

MINORITY SHAREHOLDER WATCHDOG GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Company No. 524989-M)

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Concerns over power of special shareholder

BY KAMARUL AZHAR

The reinstatement of Datuk Zakaria Arshad as the group president and CEO of Felda Global Ventures Holdings Bhd, effective Oct 16, has turned the spotlight on the powers of the company's special shareholder — the Minister of Finance Inc.

In an announcement to Bursa Malaysia last Monday, FGV said MoF Inc, which holds a golden share in the company, asked for Zakaria to be reinstated. The board was not mentioned in the announcement.

Does this mean the decision was made solely by the special shareholder and that the board has distanced itself from it?

To be fair, the press release on the matter includes a statement by chairman Datuk Wira Azhar Abdul Hamid.

FGV declined to comment on the story.

The fact that a shareholder with just one share in a public-listed company can dictate terms raises corporate governance concerns, say fund managers and investors.

“The European Union has outlawed this class of shares because of the unfair power vested in the shareholder. Once a company has assumed public listed status, it cannot justify the power given to a special shareholder,” says Malaysian Investors’ Association president Datin Ho Choy Meng in an email response to *The Edge*’s questions last Friday.

To recap, Zakaria, FGV chief financial officer Ahmad Tiffi Mohd Talhar and two other senior members of the management team were given leave of absence on June 6 following allegations of impropriety and breach of fiduciary duty.

The allegations were about FGV subsidiary Delima Oil Product Sdn Bhd’s (DOP) transactions with Safitex Trading LLC — a Dubai-based company that supplies palm oil products to Afghanistan.

It was alleged that Zakaria breached his fiduciary duty as FGV’s CEO when he allowed the sale of palm oil products to Safitex without requiring letters of cred-

Timeline of Felda Global Ventures Holdings crisis

April 1, 2016: Datuk Zakaria Arshad is appointed as the group president and CEO of FGV, replacing Datuk Mohd Emir Mavani Abdullah.

May 31, 2017: A board meeting is held to discuss outstanding payments by Safitex Trading LLC for products supplied by FGV’s subsidiary Delima Oil Products Sdn Bhd (DOP). Tan Sri Isa Samad, the then chairman of FGV, asks Zakaria to resign on the allegation of breaching the corporate governance code by allowing the practice of sales to Safitex without letters of credit.

June 5: Zakaria sends Isa a letter, affirming his innocence and refusing to resign as the group president and CEO of FGV.

June 6: FGV announces that Zakaria, FGV CFO Ahmad Tiffi Mohd Talhar and two other senior members of the management team have been given leave of absence pending investigations into certain transactions under DOP. Isa calls for a press conference to announce the leave of absence, and says he will fully cooperate with the Malaysian Anti-Corruption Commission (MACC), if the anti-graft body decides to investigate the matter.

June 7: In an interview, Zakaria gives FGV shareholders an ultimatum, asking them to choose between him and Isa as the leader of the plantation company. MACC confirms that it is investigating the alleged improprieties at FGV.

The Prime Minister’s Office appoints Datuk Seri Idris Jala as an independent party to recommend the way forward for FGV in regard to the leave of absence of Zakaria. Ahmad Tiffi and the two senior members of the management team.

June 8: Everyone has his own opinion. Why would I resign? I am not at fault, Isa says at a press conference when asked about calls for him to step down as FGV chairman. He also states his readiness to meet MACC if the anti-graft body requires him to do so. MACC conducts an eight-hour operation at the FGV headquarters.

June 14: Idris Jala wraps up his investigation and submits his recommendations to Prime Minister Datuk Seri Najib Razak. The investigation finds “sufficient facts and reasonable grounds” for the FGV board to initiate disciplinary proceedings against Zakaria and the three other officials. “We are looking at all the facts and we will make the best decision according to the three principles I outlined earlier: company laws, good governance and fair process,” says Najib.

