



The Observer

21.12.2018

MESSAGE FROM THE CEO

Enhancing Minority Rights - Two Recent Events

Landmark Court Decision Protecting Minorities

Have you ever dealt with a stronger party when signing an agreement where you felt that some 'exclusion clauses' imposed upon you were unfair but had no choice because the stronger party adopts a 'take it or leave it' stance? You felt that there was unequal bargaining position as you were merely a minority. And, anyway, those clauses have become 'industry practice'. Such clauses are referred to as 'unfair contract terms' and a recent Federal Court decision has stated that such clauses are not valid. On the facts of the case, the Federal Court decided that commercial banks cannot rely on exclusion clauses in agreements to stop their clients from suing for negligence. Judge Datuk Seri Balia Yusof Wahi noted that customers are (sometimes) made to accept the contract as prepared by the other party. The judge further stated that, "It is patent unfairness and injustice to the plaintiff".

When trading in the stock market, minority shareholders often sign on pre-drafted agreements and documents with several exclusion clauses, on a 'take it or leave it' basis. Some of the agreements that they sign include the opening of the Share Trading Account, opening of the CDS account and, if you indulge in Margin Trading, the Share Margin Trading account, and a whole host of other agreements and documents depending on what activities that you want to carry out.

Going forward, a minority shareholder, if he or she feels aggrieved or short-changed by an exclusion clause in an agreement that the minority shareholder has signed, has recourse to have that clause set aside. The landmark Federal Court decision recognises a reality of life ... the existence of unfair bargaining positions and where the 'weaker' party feels obliged (take it or leave it) to sign on the dotted line especially in relation to unfair exclusion clauses.

Substance Over Form - The Case of Lotte Chemical Titan Holding Bhd (LCTitan)

LCTitan debuted on Bursa Malaysia on 11 July 2017. Shortly after that, LCTitan announced that its profits have slumped 72% for the second quarter ended 30 June 2017. This was an unexpected (and unpleasant) announcement to minority shareholders. In fact, minority shareholders who had subscribed for the IPO at RM6.50 saw their share price nosedived to RM 4.10 due mostly to the dismal quarterly results announcement.

What went wrong?

LCTitan had a 11-day water cut (resulting in a period of 2 to 11-day plant shutdowns) in April (a few months before its Bursa Malaysia debut). This had a significant impact on the company's earnings. While LCTitan disclosed this water supply disruption (and the resultant plant shutdowns and declines in production volumes) in its IPO prospectus, the significance of the impact was not made clear. The market was not aware that the disruption would contribute so heavily, and so dismally, to the quarterly results announcement. Moreover, the resultant plant shutdowns ranged from a mere 2 days to 11 days. Understandably, one would not expect existing shareholders or potential investors to fathom what sort of financial damage it would translate into. In 'form', LCTitan appears to

have disclosed the water disruption but what was required was the ‘substance’ element - the financial impact of the disruption.

The SC has taken a serious view of this incident, and rightly so, by reprimanding various parties involved in the IPO and imposing total penalties of RM2.19 million. The SC reprimanded and fined LCTitan (a fine of RM560,000), two executive directors (a fine of RM441,000 for each director), the reporting accountant Ernst & Young (a fine of RM297,500) and the principal adviser, Maybank Investment Bank Bhd (a fine of RM450,000). To this extent, it is clear, that the SC will continue to insist on ‘substance over form’ and expects meaningful disclosures in substance.

MSWG’S AGM WEEKLY WATCH 24 December - 28 December 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.

Date & Time	Company	Venue
26.12.18 (Wed) 11.00 am	Tiger Synergy Bhd (AGM)	Klana Resort Seremban, Jalan Penghulu Cantik, Taman Tasik Seremban, Negeri Sembilan
27.12.18 (Thur) 09.00 am	Multi-Usage Holdings Bhd (AGM)	AVANI Sepang Goldcoast Resort, No 67 Jalan Pantai Bagan Lalang, Sungai Pelek

One of the points of interest to be raised:	
Company	Points/Issues to Be Raised
Tiger Synergy Bhd (AGM)	<p>The Group has disposed of its subsidiary, MHB Property Development Sdn. Bhd, (“MHB”). This has resulted in a gain on disposal of RM794,987 as disclosed on page 111 of the Annual Report.</p> <p>(a) Did MHB have any assets (apart from cash and bank balances of RM498) on its Balance Sheet at the date of disposal?</p> <p>(b) It appears from the disposal disclosure that the buyer assumes all the liabilities of MHB with no assets being acquired. Why this is so?</p> <p>(c) Who is the buyer?</p>
Multi-Usage Holdings Bhd (AGM)	<p>As disclosed in the Statements of Cash Flows on page 43 of the Annual Report, the inventories written off was RM1.2 million in FY2018 as compared to nil in FY2017.</p> <p>(a) Please explain the nature and reason for the inventories to be written off.</p> <p>(b) What are the measures taken to minimise the amount of inventories to be written off in the future?</p> <p>(c) Is there any likelihood of recovery for the inventories written off?</p>

MSWG'S WATCHLIST

IHH HEALTHCARE BERHAD ("IHH" OR THE "COMPANY")

