



The Observer

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MESSAGE FROM THE CEO

Why Two-tier Voting Must be Made a Rule Under the Listing Requirements

The Malaysian Code on Corporate Governance (MCCG) was published in April 2017.

It is going to be close to two years now and we still find companies that do not adopt the Two-tier voting process for independent directors beyond the 12-year tenure.

The excuses/reasons are about the same and not convincing:

- It is against the Companies Act 2016 (although the SC has, in an FAQ, explained why the Two-tier voting process does not offend the Companies Act 2016)
- We need to change our Constitution - a change that can be done expeditiously but is often not carried out expeditiously
- Our directors know best (yes, there are such companies and we will share the names of these companies with the regulators)
- We have explained an 'alternative' as required by the MCCG - regardless of whether the 'alternative' is a suitable substitute in substance for the advocated Practice

Part of the problem lies with the fact that the Two-tier voting requirement is a Practice under the MCCG. The MCCG only requires a company to 'apply or explain an alternative' when it comes to Practices under the MCCG. This very requirement in relation to a Practice allows companies latitude to not 'apply' the Two-tier voting process and get away with it so long as they 'explain an alternative'. Regulators could, and should, challenge whether the 'alternative' explained is of substance to truly be an alternative to the required Practice - this regulatory approach should be pursued vigorously.

Why is Two-tier voting an important empowerment for minority shareholders?

In the old days, the majority shareholders can vote for the election of independent directors and almost immediately, one can cast aspersions on the independence of the elected independent directors. It is a paradox of sorts - majority shareholders electing independent directors who in turn keep an eye on the majority shareholders to ensure that there are no abuses by the majority shareholders.

Then came the MCCG requirement that after 9 years, the election of the independent director is subject to annual re-election at the AGM. Again, the major shareholder can vote for the independent director and we have the same paradoxical situation.

The MCCG in 2017 introduced the Two-tier voting process for independent directors who wish to continue as independent directors beyond their 12-year tenure (Practice 4.2).

The 1st Tier voting is by Large Shareholders (as defined under the MCCG). The 2nd Tier voting is by minority shareholders.

Both Tiers must vote in favour of the Independent Director for the Independent Director to be re-elected as an Independent Director beyond the 12th year.

For once, the Minority Shareholders felt empowered.

In some cases, where the Two-tier voting was carried out, the Minority Shareholders managed to defeat the 2nd Tier motion and the independent director was not re-elected as an independent director. This clearly demonstrates the power of Minority Shareholders and certainly justifies having the Two-tier voting process. Perhaps it is this fear that is making companies reluctant to practise Two-tier voting.

Without Two-tier voting being made into a rule, major shareholders will continue to ride rough-shod over the legitimate interests of minority shareholders when it comes to the re-election of independent directors, beyond their 12-year tenure, as independent directors.

Two-tier voting is a good Practice but it needs 'bite'- and that bite that can be given by making it a rule.

Operationally, we have seen that most companies have already adopted electronic voting, it is thus so easy to have two-tier at minimal or no extra cost involved.

Make Two-tier voting into a rule under the Listing Requirements.

Regards,

Devanesan
8 March 2019

MSWG'S AGM WEEKLY WATCH 11-15 MARCH 2019

For this week, the following are the AGMs/EGMs of companies which are in the Minority Shareholders Watch Group's (MSWG) watch list.

The summary of points of interest is highlighted here, while the details of the questions to the companies can be obtained via MSWG's website at www.mswg.org.my.

Date & Time	Company	Venue
14.03.19 (Thur) 10.00 am	My E.G. Services Bhd AGM	Sime Darby Convention Centre, 1A Jalan Bukit Kiara 1, KL

One of the points of interest to be raised:	
Company	Points/Issues to Be Raised
My E.G. Services Bhd AGM	<ol style="list-style-type: none"> 1) On page 14 of the AR2018, it is stated that the company has entered a one-year concession to offer electronic payment gateway service for the local government of Quezon City, Philippines. The concession is set to expire in May this year. What is the progress in seeking the extension of tenure of the concession? What are the possible impacts if the concession is not renewed? 2) Note 7 of the Financial Statements (page 122 of the AR2018) states that the Company recorded a RM55.68 million share of losses in an associate company. Does the share of losses require impairment by the Company in relation to the investment in the associate company? 3) Practice 4.2 of the Malaysian Code on Corporate Governance (MCCG 2017) states that if the Board intends to retain an independent director after the twelfth year, the Board should seek annual shareholders' support through a two-tier voting process. Please explain why the Company has not adopted a two-tier voting process.

