



# The Observer

*Deloitte is holding the inaugural Asia Pacific Conduct Watch Survey to gain insights into the region's attitudes and capabilities toward whistleblowing. Senior Management, 'C-Suite', or Board level individuals with some form of responsibility or oversight related to whistleblowing are encouraged to participate in this survey. The survey results will be published on 23 June 2023 in the 2023 Asia Pacific Conduct Watch Survey Report.*



Please click the [link](#) or scan the QR code on the right to access the survey.

**07.04.2023**

## ❖ Dispute resolution – boardroom or courtroom

A board is entrusted with the role of ensuring that a company's business and affairs are managed under its direction and oversight. It is responsible for periodically reviewing and approving the company's overall strategies and significant policies. At the same time, board members should discharge their powers in a fiduciary capacity and act in the best interest of the company and its shareholders.

However, there are times when dissenting views are overruled by dominant directors/controlling shareholders to the detriment of minority shareholders' interest.

Shutting down debate in the boardroom does not resolve conflicts. Instead, the conflicts seep through the cracks, destroying relationships from within. Then, the differences in opinion and disagreements escalate into tussles between the boards and shareholder-directors. With rival camps of directors (and sometimes shareholders) jostling for control of the company, drastic actions like removal of directors, filing of legal suits and suspension of directors take place.

### **Boardroom or courtroom**

When embroiled in a dispute, directors and shareholders face the decision of whether to resolve the issue through the boardroom or the courtroom. Each option has its advantages and disadvantages, and the decision on which path to take will depend on the specific circumstances of the case.

There are now many alternatives to litigation that can pre-empt lawsuits, resolve long-standing disputes, and even produce win-win solutions to bitter fights that would otherwise leave both sides damaged. Resolving disputes through the boardroom is the preferable alternative.

This approach can be particularly advantageous where the parties are keen in maintaining their business relationships. In this scenario, the parties involved work together to find a mutually acceptable solution that can preserve the ongoing relationships necessary for the success of the company.

Doing so has its advantages. First, the parties involved in the dispute can maintain control over the outcome and work together to find a mutually agreeable and acceptable solution. Second, negotiations within a boardroom keep things confidential and safeguard a company's reputation and business interests. Third, it helps to preserve relationships and avoids the acrimony and hostility that can result from litigation. Long-term business relationships can be as valuable to a company as long-term personal relationships to peoples' lives. Lastly, negotiation and mediation are less costly and are easier to execute compared to the expensive and long-drawn-out litigation process.

Power imbalance, bias or conflict of interest may exist on the board if certain domineering directors or shareholders dominate discussions and outcomes. This can undermine the integrity of decision-making and further strain the already strained relationships.

If the dispute involves legal claims, breach of conduct or issues that cannot be resolved in the boardroom, it may be necessary to take the matter to court.

Shareholders have legal rights and remedies available under corporate law especially the Companies Act 2016. They may need to pursue these options to protect their interests. Such legal action provides a definitive resolution of the dispute and may establish legal precedents that can be useful in future disputes.

### **Another perspective**

Directors and managers dread protracted litigation as it can damage relationships, tarnish reputations, and cost enormous sums of money, time, and effort.

That said, tussles between boards and shareholders can be seen from both positive and negative perspectives.

The bright side is that it is evidence of shareholder activism, where shareholders exercise their legal right to have the directors of their choice on the board. Such shareholder activism should be encouraged and supported in a mature capital market, provided that such activism is in the best interest of the company.

The downside is that, almost always, the board and management are distracted due to the tussle and ensuing legal actions. Most companies can ill afford to be engulfed in time-consuming tussles and litigation. With protracted legal battles and ensuing legal actions, most boards and management are distracted, and the company's business and performance suffers.

Minority shareholders, when making their investment decision, must consider the possible deterioration in the company's performance and the distraction caused by any tussle (legal or otherwise). If minority shareholders believe that the group of activist shareholders (who are trying to nominate their representatives to the board or

determine some other course of action) have the good intention of bringing about long-term shareholders value enhancement, then minority shareholders should support their action.

At the end of the day, investors are well advised to steer clear of risky companies in the first place. For risk averse investors, it is about erring on the side of caution.

**Lim Cian Yai**  
**Manager, Corporate Monitoring**

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### MSWG AGM/EGM Weekly Watch 17 – 21 April 2023

For this week, the following are the AGMs/EGMs of companies 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](http://www.mswg.org.my).

Date & Time	Company	Quick-take
17.04.23 (Mon) 10.00 am	Citaglobal Berhad (EGM)	The Company proposed waiving the pre-emptive rights over new ordinary shares in the Company under section 85 of the Companies Act 2016, read together with clause 14 of the constitution of the Company.
18.04.23 (Tue) 10.00 am	OSK Holdings Berhad (AGM)	For FY2022, the Group's revenue was up 17.3% to RM1.32 billion, while pre-tax profit rose 5.0% to RM488 million from a year ago. The record revenue and profit is attributed to an improved performance across the Group.
18.04.23 (Tue) 10.00 am	MISC Berhad (AGM)	MISC's revenue for FY2022 was 30% higher at RM13.86 billion compared to RM10.67 billion in the year before, driven by the factors below: <ul style="list-style-type: none"> <li>- increased freight rates</li> <li>- higher recognition of revenue from the conversion of FPSO,</li> <li>- higher progress for an ongoing project and</li> <li>- higher dry-docking activities reported by the Marine &amp; Heavy Engineering segment</li> <li>- higher earnings day for Gas Assets &amp; Solutions segment.</li> </ul> <p>Consequently, its pre-tax profit increased to RM1.87 billion in FY2022, which was 5.6% higher compared to RM1.77 billion in the previous year.</p>

