



MINORITY SHAREHOLDER WATCHDOG GROUP

Badan Pengawas Pemegang Saham Minoriti Berhad

Incorporated in Malaysia * Company No. 524898-M

The Observer

29.05.2015

MESSAGE FROM THE CEO

There were many queries from the various stakeholders including shareholders, company directors and journalists as regards independent non-executive directors (INEDs) in terms of a tenure limit of 9 years. The issue of INEDs has always been a hot and widely debated topic in the realm of corporate governance.

As many may be aware, the Malaysian Code on Corporate Governance 2012 (the Code) recommends a 9-year term limit for INEDs and the Listing Requirements makes reference to this recommendation where the companies must either comply or explain.

The Code provides under Recommendation 3.3 that there must be strong justifications for the board of a PLC to retain as an INED a person who has served in that capacity for more than 9 years. Also, the prior approval of shareholders is required to be sought.

Over the last 3 years, since the introduction of the Code in June 2012, we observed that the following have been practised:-

- INEDs tenure limit of 9 years have been exceeded sometimes as long as 20 or 30 years.
- INEDs have been re-elected over the limit without strong justifications.
- No resolutions were proposed for re-elections.
- Multiple number of INEDs who have exceeded the limit were being put up for re-election simultaneously.

For information, 9 years had been adopted as the recommended yardstick for independent director's tenure in Singapore, South Africa, Hong Kong and the United Kingdom. France had legislated the tenure of 12 years for INEDs after which they no longer qualify as independent directors. Spain had also adopted a tenure of 12 years for independent directors. However, the processes to retain INEDs beyond the tenure varies from country to country.

The ASEAN CG Scorecard adopted by six ASEAN countries recommends the 9-year cap as optimal tenure for independent directors and this has been incorporated into the assessment parameters.

I reiterate that the Code had become effective since June 2012. Based on our 2014 assessment, the average tenure for INEDs was 7.2 years. It would appear that companies by now would have ample time to plan for succession of their long tenure INEDs.

The role of INEDs is primarily in the governance aspect whereas specific company and industry expertise are the domain of the Executives. INEDs are expected to provide the Board with independent views in their oversight function.

Whilst INEDs are expected to understand the business of their company, their expertise and in-depth knowledge in this context is secondary. If the INEDs require deeper understanding of specific industry issues relating to decision-making they have the ability to engage independent advisers at the expense of the company, especially for material corporate transactions.

In a recent study by INSEAD Business School involving 2,000 companies, it was concluded that the optimal average tenure for an independent director is between 7 and 11 years where 9 years is generally the optimal point where the independent director would have accumulated the benefits of company-specific knowledge but has not yet accumulated the costs of entrenchment. However, the study also suggested that regulating a single mandatory term-limit may not be appropriate due to significant variations across the industries and companies' characteristics.

The number of years, which in this case is 9 years, had been acknowledged as a quantitative criterion to serve as a guide. Having said that, MSWG acknowledges that the 9-year tenure is for companies to take the opportunity to think about succession of their management and directors including independent directors.

MSWG recognises that in exceptional cases, INEDs do provide valuable contributions to the company. In such exceptional cases, the board may retain such directors and re-designate them to non-independent directors.

The Code also allows the board to retain INEDs beyond the tenure limit subject to shareholders' approval as mentioned earlier. But I must emphasize that it is only for exceptional cases. It is to be noted that succession planning being a board responsibility, must be in place to ensure a smooth transition where the quality of the board as a whole is not compromised.

We hope that PLCs would take heed of the observations/issues highlighted here and also have in place a proper succession plan for all their directors as well as their senior management staff.

Regards,

Rita

MARKET AND REGULATORY UPDATE

Consumer Price Index Malaysia April 2015

The Consumer Price Index (CPI) for April 2015 increased by 1.8 percent to 111.9 compared with 109.9 in the same month last year. The increase was contributed by the significant rise in the index for Alcoholic Beverages & Tobacco group by 13.0 percent; Health by 5.0 percent ; Restaurants & Hotels

(+4.3 percent); and Food & Non-Alcoholic Beverages (+3.1 percent). These four groups of goods and services contributed 79.3 percent of the increase in CPI. In addition, this index is also influenced by the decrease in the Transport group by 4.8 percent; lower increase in Clothing & Footwear (+0.7 percent); and Recreation Services & Culture (+1.5 percent).

These four groups of goods and services contributed 79.3 percent of the CPI. In addition, this index is influenced by the decrease in the Transport group by 4.8 percent.

Overall, the index for Food & Non-Alcoholic Beverages moved up by 3.1 percent as compared with the index for Non-Food which increased only by 1.2 percent in April 2015 compared with the same month in 2014.

CPI for April 2015 recorded an increased by 0.9 percent as compared to March 2015. CPI for the first four months in 2015 also showed an increase by 0.9 percent as compared to the same period last year.

For more details, click the link

https://www.statistics.gov.my/index.php?r=column/cthemByCat&cat=106&bul_id=MWdLU0M2QjFWUll3cjI5QlpiYzRrdz09&menu_id=bThzTHQxN1ZqMVf6a2l4RkZoNDfkQT09

[Source: DEPARTMENT OF STATISTICS, MALAYSIA (22 May 2015)]

IMD World Competitiveness Yearbook (WCY) 2015 Results

On May 27, 2015, the Institute for Management Development (Switzerland) (IMD) announced the findings of its annual World Competitiveness Yearbook. As part of its ranking of 61 economies for 2015, the IMD World Competitiveness Center looks at several aspects of each country as a place to conduct business.

