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and has not obtained any leave of the court under the same section; or (d) under any law relating to prevention of crime, drug trafficking or immigration— (i) an order of detention, supervision, or deportation has been made against that person; or (ii) any form of restriction or supervision by bond or otherwise, has been imposed on him. |

More importantly, Section 60 empowers *BNM* to specify “fit and proper requirements to be complied with by a chairman, director, chief executive officer or senior officer” of an institution under the FSA. These requirements may include minimum criteria relating to probity, personal integrity and reputation; competency and capability; and financial integrity. In other words, Bank Negara has full discretionary powers to determine whether a chairman, director, chief executive officer or a senior officer has complied with the fit and proper requirements or not, in whatever aspect of their duties.

3.6 GLC Guideline Framework

The previous section showed that apart from the financial sector, there is lack of stringent criteria when it comes to appointment of GLC directors, chairman and CEO. GLCs, being corporate entities, are generally governed by the Companies Act, their respective M&As, and industry-specific laws such as the Financial Services Act. This means that there is no universal law that requires GLC directors to fulfil a certain set of qualificative requirements. Instead, several guidelines have been produced to guide the appointment process of directors in GLCs.

MoF Inc. Board of Directors Guidelines

One identified set of guidelines is the Board of Directors Guidelines published by MoF Inc. in 2014. However, it only applies to companies controlled by MoF Inc. The Guidelines contains certain educational and professional qualifications that should be considered when nominating an individual as a Chairman, CEO or director of any MoF Inc. subsidiaries. It also limits the number of directorships in subsidiary companies a director has. It calls for the creation of a Nomination Committee whose task is to nominate candidates as directors, which will have to be approved by the board and confirmed by MoF Inc itself. The guideline contains general requirements for the board members of companies owned by MoF Inc. Section 2.4(b) provides certain qualifications for:

...The Board of Directors of an MoF Inc. company has to consist of members who have various expertise such as business, finance, accounting, law, marketing, workplace relations, management and other skills which are related to the operations of the MoF Inc. company, and are appointed within their own personal capacity in order to contribute to a dynamic, competent and effective Board of Directors;

Table 3.9: MoF Inc. Guidelines on Director Appointments

| Qualification | Chairman | Director | CEO |
|---------------------|---|---|--|
| Education | At least a Bachelor's Degree or other equivalent qualification in any field | At least a Bachelor's Degree or other equivalent qualification in any field | At least tertiary education/ professional qualification or other equivalent qualification in any field |
| Experience | Have experience serving in industry and related fields or the field of accounting/law/financial | Have experience serving in industry and related fields or the field of accounting/law/financial | Have experience (except for new industries) in related industries |
| Expertise | At least have held a senior position in a public or private organization | At least have held a senior position in a public or private organization | At least have held a senior position in a public or private organization |
| Integrity Screening | Integrity screening will be conducted by the Malaysian Anti-Corruption Commission (MACC) as one of the procedures (requirements) for candidates who have been appointed to enhance the integrity of the company | | |

While the GLC board of directors may nominate any individuals as Chairman, Director, or CEO, any decisions regarding their appointment must be approved by MoF Inc. (Ministry of Finance, 2014). This rule applies for subsidiaries of companies under the control of MoF Inc. The guidelines also state that the MD or CEO of an MoF Inc. company may sit in the board of subsidiary companies if:

3.45 MD/CEO of a MKD company may sit on the Board of a subsidiary company (100% equity holding) as Chairman or ALP if the holding company has the status of a holding company and the subsidiary company carries out the core business activities of the parent company. The maximum limit that can be served by MD/CEO is five only.

Green Book on Enhancing Board Effectiveness and Governance Standards

In the case of other federal GLCs, a set of guidelines was produced under the GLC Transformation Programme covering a wide range of governance and performance-related topics. One initiative was the Green Book on Enhancing Board Effectiveness and Governance Standards.

The Green Book provided directions on who should sit on federal GLC Boards, described how and why boards should be assessed and provided a framework for GLC Boards to improve their effectiveness. 58 board members of the G20 were changed within the first two years of the programme (Putrajaya Committee on GLC High Performance, 2015, 27). According to the GLC Transformation Programme Graduation Report, professional and experienced directors were appointed into the Boards of GLCs replacing regulators. Some of their recommendations include limiting the board size to 10 members, or 12 if necessary; setting a maximum of two

executive directors and a minimum of one-third of board members are independent directors; separating the role of the Chairman and the CEO.