<p>18.04.23 (Tue) 10.00 am</p>	<p>Petronas Chemicals Group Berhad (AGM)</p>	<p>PCG posted a net profit of RM6.3 billion compared to RM7.3 billion despite posted a record high revenue of RM28.95 billion in FY2022 (FY2021: RM23.03 billion) due to elevated feedstock and fuel cost in line with higher energy prices globally and lower share of profit from joint ventures and associates.</p> <p>Looking ahead, in the short to medium term, PCG believes the market remains uncertain with recessionary pressure looming, in line with tightening fiscal policies by central banks globally.</p>
<p>18.04.23 (Tue) 11.00 am</p>	<p>Kumpulan H&amp;L High-Tech Berhad (AGM)</p>	<p>The Group's revenue for FY2022 increased by 22.2% y-o-y to RM26.69 million (FY2021: RM21.84 million), while its net profit increased by 72% to RM9.17 million (FY2021: RM5.33 million) after excluding the one-time extraordinary gain on disposal of treasury shares in FY2021.</p> <p>The improved financial performance was due to improvement across all segments, especially plantation. The financial prospect of the Group is well guarded with a net cash position as well as consistent net cash generated from operations in the past.</p>
<p>19.04.23 (Wed) 10.00 am</p>	<p>Carlsberg Brewery Malaysia Berhad (AGM)</p>	<p>Carlsberg's net profit for FY2022 jumped 57.7% year-on-year, driven by higher sales from the recovery of on-trade consumption and higher profits in both its Malaysia and Singapore operations.</p> <p>It expects the business environment in 2023 to remain challenging given the continued pressure from global supply chain disruptions, recessionary pressures from leading economies, rising input costs, currency fluctuation and inflationary pressure that could impact consumer purchasing power. The Group will stay vigilant on cost control management whilst continuing to reinvest in its brands to sustain growth amidst the ongoing economic uncertainties.</p>

<b>One of the points of interest to be raised:</b>	
<b>Company</b>	<b>Points/Issues to Be Raised</b>
OSK Holdings Berhad (AGM)	<p>The steep hike in the prices of building materials, which has an adverse impact on the building industry. (Page 58 of AR)</p> <p>a) What was the impact of the steep hike in the prices of building materials on the gross profit of the Property Development and Construction Divisions of the Group?</p> <p>b) How does the Group intend to mitigate the steep hike in the prices of building materials?</p> <p>c) What is the outlook of the prices of building materials in FY 2023?</p>
MISC Berhad (AGM)	<p>What are the reasons for the jump in impairment provisions from RM58.0m in FY2021 to RM644.6m in FY2022? (Notes 5(a) and 13(b) to Financial Statements 2022)</p>
Petronas Chemicals Group Berhad (AGM)	<p>The Olefin &amp; Derivatives (O&amp;D) segment recorded an EBITDA of RM2.86 billion on the back of RM12.93 billion sales in FY2022. This translated into an EBITDA margin of 22.16% compared to 30.16% in FY2021.</p> <p>a) Does PCG expect a recovery of profit margin for O&amp;D in 2023?</p> <p>b) Referring to PCG's fourth quarter FY2022 financial result announced on 24 February 2023, the O&amp;D segment recorded EBITDA and profit after tax of RM372 million and RM47 million respectively, compared to RM697 million and RM843 million in the preceding quarter. Meanwhile, quarterly revenue amounted to RM3.49 billion against RM3.4 billion a year ago.</p> <p>Why was there a huge swing in O&amp;D quarterly financial performance especially the profit after tax despite a marginal increase in revenue?</p>
Kumpulan H&L High-Tech Berhad (AGM)	<p>For much of the global economy, 2023 is going to be a tough year as the main engines of global growth – the United States of America ("US"), Europe and China – all experience weakening activity and IMF is looking at a mere 2.9% GDP growth for 2023. (page 9 of AR2022)</p> <p>With the economic headwinds such as inflation, global recession risk and demand corrections in consumer products as consumer spending slows, to-date, to what extent has the Group experienced slowdown in demand in its manufacturing and sale of precision engineering moulds and machine parts, and customisation of precision engineering plastic injection moulds and components?</p>
Carlsberg Brewery Malaysia Berhad (AGM)	<p>Both Malaysia and Singapore are expected to record more moderate growth rates in 2023 as inflation persists amid escalating commodity prices (page 42 of IAR 2022).</p> <p>a) Is the Company still looking to make further (upward) price adjustments to mitigate the impact of higher raw material and packaging costs?</p>

	b) In view of the rising inflation that impact on consumer purchasing power and consumption habits, can the Group pass on cost increases to customers to preserve its margin?
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### DISCLOSURE OF INTERESTS

• With regard to the companies mentioned, MSWG holds a minimum number of shares in all the companies covered in this newsletter.

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