



# The Observer

17.08.2018

## MESSAGE FROM THE CEO

The SGX Listing Requirements (“LR”) has been amended to clarify expectations under the comply-or-explain regime. The Malaysian regime is an apply-or-explain regime. There are, of course, different nuances when it comes to the words ‘comply’ and ‘apply’.

The recent amendments to the SGX LR are quite interesting when compared to Bursa Malaysia’s Listing Requirements. We will examine four of these:

### 1. Disclosure on reasons for not paying dividends

The issuer is required to disclose reasons where directors decide not to declare or recommend a dividend. Minority shareholders often look forward to dividends. But there are times when declaring a dividend may not be in the best interest of the issuer.

One such instance is when the issuer may fail the solvency test (by declaring the dividend) under the Companies Act 2016.

Another instance is when the issuer needs funds. In this instance, it may be cheaper to plough back the funds to the issuer than to pay out the dividend and borrow funds at higher cost. Hopefully, shareholders may be rewarded by share price accretion instead of dividends if all goes well.

A popular question at Malaysian AGMs is “Why no dividends?”.

The SGX requirement pre-empts this popular question by placing the onus on the Board to disclose the answer.

### 2. Appointment of independent directors

The revised SGX LR in respect of the term of an ID is more stringent.

After nine years, their appointment will be subjected to a two-tier vote. The two-tiers referred to in the SGX LR are the majority of (i) all shareholders; and (ii) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates).

This is different from Bursa Malaysia’s definition of the two-tiers.

The resolutions to approve the continued appointment of IDs beyond nine years may remain in force until the retirement or resignation of the director or the conclusion of the third annual general meeting of the issuer following the passing of the resolutions.

It is interesting to note that the SGX requirements on the nine-year tenure is more stringent as it is in their Listing Requirements.

The message is clear...long tenure causes attrition of independence and the regulators in Malaysia and Singapore have chosen nine years and twelve years as important milestones in the attrition process.

### 3. Internal controls and risk management

The revised SGX LR requires the board to comment on the adequacy and effectiveness of the issuer's internal controls (including financial, operational, compliance and information technology controls) and risk management systems.

Where material weaknesses are identified, there is an explicit requirement for these to be disclosed together with the steps taken to address them in the annual report.

### 4. Internal audit

There is now a requirement for the issuer to establish, and maintain on an ongoing basis, an effective internal audit function that is adequately resourced and independent of the activities it audits. This has been a requirement under Bursa Malaysia's LR for several years.

Internal audit is considered the fourth cornerstone of corporate governance, the other three being the board, the management and external audit.

The above are some of the recent changes to the SGX LR. Regional Exchanges will be examining closely how SGX's LR have changed the regulatory landscape. They will sieve through and adopt those that they find worthy of incorporation into their respective Listing requirements.

There is a risk that more and more regulations can result in regulatory friction in term of costs. The challenge is to have just enough regulations, no more and no less.

Regards,

Devanesan  
17 August 2018

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## MSWG'S QUICK TAKE ON-ONGOING CORPORATE DEVELOPMENTS

### Apex Equity Holdings Berhad

Court application pursuant to Section 582 (3) of the Companies Act 2016 and /or Section 355(3) of the Companies Act 1965 to validate past share buy-back exercises carried out by Apex Equity Holdings Berhad.

The Board of Directors ("Board") of Apex Equity Holdings Berhad ("the Company") wishes to announce that the Company has filed a court application pursuant to Section 582(3) of the Companies Act 2016 and/or Section 355(3) of the Companies Act 1965 to the High Court of Malaya at Kuala Lumpur on 30 July 2018 and has extracted the sealed copy of the Originating Summons on 31 July 2018. The said application was filed in order to seek a validation order from the court to regularise previous share buy-back exercises which have been carried out by the Company between the years 2005 and 2017. The validity of such share buy-back exercises is questionable because the Company's Memorandum and Articles of Association does not provide the Company with the requisite authority to undertake share buy-back exercises.

#### **MSWG'S COMMENTS:**

The Board and management should be held accountable for the non-compliance and contravention of Section 127 of the Companies Act 2016 in relation to the share-buyback exercise and the adviser taken to task for the failure to undertake the due care, diligence and professional standards expected.

MSWG have always advocated that the Memorandum & Articles of Association or under the new Companies Act 2016, "Constitution" to be published to enhance the CG practices and disclosure standards for all shareholders. However, this requirement is not made mandatory under the law and guidelines. Nevertheless, we see more companies have positively taken measures to publish their "Constitution" and this is a positive improvement.