News article titled "Acquisition of Fortis on hold - India's top court halts IHH's purchase of private hospital operation" appearing in The Star BizWeek section on 15 December 2018

The Board of Directors of IHH informed that the Honourable Supreme Court of India had on 14 December 2018 passed an order ("Order") directing "status quo with regard to sale of the controlling stake in Fortis Healthcare to Malaysian IHH Healthcare Berhad be maintained". In light of the Order, Northern TK Venture Pte Ltd ("NTK" or the "Acquirer") and IHH and PPL, in their capacity as the persons acting in concert with the Acquirer ("PACs") will not be able to proceed with the Fortis Open Offer for the time being until further order(s)/clarification(s)/ direction(s) are issued by the Supreme Court of India and/or the Securities and Exchange Board of India (SEBI).

The Board also clarified that IHH, Parkway Pantai Limited ("PPL") and NTK were not a party to the proceedings before the Supreme Court of India, and that the Order does not impact the Subscription which was completed on 13 November 2018 in accordance with applicable law, resulting in IHH through NTK, owning 31.1% of the Expanded Voting Share Capital of Fortis. IHH, PPL and NTK are in the process of evaluating the Order and seeking appropriate legal advice on this matter and will subsequently decide on the future course of action. IHH will make appropriate announcement(s) to Bursa Securities in a timely manner in accordance with the Main Market Listing Requirements of Bursa Securities should there be any further material development on this matter.

<http://www.bursamalaysia.com/market/listed-companies/company-announcements/6008081>

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. 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/>

Regulatory News

SC INTRODUCES ENHANCED DISCLOSURE REQUIREMENTS FOR ABRIDGED PROSPECTUSES AND CIRCULARS

The Securities Commission Malaysia (SC) had on 14 December 2018 released the revised Prospectus Guidelines and Equity Guidelines to enhance the disclosure requirements of abridged prospectuses and for circulars related to proposals that would result in a significant change in the business direction or policy of a listed corporation, including back-door listings and reverse take-overs.

The amendments aim to make abridged prospectuses and circulars more reader-friendly while ensuring that disclosures focus on meaningful information and are useful in helping shareholders in making informed investment decisions.

These amendments were made after extensive consultation with key stakeholders such as principal advisers, reporting accountants, independent advisers, investors and representatives of listed corporations.

These amendments will come into effect on 13 March 2019. However, market participants and listed corporations are encouraged to adopt these revisions earlier for the immediate benefit of shareholders and investors.

More details of the revisions can be found in Division 5, Part II of the Prospectus Guidelines (<https://www.sc.com.my/regulation/guidelines/prospectus>) and the Equity Guidelines (<https://www.sc.com.my/regulation/guidelines/equity>) respectively.

<https://www.sc.com.my/news/media-releases-and-announcements/sc-introduces-enhanced-disclosure-requirements-for-abridged-prospectuses-and-circulars>

LOCAL NEWS AND DEVELOPMENTS

Unisem board, independent adviser tell minorities to reject takeover offer

<https://www.thestar.com.my/business/business-news/2018/12/17/unisem-board-says-reject-chia-family-takeover-offer/#fE3T9pEbYoVwmQL5.99>

SP Setia, Sime Property sell Battersea stakes to PNB-EPF for RM8.35b

<https://www.thestar.com.my/business/business-news/2018/12/17/sp-setia-sime-property-sell-battersea-stakes-to-pnb-epf-for-rm8pt35b/#i4vhGxOTRCUOPUdd.99>

IHH says will not be able to proceed with Fortis open offer until further order(s)/ clarification(s)/ direction(s) are issued by the Supreme Court of India and/or Securities and Exchange Board of India

<https://www.theedgemarkets.com/article/ihh-says-will-not-be-able-proceed-fortis-open-offer-until-further-orders-clarifications>

Scomi Mumbai monorail contract terminated

<https://www.thestar.com.my/business/business-news/2018/12/17/scomi-mumbai-monorail-contract-terminated/>

SC stands firm on penalising Lotte Chemical Titan, directors, advisers

<https://www.theedgemarkets.com/article/sc-maintains-decision-rebuke-impose-penalties-lotte-chemical-titan-directors-advisers>

Genting theme park on track for completion in early 2019 despite multibillion-ringgit lawsuit - report

<https://www.theedgemarkets.com/article/genting-theme-park-track-completion-early-2019-despite-multibillionringgit-lawsuit-%E2%80%93-report>

GLOBAL NEWS AND DEVELOPMENTS

Oil prices pressured by oversupply, global economic concerns

<https://www.reuters.com/article/us-global-oil/oil-prices-pressured-by-oversupply-global-economic-concerns-idUSKBN1OG01L>

Oil prices fall 1 percent amid supply glut worries

<https://www.reuters.com/article/us-global-oil/oil-prices-fall-1-percent-amid-supply-glut-worries-idUSKBN1OH03J>

U.S. oil prices climb after tumble, but oversupply worries drag

<https://www.reuters.com/article/us-global-oil/u-s-oil-prices-climb-after-tumble-but-oversupply-worries-drag-idUSKBN1OI055>

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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.*

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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