



The Observer

26.10.2018

PLEASE MARK YOUR CALENDER

2nd ASEAN CORPORATE GOVERNANCE AWARDS CEREMONY TO BE HELD AT KUALA LUMPUR CONVENTION CENTRE ON WEDNESDAY, 21 NOVEMBER 2018

We are pleased to announce that we will be organising the 2nd ASEAN Corporate Governance Awards Ceremony with the support of the Malaysian Securities Commission. It will be our greatest pleasure to showcase the findings and results of the Top 50 ASEAN public listed companies (“PLCs”) and outstanding PLCs from each participating ASEAN country in terms of corporate governance practices based on assessment using the ASEAN Corporate Governance Scorecard in 2018.

Malaysia is the host for this bi-annual event. Please join us in celebrating, with the ASEAN winners, excellence in corporate governance.

We look forward to your participation and support at the event.

Please contact Miss Emily Lim at 603-2070 9090 if you are interested in joining us in celebrating this bi-annual event or for further enquiries.

MESSAGE FROM THE CEO

Apex Equity Holdings Bhd’s Share Buybacks - Who is Accountable?

The Company has undertaken share buybacks between 2005 and 2017.

It then realised that the Company’s Constitution does not provide for the authority to undertake share buybacks. By right, the Constitution, (or the Memorandum and Articles of Association (M&A), as it was previously known), should have been amended, with shareholders’ approval, to provide for the requisite authority prior to undertaking the share buybacks.

The Constitution, (previously known as the M&A), is the important charter that governs the relationship between the company and its shareholders. In the above instance, the company has acted *ultra vires* (beyond its powers).

Many parties, including the shareholders, may presume that share buybacks are a common transaction practised by many PLCs and moreover, since a resolution has been proposed by the Board for their approval, it would not occur to them that share buybacks need to be expressly authorised by its Constitution. However, the Companies Act 2016 (Section 127(1)) explicitly states that a company whose shares are quoted on a stock exchange may purchase its own shares if so authorised by its Constitution. This is further amplified in Bursa Malaysia Listing Requirements (Chapter 12.03) which states, amongst others, that a listed corporation must not purchase its own shares unless its shareholders have, by ordinary resolution passed at a general meeting, given an authorisation to its directors to make such purchase(s) and - (a) it complies with section 127 of the Companies Act.

At an AGM held on 28 May 2018, the shareholders voted against an ordinary resolution for the proposed renewal of authority for share buybacks - but this is prospective. It was not clear why they voted against the resolution. This means that the company cannot undertake share buybacks in future. It does not have any retrospective effect as the past share buybacks have already been done.

The Company had sought and obtained the Court order to validate all the past share buybacks. In this context, it may be harsh or inappropriate for some minority shareholders to conclude that the Company disregarded the majority shareholders vote against the proposed share buybacks at the AGM.

The shareholders have also voted in favour of the proposed share buybacks at the previous AGMs not realising that the Constitution did not provide the authority for undertaking such share buybacks.

Under such circumstances, the Company has a tough decision to make: to unwind all previous share buybacks which means that the Company sells all the buyback shares on the stock exchange or to 'validate' the share buybacks.

The Company chose the latter option by applying to the High Court. On 26 September 2018, the High Court granted a validation of the past share buyback exercises for the period 2005 and 2017.

Alternatively, the Court may have asked the Company to unwind its share buybacks i.e. sell all the shares off within a stipulated time. And if the Company makes a loss, they will have to answer to the shareholders. Were any shares bought-back also distributed as dividends per specie to shareholders? If so, how would the Company deal with this as some shareholders may not be traceable?

Apart from all the aforesaid complications, there is also the question of accountability and risk management. Who should be accountable for the oversight?

There are three parties who may be held accountable with varying degrees of accountability.

The Board should have been aware of the Constitution.

The Company Secretary, as adviser to the Board, should have been aware of the Constitution.

Also, the shareholders, as a party governed by the Constitution, should have been aware of the Constitution.

