



The Observer

31.01.2019

MESSAGE FROM THE CEO

ALAM MARITIM RESOURCES BERHAD (AMRB)'s Employees' Share Option Scheme (ESOS)

We attended AMRB's Extraordinary General Meeting on 30th January 2019.

Some of the proposed resolutions relate to ESOS. We raised two issues in relation to AMRB's ESOS proposals from the perspective of better corporate governance:

1. Should Independent Directors enjoy ESOS shares?
2. Should the ESOS Committee be comprised only Executive Directors (EDs) and Senior Management?

Both were the cases with AMRB and have been approved by shareholders at AMRB's EGM.

1. Should Independent Directors enjoy ESOS shares?

The ESOS Committee is appointed by the Board.

In AMRB's case, all the Directors are entitled to participate in the Proposed new ESOS.

MSWG is of the view that ESOS should not be granted to Independent Directors as they are not 'employees' and ESOS, by definition, is meant for employees. After all, ESOS is the acronym for **Employees'** Share Option Scheme (emphasis ours).

AMRB, in addressing our issues, raised three justifications for offering ESOS shares to independent directors:

1. To align shareholders' interests with that of the independent directors
2. To secure the loyalty of independent directors
3. To attract and retain quality independent directors

We will comment on each of the three points raised:

- **To align shareholders' interests with that of the independent directors**

The argument of aligning the interest of Independent Directors with that of shareholders is that both parties will have a common interest as shareholders.

But one must weigh the prejudicial effect against the probative value of the decision to grant ESOS shares to independent directors.

In our view, the prejudicial effect (of potential conflict of interest) of granting ESOS shares to independent directors outweigh the probative value (of alignment with shareholders' interests).

There is a risk that Independent Directors, who also hold shares under the ESOS, may be 'fixated' by share price considerations when making decisions (especially financial decisions) for their company.

To illustrate the point, such independent director may be hesitant to impair certain assets as that may have an adverse impact on the profits which, normally, has a consequent impact on the share price. The Independent Directors may be tempted to delay the impairment to next year/quarter until they have sold their shares. The potential for conflict of interest is real.

Being shareholders under an ESOS may compromise the independence of independent directors or, at least, create a perception of such compromise.

- **To secure the loyalty of independent directors**

Loyalty of independent directors can be secured in many ways apart from the granting of ESOS shares. The many ways include, amongst others, a competitive remuneration package and a conducive work environment, good governance and good board culture.

- **To attract and retain quality independent directors**

Quality independent directors can be attracted by offering a competitive remuneration package. Another important point in attracting quality directors is the performance, good governance and reputation of the company. Increasingly, more and more potential independent directors are doing a 'due diligence' on the company that they intend to join.

A company can always reward outstanding independent directors by increasing their remuneration - it does not necessarily have to be by granting ESOS shares.

To be fair to AMRB, they mentioned that the company (oil and gas sector) is facing severe headwinds and they cannot afford to increase independent directors' remuneration and as such are granting the ESOS shares, in lieu.

2. Should the ESOS Committee be comprised only Executive Directors (EDs) and Management?

The ESOS Committee comprises only Executive Directors and Senior Management personnel appointed by the Board to administer the ESOS.

There are no independent directors in the ESOS committee and as such there is no 'independent' thought process in the allocation of ESOS shares.

In the above scenario, we have a situation where the 'executives' recommend to the Board on the number of shares that they should get and the number of shares that the Non-Executive Directors should get.

There should be a presence of Independent Directors at the ESOS committee to ensure that recommendations to the Board by this Committee also has an 'independent flavour'.

It is stated in the Circular that the Executive Directors, Non-Executive Directors and Senior Management do not participate in the deliberation or discussion of their own allocation. But this is a general rule of natural justice and does not cure the potential for 'conflicts of interests' and perceptions thereof when an ESOS committee is comprised entirely of Executive Directors and Senior Management.

While we recognise the contribution of the independent directors to the Company, we do not encourage the practice of giving ESOS to them as they play the governance role in the Company. They should also be responsible in monitoring the option allocation to employees and executive directors. They should be paid a fee that is commensurate with their roles and responsibilities and the skills and experience they bring to the Company.

The Board of AMRB has agreed to take onboard the recommendations made by MSWG in their future Board deliberations.

In summary, Independent Directors should not be granted shares under ESOS or any other Share Grant schemes. And the ESOS committee should comprise some independent directors.

MSWG'S AGM WEEKLY WATCH 4 February - 8 February 2019

There is no AGM/EGM held during this period.

