



MINORITY SHAREHOLDER WATCHDOG GROUP

Badan Pengawas Pemegang Saham Minoriti Berhad

Incorporated in Malaysia \* Company No. 524898-M

# The Observer

16 March 2018

## VOICE OF MSWG

In another welcome boost in the move for more transparency and accountability, Transparency International (TI) Malaysia launched the country's first Business Integrity Country Agenda (BICA) Assessment Report, following other international T-I chapters in building a country specific body of evidence on business integrity as a platform for reform and change.

Such reports are set to become important reference points for fighting corruption in business practices in Malaysia and overseas.

For Malaysia especially, this is an especially important development, since Transparency International president Dato' Akhbar Satar has rightly pointed out that this country is facing an "integrity crisis" following multiple examples of money leaks in government and government-linked bodies.

From the perspective of key stakeholders in large companies, the issue of leakages is an important one due to the close nexus of business and government, with the whole issue of GLCs and GLICS being a hotly debated Malaysia-centric subject.

Dato' Akhbar is correct in noting that integrity is key to any operation and leaders play a huge role in determining the level of integrity.

Hence the importance of corporate- and political leaders alike setting a good example.

TI's recommendations include the Malaysian Anti-Corruption Commission (MACC) working closely with the private sector, the deregulation of the media industry to enhance its watchdog capabilities and amending the MACC Act 2009 to incorporate a corporate liability clause.

On a different subject matter, we wish to highlight issues surrounding companies that we monitor.

## **MULTI-USAGE HOLDINGS BERHAD (MUHB)**

Based on our observations when we attended MUHB's recent Adjourned Annual General Meeting (AAGM) held on 12 March 2018, we noted certain unfavourable/undesirable practices by the Penang-based building technologies company.

### **Notice of AAGM**

The Company announced its Notice of the adjourned meeting on 5 March 2018, a short notice period of 7 days, which is clearly insufficient as compared with the required 21 days' notice under Section 318 of the Companies Act 2016. The shareholders present at the meeting were informed that the AAGM was held in accordance with the Consent Order that requires it to be convened on or before 13 March 2018.

However, we wish to highlight that the Consent Order was obtained on 21 February 2018 and the notice of the AAGM was only issued on 5 March 2018, which was 12 days after the Consent Order but only 7 days' notice for the AAGM. In this instance, the Board could have given a longer notice period if it has considered facilitating the participation of more shareholders to attend and to vote at the meeting. But obviously, this was not the case.

Section 196 (1) of the Companies Act 2016 requires a public company to have a minimum number of two directors while Section 196 (3) states, amongst others, that a director of a company shall not resign or vacate his office if by his resignation or vacation from office, the number of directors of the company is reduced below the minimum number required under Section 196 (1).

Due to the resignations of many directors, MUHB was left with two directors - one of whom was the Chairman who was due for re-election. The shareholders voting rejected the re-election of the Chairman. However, this was considered ineffective by the one remaining Director of the Company who had invoked the above Sections 196 (1) and 196 (3) to reinstate the Chairman as a director of MUHB instead of allowing that position to be filled by a director elected by shareholders.

This is clearly a very unhealthy case of not respecting the voice of shareholders and not demonstrating the desired professionalism and governance. We noted that this is the second time MUHB had used Section 196 (1). A strong message must, therefore, be sent to not only MUHB but also to all other companies that such undesirable practices should not be allowed to prevail in the interest of a healthy capital market with a high level of governance.

Shareholder activism should not be taken lightly and shareholders' rights and interests must certainly be respected and safeguarded.

### **Accuracy in Recording Key Matters Discussed at General Meetings**

In this case, the Company Secretary should take every possible effort to ensure that key matters discussed at MUHB's AGM are recorded accurately without any errors or omissions. MSWG pointed out that the question asked by MSWG at the AGM held on 29 December 2017 was on "Other Expenses" and not "Other Losses" as recorded. Responding to our request for details on "Other Expenses" with details of "Other Losses" is surely not acceptable. Both are obviously not the same.