As a matter of appropriateness, before proposing any resolutions or entering into any acts or transactions, there should be checks made on the Companies Act and Bursa Malaysia Listing Requirements in respect to the subject matter to ensure its validity.

MSWG encourages all listed companies to publish their Constitutions on their corporate websites. This would make it easier for shareholders and other stakeholders to access the Constitution.

On the question of risk management, the Company needs to review its risk management framework and enhance it particularly in the area of compliance.

It has also been suggested that the court decision may create a precedent whereby a Board can act *ultra vires* the Constitution and then have it validated by the court as a *fait accompli*.

That is why accountability becomes very important. There must be sanctions on those who have been negligent or reckless. Notwithstanding the Court's decision, we would like to see what appropriate actions the Companies Commission of Malaysia will take in this case to ensure that those responsible in this fiasco, be it the Company and/or the management will be held accountable in accordance with the Companies Act 2016.

Holding people accountable introduces vigilance amongst those tasked with statutory roles to safeguard shareholder interests - like directors, company secretaries and external auditors. Sanctions will ensure that those held accountable to observe the sanctity of the Constitution do not disregard the Constitution 'willy nilly'.

One school of thought states that sanctions are the greatest motivation for compliance. And there is some truth to that thought.

Regards,

Devanesan

26 October 2018

MSWG'S QUICK TAKE ON-ONGOING CORPORATE DEVELOPMENTS

FGV HOLDINGS BERHAD ("FGV")

Datuk Azhar Abdul Hamid, who is Chairman of FGV, has been appointed as interim CEO until a new CEO is appointed to fill the position vacated by Datuk Zakaria Arshad (based on an exchange filing on 24 October 2018). The announcement also stated that the appointment has been agreed to by MoF Inc.

Datuk Zakaria resigned on 18 September 2018 and a Special Board Committee 2 was set up to perform the CEO functions. This Special Board Committee 2 is now disbanded with Datuk Azhar's appointment as Chairman cum CEO.

[Source: FGV's announcement on Bursa Malaysia's website on 24 October 2018]

MSWG'S COMMENTS:

A Step Back for Corporate Governance?

MCCG 2017 advocates the Practice of the positions of chairman and CEO being held by different individuals. This Practice is to ensure that no one has too much powers and that there is a 'check and balance' especially since the Chairman and the board provide oversight over CEO and management. As such, the abovementioned appointment is not in accordance with good corporate governance.

The appointment raises some concerning questions which minority shareholders will be interested in:

- Why was the Special Board Committee 2 disbanded only after 5 weeks of its creation? Was it not effective?
- What happened to the 11 candidates for the position of the CEO (as reported in the media)? Could not the Special Board Committee 2 have continued till a suitable CEO candidate was appointed?
- What was the rationale for the appointment of a Chairman cum CEO instead of appointing someone other than the Chairman as an interim CEO pending the filling of the position of the CEO. Surely FGV has sufficient talents to have one from within its ranks to act as an interim CEO.
- How long is Datuk Azhar expected to hold the post of interim CEO?

The Board should provide more rationale for its decision regardless that the MoF Inc has agreed to the appointment.

KIM TECK CHEONG CONSOLIDATED BERHAD (“KTC”)

KTC on 19 October 2018 announced its amended 4th quarter report on its consolidation results for the financial period ended 30 June 2018. Unaudited net loss, for the 12 months period ended 30 June 2018 which originally amounted to RM2.4 million, dipped further to approximately RM6.8 million.

On 22 October 2018, KTC also announced a revised 3rd quarter report on its consolidation results for the financial quarter ended 31 March 2018, with revisions as follows:

	Original 3 rd Quarter 2018 RM'000	Revised 3 rd Quarter 2018 RM'000	Variance RM'000
Tax credit/(expense)	2,649	(1,744)	(4,393)
Net loss for the period	(6,997)	(11,390)	
Exchange differences on translation of a foreign operation	(399)	18	417

(Extract of the financial results for 31 March 2018)

[Source: KTC’s announcement on Bursa Malaysia’s website on 19 October 2018 and 22 October 2018]

MSWG’S COMMENTS:

The company re-announced its 3rd quarter results and re-announced its 4th quarter results.

