



MINORITY SHAREHOLDERS WATCH GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD

(Incorporated in Malaysia . Registration No. 200001022382 (524989-M))

The Observer

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❖ Two-tier voting and corporate governance

Under the Malaysian Code on Corporate Governance (MCCG), the two-tier voting process is integral in retaining long-tenured independent directors (IDs).

Practice 5.3 of MCCG calls PLCs to cap the tenure of IDs to not more than nine years. If companies choose to retain the services of their IDs after nine years, they should seek shareholders' approval every subsequent year by way of resolution through a two-tier voting process at annual general meetings. But there is a hard-stop at 12 years.

Two-tier voting comprises Tier 1 and Tier 2 votes. Tier 1 is limited to the company's Large Shareholder(s), and Tier 2 comprises shareholders other than Large Shareholders. The two-tier resolution is carried when there is at least a simple majority vote of both Tier 1 and Tier 2.

Over the years, regulators have strengthened board effectiveness by enhancing existing codes, guidelines, and listing requirements.

When the Securities Commission (SC) incorporated the two-tier voting process in MCCG five years ago, it was applicable for retaining IDs with a tenure of beyond 12 years. The SC lowered the tenure limit to nine years in the 2021 revision.

The MCCG advocates best Practices under a 'apply or explain' approach. But the Listing Requirements compel PLCs to disclose the 'apply or explain' approach. PLCs are required to make the mandatory disclosure through the mandated Corporate Governance Reports.

Application of two-tier voting among PLCs

The findings in Corporate Governance Monitor 2022* (CG Monitor 2022) show that 136 companies used the two-tier voting approach to decide on the retention of IDs, compared to 225 companies in 2020.

The number of resolutions voted using the two-tier voting process was also lower at 293 compared to 312 in the previous assessment.

But the situation is not as regressive as it seems. There is a reason for the decline in numbers.

Based on findings in CG Monitor 2022, the decline was attributed to the voluntary resignations of IDs, where 81 long-serving IDs resigned before the general meeting. About half of them had a tenure of longer than 15 years. The mass exodus of long-serving IDs from boardrooms is probably due to the hard-stop limit of 12 years imposed by Bursa Malaysia on the tenure of IDs.

In addition, there were also 18 companies which did not use the two-tier voting process, opting instead to vote using a simple majority in 2021.

On the other hand, if we look at the numbers before the 2021 assessment, there were steady increases in the number of resolutions and companies adopting two-tier voting.

The number of resolutions has increased from 242 in 2018 to 312 in 2020, while the number of companies that adopted two-tier voting increased from 164 to 225 over the same period. The numbers suggest an improved acceptance of two-tier voting among listed issuers.

Year of assessment	2018	2019	2020	2021
The number of CG reports assessed	841	868	864	869
The number of IDs with tenure of more than nine years	785	800	775	734
The number of resolutions voted using the two-tier voting process	242	268	312	293
The number of companies that applied a two-tier voting process	164	181	225	136
The number of long-serving IDs resigned from the board after the introduction of the two-tier voting process	116	52	28	81

Source: Corporate Governance Monitor 2019 - 2022

**CG Monitor 2022 involved the review of the Corporate Governance (CG) Reports of 869 companies with financial year from 1 January 2021 to 31 December 2021. For 466 of these companies with the financial year ending 31 December 2021, the review was based on the companies' adoption of the revised MCCG 2021.*

Minority shareholders should step up

Practice 5.3 of MCCG premises upon the notion that there is attrition in the independence of IDs over time. Familiarity with management after a long service period might compromise the independence and objectivity of IDs, both in perception and actuality.

Therefore, applying two-tier voting prods shareholders and boards to critically review and justify the decision to retain long-serving IDs. The nominating committee and the board should devote sufficient time to review, deliberate and decide the nomination, appointment, and retention of directors. At the same time, minority shareholders should carefully deliberate on the board's justification for retaining these long-serving IDs and vote accordingly.

Often, boards tend to provide broad and generic statements to support the reappointment of long-serving IDs. The boilerplate statement is usually that the ID remained objective and independent despite the long tenure.

Additionally, applying the two-tier voting process empowers minority shareholders as their shares can determine the outcome of tier-2 voting. Apart from ensuring the independence of IDs, two-tier voting can also facilitate board renewal and succession planning.