Some of the reform proposals are designed to create a more independent and capable Nomination Committee, which is responsible in nominating director candidates to the Board for approval, and then to shareholders for confirmation. The Nomination Committee is suggested to consist of mainly non-executive, and mostly independent, directors. The Nomination Committee should set out clear and appropriate criteria to the board for any directorial appointment. Nominee Directors from GLICs, according to the Green Book, should be represented in the Nomination Committee to ensure that the candidate fits the GLC's requirements.

Table 3.9: Change of Directors in the G20

| Year | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------------|------|------|------|------|------|------|------|------|------|------|------|
| Total Change of Directors | 42 | 16 | 18 | 15 | 25 | 25 | 25 | 32 | 14 | 15 | 26 |

Source: PCG Secretariat

The Green Book also contributed to an improved governance standard within GLCs. Based on a survey conducted by the Minority Shareholder's Watchdog Group (MSWG) for the Corporate Governance Index, representation of G20 in the Top 100 with Good Disclosure improved from 71% in 2009 to 82% in 2014.

As part of the GLCT Programme's Initiative to strengthen directors' capabilities, the Malaysian Directors Academy (MINDA) was established in December 2006, with the aim of enhancing board performance by equipping GLC directors with world class knowledge, skills and mindset. For the past eight years, MINDA has steadily achieved an excellent 4.6 out of 5 in its overall programmes rating. From 2012 onwards, MINDA opened to public listed companies as training requests from listed companies increased.

In order to facilitate the search for qualified GLC directors, MINDA established a Directors Registry from which the Nominations Committee are encouraged to select potential board members from. A pool of directors comprising qualified individuals based inside and outside the country. MINDA also provides a lot of programmes to train world-class directors. In late 2014, with the new mandates from Securities Commission and *Bursa Malaysia Berhad*, MINDA expanded its role to include the professionalising of directorship, creation of a director's registry, and conducting of board effectiveness assessment and individual director evaluation (Putrajaya Committee on GLC High Performance, 2015).

Bursa Malaysia Berhad and Securities Commission Guidelines

On the other hand, GLCs which are listed in the local stock market are also tied to a set of rules by regulators namely the Securities Commission and *Bursa Malaysia Berhad*. Chapter 9 of the Bursa Malaysia Listing Requirements for example requires listed companies to submit regular financial and non-financial reporting according to the Malaysian Financial Reporting Standards. Other requirements include the establishment of an audit committee to appoint an external

auditor. Non-compliance with the listing requirements can lead to de-listing or suspension.

The Securities Commission's Malaysian Code on Corporate Governance (MCCG) also caters to listed GLCs. Recently reviewed in 2017, the MCCG contains best-practice recommendations for listed companies, particularly the "Large Companies" which refers to those that sit on the FTSE Bursa Malaysia Top 100 Index; or those with a market capitalisation of at least RM2 billion (Putrajaya Committee on GLC High Performance, 2015). MCCG 2017 focused on certain aspects relating to appointment of directors which are board composition, gender diversity on boards, and tenure of independent directors. For example, it recommends Large Companies to have more than 50 percent of its board members as independent directors, have at least 30% women directors, and to limit the tenure of independent directors to ideally nine years. MCCG also recommends Independent Directors to chair the Nomination Committee.

Latest data show only partial compliance with MCCG. For example, it was revealed that 45 out of the top 100 companies in 2017 do not have boards with a majority of independent directors (New Straits Times, 2017). The portion of women directors among the top 100 companies is only 23.68% in 2018, still below the 30% target. In general, despite some progress made, many companies still do not achieve the stipulated targets. This is perhaps due to the lack of clear legal repercussion that befalls non-complying companies.

These sets of guidelines can provide a good direction to improve meritocracy in appointment of directors in GLCs. However, as they are not legal documents per se, there is still room for non-compliance. This is especially more concerning in unlisted GLCs, which are not bound by regulations accorded by regulators i.e., Securities Commission and *Bursa Malaysia Berhad*.

3.7 International Comparison

Clear Legal Mechanism

Comparison with other countries provide some suggestion on available best practices in SOE appointment process. One of them is creating a dedicated law to oversee the governance of SOEs. These laws allow for a clear ownership structure, and stringent appointment process to be put in place.