In addition, there was no record of the statement by MSWG that the directors would need to reimburse the Company for any payments made to them as the resolution on directors' remuneration was not carried.

Overall, we found MUHB's conduct and approach to its AGM wanting in professionalism and governance - this must be addressed immediately. Despite our previous comments, MUHB had again held its AAGM at a faraway and inconducive place (Avani Resort Sepang Gold Coast) and this does not facilitate attendance and participation by shareholders. The choice of location may have discouraged some shareholders from attending the AAGM.

MUHB's external auditors Messrs Baker Tilly Monteiro Heng have expressed a qualified opinion on its June 2017 financial statements - this audit qualification exacerbates the continuing boardroom/shareholder tussles.

MUHB's Board must improve on its oversight and approach to better corporate governance.

Not doing so would mar its reputation and further jeopardise its standing among investors.

### ***TA ANN - SARAWAK PLANTATIONS***

Moving on to Ta Ann's proposed acquisition of a 30.39% equity interest in Sarawak Plantation Bhd (SPB). This is a related party transaction, since Ta Ann's Chairman and major shareholder Datuk Amar Abdul Hamed bin Sapawi is also a controlling shareholder in Cermat Ceria Sdn Bhd, the vendor of the shares, which holds 30.39% equity interest in SPB (as per the 2017 Annual Report)

Under the proposal, Ta Ann will emerge as the largest shareholder of SPB and SPB will become an associate company of Ta Ann where its proportionate share of SPB Group's future profits would be recognised under 'share of results of associates'. Therefore, the earnings accretion to Ta Ann Group from the Proposed Acquisition would only happen if the 'share of results of associates' from SPB is higher than the additional borrowing cost from the loan obtained for the Proposed Acquisition.

We noticed that there was no mention of a proper legal or financial due diligence exercise being carried out. We view that proper due diligence is important for a few reasons, which include, among others, it being a related party transaction, a material transaction where the purchase consideration of RM169,936,048 represents about 12% of Ta Ann's market capitalisation, and also that 76% of the purchase consideration would be funded by bank borrowings which would mean additional cost to the Company, moving forward.

We also found that Inter-Pacific Securities, the independent Adviser (IA) for Ta Ann, was unable to carry out a Discounted Cash Flow (DCF) analysis to assess the fairness of the purchase value because they were not granted access to SPB's profit and cash flow forecast and projections.

We agree with Inter-Pacific's statement that DCF is a more appropriate method for valuing assets with a finite stream of expected future cash flows (as is the case with SPB's palm oil business).

As such, we would like to reiterate MSWG's firm stance that it is the responsibility of the board of directors to present all the necessary information and documents to the IA so that they are able to offer a complete assessment of the offer tabled to the shareholders of SPB.

Minority shareholders have therefore every right to question (and even object to) Inter-Pacific's view that the purchase consideration is 'Fair', since they were unable to complete their work according to accepted valuation metrics.

Our firm stance is especially relevant particularly given the related party nature of this deal: both acquirer and acquiree share the same chairman and shareholder, making it wholly incumbent on the relevant parties to demonstrate that this offer has been proposed in the collective interest of all shareholders.

MSWG TEAM  
16 March 2018

### MSWG'S AGM WEEKLY WATCH 19 - 23 MARCH 2018

For this week, the following are the AGMs/EGMs of companies which are in the Minority Shareholder Watchdog 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	Venue
20.03.18 (Tue) 02.00 pm	Kim Loong Resources Bhd (EGM)	Amari Johor Bahru, No. 82C, Jalan Trus, Johor Bahru, Johor
21.03.18 (Wed) 10.30 am	GFM Services Bhd (EGM)	Connexion Conference & Event Centre @ Nexus, Bangsar South City, Jalan Kerinchi, KL
23.03.18 (Fri) 11.00 am	TA ANN Holdings Bhd (EGM)	Tanahmas Hotel, Lot 277 Block 5, Jalan Kampong Nyabor, Sibul, Sarawak

