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## **The Practice of Board Delegation of CLBG in Malaysia-Decision Making, Regulatory Compliance, and Disclosure**

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### **Abstract**

This paper explored the Board's delegation practices in Malaysia's company limited by guarantee (CLBG). It investigated the decision-making process, regulatory compliance, and disclosure of the Board's functions in promoting transparency to the stakeholder/public. The methodology involves a survey from CLBG. The study used a correlation analysis to determine the significant determinants of board delegation practices. The results showed that decision-making processes and disclosure of information in annual reports or websites could show the delegation role of the Board of directors. However, the sample only covers 20 CLBGs in Klang Valley and Selangor as the pilot study.

Keywords: delegation; CLBG; committee; accountability

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### **1.0 Introduction**

A company limited by guarantee (CLBG) is a nonprofit organization registered with the Companies Commission of Malaysia as a public company without any shareholder, as mandated by section 11(2) of the Companies Act 2016[CA 2016]. CLBG enjoys public trust because it is a distinct legal entity from its owners and is responsible for its liability. Section 45(2) and section 38(5) [CA 2016] also prohibit any distribution of earnings among the holders of CLBG. Companies Commission of Malaysia also prohibits remuneration for its non-executive directors as stated in para 20(a) of the Guidelines for CLBG 2021. Some CLBGs have a global presence that provides a framework for national and international operations and foreign partnership, recruitment, or engagement of experts and professionals. CLBG can raise public funds through donations subject to the approval of the Registrar of Companies and have a tax exemption advantage to fulfill their social obligation. The legitimate source of funds can derive from the sponsors in the early formation of the company, membership, government funds, donations from members, outsiders, and fees collected from programs or sales from activities conducted. The amount of funds is often cash-intensive, ranging from hundreds to millions of dollars, especially if the companies have branches mushrooming worldwide or receive donations from partners, organizations, and individuals who like to do "good work."

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Sections 215 and 216 [CA 2016] allow the Board of directors to delegate some of their responsibilities or power to individuals or committees. This provision shows that company law supports the director's role in the public company. However, studies on legal cases showed that directors' accountability is still a significant concern because CLBG scandals are arising towards the level of global risk. The western cases have highlighted CLBG fraud in top management [Aramony v. United Way of America(1998) and a Ponzi scheme [Foundation of New Era Philanthropy [Britanica.com]. Local cases highlighted the mismanagement of funds [Malaysiakini, 2019], potential breach of trust, and money laundering [Tun Dr. Mahathir Bin Mohamad & Ors v Datuk Seri Mohd Najib Bin Tun Hj Abdul Razak (2016) and Khairuddin bin Abu Hassan v Tan Sri Mohamed Apandi Ali (2017)]. Simultaneously, the public is also concerned about CLBG's information transparency to the public/stakeholders [Norli Ali et al., 2012]. These issues make the directors of CLBG are facing more demanding and challenging tasks in delegating the responsibilities to others. Responsibility is a mechanism of accountability, but directors could have limitations in delegating their responsibility.

Therefore, the survey's main objective was to explore the practices of board delegation in CLBG in Malaysia. Hence, the survey addressed the following specific objectives:

- I. To determine whether there is a relationship between decisions making processes and the practices of the board delegation.
- II. To determine whether there is a relationship between regulatory compliance of a CLBG and the practices of board delegation.
- III. To determine whether there is a relationship between disclosures of information in annual reports or websites and the practices of board delegation in CLBG.