MSWG'S WATCHLIST

SUIWAH CORPORATION BERHAD

PROPOSED SELECTIVE CAPITAL REDUCTION AND REPAYMENT EXERCISE PURSUANT TO SECTION 116 OF THE COMPANIES ACT 2016

We wish to announce that the Board of Directors of SCB ("Board") has today received a letter from its major shareholder, Suiwah Holdings Sdn Bhd and parties acting in concert, requesting for SCB to undertake a selective capital reduction and repayment exercise pursuant to Section 116 of the Companies Act 2016 ("Act") ("Offer" or "Proposed SCR"). The Proposed SCR entails a capital repayment which is equivalent to a cash amount of RM2.80 per ordinary share each in SCB held by the entitled shareholders of SCB on an entitlement date to be determined later.

The Offer will remain open for the Board's acceptance until 5.00 p.m. on 11 February 2019. The non-interested directors will deliberate on the Proposed SCR and upon consultation with an Independent Adviser to be appointed will decide on the next course of action. Accordingly, a further announcement will be made in due course.

Please refer to the letter of Offer for further details on the Proposed SCR.

This announcement is dated 25 January 2019.

Source: <http://www.bursamalaysia.com/market/listed-companies/company-announcements/6046249>

HOVID BERHAD

HOVID - DELISTING OF HOVID BERHAD ("HOVID") FROM THE OFFICIAL LIST OF BURSA MALAYSIA SECURITIES BERHAD ("BURSA SECURITIES")

Kindly be advised that the shares of HOVID will be removed from the Official List of Bursa Securities with effect from 9.00 a.m., Monday, 4 February 2019 pursuant to Paragraph 16.06 of the Main Market Listing Requirements.

Source: <http://www.bursamalaysia.com/market/listed-companies/company-announcements/6052189>

MSWG'S VIGILANCE

Listing of PN17 and GN3 companies

PN17 Companies

1. AMTEK HOLDINGS BERHAD
2. APFT BERHAD
3. BERJAYA MEDIA BERHAD
4. BERTAM ALLIANCE BERHAD
5. CHINA AUTOMOBILE PARTS HOLDINGS LIMITED
6. DAYA MATERIALS BERHAD
7. EKA NOODLES BERHAD
8. HB GLOBAL LIMITED
9. KINSTEEL BHD
10. KUANTAN FLOUR MILLS BERHAD
11. MAA GROUP BERHAD
12. MALAYSIA PACIFIC CORPORATION BERHAD
13. MAXWELL INTERNATIONAL HOLDINGS BERHAD
14. MULTI SPORTS HOLDINGS LTD
15. PERISAI PETROLEUM TEKNOLOGI BERHAD
16. RGT BERHAD (fka ASIA KNIGHT 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 REPRIMANDS AND FINES DELOITTE RM2.2 MILLION

THE SECURITIES COMMISSION MALAYSIA (SC) TODAY REPRIMANDED AND IMPOSED PENALTIES ON DELOITTE PLT (DELOITTE) FOR FOUR BREACHES RELATED TO THE RM2.4 BILLION SUKUK MURABAHAH PROGRAMME ISSUED BY BANDAR MALAYSIA SDN BHD (BMSB) IN 2014.

The Securities Commission Malaysia (SC) today reprimanded and imposed penalties on Deloitte PLT (Deloitte) for four breaches related to the RM2.4 billion Sukuk Murabahah Programme issued by Bandar Malaysia Sdn Bhd (BMSB) in 2014.

Deloitte was the statutory auditor for BMSB and 1MDB Real Estate Sdn Bhd (1MDB RE) for their financial years ended 31 March 2015 to 2016. 1MDB RE, now known as TRX City Sdn Bhd, was one of the third party security providers of the Sukuk Murabahah Programme and the immediate holding company of BMSB. 1Malaysia Development Bhd (1MDB) is the holding company of 1MDB RE and BMSB.

Deloitte was found to have committed two breaches under section 276(3)(b) of the *Capital Markets and Services Act 2007 (CMSA)* for failure to immediately report to the SC irregularities which may have a material effect on the ability of BMSB to fulfil its obligations in repaying sukukholders any amount under the Sukuk Murabahah Programme.

The SC finds the breaches committed by Deloitte serious in nature, as it has failed to discharge its statutory obligations despite having included the following in BMSB's and 1MDB RE's Audited Financial Statements (AFS):

1. An Audit Qualification in its Independent Auditors' Report for 1MDB RE for the AFS for the financial year ended 31 March 2015 (AFS 2015) and 31 March 2016 (AFS 2016);
2. An Emphasis of Matter in its Independent Auditors' Report for BMSB's AFS 2015 and AFS 2016; and
3. An Emphasis of Matter in its Independent Auditors' Report for 1MDB RE's AFS 2015 and AFS 2016.

