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Shedding light on the AG's powers provided under the law

BY HAFIZ YATIM

Last Wednesday, four senior executives of Serba Dinamik Holdings Bhd were compounded a total of RM13 million by the Securities Commission Malaysia (SC) for submitting a false statement involving revenue of RM6.01 billion for its financial period ended Dec 31, 2020 (FY2020), which had previously been red-flagged by the company's external auditor KPMG.

The decision may come as a surprise as the SC had charged the four in the Kuala Lumpur Sessions Court last December with the purported intention to deceive, make or furnish false or misleading statements or reports to the commission or stock exchange.

The company was charged in the Sessions Court under Section 369(a)(B) of the Capital Markets and Services Act 2007 (CMSA), while its officers were charged under the same Section read together with Section 367(1) of the same Act.

The respective charges were in relation to a revenue figure of RM6.014 billion contained in Serba Dinamik's financial report for the quarter and year ended Dec 31, 2020.

The senior executives charged in the Sessions Court were Serba Dinamik CEO Datuk Dr Mohd Abdul Karim Abdullah, executive director Datuk Syed Nazim Syed Faisal, group chief financial officer Azhan Azmi and vice-president of accounts and finance Muhammad Hafiz Othman.

Rumours senior executives to be compounded

While the compound was issued on Wednesday (April 13), rumours had been swirling since Monday (April 11) over a decision to compound the senior executives.

This followed Serba Dinamik's counsel Mak Lin Kum informing the appellate bench on April 11 (in a separate civil case at the Court of Appeal) that a representation letter was

apparently accepted and the company and individuals were offered to be compounded.

Meanwhile, in the Sessions Court also on April 11, the SC's deputy public prosecutor Hashley Tajudin announced that the company and the four senior executives had sent representation letters to the Attorney-General's (AG) Chambers and they were conditionally accepted.

A representation letter in a criminal case is sent to the public prosecutor by the person or company charged, with the intention of having the charge withdrawn, reduced or due to some other development.

On April 13, the SC issued a statement that Serba Dinamik along with Karim, Syed Nazim, Muhammad Hafiz and Azhan were each given the maximum compound of RM3 million by the SC, while an additional RM1 million compound was issued on Muhammad Hafiz for falsifying the accounting records of the company's subsidiary.

Compounds issued under Section 373(1)

The compounds were issued under Section 373(1) of the CMSA with written consent of the public prosecutor.

Section 373(1) stipulates the chairman of the SC may, with the consent in writing of the public prosecutor, compound any offence committed by any person under Part II, III, VI, VII, X or XII or any regulations made thereunder, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.

The offences Serba Dinamik and its senior

executives were charged with under Section 367 and 369 come under Part VII of the CMSA.

The decision may have raised eyebrows, with some expressing concern about the possible negative implications on the capital market, and also reports that the SC and Bursa Malaysia Securities Bhd (which took separate action against Serba Dinamik) are unhappy with the decision.

However, an understanding of Article 145(3) of the Federal Constitution regarding the powers of the AG may shed some light.

Under Article 145(3), the AG shall have the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a syariah court, a native court or a court martial.

From the reading of Article 145, the AG has the sole or unfettered discretion to charge or discontinue to institute trial against an accused person or company.

This may explain the decision to offer the compound on Serba Dinamik and its senior executives, much to the chagrin of others, instead of going for a full trial.

The Edge has reached out to AG Tan Sri Idrus Harun, whose tenure was extended last month for another year, for comments on the compound on Serba Dinamik and its senior executives. The publication is awaiting his response.

Meanwhile, a quote by former Malaysian Bar president A G Kalidas concerning the AG Chambers' decision not to appeal in the acquittal of former federal territories minister, Datuk Seri Tengku Adnan Tengku Mansor is also possibly apt in this Serba Dinamik case.



Tan Sri Idrus Harun

"Thus, in cases attracting high public interest where the charge is one that strikes in the heart of faith in the administration and its governance, no matter the personality in question, those who they are associated with, or to which divide of party they belong to, it bodes well for the AG or the AG Chambers to provide reasons to the public when it decides to discontinue to prosecute at any stage," Kalidas said at the Opening of the Legal Year 2022 event recently.

He also said that the central tenets of the rule of law, such as transparency, are building blocks which contribute to public trust and confidence.

In the Serba Dinamik saga, an explanation would also be warranted on the decision to compound and not go ahead with the trial in the interest of the investing public and capital markets.

Meanwhile, the Minority Shareholders Watch Group (MSWG), CEO Devanesan Evanson, commenting on the compound, told theedgemarkets that the regulator's decision should be respected.

"MSWG looks forward to the resolution of all issues and the eventual lifting of the suspension," Devanesan added.

However, as reported, Serba Dinamik is not off the hook yet, as Bursa Malaysia had initiated contempt proceedings on five of its directors — including Karim, Syed Nazim, along with Datuk Awang Daud Awang Putera, Datuk Abdul Kadier Sahib and Noor Azri Noor Azerai as contemnors for not abiding with the High Court decision in disclosing the factual finding update done by the company's special independent review auditor Ernst and Young Consulting Sdn Bhd. ■



A G Kalidas