One example is The Act on The Management of Public Institutions in Korea addresses the overall governance of SOEs. The Act explicitly places responsibility of SOEs under the Ministry of Strategy and Finance (MoSF) in a predominantly centralised state ownership model. The Public Institutions Policy Bureau, within the MoSF, formulates and implements government policies regarding SOE governance and management practices. Article 30 of the Act states that candidates with good knowledge, experience, and competent ability necessary for performing his/her duties can be nominated as a director or auditor of the SOE.

The nomination process of directors is also clearly stated in the Act. Article 24 of the Act states that the recruitment of board of directors should be announced publicly on the Internet website of a concerned SOE as well as daily newspapers. The period of time allowed for application should be at least one week. The Act prohibits public officials or civil servants from sitting in the

boards of SOEs.

According to Article 31 of the Act on The Management of Public Institutions, CEOs of SOEs and public institutions are required to consult the board of directors in key matters such as performance objectives. The CEO must also negotiate and finalise “management performance contracts” with the Ministry on specific objectives such as responsibilities, rights, remuneration, human resources and evaluation. Article 32 of the Act empowers the board of directors to evaluate various aspects of the company management that could have an impact on company performance.

In Thailand, the Act on Reorganisation of Ministries, Ministerial Bureaus and Departments clearly accords responsibility for exercising state ownership rights in SOEs to the Ministry of Finance. The State Enterprise Policy Office (SEPO) within the Ministry of Finance acts as the main unit responsible for monitoring and overseeing implementation of state policies related to SOE governance. Meanwhile, the State Enterprises Act requires that independent directors make up at least a third of non-state board members.

In Sweden, while there is no explicit law concerning SOEs, the Companies Act itself included provisions for the governance of SOEs. The framework for SOE board governance is clearly set out in the Companies Act, supported by the State’s ownership policy and the expectation that SOEs are governed by the Swedish Code of Corporate Governance for listed companies.

The Philippines has created a coordinating agency, called the Governance Commission for Government-Owned or -Controlled Corporations (GCG), which acts as a “central advisory, monitoring and oversight body, with authority to formulate, implement and coordinate policies” on SOEs according to the 2011 Government-Owned and Controlled Corporation (GOCC) Governance Act.

According to the Act, the President of the Philippines is the primary representative of the state as owner of GOCCs and empowers the GCG on behalf of the state, to oversee SOE board nomination and selection processes; monitor and evaluate SOE’s performance; rationalise the SOE sector through corporate restructuring, etc.; and formulate remuneration standards in order to attract and maintain talent. The GCG oversees 104 SOEs in eight broad sectors: Government Financial Institutions Sector; Trade, Area Development and Tourism Sector; Educational and Cultural Sector; Gaming Sector; Energy and Materials Sector; Agriculture, Fisheries, and Food Sector; Utilities and Communications Sector; and Healthcare Services Sector.

Guidelines on Nomination and Appointment

Various governments have imposed strict guidelines in terms of appointment of SOE directors. In China, the State-owned Assets Supervision and Administration Commission of the State Council of the People’s Republic of China (SASAC) has established the “Guidelines on further improving Corporate Governance of SOEs” and the “Guidelines on Pilot Programs for Central SOE Board of Directors” to improve responsibility of board of directors in SOEs. The SASAC has selected 83 central SOEs since 2004 to participate in a pilot programme for improving board governance.

The pilot programme sees the SASAC issuing regulations and guidelines on SOE boards of directors' operations, according to the Company Law and Interim Regulations on Supervision and Administration of State-owned Assets of Enterprises. Based on these laws and regulations, enterprises that are wholly owned by the government should safeguard the board of directors' responsibilities including making development strategies and supervising their implementation; setting up a management structure; communicating their decision to the SASAC; conducting performance evaluation; determining remuneration level of senior executives; developing and monitoring the enterprise's risk management system; reviewing internal audit report and appointing the person in charge of the internal audit unit; and addressing problems pointed out by the supervisory board. The Guidelines also require the board to produce an annual report.

In terms of nomination, non-executive (external) directors of SOEs are directly nominated and appointed by the ownership agency SASAC in consultation with relevant departments including the ministries, central SOEs and industrial associations. External directors are recruited either through direct appointment or through an open selection process. The board can recommend candidates for external directors and interested outsiders can recommend themselves as candidates.