[Source: Apex Equity Holdings Bhd's announcement on Bursa Malaysia's website on 1 August 2018]

### **Supermax Corporation Berhad ("Supermax")**

Supermax issued a statement in relation to Datin Seri Tan Bee Geok, Group Executive Director of Supermax Corporation Berhad ("Supermax" or the "Company") who has been convicted by the Kuala Lumpur Sessions Court for a single count of insider trading offence involving APL Industries shares under Section 188 of the Capital Markets and Services Act 2007. The Court has granted a stay of execution pending appeal against the conviction and sentence.

The Company wishes to inform members of the public a succession plan is in place and that it is business as usual in Supermax. Its Management team is committed to delivering good business performance and profitability in the interest of the Company and its shareholders.

#### **MSWG'S COMMENTS:**

MSWG is pleased to note that the Company has a succession plan in place to ensure that business is usual at Supermax. We hope the person(s) assuming the new role will have the experience, qualification and knowledge in ensuring that Supermax will continue to perform as both Datin Seri Tan Bee Geok and Dato Seri Thai Sim have delivered consistent profits and dividends to shareholders since its listing on Bursa Malaysia Securities Berhad in 2001.

[Source: Supermax Corporation Bhd's announcement on Bursa Malaysia's website on 9 August 2018]

### **PERAK CORPORATION BERHAD ("PCB")**

#### **Clarification**

With reference to MSWG's Newsletter last week which mentioned that "the RM15.735 million to be written off in the current financial year will further worsen the Group's financial position", we wish to highlight that the RM15.735 million to be written off was in respect of the related inventories and estimated DreamWorks' attractions development in progress cost. While a carrying value of RM17.461 million in relation to the related intellectual properties rights acquired under the License Agreement which are classified as intangible assets will also be written off. As such, the total amount to be written off by the Company in the current financial year is RM33.196 million.

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### **MSWG'S AGM WEEKLY WATCH 20 - 24 AUGUST 2018**

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](http://www.mswg.org.my).

<b>Date &amp; Time</b>	<b>Company</b>	<b>Venue</b>
21.08.18 (Tue) 10.00 am	Eastern & Oriental Bhd (AGM)	Sime Darby Convention Centre, No. 1A, Jalan Bukit Kiara 1
24.08.18 (Fri) 09.30 am	Hartalega Holdings Bhd (AGM)	Sime Darby Convention Centre, No. 1A, Jalan Bukit Kiara 1
24.08.18 (Fri) 10.30 am	Panasonic Manufacturing Malaysia Bhd (AGM)	IDEAL Convention Centre Sdn Bhd, Corporate Tower, Jalan Pahat L15/L, Shah Alam
24.08.18 (Fri) 11.00 am	United Malacca Bhd (AGM)	United Malacca Berhad Building, Jalan Melaka Raya 8, Taman Melaka Raya

**Some of the points of interest to be raised:**

Company	Points/Issues to Be Raised
Eastern & Oriental Bhd (AGM)	<p>Please provide the latest update on the Seri Tanjung Pinang Phase 2A land reclamation project relating to the following:</p> <ul style="list-style-type: none"> <li>(a) Expected cost of reclamation;</li> <li>(b) Expected date of completion of the reclamation work; and</li> <li>(c) Expected Gross Development Value (“GDV”) derived from the reclamation project?</li> </ul>
Hartalega Holdings Bhd (AGM)	<p>As reported on Page 29 of the Chairman’s Review and MD&amp;A, Malaysian glove producers further benefitted from a supply deficit from China, as stricter environmental policies by the Chinese government impacted vinyl glove makers in the country.</p> <ul style="list-style-type: none"> <li>(a) Is the impact only on vinyl gloves and not on other types of gloves?</li> <li>(b) Please also brief on the extent of the impact/benefit and how long is it expected to last?</li> </ul>
Panasonic Manufacturing Malaysia Bhd (AGM)	<ul style="list-style-type: none"> <li>1. It was stated on page 4 of the Annual Report that there are plans to construct a new building in Shah Alam Plant II. <ul style="list-style-type: none"> <li>(a) Could the Board provide the estimated cost for the expansion?</li> <li>(b) What are the plans for the new building in Shah Alam Plant II?</li> </ul> </li> <li>2. We note on page 8 of the Annual Report that the Company is trying to reduce the use of foreign workers in the future with the implementation of Automation and Semi-Automation equipment through Robotics Technology. <p>Could the Board provide the estimated cost, operational advantages and tentative timeframe for the said implementation?</p> </li> </ul>
United Malacca Bhd (AGM)	<p>On 17 October 2017, the Company announced that it had entered into a conditional sale and purchase agreement (“CSPA”) for the proposed acquisition of UMB’s 60% effective equity interest in PT Wana Rinding Lestari (“WRL”).</p> <ul style="list-style-type: none"> <li>(a) As reported in the annual report of the Company for FY2017, the Company had on 29 October 2016 entered into a Memorandum of Understanding (“MOU”) for the same purpose and upon execution of the MOU, the Company will be entitled to conduct due diligence on WRL. <p>Has the Company completed the due diligence exercise on WRL? Are there any findings that are of concern to the Board and Management of the Company?</p> </li> <li>(b) We note that the long-stop date for the CSPA has been extended several times from 1 January 2018 to 15 August 2018 for the fulfilment of certain Conditions Precedent in the CSPA. <p>Are there any Conditions Precedent that have yet to be fulfilled and will the date be expected to be extended beyond 15 August 2018?</p> </li> <li>(c) As reported in Note 42 to the Financial Statements, the legal due diligence exercise</li> </ul>