## 2.0 Literature Review

### 2.1 Decision-making processes

The Board of directors is responsible for corporate management activities in the nonprofit organization [Huse, 2005; Kumar & Nunan, 2002; Vanderwarren, 2001; West & Zech, 2007] and ensures the organization's performance based on strategic planning. This literature review is in line with prior research suggestions for delegation to occur. Firstly, the agent (directors) needs to be skillful, knowledgeable, and competent [Sengul et al., 2012]. Secondly, it is vital to align the interest of the agent and the principal to ensure that the agent does not act opportunistically or contrary to the principal's interest [Lupia, 2015]. The empirical research conducted by Noor and Fadzil (2013) identified that holding more meetings increased business performance and success because directors discuss and make policy decisions in managing the CLBG during the board meeting. The Third Schedule of Companies Act 2016 contains a provision on Board proceedings, including the conduct of meetings and the method of casting votes for passing the resolution. Malaysia Code of Corporate Governance 2017 provides guidelines for all publicly listed and non-listed companies but does not contain a specific policy for the nonprofit organization. MCCG2017 emphasizes that the Board of directors has the right to access accurate and timely information about the company. The director's rights imply that proper documentation and report are required for effective decision-making by the Board. Section 340 [CA2016] requires a general meeting of members to be held annually for communication between directors, senior management, and members regarding the CLBG's business, governance, and performance. Members could exercise the right to deliberate and vote for policy decision-making. Companies Act also allows CLBG to use technology to promote more excellent development in the participation of members. The governance code for nonprofit companies like CLBG in the global practices emphasizes the use of committees in the board delegation [King IV Report2016, CGAI2008]. The name and function of the board committees' in CLBG can be different than those used for publicly listed companies for audit, nomination, and remuneration [King IV Report2016, CGAI2008]. Additionally, the global best practice recommended that the Board of directors appoints a chief executive officer and that CLBG must have a diverse board of directors. A diversity of personalities with a range of expertise and experience allow them to carry out their roles and responsibilities effectively [Ansari, 2010].

### 2.2 Regulatory compliance

Director has duties of care and must exercise skill and diligence. Section 213 [CA2016] said directors must exercise their powers for a proper purpose and in the company's best interest regardless of whether the company is not-for-profit or 'for-profit.' It was the apparent decision of Commonwealth Bank of Australia v Frederich (1991) that being a voluntary director will not be sufficient to relieve a director from liability. The policy reason for this approach is that there should be a high degree of accountability for directors of CLBG that receive donations from the public or government funding. Director's fiduciary duties of care and loyalty include compliance oversight that, if they fail to implement and oversee aspects of a compliance program, could constitute an indemnifiable breach of the duty of loyalty [Stone v Ritter (2006)]. Regulatory compliance involves following legal mandates and legislation as directed by regulatory bodies, while corporate compliance refers to ensuring the company follows its internal compliance structure. Corporate compliance is about corporate governance. The Board uses corporate governance as a management approach to control the company. Prioritizing regulatory compliance is essential because the regulatory landscape is constantly changing, non-compliance with the regulation will cost the company, and compliance will protect the company, employees, and the consumer [https.learn.g2.com]. The regulatory compliance obligations for CLBG are extensive, involving company setup requirements, ongoing business compliance requirements, submission of annual returns, accounting, tax compliance, obtaining business licenses, and employment law [www.malaysia.acclime.com]. The Companies Act 2016, the CLBG constitution, and the Guidelines on CLBG, according to section 20C of the Companies Commission of Malaysia Act 2001, contain provisions about the regulatory compliance for CLBG. CLBG is obligated to promptly submit company information to the Companies Commission of Malaysia, such as annual returns, audited accounts, changes in directors, changes in members, and changes in business activities, as required by all public companies. Section 44(6) of the Income Tax Act1967 provides tax exemption for CLBG as a nonprofit

organization, subject to terms and conditions. However, the CLBG that creates a profit (usually applies to CLBG with Berhad status) must declare to the Inland Revenue Department for tax compliance. In conclusion, CLBG is performing with regards to elements of control activities if the company fulfills the regulatory or corporate compliance.