The company announced that the revised 3rd quarter results are due to the inaccurate calculation of consolidated tax expenses of approximately RM4.4 million which has led to the widening of KTC’s losses for the said 3rd quarter. No further details or elaboration was given by the Company in relation to how the revised consolidation tax calculation came about. Net loss for the period has now increased by approximately 62% compared to the earlier reported net loss. This would come as a rude shock to the shareholders (and public) who had relied on the earlier reported figures in making their investment decisions. The company should also announce how this huge miscalculation came about and more importantly, what the company is doing/going to do to mitigate such risks relating to the integrity of their reported financial figures in the future.

As stated earlier, KTC also revised its 4th quarter results (as re-announced on 19 October 2018 compared to the earlier announcement on 30 August 2018). This re-announcement saw the Company’s unaudited net loss for the 12 month period ended 30 June 2018 being adjusted downward by approximately 183% from its originally announced figure on 30 August 2018. Oddly, its revised other income figure increased by approximately 167%. Administrative expenses, selling and distribution expenses and other operating expenses in total has now increased by approximately RM6.7 million as compared to the earlier reported figures.

The reason for the restatement of the 3rd quarter results was due to inaccurate calculation of consolidated tax expenses and exchange difference on translation of a foreign operation. Why then were there changes to other line items in the restated 4th quarter results? It would be beneficial to shareholders if the reasons for all the changes to the 4th quarter results are also explained by announcement.

Meanwhile, we await the audited financial statements of the Company and hopefully no more unpleasant surprises to the shareholders.

MSWG'S AGM WEEKLY WATCH 29 October- 2 November 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
29.10.18 (Mon) 09.30 am	Hong Leong Bank Bhd (AGM)	Menara Hong Leong, No. 6, Jalan Damanlela, Bukit Damansara
29.10.18 (Mon) 10.00 am	ES Ceramics Technology Bhd (AGM)	Armada Hotel, Lot 6 Lorong Utara C, Section 52, PJ
30.10.18 (Tue) 09.30 am	Hong Leong Capital Bhd (AGM)	Menara Hong Leong, No. 6, Jalan Damanlela, Bukit Damansara
30.10.18 (Tue) 11.00 am	Hong Leong Financial Group Bhd (AGM)	Menara Hong Leong, No. 6, Jalan Damanlela, Bukit Damansara
30.10.18 (Tue) 11.00 am	Caring Pharmacy Group Berhad (AGM)	Bukit Jalil Golf and Country Resort, Jalan Jalil Perkasa 3, Bukit Jalil, KL
31.10.18 (Wed) 10.00 am	Sime Darby Property Bhd (AGM)	Sime Darby Convention Centre, 1A Jalan Bukit Kiara 1, KL
31.10.18 (Wed) 10.00 am	C.I. Holdings Bhd (AGM)	InterContinental Kuala Lumpur, 165, Jalan Ampang
31.10.18 (Wed) 10.00 am	IOI Properties Bhd (AGM)	Le Méridien Putrajaya, Lebuhr IRC, IOI Resort City, Putrajaya
31.10.18 (Wed) 03.00 pm	Plenitude Bhd (AGM)	Novotel Kuala Lumpur City Centre, No. 2, Jalan Kia Peng
01.11.18 (Thur) 10.00 am	Dutaland Bhd (AGM)	Hotel Istana Kuala Lumpur

Some of the points of interest to be raised:	
Company	Points/Issues to Be Raised
Hong Leong Bank Bhd (AGM)	As digitalization strategy is one of the key focus of the Bank to spur growth and differentiate itself, please share on the next three-year plan and estimated capital budget for the transformation. (page 25 of the Annual Report) a) Please provide the results achieved so far on digitalization. How have the digitalization changes resulted in cost savings? b) Please share the cyber security measures taken to ensure the customers and other banking information are not compromised.
ES Ceramics Technology Bhd (AGM)	We note on page 69 of the Annual Report, that for FY2018, there was impairment loss on receivables of RM714,736 and inventories written off totalling RM1,061,893. There were no such items in FY2017. a) What is the probability of recovering the impaired receivables? What is the current status of the receivables? b) Please brief on the inventory policy and how such a significant amount of inventories could have been written off.