**Some of the points of interest to be raised:**

on Clifton noted that a loan of USD425,000 from Dalvery to Clifton was incurred after the date of the CSPA without the prior knowledge of UMB.

Notwithstanding that the issue has been rectified, what is the right of UMB under the CSPA in the event of any omission or non-disclosure of material information by the vendors or by any parties to the agreement?

**MSWG'S WATCHLIST*****Pasdec Holdings Berhad ("Pasdec")***

Datuk Seri Tew Kim Thin, the major shareholder of Jasa Imani Sdn. Bhd. has failed in his bid to take over Pasdec Holdings Bhd.

As at the final closing time for the takeover bid, 14 August 2018, Jasa Imani had only managed to garner a total acceptance of 48.4% of the voting shares in Pasdec, 1.6% shy of the 50% minimum threshold.

As such, the acceptance condition has not been fulfilled, after it had received a notice from UOB Kay Hian Securities (M) Sdn Bhd, which is acting on behalf of Jasa Imani.

Accordingly, the offeror (Jasa Imani) shall return all the Pasdec shares and warrants, which have been transferred into the CDS (central depository systems) account of the offeror pursuant to the offer to the respective holders who have accepted the offer.

Jasa Imani's failed attempt to take over Pasdec followed an assessment by independent adviser Public Investment Bank Bhd, which had on Aug 3 urged shareholders to reject the bid, claiming that it was "not fair" and "not-reasonable"

[Source: Pasdec's announcement on Bursa Malaysia's website on 14 August 2018]

***UTUSAN MELAYU (MALAYSIA) BERHAD ("UTUSAN" OR THE "COMPANY")******DEFAULT IN PAYMENT PURSUANT TO PARAGRAPH 9.19A OF THE BURSA MALAYSIA SECURITIES BERHAD MAIN MARKET LISTING REQUIREMENTS ("MMLR")***

Utusan had on 10 August 2018 announced that it had defaulted the repayments of principal and profit for the banks mentioned below:

Bank	Facility	Due Date	Principal (RM)	Profit (RM)	Total (RM)
Bank Muamalat Malaysia Berhad	Muamalat Revolving Financing ("MRF")	10 August 2018	478,425	51,696	530,121
Maybank Islamic Berhad	Bankers Acceptance	10 August 2018	642,505	12,245	654,750

Due to financial constraints, the Company is not able to meet the obligation to repay the Bank and therefore had defaulted in profit and principal repayment to the banks. Utusan intends to submit a proposal to restructure the Loan Facilities with the Banks. In the meantime, UTUSAN is working towards restructuring all its loan facilities in line with its business transformation plan.

The Board is of the opinion that the Company is able to provide Bursa Securities a Solvency Declaration pursuant to Paragraph 9.19A(4) of the Main Market Listing Requirements that the Company is solvent on the basis that the Company's assets and properties held by the Company have market value exceeding the outstanding sums owed to the Banks.

[Source: UTUSAN's announcement on Bursa Malaysia's website on 10 August 2018]

## **PROPOSED PRIVATE PLACEMENT OF UP TO 10% OF THE ISSUED SHARES OF UTUSAN (“PROPOSED PRIVATE PLACEMENT”)**

UTUSAN had obtained the approval from its shareholders at the annual general meeting (“AGM”) convened on 6 June 2018, authorising the Board to issue new ordinary shares in Utusan not exceeding 10% of the issued shares of the Company pursuant to Sections 75 and 76 of the Companies Act 2016. The authority under the General Mandate is expected to continue to be in force until the conclusion of the next AGM of the Company. The Proposed Private Placement involves an issuance of up to 10% of the issued shares of UTUSAN.

The issue price of the Placement Shares will be determined and fixed by the Board at a later date after receipt of all relevant approvals for the Proposed Private Placement.

The Placement shares will be issued at a price of not more than 10% discount to the 5-day volume weighted average market price (“VWAMP”) of UTUSAN shares immediately preceding the price-fixing date.

The proceeds from the Proposed Private Placement are intended to be utilised by UTUSAN and its subsidiaries to repay bank borrowings.