In Thailand, and the State Enterprise Policy Office (SEPO) determines objectives known as "Statement of Direction (SOD)" for all SOEs in line with a policy for the government shareholders. According to the Statement, the entire board has a responsibility to pursue the stated objectives. The SEPO has also developed the Guidelines to specify the role and responsibilities of an effective SOE board of directors. SOE boards have a responsibility for the performance of the company as demanded by the Guidelines.

As for nomination of directors, the line ministry and the SEPO shall propose names of potential candidates to an authority for approval. SEPO is in charge of developing a profile of relevant skills known as the "Skill Matrix" which is subject to a consensus among multiple parties – SOE board, the line ministry, SEPO, and the State Enterprise Policy commissioner. The "Skill Matrix" allows SEPO to identify potential individuals with appropriate knowledge, competencies, and expertise. The qualification criteria include age, educational qualifications, relevant work experience, and Thai nationality.

In Morocco, the draft Law on the State Governance and Financial Control of Public Enterprises and Establishments governs the nomination and appointments of SOE board of directors. The Law requires for the establishment of a transparent and institutionalised mechanism for board member appointment based on predetermined selection criteria. Furthermore, the Moroccan Code of Good Governance Practices of the Public Enterprises and Establishments also requires SOE directors to be chosen based on their professional competency and expertise, particularly in the technical, economic and financial fields relevant to the SOE. Regardless, the nomination would be reviewed by the Council of the Government, taking into account multiannual plans and action plans presented by the SOEs. As for "strategic" SOEs, board members are formally appointed by the King after consultation with the Council of Ministers.

In India, the Administrative Ministry receives recommendations from the Public Enterprises Selection Board (PESB) on possible board candidates in accordance with the Companies Act and the Securities and Exchange Board of India (SEBI) regulations. Final approval, however, lies with the Cabinet Committee. The qualification criteria are formulated by the responsible ministry after deliberation with the concerned SOE. Apart from education and relevant expertise, the DPE guidelines set a maximum age of 65 years for independent directors. However, the requirements

can be relaxed on a case- by-case basis by the government.

In Korea, appointment of SOE director is done based on recommendation by the Committee for Recommendation of Executive Officers and Board Members to the Ministry of Strategy and Finance. The latter comprises non-executive directors of the SOE and the members appointed by the board of directors.

In Vietnam, potential applicants are suggested by the SOE boards and nominated by state authorities. The nominees would be voted to the SOE board in shareholder meetings. However, given the possibility of lack of applicants, the Prime Minister or other relevant authorities may undertake a direct appointment to the board. If a public official is nominated to the SOE board, he shall no longer act as an official.

Chapter 4 - Discussion

4.1 Major Issues

Widening of the Payroll Vote

The high degree of overlap between elected representatives (MPs or ADUNs) presents a problematic situation in terms of governance as well as adherence to the principles of democratic institution. When elected representatives are appointed as a director in a GLIC, GLC or statutory body which is within their legislature's supervision, there is a risk of expansion of payroll vote. This means that the Executive's control over the Legislature is strengthened, which hampers the latter's function in preserving the integrity of the separate branches of power and hold the Executive accountable.

Furthermore, the overlap between the positions of elected representative and director of GLIC, GLC or statutory body creates a possible conflict of interest. This is due to the directors prioritising personal or political gains over the needs of society. Such conflict of interest increases the likelihood of abuse of power which could cause political and economic damage to the country.

Perhaps it is advisable that politicians who are not elected representatives be allowed to hold directorships in GLICs, GLCs or statutory bodies. However, there is also the issue of competence when one considers that there is a lack of due diligence when it comes to the nomination and appointment process. If appointments are not based on merit but on political loyalty, then there is a high possibility that many political appointees lack the necessary qualifications to function as capable and competent directors.

Weak Check & Balance Mechanism

There is a serious lack of qualificative requirement or restriction in the appointment of directors at both the statutory (GLIC) and the enterprise (GLC) level. For the statutory GLICs, their respective laws do not spell out stringent requirements on persons to be appointed as directors. At best, there is an ambiguous requirement which states that the Minister-in-Charge should appoint a director who has knowledge in business and finance, for example. The requirement, however, does not apply to the Chairman position, which can be considered one of the key individuals in the board. Furthermore, even with such requirements stated in the act, ultimate decision is still with the Minister-in-Charge. There is no dependable legal or institutional instrument to ensure that the appointments made by the Minister have appropriate qualifications or not.