The application of two-tier voting highlights a paradoxical situation. Generally, well-governed PLCs already have robust processes for assessing the independence and competency of directors. They would likely have a good balance between succession planning and board renewal and are unlikely to have long-tenured IDs on their board.

As such, the retention of IDs beyond nine years, for them, should be an exception.

For companies with long-tenured IDs (sometimes serving the same board for a few decades), minority shareholders should raise more questions related to board renewal and succession planning.

Minority shareholders should carefully consider whether the retention of long-serving IDs is in the company's best interest, especially if those companies are performing poorly.

Lim Cian Yai
Manager, Corporate Monitoring

MSWG AGM/EGM Weekly Watch 26 – 30 December 2022

For this week, the following are the AGMs/EGMs of companies 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	Quick-take
27.12.22 (Tue) 03.30 pm	Cypark Resources Berhad (EGM)	The EGM is to seek greenlight to conduct a private placement exercise of up to 178.94 million shares or equivalent to 30% of its total number of shares to independent third-party investors. Based on the illustrative issue price of 32 sen per Placement Share, Cypark expects to raise a minimum of m RM56.53 million to fund its Danau Tok Uban LSS2 solar photovoltaic plant project.
28.12.22 (Wed) 10.00 am	Pestech International Berhad (EGM)	The purpose of the EGM is to seek shareholders' approval for the proposed disposal by Diamond Power Limited, a 60%-owned indirect subsidiary of Pestech International Berhad, of the 230 kilovolt Kampong Cham-Kratie transmission system to Cambodian Transmission II Co. Ltd for US\$118.00 million.
28.12.22 (Wed) 10.30 am	Saudee Group Berhad (AGM)	Saudee Group recorded a net loss of RM4.4 million in FY2022. Excluding the recognition of fair value loss on other investments of RM7.19 million, the Group would have been profit-making with a net profit of RM2.8 million in FY2022. The Group will continue to grow the distributorship channel on manufacturing-further process products (FPP) segment and increase production capacity to cater the increase in demand of FPP in the local and East Malaysia market.
29.12.22 (Thur) 09.00 am	MAG Holding Berhad (AGM)	In FY2022, MAG group was profitable despite the challenging economic environment. It recorded a revenue of RM137.1 million compared with RM81.5 million for 18 months ended 30 June 2021 (FPE2021). This was mainly contributed by the aquaculture business and food processing businesses. In tandem with the increase in revenue, the Group achieved a pre-tax profit of RM25.3 million in FY2022 compared to RM10.5 million in FPE2021. Due to market uncertainties, MAG expects a challenging outlook in the next financial year. Hence, it will continue to undertake stringent cost

		control measures and improve productivity and efficiency to enhance its profitability.
29.12.22 (Thur) 10.30 am	Nexgram Holdings Berhad (AGM)	<p>The Group recorded lower revenue of RM31.02mil in FYE2022 (FYE2021: RM73.32mil) due to the lower revenue contribution from its medical and logistics segments.</p> <p>In line with the lower revenue, the Group recorded a higher loss before tax (LBT) of RM16.95mil (FYE2021: RM7.95mil). Besides the lower revenue, higher impairment of trade and other receivables, and impairment losses from goodwill on consolidation were the other factors that contributed to the higher LBT.</p>
30.12.22 (Fri) 10.00 am	Prolexus Berhad (AGM)	<p>Prolexus Bhd's FY2022 net profit fell by 45.3% to RM9.4 million from RM17.2 million a year ago, on the back of revenue in increasing 4.4% to RM237.4 million from RM227.5 million a year ago. Higher sales from the apparel and advertising division contributed to the increase in revenue, but this was offset by lower sales of fabric masks that carried a high profit margin, which correspondingly led to a decline in net profit.</p>

One of the points of interest to be raised:

Company	Points/Issues to Be Raised
Cypark Resources Berhad (EGM)	<p>The Proposed Private Placement will entail the issuance of up to 178.94 million new shares representing up to 30% of the total number of issued shares to third-party investor(s) to be identified later (page 2, Circular dated 9 December 2022).</p> <p>a) The Proposed Private Placement will have a huge dilution impact i.e., 30% dilution to the existing shareholders and a discount of not more than 10% for the issuance of placement shares to independent third-party investor(s). Moreover, the share price of Cypark has declined by about 55% year-to-date.</p> <p>Is the Proposed Private Placement a fair fundraising option for the existing shareholders since their interests are at risk of being diluted?</p> <p>b) What is the urgency of raising funds via private placement instead of other funding options since the free cash available for operation amounted to RM130.82 million as of 31 July 2022 (page 7 of the Circular)?</p>