MSWG'S WATCHLIST

DAYA MATERIALS BERHAD

DEFAULT IN PAYMENT PURSUANT TO PARAGRAPH 9.19A OF THE MAIN MARKET LISTING REQUIREMENTS OF BURSA MALAYSIA SECURITIES BERHAD DEFAULT IN PAYMENT TO SMALL MEDIUM ENTERPRISE DEVELOPMENT BANK MALAYSIA BERHAD

The Board of Directors of Daya Materials Berhad ("Company") wishes to announce that its subsidiary, Daya Proffscorp Sdn Bhd ("DPRO") had on 18 February 2019 received a letter of reminder dated 8 February 2019 ("LOR") from Small Medium Enterprise Development Bank Malaysia Berhad ("SME Bank") for the sum of RM883,214.05 ("Outstanding Sum"). The LOR arose due to failure of DPRO to pay the monthly instalments under the facilities granted by SME Bank to DPRO.

DPRO and the Company are currently in discussion with SME Bank to regularize the outstanding payment of the hire purchase.

There will not be any significant impact of the default in payment on the business, financial and operations of the remaining business of the Group. Nevertheless, the Group shall endeavour to continue its other remaining business operations notwithstanding the default and will engage with the lenders and suppliers for their continuous support

The Board of Directors of the Company ("Board") wish to clarify that the announcement made on 28 February 2019 by the Company, indicating that DPRO is solvent, was on the basis that the assets disposal and assets monetization would be able to repay the principal and interest due on the outstanding sums.

As the Company is already an affected listed issuer under the PN17 and after further inquiry into the affairs of the Company, the Board is of the opinion that the Company is unable to provide Bursa Securities a solvency declaration as required under Paragraph 9.19A(4) of the MMLR. Pursuant to this, the Company is now an affected listed issuer under Paragraph 2.1(f) of PN17 as well.

On 15 February 2019, Hong Leong Investment Bank Berhad has on behalf of the Company, submitted an application to Bursa Securities seeking its approval for an extension of time of 6 months until 27 August 2019 for the Company to submit its proposed regularisation plan to Bursa Securities.

[Source: <http://www.bursamalaysia.com/market/listed-companies/company-announcements/6086865>]

MSWG'S VIGILANCE

PN17 Companies

1. AMTEK HOLDINGS BERHAD
2. APFT BERHAD
3. BERJAYA MEDIA BERHAD
4. BERTAM ALLIANCE BERHAD
5. BRAHIM'S HOLDINGS BERHAD
6. CHINA AUTOMOBILE PARTS HOLDINGS LIMITED
7. DAYA MATERIALS BERHAD
8. EKA NOODLES BERHAD
9. HB GLOBAL LIMITED
10. KINSTEEL BHD
11. KUANTAN FLOUR MILLS BERHAD
12. MAA GROUP BERHAD
13. MALAYSIA PACIFIC CORPORATION BERHAD
14. MAXWELL INTERNATIONAL HOLDINGS BERHAD
15. MULTI SPORTS HOLDINGS LTD
16. PERISAI PETROLEUM TEKNOLOGI BERHAD
17. STONE MASTER CORPORATION BERHAD
18. SUMATEC RESOURCES BERHAD

19. TH HEAVY ENGINEERING BERHAD
20. UTUSAN MELAYU (MALAYSIA) BERHAD
21. YFG BERHAD

GN3 Companies

1. G NEPTUNE BERHAD
2. IDIMENSION CONSOLIDATED BERHAD
3. WINTONI GROUP BERHAD

Please refer to the link below for the latest status of the company.

<http://www.bursamalaysia.com/market/listed-companies/list-of-companies/pn17-and-gn3-companies/>

LOCAL NEWS AND DEVELOPMENTS

Khazanah posts loss before tax of RM6.27b in 2018, unveils fresh mandate

<https://www.thestar.com.my/business/business-news/2019/03/05/khazanah-records-weaker-2018-performance-reveals-fresh-mandate/>

Johari emerges as major shareholder in KUB

<https://www.thestar.com.my/business/business-news/2019/03/05/johari-emerges-as-major-shareholder-in-kub/>

Ringgit extends declines as BNM flags growth risks

<https://www.theedgemarkets.com/article/ringgit-extends-declines-bnm-flags-growth-risks>

Malaysia in last ditch effort to avert EU palm oil curbs

<https://www.theedgemarkets.com/article/malaysia-last-ditch-effort-avert-eu-palm-oil-curbs>

GLOBAL NEWS AND DEVELOPMENTS

Tariff-Man Trump to Preside Over \$100 Billion Jump in Trade Gap

<https://www.bloomberg.com/news/articles/2019-03-05/trump-set-to-become-100-billion-man-as-u-s-trade-gap-surges?srnd=premium-asia>

Michael Bloomberg Decides Against Presidential Run in 2020

<https://www.bloomberg.com/news/articles/2019-03-05/michael-bloomberg-decides-against-presidential-run-in-2020?srnd=premium-asia>

Singapore, unions agree to raise retirement age

<https://www.thestar.com.my/business/business-news/2019/03/05/singapore-unions-agree-to-raise-retirement-age>

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DISCLOSURE OF INTERESTS

- *With regard to the companies mentioned, MSWG holds a minimum number of shares in all these companies covered in this newsletter, save for Daya Materials Berhad.*

Feedback

We welcome your feedback on our newsletter and our work. Email us at corporateservices@mswg.org.my with your comments and suggestions.

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