Some of the points of interest to be raised:

Hong Leong Capital Bhd (AGM)

Under the Group Performance Review in the Management Discussion & Analysis (“MD&A”) on page 14 of the Annual Report (“AR”), the increase in the allowances for impairment losses on loans and advances and other losses under the Investment Banking (“IB”) of RM803,000 in FY2018 was significant compared to RM467,000 in FY2017. Its segmental review on page 16 for IB further showed that both its fee income and other income were substantially lower compared to FY2017 respectively.

- a) What are the reasons for the higher allowances for impaired losses on loan and advances and other losses for IB in FY2018? Is there any single customer concentration and what is the recovery prospect in FY2019?
- b) What measures are taken to improve the fee income and other income for FY2019?

Hong Leong Financial Group Bhd (AGM)

We refer to page 127, Note 11(i), (f) on the “Investment in Subsidiary Companies / information about principal subsidiaries” of the Annual Report.

Hong Leong Capital Berhad (“HLCB”) has announced on 28 August 2018 that the company does not comply with the required public shareholding spread pursuant to paragraph 8.02(1) of the Main Market Listing Requirements which states that a listed issuer must ensure that at least 25% of its total listed shares (excluding treasury shares) are in the hands of the public shareholders.

As stated in the announcement of HLCB to Bursa as at 29 June 2018, the public shareholding spread was 18.67%. HLCB has not identified a satisfactory plan to address the non-compliance with the 25% public shareholding spread requirement and will continue to discuss with its majority shareholder, HLF, options to comply with the requirement.

What is the status of the discussion? What are the actions to be taken by HLF to address this issue?

Caring Pharmacy Group Berhad (AGM)

As reported on page 55 of the Annual Report, all internal audit activities in FY2018 were outsourced to an independent assurance provider, NGL Tricor Governance Sdn Bhd (“NGL Tricor”) and the total costs incurred amounted to RM32,000.

Considering that Caring is not really a small company with group revenue exceeding the half a billion ringgit mark and with 115 outlets nationwide, the relatively low internal audit cost may result in a very limited scope of internal audit work being carried out which in turn may compromise the auditing of high risk areas.

The Board especially the Audit and Risk Management Committee should review the adequacy of the scope of the internal audit, particularly in the light of increasing revenue and size of operations with the expanding network of outlets.

<p>Sime Darby Property Bhd (AGM)</p>	<p>Malaysia Vision Valley (MVV)</p> <p>a) With the lapse of Memorandum of Understanding (MOU) between SDP, Brunfield Development Sdn Bhd and Kumpulan Wang Amanah Pencen (KWAP) in November 2017, it was recently reported that SDP has decided to undertake the development project by itself.</p> <p>(i) What factors have the Board taken into consideration in arriving at the decision to take up the project without any partners?</p> <p>(ii) What are the challenges for the Company to undertake the MVV development projects without any partners?</p> <p>b) How will the deferment of the Kuala Lumpur-Singapore High Speed Rail (HSR) affect the development plan of the MVV project?</p>
<p>C.I. Holdings Bhd (AGM)</p>	<p>We note that “other expenses” has increased from RM920,000 in FY2017 to RM16,560,000 in FY2018 (page 47 of the Annual Report 2018). What are the reasons for the significant increase in the expenses?</p>
<p>IOI Properties Bhd (AGM)</p>	<p>As disclosed in Note 22.1 to the Financial Statements on page 264 of the Annual Report, as at 30 June 2018, the Group has Interests in joint ventures of RM4.95 billion, of which RM1.17 billion represents advances and working capital to the joint ventures. The amount due from joint ventures are unsecured and non-interest bearing except for an amount of RM564.3 million.</p> <p>a) What is the justification to provide non-interest bearing advances to joint-ventures?</p> <p>b) To what extent has the Company control over the operations of the joint ventures? Are there any Board representations in the joint venture companies?</p>
<p>Plenitude Bhd (AGM)</p>	<p>The Group holds an equivalent amount of RM39.8 million of British Pound (“GBP”) as Cash and Bank Balances as disclosed on page 161 of the Annual Report.</p> <p>Please explain the rationale for the Group to hold GBP as the Group’s businesses, Property Development and Hotel/Hospitality Operations are predominantly in Malaysia.</p>
<p>Dutaland Bhd (AGM)</p>	<p>Note 23(a) on page 108 of the Annual Report shows that as at 30 June 2018, approximately 40% or RM3.767 million of the total trade receivables of RM9.579 million is impaired.</p> <p>a) Which segment of business are these impairments attributable to?</p> <p>b) Has any portion of the impaired amount been recovered subsequent to the financial year end? What is the probability of recovery?</p>