The points of interest to be raised:	
Company	Points/Issues to Be Raised
GFM Services Bhd (EGM)	We noted that on page 5 of the Circular, the Purchase Consideration was arrived at on "a willing-buyer and willing-seller" basis, after taking into consideration: <ul style="list-style-type: none"> <li>(i) the appraised value of the entire equity interest in KP Mukah Development Sdn Bhd ("KPMD") which was arrived at using the DCF Valuation as performed by KAF IB;</li> <li>(ii) potential synergistic benefits to be derived by GFM Services upon completion</li> </ul>

The points of interest to be raised:	
	<p>of the Proposed Acquisition of KPMD; and</p> <p>(iii) the future prospects and earnings potential of KPMD.</p> <p>Could the Board share the range of value for KPMD's entire equity interest which was arrived at using the DCF Valuation as performed by KAF IB? What were the benchmark and parameters used?</p>
TA ANN Holdings Bhd (EGM)	<p>As highlighted in Section 3, Part A of the Circular to Shareholders dated 8 March 2018 ("the Circular"), SPB Group has 8,055 hectares of Encumbered Estates that are subject to on-going legal suit and/or disputes. Consequently, SPB Group has not been able to harvest from the Encumbered Estates. An accumulated impairment loss of RM21.8 million and RM43.0 million was provided in FYE 2016 and FYE 2017 respectively.</p> <p>(a) What is the age profile of the palms in the Encumbered Estates?</p> <p>(b) Considering that SPB Group had not been operating on the Encumbered Estates since 2010, would there be substantial CAPEX to be incurred on these estates upon resumption of the operations?</p> <p>(c) As stated on Page 11 the Circular, SPB Group has successfully recovered part of the previous disputed estates in year 2016. What was the hectareage recovered?</p> <p>(d) As reported on Page 57 of the Circular, the High Court had on 23 February 2017 dismissed SPB Group's claim and SPB Group has to vacate the land. SPB Group filed a notice of appeal and applied for a stay of execution. Could the Board share the view of the Company's solicitor on the case?</p> <p>(e) What measures or actions that would be taken, besides what had been initiated by SPB, to ensure that the issues would be resolved?</p>

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## LOCAL NEWS AND DEVELOPMENTS

Economists warn seasonal factors may impact IPI data in Q1

<https://www.thestar.com.my/business/business-news/2018/03/12/economists-warn-seasonal-factors-may-impact-ipi-data-in-q1/#dFuRpQkGKErKu9Af.99>

CPO price outlook for 2018 seen subdued

<https://www.thestar.com.my/business/business-news/2018/03/10/cpo-price-outlook-for-2018-seen-subdued/#wugVEmF5zhdRyu62.99>

Star Media says letter from Jaks Resources cannot be considered as arbitration notice

<http://www.thesundaily.my/news/2018/03/08/star-media-says-letter-jaks-resources-cannot-be-considered-arbitration-notice>

MoF buys 51% stake in TRX skyscraper

<http://www.theedgemarkets.com/article/mof-buys-51-stake-trx-skyscraper>

Bank Negara: Divesting stakes by foreign insurers agreed earlier

<https://www.thestar.com.my/business/business-news/2018/03/08/bank-negara-expects-foreign-insurers-to-honour-commitments/#sXdrG54ofu4UIUW7.99>

Atta Global diversifies into property development

<https://www.thestar.com.my/business/business-news/2018/03/08/atta-global-diversifies-into-property-development/>

Malaysia records highest inflow

<https://www.nst.com.my/business/2018/03/344173/malaysia-records-highest-inflow>

JDE Asia extends OldTown takeover deadline to March 20

<http://www.theedgemarkets.com/article/jde-asia-extends-oldtown-takeover-deadline-march-20>