As for the two non-statutory GLICs *Khazanah* and PNB, which were founded as companies rather than statutory bodies, the appointment process of their board of directors are not specified in any parliamentary laws unlike the other GLICs. Both GLICs are governed by the Companies Act, as all companies in Malaysia are, which do not provide stringent qualificative criteria for the appointment of directors. Details and specifications on their directorial appointment process are perhaps states in their respective Memorandums and Articles of Association (M&A), which are not publicly accessible.

Media reports revealed that some GLCs such FGV Holdings Berhad has included a provision in its Board Nomination and Election Policy and Procedures which disallow any active politician—defined as an MP, state assemblyman, supreme council member of a political party or a member who holds a position at a divisional level in a political party — from being appointed as a director (Barrock, 2020). This is a good step towards improving corporate governance and prevent conflict of interest cases. However, it is unclear if other GLCs have included this provision or not.

At the state level, the enactments of statutory bodies similarly lack clear qualificative requirements for the appointment of directors. Only vague requirements such as “having knowledge of business, etc.” are states in several instances. It is noteworthy that a lot of directorship in these bodies are ex-officio members (Chief Minister, State Secretary, State Financial Officer, etc.). The appointment of non-ex-officio directors falls under the authority of the Chief Minister or the Ruler-in-Council for the most part.

Apart from the individual founding acts and enactments, the statutory bodies are bound by several laws which are the Statutory Bodies (Accounts and Annual Reports) Act, Statutory Bodies (Discipline and Surcharge Act) and the Statutory Bodies (Power to Borrow) Act. However, these laws mainly cover financial reporting or disciplinary proceedings, and debt matters rather than directorial appointment criteria. The Statutory Bodies (Accounts and Annual Reports) Act requires statutory bodies to submit an audited statement of accounts, an activities statement and the Auditor General's Report (if undertaken) each year to the Minister-in-Charge. These reports then are submitted to the Parliament. Yet, there is no guarantee that these reports be disclosed to the public.

For GLCs, there is no parliamentary legislation that specifically provides qualificative requirements or criteria for the appointment of directors in GLCs. The Companies Act does not contain any provision for the appointment criteria for directors in GLCs. It only requires that directors be appointed through an ordinary resolution. This means that the appointment of directors is highly dependent on the controlling shareholders. In the case of GLCs, that would be the GLICs.

It seems that the only existing parliamentary law that contains stringent requirements for directorial appointments of GLCs are the ones in the financial sector. The Financial Services Act 2013 contains a set of criteria that must be abided in order for a bank to appoint its Chairman, CEO or other directors. The Act also empowers *Bank Negara Malaysia* (BNM) to act as an institutional check and balance to the appointment of these directors. No appointment can be made unless a written approval is granted by BNM. Apart from determining which criteria counts as “fit and proper” for a potential director, BNM is also empowered to arbitrate should any contention arise regarding the appointment of directors in any banks, including GLCs.

Lack of Uniform Guideline Framework

While there are no identified guidelines for the appointment of directors at the statutory (GLIC) level, there are some important guidelines that exist at the firm (GLC) level. However, these guidelines are not centralised and vary depending on different categories of GLCs. Guidelines produced by MoF Inc. apply only to GLCs (mostly unlisted companies) owned by that GLIC. The Green Book on Enhancing Board Effectiveness published under the GLC Transformation Programme applies only to major commercial-oriented GLCs. Meanwhile, guidelines by

regulatory agencies such as Securities Commission Malaysia and *Bursa Malaysia Berhad* are applicable to all public-listed companies which include GLCs.

The achievement of a set of guidelines to improve issues concerning appointments and corporate governance can be lauded. Most related to appointment process is, perhaps, the Green Book on Enhancing Board Effectiveness, which contains best practice standards that should be emulated by GLC boards. A major reform proposal is the formation of a relatively independent and capable Nomination Committee in GLC board or directors, which is responsible in nominating director candidates to the Board for approval, and then to shareholders for confirmation. The Nomination Committee is suggested to consist of mainly non-executive, and mostly independent, directors. The Nomination Committee should set out clear and appropriate criteria to the board for any directorial appointment. Nominee Directors from GLICs, according to the Green Book, should be represented in the Nomination Committee to ensure that the candidate fits the GLC's requirements.