MSWG'S WATCHLIST

SYF RESOURCES BERHAD ("SYF")

The Board of Directors of SYF announced that SYF proposes to vary the remaining balance of RM15 million of its Disposal Proceeds (as defined below) to repay bank borrowings ("**Proposed Variation**"). Pursuant to Paragraph 8.22 of the Main Market Listing Requirements of Bursa Malaysia Securities Berhad, SYF is required to seek shareholders' approval for the Proposed Variation.

Previously on 27 February 2018, SYF completed a disposal of the entire issued share capital in Great Platform, to Mico Chipboard Berhad ("Meico") together with the settlement by Mico of the shareholder's advances owed by Great Platform to SYF ("**Disposal**"), raising total gross proceeds of RM58,592,150 ("**Disposal Proceeds**"). As at the latest practicable date prior to the announcement, the Company has yet to utilise the remaining balance of RM15 million of the Disposal Proceeds previously earmarked to fund the future acquisition of land bank for the group's property development division.

[Source: SYF's announcement on Bursa Malaysia's website on 22 October 2018].

CN ASIA COPORATION BERHAD ("CN ASIA")

The Board of Directors (the "Board") of CN Asia announced that Messrs. Siew Boon Yeong & Associates ("SBY" or the "Firm") had, on 22 October 2018 ("Date of Notice"), given a notice in writing to the Board that it wishes to resign as Auditor of the Company and its subsidiaries as the Firm has been temporarily prohibited to audit the financial statements of public listed companies. Pursuant to Section 281(2) of the Companies Act 2016, SBY's term of office shall end after twenty-one (21) days from the Date of Notice. The replacement Auditor will be appointed by the Board in accordance with the Companies Act, 2016 and the Company's Constitution.

[Source: CN ASIA's announcement on Bursa Malaysia's website on 22 October 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. UTUSAN MELAYU (MALAYSIA) BHD
22. 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/>

LOCAL NEWS AND DEVELOPMENTS

Reinvestment allowance crucial to remain leader in rubber gloves, says MARGMA

<https://www.thestar.com.my/business/business-news/2018/10/24/reinvestment-allowance-crucial-to-remain-leading-manufacturer-of-rubber-gloves/>

Proposed deal may not happen?

<https://www.nst.com.my/business/2018/10/423814/proposed-deal-may-not-happen>

GLOBAL NEWS AND DEVELOPMENTS

Wall Street tumbles on global worries, Treasuries rise

<https://www.thestar.com.my/business/business-news/2018/10/25/wall-street-tumbles-on-global-worries-treasuries-rise/>

Dyson chooses Singapore over Britain to build electric car

<https://www.theedgemarkets.com/article/dyson-chooses-singapore-over-britain-build-electric-car>

IPOs in a global rout: Thailand bags US\$2b in October alone

<https://www.theedgemarkets.com/article/ipo-global-rout-thailand-bags-us2b-october-alone>

For Fed, sell-off could point to fading Trump stimulus

<https://www.thestar.com.my/business/business-news/2018/10/24/for-fed-sell-off-could-point-to-fading-trump-stimulus/>

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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, Kim Teck Cheong Consolidated Berhad, SYF Resources Berhad and CN Asia Corporation Berhad.*
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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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