### 2.3 Disclosure of information in the company's Annual Report or websites

An annual report is a document that public corporations must provide annually to shareholders (or members) that describes their operations and financial conditions [Hayes, 2020]. The annual report also provides the basis of other related information, such as the management's assessment and analysis of the company's past performance and prospects. Jurisdiction's accounting regulations, securities regulations, or company law contain the outlines for the content requirements for an Annual Report. A company must disclose the information in the annual report as of the latest practicable date [ibid]. Disclosure about the significant factors could include development activities, board meetings attendance, and participation or elements that have materially affected or affected the company's governance practices. Malaysian nonprofit organizations produce annual reports mainly to report to the regulatory and all interested groups such as the stakeholders, donors, and researchers on their activities [Norli Ali et al., 2012]. Due to higher costs, larger firms have higher information asymmetry between managers and members. Companies that obtained external financing made more disclosure than other companies (ibid). Vanstraelen et al. (2003) discovered that firm size is positively related to the nonfinancial disclosures of firms. The dissemination of information can be via different means, such as press releases and newspaper notices of the availability of the annual reports on the issuers. The various means of disseminating annual reports shall give the investor equal access. Other jurisdictions viewed equal access as provided by free public access to the annual reports on the regulator's website when the annual accounts are filed with the regulator so that it is available to all investors and the public simultaneously [Bushee, Matsumoto & Miller, 2003].

## 3.0 Methodology

### 3.1 Sample and data collection

Data for examining CLBGs comes from a combination of questionnaires and content analysis from the 20 CLBGs registered with the Companies Commission of Malaysia selected randomly. The authors have chosen the company secretary, director, or important officer as the respondents for the company limited by guarantee from Selangor and Kuala Lumpur. The content analysis is about the corporate information in the company's annual report for the financial years 2018,2019,2020, and 2021 or websites. Prior studies have widely employed content to measure voluntary and mandatory disclosures in annual reports [O'Donovan, 2002].

### 3.2 Development of the Conceptual Framework on the Practice of Board Delegation in CLBG

This study is measured based on a self-constructed index. The guidance for identifying items to be included in the index comes from the Companies Act 2016, Guidelines for CLBG from the Companies Commission of Malaysia, and the Malaysian Code of Corporate Governance 2017(MCCG2017). The authors also refer to the code of governance of the nonprofit organization. The codes selected are the King IV Report on Corporate Governance from South Africa 2016 (King Code) and The Code of Corporate Governance on Irish Development NGOs (ICGAI2008). Identifying the list of items to be included is also based on reviewing relevant literature and recommended practices.

A summary of the list of items under each main category in the index is listed in Table 1 below:

Table 1. Summary of a list of items for Category 1 Decision Making

Category 1	Questions
Decision making	1No of board meeting per year
	2Conduct board meeting
	3Method of decision making
	4. Board-appointed advisor/consultant
	5 Board sets strategic planning and does monitoring
	6. Board guide and monitor the company's financial position
	7. Board set up committees
	8. Board monitors and advice the management about the company's policy and governance
	9. Board concerns about stakeholders' interest
	10. Board appointed CEO and reviewed performance

Table 2. Summary of a list of items for Category 2 and 3

Category 2	
Regulatory compliance	1 Hold annual general meeting every calendar year
	2 Audited financial statements/accounts tabled at AGM every calendar year
	3 Company's financial statements/account records are kept, maintained, and updated

	4 The company displays its name and number on the business premises and registered office
	5 The display of the company's name and number on official documents such as Annual Reports and websites
	6 There is a qualified Secretary appointed for the company
	7 There is a qualified auditor appointed for the company
Category 3	
Disclosure of information to stakeholders	1. Display of vision and mission on the company's website and annual report
	2. Company update information about governance on the company's website and annual report
	3. Annual reports are presented clearly and valuable for board members to explain to members and outsiders about their strategic management.
	4. The annual report includes a statement of its financial position
	5. Annual Report is comprehensive and includes programs and uses of funds.
	6. The Annual Report has a detailed report on the annual fundraising amount, which encompasses all types of fundraising activities.
	7. The Annual Report discloses board composition, attendance of board meetings, and participation in the company's activities.
	8. The Annual Report discloses the number of volunteers or working partnership

After identifying the list of items, the authors conducted a pilot study of the questionnaires. The pilot study on content analysis of annual reports and websites involves extracting the list of items disclosed in the annual report and websites of CLBGs and comparing it against the questions under categories 2 and 3. The list of items under the respective categories was reviewed based on the preliminary content analysis to modify the questions list. Finally, there are a total of 25 questions in the survey form.