On the other hand, GLCs which are listed in the local stock market are also tied to a set of rules by regulators namely the Securities Commission and *Bursa Malaysia Berhad*. Chapter 9 of the Bursa Malaysia Listing Requirements for example requires listed companies to submit regular financial and non-financial reporting according to the Malaysian Financial Reporting Standards (*Bursa Malaysia Securities Berhad*, n.d.). Other requirements include the establishment of an audit committee to appoint an external auditor. Non-compliance with the listing requirements can lead to de-listing or suspension.

The Securities Commission's Malaysian Code on Corporate Governance (MCCG) also caters to listed GLCs. Recently reviewed in 2017, the MCCG contains best-practice recommendations for listed companies, particularly the "Large Companies" which refers to those that sit on the FTSE Bursa Malaysia Top 100 Index; or those with a market capitalisation of at least RM2 billion. MCCG 2017 focused on certain aspects relating to appointment of directors which are board composition, gender diversity on boards, and tenure of independent directors (Securities Commission Malaysia, 2017). For example, it recommends Large Companies to have more than 50 percent of its board members as independent directors, have at least 30% women directors, and to limit the tenure of independent directors to ideally nine years. MCCG also recommends Independent Directors to chair the Nomination Committee.

As for unlisted GLCs, one identified set of guidelines is the Board of Directors Guidelines published by MoF Inc. in 2014. However, it only applies to companies controlled by MoF Inc. The Guidelines contains certain educational and professional qualifications that should be considered when nominating an individual as a Chairman, CEO or director of any MoF Inc. subsidiaries. It also limits the number of directorships in subsidiary companies a director has. It calls for the creation of a Nomination Committee whose task is to nominate candidates as directors, which will have to be approved by the board and confirmed by MoF Inc itself.

These sets of guidelines can provide a good direction to improve meritocracy in appointment of directors in GLCs. However, as they are not legal documents per se, and thus have weak enforcement capacity. This is especially more concerning in unlisted GLCs, which are not bound by regulations accorded by regulatory agencies and tend to be less transparent regarding their operations. Moving forward, it is suggested that the guideline framework for GLCs be streamlined in order to prevent ambiguity and allow for better enforcement.

Over-Dominance of the Executive

The concentration of GLC ownership under the GLICs also accorded great authority under the Executive in the appointment of GLC directors. The GLIC statutes accorded authority over appointment of their directors totally to the Executive, namely specific Cabinet Ministers. As for MoF Inc., the absence of a board of directors further concentrate power to appoint directors under the Finance Minister. Even appointment of directors in non-GLIC statutory bodies such as FELDA, MARA and Petronas are dominated by the Executive through several Ministers.

While *Khazanah* and PNB do not have individual laws, the dominance of the Executive in their board of directors can similarly be observed. The Chairman of *Khazanah* is usually the Prime Minister. At least one other Cabinet Minister, usually the Minister of Finance, would also sit in the board of directors.

PNB, which is owned by *Yayasan Pelaburan Bumiputera*, also appears to be dominated by the Executive. While it is unclear if there is any stated regulation regarding the appointment of YPB trustees, it seems that the Executive, usually several Cabinet Ministers including the Prime Minister, would sit as trustees. This allows the Executive to have a strong, if not ultimate, say in the appointment of PNB directors.

The dominance of the Executive is also reflected at the state level. The appointment of directors in SEDCs and many state statutory bodies fall under the prerogative of the Chief Minister. However, unlike at the federal level, it appears that power to appoint directors in the SEDCs seem to be shared between the state Executive and the state Ruler-in-Council. Yet, it is unclear whether the state Ruler has to act upon advice or according to his own judgement.

There is currently no institutional mechanism to check appointment decisions made by the Executive. Even with certain guidelines in place, ultimate decisions on appointment at the GLIC level remains with the Executive. At the GLC level, final decisions on appointments rely on the controlling shareholder, which would be the GLICs.

Convolutd GLC Ownership Structure & Definition

Further complicating matters for reform is the convoluted ownership structure of GLCs. As noted earlier, the official definition of GLICs is not encompassing enough. There are several other statutory bodies that functions like a GLIC but are not included in the category. These statutory bodies have substantial assets, own numerous companies and are controlled by the Executive as accorded by their incorporating statutes. Examples of such statutory bodies are MARA, FELDA and PETRONAS.