<p>Pestech International Berhad (EGM)</p>	<p>The power transmission charges were fixed at USD12.25m per year for the first three years from the Commercial Operation Date ("COD") and approximately USD18.216m per year from 4th year from COD until the end of the concession period. Diamond Power Limited ("DPL") recorded a profit after tax of USD6.464m, USD8.333m and USD8.602m for FY2020, FY2021 and FY2022 respectively. Also, the disposal consideration of RM520.144m falls within the fair valuation of the project of USD114.20m and USD121.65m, as appraised by the independent valuer using the discounted free cash flow to firm method.</p> <p>How do these reconcile with the significant pro forma net loss on disposal of RM139.395m?</p>
<p>Saudee Group Berhad (AGM)</p>	<p>Impairment of trade receivables is one of the key audit matters highlighted in the Independent Auditors' Report. The Group has significant trade receivables as at 31 July 2022 which include certain amounts that are long outstanding and it is subject to credit risk exposure (page 66 of AR 2022). The ageing profile of the trade receivables past due but not impaired shown a significant increase in the amounts past due of more than 90 days (RM3.3 million in FY2022 compared to RM0.89 million in FY2021) (page 118 of AR 2022).</p> <p>a) What are the reasons that trade receivables more than 90 days past due have increased significantly? Has the Group experienced slower collection of its receivables?</p> <p>b) What are the profiles of the customers with significant outstanding trade receivables?</p>
<p>MAG Holding Berhad (AGM)</p>	<p>The Group has significant concentration of credit risk arising from the amounts owing by 1 customer (FY2021: 2 customers) constituting 92% (FY2021: 99%) of net trade receivables of the Group (Note 30, page 122 of annual report (AR) 2022). This was highlighted by MSWG in the previous year AGM of which the Company responded that it would look into ways to increase its products and brand visibility and look for fresh leads to build a larger customer base as well as using online marketing to create a B2C channel to broaden the customer base.</p> <p>a) Given that the Group has only one customer in FY2022, has the board reviewed the Group's customer concentration risk? If so, how does the Group plan to manage this risk?</p> <p>b) Please provide the name of the single customer.</p> <p>c) To date, has there been any progress in acquiring new customers to broaden the customer base?</p>

<p>Nexgram Holdings Berhad (AGM)</p>	<p>1. During the financial year, the Group has performed impairment assessment of goodwill, by comparing the carrying amount with the recoverable amount and identified an impairment of RM16,959,547 (Page 47 of AR 2022).</p> <p>Which units/segments contributed to the major impairments? What is the likelihood of further impairment of goodwill moving forward?</p> <p>2. Group trade receivables (gross) stood at RM13.603 million as at end of FY 2022. Outstanding allowance for impairment losses was RM7.226 million constituting a sizeable 53.1% of gross trade receivables. Other receivables were RM5.719 million while its allowance for impairment losses was almost 100% (RM5.681 million) (Pages 119 and 121 of AR 2022).</p> <p>Why were there such substantial impairment losses for both types of receivables? What is the probability of recovering fully the impaired amounts?</p>
<p>Prolexus Berhad (AGM)</p>	<p>1. In FY2022, the largest export market for the apparel division was the US which accounted for 49% of total apparel sales in FY2022, followed by Malaysia (19%) and Europe (13%). Whereas in FY2021, Asia was the largest export market contributing 45%, followed by US (33%) and Europe (14%).</p> <p>a) What were the reasons for the notable shift in export markets, in particular Asia, which had previously contributed to more than RM90 million in sales in both FY2020 and FY2021?</p> <p>b) Have the Group's apparel sales been growing in tandem with its key customers such as Under Armour and Nike? Have there been any significant changes in the Group's customer base? Did Prolexus gain or lose any major customers?</p> <p>2. The Group welcomed new board of directors during FY2022, collectively bringing new leadership to the Group backed with years of experience and expertise to spearhead the Group's strategic transformation (page 14 of AR 2022).</p> <p>What are the transformation plans to reposition Prolexus for growth? What is the future business direction of the Group towards enhancement of its earnings base?</p>

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