Weida to present selective capital reduction scheme to shareholders

<http://www.thesunday.my/news/2018/03/09/weida-present-selective-capital-reduction-scheme-shareholders>

Gamuda unit sued by TNB for RM40m outstanding electricity bill

<http://www.thesunday.my/news/2018/03/09/gamuda-unit-sued-tnb-rm40m-outstanding-electricity-bill>

UMW seeks controlling stake in Perodua, to take MBM Resources private at RM2.56 apiece

<http://www.thesunday.my/news/2018/03/09/umw-seeks-controlling-stake-perodua-take-mbm-resources-private-rm256-apiece>

Perwaja Steel goes into receivership

<http://www.theedgemarkets.com/article/perwaja-steel-goes-receivership>

DRB-Hicom exits hospitality business, swaps land with Syed Mokhtar firm in RM1.9b deal

<http://www.thesunday.my/news/2018/03/08/dr-b-hicom-exits-hospitality-business-swaps-land-syed-mokhtar-firm-rm19b-deal>

Malaysia gets high marks for women in senior management

<http://www.thesunday.my/news/2018/03/07/malaysia-gets-high-marks-women-senior-management>

BNM keeps OPR at 3.25%

<http://www.theedgemarkets.com/article/bnm-keeps-opr-325-2>

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## GLOBAL NEWS AND DEVELOPMENTS

Strong U.S. job growth forecast; unemployment rate seen at 4 percent

<http://www.theedgemarkets.com/article/strong-us-job-growth-forecast-unemployment-rate-seen-4-percent>

EU, Japan start push for exemptions from Trump tariffs

<http://www.themalaymailonline.com/money/article/eu-japan-start-push-for-exemptions-from-trump-tariffs#1mctLmDDWRWozmzv.99>

China Feb consumer inflation highest since late 2013, hits PBOC goal

<http://www.theedgemarkets.com/article/china-feb-consumer-inflation-highest-late-2013-hits-pboc-goal>

China February exports surge most in three years as global trade war fears build

<http://www.theedgemarkets.com/article/china-february-exports-surge-most-three-years-global-trade-war-fears-build>

German industrial orders plunge in January

<http://www.theedgemarkets.com/article/german-industrial-orders-plunge-january>

Japan fourth-quarter GDP growth revised up, BOJ seen in no rush to exit debate

<http://www.theedgemarkets.com/article/japan-fourthquarter-gdp-growth-revised-boj-seen-no-rush-exit-debate>

Toymakers tumble as Toys 'R' Us prepares to liquidate

<http://www.themalaymailonline.com/money/article/toymakers-tumble-as-toys-r-us-prepares-to-liquidate#pJpE8CSkVMJzZwbe.97>

Asia-Pacific nations sign sweeping trade deal without U.S.

<http://www.theedgemarkets.com/article/asiapacific-nations-sign-sweeping-trade-deal-without-us>

UK house prices rise at slowest pace in nearly five years – Halifax

<http://www.theedgemarkets.com/article/uk-house-prices-rise-slowest-pace-nearly-five-years---halifax>

Head of China's Maiké hopes for LME metals warehousing in Shanghai free port

<http://www.theedgemarkets.com/article/head-chinas-maike-hopes-lme-metals-warehousing-shanghai-free-port>

Moody's downgrades Turkey's sovereign rating, markets shrug

<http://www.theedgemarkets.com/article/moodys-downgrades-turkeys-sovereign-rating-markets-shrug>

Trump Blocks Broadcom Takeover of Qualcomm on Security Risks

<http://www.theedgemarkets.com/article/trump-blocks-broadcom-takeover-qualcomm-security-risks>

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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.*
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## **Feedback**

We welcome your feedback on our newsletter and our work. Email us at [corporateservices@mswg.org.my](mailto:corporateservices@mswg.org.my) with your comments and suggestions.

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