As it stands, the official definition of GLCs comprises only the commercial ones and owned by GLICs. This excludes companies owned by the statutory bodies mentioned above. Also excludes government-owned companies that are not commercially oriented. Even the GLC Transformation Programme was focused only on a handful of GLCs, the G20. The matter becomes even murkier when one includes GLCs at the state level. There is no official definition of a state "GLIC". Hence, there is no definition of a state GLC as well.

Without an encompassing definition, any attempt at reform becomes challenging. The definition may also be modified by the government arbitrarily. When the Putrajaya Committee on GLC High

Performance was launched, GLICs consisted of only EPF, LTH, LTAT, *Khazanah* and PNB. The Treasury website, however, added MoF Inc. and KWAP as part of the GLICs. It can further be argued that there are other bodies that function similarly to GLICs.

4.2 Policy Recommendations

Prohibition of Appointment of Elected Representatives in GLICs, GLCs or Statutory Bodies

The lack of prohibition regarding political appointments in GLCs has allowed the Executive to take advantage of the situation in exchange for political support, which does not carry the best interest of the public. Given increasing public scrutiny of political appointments in GLCs, it is timely to prohibit elected representatives from becoming a GLC director.

While it may be true that some elected representatives have suitable capabilities in a certain GLC, it is crucial that the government signal its commitment to institutional reform by prohibiting MPs or ADUNs to sit in the boards of GLCs. Such policy would restore public and investor confidence on GLC corporate governance, which has been tainted in recent years.

The prohibition can be institutionalised through the enactment of a GLC/SOE Act. The prohibition of an elected representative to be appointed as chairman of SOCSO, based on its incorporating statute, serves as a good example.

However, in lieu of a well-drafted GLC Act, such prohibition can be introduced via a simple and straightforward amendment to existing laws. An example is the 91st Amendment to the Indian Constitution, which prohibits MPs from holding any “remunerative political posts”, defined in Article 361B Explanation (b) as:

(i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.

A similar prohibition is also promulgated in Korea. The “Act on The Management of Public Institutions” prohibited public officials or civil servants to become members of SOE boards since 1999. Therefore, whether through creation of a new law or an amendment to existing one, elected representatives can be prohibited from sitting in the board of directors of a GLIC or GLC in Malaysia.

Alternatively, the prohibition may also be implemented without going through the legal process. Instead, respective corporate charters i.e., Memorandum and Articles of Association (M&A) of non-statutory GLICs and GLCs may be amended to include this restriction. One useful example is the Board Nomination and Election Policy and Procedures of FGV Holdings Berhad which

disallows any active politician to be appointed as a director (Barrock, 2020). The government can commit to ensure that similar provisions are introduced in all GLCs.

Establishment of one or more Parliamentary Select Committees (PSCs) to monitor and vet director nominees of GLICs and GLCs

While there are guidelines relating to directorial appointments produced by several bodies that are applicable to GLCs, they are not uniform and vary according to type of GLCs. As there is no centralised ownership unit of GLCs in Malaysia, there is some difficulty in producing a set of guidelines that is applicable to all GLCs especially the unlisted ones.

For instance, separate guidelines are produced by MoF Inc., Putrajaya Committee on GLC High Performance (PCGHP), Securities Commission and *Bursa Malaysia Berhad*. Listed GLCs must be responsible in abiding by regulations imposed by Securities Commission, *Bursa Malaysia Berhad* and other regulators. The MoF Inc. guidelines are only applicable to MoF Inc. subsidiaries, and not GLCs owned by other GLICs. The set of guidelines produced by the PCGHP seemed catered largely to commercial and large GLCs dubbed as the G20. There should be an effort to streamline these guidelines and regulations so that there is no confusion and disparity in terms of compliance and implementation of the reform agenda.

One way to achieve that is by forming a parliamentary select committee (PSC) with the function of screening and vetting nominated directors of GLICs and GLCs. The PSC can be empowered with a veto decision in the case where a nominee fails to meet the expected qualitative requirements.

Alternatively, instead of a single PSC that oversees appointments in all GLICs or GLCs, several portfolio-specific PSCs can be proposed. These PSCs may focus only on appointments in certain GLICs or GLCs which are most crucial to the public. For instance, such PSCs may be catered to *Khazanah Nasional Berhad* or PNB, which both have a wide range of investments within and without the country. State governments may emulate this initiative and establish a state legislative committees in respective state legislative assemblies in order to provide better accountability and transparency in terms of state GLC governance.