June 19: Isa resigns as FGV chairman and from all other positions in the group. Tan Sri Sulaiman Mahbob is appointed as acting chairman of FGV. Sulaiman is tasked with setting up a ‘governance quantum leap’ team in FGV to radically improve the group’s governance and internal controls. Isa is made acting chairman of the Land Public Transport Commission (SPAD).

June 21: MACC calls in Isa and his wife Puan Sri Bibi Shariza Mohd Khalid to assist with the investigation over the alleged improprieties in FGV. Isa and Bibi Shariza are questioned for four hours at the MACC headquarters.

July 11: MACC starts a new probe into the Federal Land Development Authority (FELDA) following a new lead the commission has received. Investigations into the alleged impropriety in FGV are ongoing, says MACC chief commissioner Tan Sri Dzulkifli Ahmad.

Aug 1: Isa’s special aide, Zahid Md Arip, and former Felda Investment Corporation (FIC) CEO Zaid Abdul Jalil are remanded until Aug 5 to assist in MACC’s investigation into the purchase of hotels in London and Kuching. FIC is said to have purchased a hotel in Kensington, London, for an inflated price of RM330 million when the actual value is RM110 million. Its purchase of a hotel in Kuching for RM160 million is also said to be RM50 million more than the actual value.

Aug 15: Isa arrives at the MACC headquarters to assist with the investigation into the purchases of hotels in Kuching and London by FIC. He is held for two hours after arriving at the headquarters and remanded for five days. Isa’s house in Selangor is raided by MACC.

Aug 16: Isa’s house in Nilai is raided by MACC.

Aug 17: MACC raids Isa’s office at SPAD.

Aug 21: Isa is released on RM150,000 bail with two sureties. MACC does not apply to extend his remand. Sulaiman says FGV’s board of directors will make a decision on the domestic inquiry report on the four senior management members by the end of August.

Sept 8: Najib announces the appointment of Datuk Azhar Abdul Hamid as the new chairman of FGV. He was the CEO of Malakoff Corp Bhd, acting president and CEO of Sime Darby Bhd and also CEO of Mass Rapid Transit Corp Sdn Bhd. FGV announces that its board has yet to receive any written notification from the Minister of Finance Inc in regard to the appointment of Azhar as the chairman.

Sept 11: Azhar starts as the chairman of FGV.

Sept 12: MACC says will wrap up investigation into FIC’s controversial hotel purchases in London and Kuching by the end of September.

Oct 3: FGV announces that Ahmad Tiffi will resume his duties as group CFO effective Oct 4.

Oct 9: FGV announces that the domestic inquiry has been concluded and the findings have been submitted to MoF Inc as per Article 80 of FGV’s memorandum and article of association. It also says MoF Inc would like Zakaria to return as the group president and CEO of FGV effective Oct 16.

it. Safitex has outstanding debt with DOP.

What followed next was a series of investigations and raids over two months that saw former FGV chairman Tan Sri Isa Samad, his aide Zahid Md Arip and former CEO of Felda Investment Corporation (FIC), Zaid Abdul Taili, being remanded by the Malaysian Anti-Corruption Commission for five days.

Zakaria had maintained his innocence when accused of wrongdoing

ings by Isa and had refused to step down. Now, with the endorsement of MoF Inc, he has strengthened his position at FGV.

Ahmad Tiffi was also reinstated in his post, effective Oct 4 while the other two senior executives who were suspended, too, are believed to be back on the board. While it seems that the reinstatement of these three was made by FGV’s board of directors, Zakaria’s return was at the behest of the special shareholder.

The Oct 9 announcement by FGV states that the domestic inquiry (DI) into the alleged wrongdoings of Zakaria and the other three with regard to Safitex had ended and the findings submitted to MoF Inc.

“There is nothing in the law that says a DI must be made public. I think the key decision-maker is the board. Therefore, they must make the decision with regard to the operations of the company with full impartiality,” says a former fund manager. “It goes beyond what is necessary for the DI to be made public. But if you look at FGV as a politically connected vehicle, it is good for it to project transparency.”

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