The Audit Qualification in Deloitte's Independent Auditors' Report for 1MDB RE for AFS 2015 and AFS 2016 states that Deloitte was unable to obtain sufficient appropriate audit evidence to determine whether the advances to 1MDB from, among others, the proceeds of the Sukuk Murabahah Programme could be recovered.

The Emphasis of Matter in Deloitte's Independent Auditors' Report for 1MDB RE for AFS 2015 and AFS 2016 as well as BMSB's AFS 2015 and AFS 2016 states that 1MDB is under investigation by several authorities. Deloitte further highlighted in its report for 1MDB RE's AFS 2015 and AFS 2016 that "*the ongoing investigations of 1MDB indicate the existence of material uncertainty which may cast significant doubt about the Group's and the Company's ability to continue as a going concern*".

The SC imposed a total fine of RM2 million for the above breaches, the maximum fine provided under section 354(3)(b) of the CMSA.

On the remaining two breaches under section 276(1) of the CMSA, Deloitte was fined a total of RM200,000 for its failure to send a copy of BMSB's AFS 2015 and 2016 to MTrustee Bhd, within seven days after furnishing the AFS 2015 and 2016 to BMSB.

Source: <https://www.sc.com.my/news/media-releases-and-announcements/sc-reprimands-and-fines-deloitte-rm22-million>

THE SC'S AOB REPRIMANDS AUDITORS FOR FAILURE TO COMPLY WITH INTERNATIONAL STANDARDS ON AUDITING

The Securities Commission Malaysia's (SC) Audit Oversight Board (AOB) has reprimanded Gary Yong Yoon Shing and Jason Sia Sze Wan, partners of Nexia SSY, and Lye Ghee Kang, a partner of CAS Malaysia PLT (the "auditors") for failure to comply with the International Standards on Auditing when auditing their respective public listed company clients.

The auditors failed to design and perform audit procedures to obtain sufficient appropriate audit evidence to support the audit opinion for their clients. In respect of Gary Yong Yoon Shing and Jason Sia Sze Wan, the offence was for two audit clients for the financial year ended 31 December 2012 and in respect of Lye Ghee Kang it was for an audit client for the financial year ended 30 April 2017.

Compliance with auditing standards when auditing the financial statements of a public interest entity is a condition of registration for AOB registrants. Failure to comply with AOB's conditions of registration will result in the breach of section 31Z of the Securities Commission Malaysia Act 1993.

Source: <https://www.sc.com.my/news/media-releases-and-announcements/the-scs-aob-reprimands-auditors-for-failure-to-comply-with-international-standards-on-auditing>

LOCAL NEWS AND DEVELOPMENTS

New anti-graft plan after slew of scandals

<http://www.theedgemarkets.com/article/new-antigraft-plan-after-slew-scandals>

Bank Negara sets up RM1b fund to help lower income earners buy homes

<http://www.theedgemarkets.com/article/bank-neagara-sets-rm1b-fund-help-lower-income-earners-buy-homes>

Happy ending to Genting-Wynn dispute

<http://www.theedgemarkets.com/article/happy-ending-gentingwynn-dispute>

Customs D-G: 2019 SST target of RM22b can be easily surpassed

<http://www.theedgemarkets.com/article/customs-dg-2019-sst-target-rm22b-can-be-easily-surpassed>

Vietnam could overtake Malaysia via CPTPP

<http://www.theedgemarkets.com/article/vietnam-could-overtake-malaysia-cptpp>

GLOBAL NEWS AND DEVELOPMENTS

China to offer some subsidies on cars, appliances to lift weak demand

<https://uk.reuters.com/article/us-china-autos/china-to-offer-some-subsidies-on-cars-appliances-to-lift-weak-demand-idUKKCN1PN06W>

U.S. charges China's Huawei for sanctions violations, technology theft

<https://www.reuters.com/article/us-usa-china-huawei-tech/u-s-charges-chinas-huawei-for-sanctions-violations-technology-theft-idUSKCN1PM2BD>

Fintech companies raised a record \$39.6 billion in 2018: research

<https://www.reuters.com/article/us-fintech-funding/fintech-companies-raised-a-record-39-6-billion-in-2018-research-idUSKCN1PNOEL?il=0>

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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 Suiwah Corporation Bhd and Hovid Bhd.*
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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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