Enactment of a well-defined SOE / GLC Act

The current ownership structure of GLCs in Malaysia is convoluted and lacks transparency. Even the definitions of GLICs and GLCs are not encompassing enough and are inconsistent. This proposed Act should provide a clear definition of GLICs and GLCs that are applicable in both the federal and state levels.

The enactment of the Act allows for the provision of appointment criteria to be stated legally, which is more enforcing than guideline documents. While the process of finalising the Act may be lengthy, its enactment will be beneficial as the matter of GLC governance becomes a public issue. By having a parliamentary legislation concerning appointment of GLC directors, the dominance of the Executive will be curbed as other institutions are able to function as a check and balance mechanism. The current arbitrariness in the appointment of GLIC and GLC directors

presents the possibility of systemic abuse in exchange for political support. More concerning is the possibility of large-scale financial abuse, as happened in 1MDB.

Through this Act, important corporate governance practice that are already espoused by regulators such as Securities Commission and *Bursa Malaysia Berhad* can be included. The requirement to establish an independent Nomination Committee filled mostly by independent directors, the requirement for a Chairman to be an independent director, for instance, can be included as a mandatory requirement in the Act.

The proposed Act presents a good opportunity to institutionalise reforms relating to the process and requirements of GLC director appointments. It may be debatable whether a centralised ownership unit such as the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) in China is desirable in Malaysia. While the existence of a centralised unit may ease the enforcement of appointment guidelines and regulations throughout all the GLCs, it may produce unwanted outcomes such as over-bureaucratisation. Furthermore, GLCs serve various objectives and perhaps may not benefit from a centralised ownership. Regardless, the proposed Act can be used to strengthen the guidelines relating to GLC director appointments, perhaps by stating punishments in the event of non-compliance.

With this federal legislation, other state legislatures can be encouraged to table similar enactments to ensure that the GLC structure is streamlined across the federal and state level.

Gradual Removal of Golden Shares from non-strategic GLCs

While golden shares had a strategic purpose in the past, it is timely for the government to gradually move away from this control mechanism, especially in non-strategic GLCs. The existence of golden shares hurts the GLC reform agenda as the government may still veto decisions made by the board of directors. In order to preserve and enhance the independence of GLC boards, control mechanisms such as the golden share must be gradually removed.

While the use of golden shares may be justified, the improved regulatory framework in the country reduces the relevance for such control mechanism. Similar to how *Bank Negara Malaysia* has the power to determine if a director candidate in commercial banks is “fit and proper” or not, other regulatory bodies in other sectors can have the same function. The Energy Commission, for instance, may act as a body that reviews appointments of directors in the energy sector. In other words, the golden share’s function to ensure the best candidate for key GLC leadership position can be replaced by regulatory bodies.

Perhaps, for key GLCs such as Petronas, the use of golden shares should remain for now. However, the government should commit to gradually remove the use of golden shares in other GLCs in the name of institutional reform. The removal of golden shares not only improves the independence of GLC boards but may also improve investor confidence in the listed GLCs. After all, as long as the GLCs maintain a controlling stake over the GLCs, there should not be any fear of loss of control due to removal of golden shares.

Enhanced Disclosure and Transparency

Public-listed GLCs are already subject to certain disclosure and transparency requirements as required by regulatory entities such as Securities Commission and *Bursa Malaysia Berhad*. The Putrajaya Committee on GLC High Performance should commit itself to produce regular reports on GLCs, listed and unlisted, to the public. The report should include important information such as director remuneration, director background, tender bids and other important information. Enhanced transparency will be the first major step towards reform as it spreads awareness of good GLC governance to the public.

The public should also be aware of the guidelines and requirements relating to appointment of GLC directors. Progress reports of targets such as gender representation should be regularly updated, for example. In terms of appointment process of GLC directors, the public should be informed as much as possible. This includes public advertisement of recruitment, disclosure of information on the identity and number of candidates and requiring disclosure of AGM voting percentage results.

A good example is the online reporting system of SOEs in Korea called ALIO. SOEs are required to provide annual reports on 39 items including financial performance, entity operations among other things. Philippine SOEs similarly are required to provide specific disclosure as outlined in the Ownership and Operations Manual and the Code of Corporate Governance for GOCCs. In Thailand, a 2011 Cabinet decision calls for all non-listed SOEs to face the same disclosure requirements as listed companies (OECD, 2018).

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