### 3.3 Scoring the practice of board delegation

The scoring approach for Category 1 uses a Likert scale of 1 to 4; one is the lowest, and four is the best score. The respondent gives the score as this reflects their internal governance practices. The scoring approach for Categories 2 and 3 uses a dichotomous measure. When there is a disclosure, the item scores a one, and if there is no disclosure, the item scores a zero [Chau and Gray, 2002, Gray Kouhy and Lavers, 1995].

## 4.0 Findings

### 4.1 Demographic Profile of CLBG

Table 3. Descriptive statistics of the demographic profile of the CLBG

Variable	Frequency	Percentage (%)	
Nature of Business in CLBG	Education	7	35.0
	Health	2	10.0
	Community Service	1	5.0
	Philanthropic	2	10.0
	Interest Group	6	30.0
	Others	2	10.0
	Total	20	100.0
Receive Donation	Yes	10	50.0
	No	10	50.0
	Total	20	100.0
	No	5	25.0

<b>Tax exemption</b>	Yes	15	75.0
	Total	20	100.0
<b>Total number of members</b>	2-9	10	50.0
	10-19	6	30.0
	20-49	4	20.0
	Total	20	100.0
<b>Type of Members</b>	Individual	3	15.0
	Organization /Corporate	12	60.0
	Associate Individual/Organization	5	25.0
	Total	20	100.0
<b>Volunteers</b>	None	12	60.0
	Less than 5	2	10.0
	5 to 20	2	10.0
	More than 20	4	20.0
<b>Total Board of Directors</b>	2 to 3	8	40.0
	4 to 6	4	20.0
	6 to 10	5	25.0
	More than 10	3	15.0
	Total	20	100.0
<b>Non-Executive Directors</b>	None	16	80.0
	1/3 of the Board	3	15.0
	Half of the Board	1	5.0
	Total	20	100.0

4.2 Reliability Analysis

The study uses reliability testing to ensure that each dedicated variable can provide consistent results across time. For example, Table 4 illustrates that regulatory compliance (0.850), disclosure of information to the members (0.757), and board delegation practices (0.831) have the highest Cronbach's Alpha values. Subsequently, the values for the decision-making (rate 0.606) seem to be the lowest. According to Hair et al. (2010), the values of Cronbach's Alpha above 0.6 are acceptable, and 0.7 is deemed reasonable.

Table 4. Reliability Analysis

Variables	No. Of Items	Cronbach's
Decision Making	10	0.606
Regulatory Compliance	8	0.850
Disclosure of information	9	0.757
Board Delegation Practices	10	0.831

4.3 Test of normality

The study uses the normality test to see the shape of the distribution and the interval level's usage scale. The skewness and kurtosis values can determine the normal distribution in the range of -2 and + 2. Table 5 indicates that the kurtosis and skewness value for all the variables is between ± 0 and ± 1. The conclusion is that one can expect and accept the standard shape of the distribution.

Table 5. Test of Normality Analysis

Variables	Skewness	Kurtosis	Decision
Decision Making	-1.049	1.280	Normal
Regulatory Compliance	1.104	1.708	Normal
Disclosure of Annual Report/Website	-0.597	-0.636	Normal
The Board Delegation Practices	-0.648	-0.665	Normal

4.4 Correlation Analysis

Correlation analysis measures whether a relationship exists between the dependent and independent variables and how strong the relationship is. The study uses the Pearson Correlation Coefficient (r) technique for measuring the linear correlation between board delegation practices and decision-making and disclosure of information. Pearson's r value ranges between -1.00 (identifying a negative relationship) and +1.00 (identifying a positive relationship), and Pearson's r value approaching 1 indicates a stronger connection between two variables. The one-tailed test identifies the statistical significance in a one-sided distribution area and whether the p-value (statistically significant is 0.05) is less or greater than a specific range of values. In addition, a combined technique of crosstabulation and chi-square

measure the relationship between the board delegation practices and regulatory compliance since regulatory compliances involve one or more categorical variables.