[Source: UTUSAN’s announcement on Bursa Malaysia’s website on 10 August 2018]

### **Versatile Creative Berhad**

The Board of Directors (“the Board”) of Versatile Creative Berhad (“the Company”) wishes to update that the forensics audit report from Crowe Malaysia was completed on 8.8.2018 (“Report”).

The Report found, amongst others, that there were irregularities in payments amounting to RM 2.3 million which were approved by the Company’s Managing Director and Chief Financial Officer. The Report also found that the Managing Director and Chief Financial Officer could not account for the RM 2.3 million and failed to provide evidence as to whom the RM 2.3 million was paid to.

The Board has issued and served the show-cause letters on the Company’s Managing Director and Group Chief Financial Officer relating to irregularities in payments amounting to RM 2.3 million. They have been given seven (7) days from today to provide a written reply pertaining to the allegations mentioned in the show-cause letters and shall be suspended for fourteen (14) days from today or until further notice from the Board.

[Source: Versatile Creative’s announcement on Bursa Malaysia’s website on 13 August 2018]

## **MSWG’S VIGILANCE**

### **Listing of PN17 and GN3 companies**

#### **PN17 Companies**

1. AMTEK HOLDINGS BERHAD
2. APFT BERHAD
3. ASIA KNIGHT BERHAD
4. BERJAYA MEDIA BERHAD
5. BERTAM ALLIANCE 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. PETROL ONE RESOURCES BERHAD
18. STONE MASTER CORPORATION BERHAD
19. SUMATEC RESOURCES BERHAD
20. TH HEAVY ENGINEERING BERHAD
21. YFG BERHAD

## GN3 Companies

1. G NEPTUNE BERHAD
2. 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/>

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## LOCAL NEWS AND DEVELOPMENTS

Fortis, which got approval for a Malaysian takeover, sees signs of improvement

<https://www.thestar.com.my/business/business-news/2018/08/15/indias-cash-strapped-fortis-healthcare-sees-signs-of-improvement/#ryLYSr5Ru1bFAVPj.99>

TH Plantations puts CEO Zainal Azwar on garden leave

<https://www.thestar.com.my/business/business-news/2018/08/14/th-plantations-puts-its-ceo-on-garden-leave/#zqjB1kshwAt5ycwj.99>

Malaysian Turkey-linked stocks fall as lira plunges

<https://www.thestar.com.my/business/business-news/2018/08/14/turkeylinked-stocks-fall/#STWY6LIFgT4G1svF.99>

M'sian equities hit, ringgit lowest level in 10 months on Turkish troubles

<https://www.thestar.com.my/business/business-news/2018/08/14/turkish-troubles/#1ylizwgPmBWRqqb9.99>

India's Fortis shareholders to decide on Malaysian IHH offer today

<https://www.thestar.com.my/business/business-news/2018/08/13/fortis-shareholders-to-decide-on-ihh-offer-today/>

CPO prices under pressure on lacklustre demand

<https://www.thestar.com.my/business/business-news/2018/08/13/cpo-prices-under-pressure-on-lacklustre-demand/#A24zXpuUoVjDRm7M.99>

Sarawak corridor attracts RM79.3bil in investments

<https://www.thestar.com.my/business/business-news/2018/08/13/sarawak-corridor-attracts-rm793bil-in-investments/>

## GLOBAL NEWS AND DEVELOPMENTS

China's Yuan Slump Almost Over, Says StanChart Veteran

<https://www.bloomberg.com/news/articles/2018-08-13/veteran-stanchart-trader-says-worst-of-yuan-slump-is-likely-over>

New Zealand Poised to Crack Down on Foreign Home Buyers

<https://www.bloomberg.com/news/articles/2018-08-14/new-zealand-poised-to-impose-crackdown-on-foreign-home-buyers>

What went wrong for Turkey? Its economy is 'in the midst of a perfect storm'

<https://www.cnbc.com/2018/08/13/turkey-crisis-economy-faces-weak-lira-inflation-debt-and-tariffs.html>

Lira Extends Retreat as Turkey Heads Toward a Financial Crisis

<https://www.bloomberg.com/news/articles/2018-08-12/lira-extends-retreat-as-turkey-heads-toward-a-financial-crisis>

A move in crude oil to \$50 could come as quickly as a surge above \$100, says veteran oil investor

<https://www.cnbc.com/2018/08/11/a-move-in-crude-oil-to-50-could-come-as-quickly-as-a-surge-above-100.html>

Why Trump is attacking Turkey with sanctions and tariffs

<https://www.cnb.com/2018/08/10/why-trump-is-attacking-turkey-with-sanctions-and-tariffs.html>

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## MSWG Team

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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 Apex Equity Holdings Bhd and Pasdec Holdings Berhad.*
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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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