Table 6 illustrates that there is strong positive relationship between board delegation practices and decision-making process ( $r=0.789$ ,  $p\text{-value}=0.000 < 0.05$ ). The relationship implies that an increase (decrease) in decision-making will lead to an increase(decrease) in board delegation practices.

Table 6. Correlation Analysis

Variable	r	p-Value
Decision Making	0.789	0.000

Table 7 illustrates that there is a positive relationship between board delegation practices and disclosure in the annual report /website ( $r=0.614$ ,  $p\text{-value}=0.004 < 0.05$ ), which implies that an increase(decrease) in disclosure of information in the annual report and website will lead to an increase(decrease) in board delegation practices.

Table 7. Correlation Analysis

Variable	r	p-Value
Disclosure in Annual Report/Website	0.614	0.004

However, Table 8 illustrates that there is no relationship between board delegation practices and regulatory compliance using crosstabs and the chi-square test ( $r=27.619$ ,  $p\text{-value}=0.276 > 0.05$ ). The result implies that an increase(decrease) in regulatory compliance will not affect board delegation practices.

Table 8. Correlation Analysis

Variable	X <sup>2</sup>	p-Value
Regulatory Compliance	27.619	0.276

## 5.0 Discussion

The research findings indicated that decision-making has the most significant correlation (Sig t = 0.000) and a high positive linear relationship (Pearson's  $r = -0.789$ ) with board delegation practices in a CLBG in Malaysia. Findings proved this is consistent with previous studies [Noor and Fadzil,2013].

Regarding the second objective of this study, using crosstabulation and the chi-square method, research findings revealed no correlation between regulatory compliance and the practice of board delegation. The non-correlation result contrasts with the case law from Commonwealth Bank of Australia v Frederich (1991); being a voluntary director will not be sufficient to relieve a director from liability. Possibly, this is because regulatory compliance involves following legal mandates and legislation as directed by an external source (regulatory bodies) which is beyond the control of the directors; thus, the management should take regulatory compliance care.

Finally, regarding the third objective of this study, the research findings revealed that the disclosure of information in the annual report or website has a significance value (Sig t = 0.004) and an excellent positive linear relationship (Pearson's  $r = 0.614$ ) with board delegation practices in Malaysia. Findings proved that this is consistent with the literature review that an annual report is an essential document for the directors, members, investors, donors, and regulators [Hayes 2020 and Norli Ali et al. 2012].

## 6.0 Conclusion & Recommendations

This exploratory study concludes that there are good delegation practices involving decision-making and disclosing information in CLBG's annual report or website following statutory requirements and global procedures for CLBG. However, the study concludes that regulatory compliance does not correlate with board delegation practices. Authors of the opinion indicate an early signal of a dilemma faced by volunteered directors concerning the extent of their liability in the nonprofit CLBG towards regulatory compliance equivalent to listed companies. The authors experienced two limitations-firstly; when developing the conceptual framework, the authors referred to the Companies Act 2016 and MCGG2017. However, the recommendation in MCGG2017 for other companies in Malaysia to embrace the rules, to some extent, is not appropriate for CLBG to follow because profit orientation is the basis of MCGG2017 rules. As an alternative, the authors referred to ICGAI2008 and King IV Report 2016 Part 6, the Supplement Paper on the corporate governance of the nonprofit organization. As such, the authors suggest that policy maker formulate a similar code of governance for nonprofit organizations in Malaysia. The second limitation of this study is that only 20 CLBGs participated in the pilot survey when Malaysia was in the movement control order during the Covid19 pandemic. Therefore, the authors recommended replicating this study in a more diverse population among CLBGs in Malaysia to get more information about the extent of board delegation practices in the decision-making process, disclosure of annual reports or websites, and especially in regulatory compliance.

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## Paper Contribution to Related Field of Study

The content of this paper shall contribute to the field of corporate governance in nonprofit organizations. This study contribution shall benefit the Board of directors, investors, regulators, and policymakers and add a database of literature reviews about the practice of good governance in a nonprofit organization in Malaysia.

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