The IMD World Competitiveness Scoreboard presents the 2015 overall rankings for the 61 economies covered by the WCY. The economies are ranked from the most to the least competitive.

The top 3 are US, Hong Kong and Singapore! "A general analysis of the 2015 ranking shows that the top countries are going back to the basics," said Professor Arturo Bris, Director of the IMD World Competitiveness Center.

Malaysia had dropped to 14th position from 12th position in 2014.

For more details, click the link

<http://www.imd.org/wcc/news-wcy-ranking/>

[Source: IMD website <http://www.imd.org/>]

MSWG's QUICK TAKE ON ONGOING CORPORATE TRANSACTIONS

COCOALAND HOLDINGS BERHAD ("CCHB")

The Board of Directors of CCHB informed that CCHB has received a non-binding indicative offer letter dated 22 May 2015 from Navis Asia VII Management Company Ltd (on behalf of Navis Asia Fund VII, LP) for the proposed acquisition of all the assets and liabilities of CCHB (Proposed Acquisition).

The Board of Directors of CCHB have subsequently deliberated on the Proposed Acquisition by Navis Asia VII Management Company Ltd and unanimously rejected the Offer. The offer price for the Proposed Acquisition was RM377,520,000 (RM2.20 per share).

[Source: CCHB's announcements on Bursa Malaysia's website on 22 May 2015 and 25 May 2015]

MSWG'S COMMENTS:

This is one of the few cases of a proposed acquisition of all assets and liabilities of a PLC where the Board of the PLC had rejected the offer. It is interesting to see why exactly did the Board reject the offer as no reason was stated in the announcement.

We hope that the Board would clarify to the shareholders on the reasons for the rejection.

CHINA AUTOMOBILE PARTS HOLDINGS LIMITED ("CAP")

CAP announced on 15 May 2015 that it has been informed by its major shareholder, namely Guotai International Holdings Limited (Guotai) (Vendor), via its letter dated today that it had entered into a conditional binding heads of agreement (HOA) with Siburan Resources Limited (SBU) (Purchaser), an Australian public-listed company which is a West-Australian based exploration company with tungsten and gold projects in Australia, New Zealand and Papua New Guinea.

The HOA entails the acquisition by SBU of 100,000,000 existing ordinary shares of USD0.10 each (Sale Shares) representing 16.67% of the issued capital of CAP from Guotai International Holding Limited, for a total purchase consideration of RM60,000,000 representing a purchase price of RM0.60 per CAP share.

To satisfy the purchase consideration of RM60,000,000, SBU shall issue to Guotai and/or its nominees 417,360,000 fully paid-up ordinary shares in the capital of SBU or equivalent to 62.5% stake in SBU (after the acquisition) at an issue price of \$0.05 per share, which is equal to the Australian dollar equivalent of RM60,000,000.

Upon completion of the acquisition, one (1) of the current SBU directors will be appointed to the Board of CAP and two (2) persons nominated by the Vendor will be appointed to the Board of SBU.

[Source: CAP's announcement on Bursa Malaysia's website on 15 May 2015]

MSWG'S COMMENTS:

As this corporate development involves a significant shareholding change (16.67%) in CAP, especially with the emergence of a new shareholder (SBU) involved in mining business, the pertinent questions would be:

- (i) How would there be a synergy between SBU and CAP or how would SBU be able to bring value to CAP?
- (ii) Would SBU be the main driver to drive CAP's business and would there be a potential change in business direction considering that China is a big consumer of mining products?
- (iii) Would CAP be able to leverage on SBU to tap the Australian market?

MSWG's WATCHLIST

SCANWOLF CORPORATION BERHAD ("SCB")

The Board of Directors of SCB informed that the company has been served with an Originating Summons dated 18 May 2015 and Notice of Application (Ex-parte) dated 19 May 2015 together with an affidavit in support for an injunction by the Plaintiffs.

The Plaintiffs have sought for the following prayers from the Court

- (a) an order that the 1st Defendant, 2nd Defendant, 3rd Defendant, 4th Defendant, 5th Defendant, 6th Defendant, 7th Defendant, 8th Defendant and 9th Defendant by themselves, through their employees, agents, nominees are prohibited from appointing new directors for the 10th Defendant pending the disposal of the Originating Summons; and
- (b) an order that if any new director of the 10th Defendant company is appointed by the 1st to 9th Defendants or any of them as the directors of the company of the 10th Defendant after 15 May 2015 and before the disposal of the extraordinary general meeting to be held in accordance with the said notice of extraordinary general meeting, the 1st to 10th Defendants by themselves, through their employees, agents, nominees or any other manner, are prohibited from enforcing or to give effect to or cause to be enforced or cause to give effect to any appointment of new directors of the 10th Defendant Company pending the disposal of the Originating Summons;
- (c) costs in the cause; and
- (d) other reliefs that the Court may deem fit and appropriate.

The Court has fixed 27 May 2015 as the hearing date for the Plaintiffs' Notice of Application for an Injunction.

The company will be seeking legal advice from its lawyers.

[Source: SCB's announcement on Bursa Malaysia's website on 22 May 2015]

LOCAL NEWS AND DEVELOPMENTS

Firms don't fully comply with governance code

<http://focusmalaysia.my/Markets/Firms%20don%E2%80%99t%20fully%20comply%20with%20governance%20code>

Listed timber firms not affected by crackdown in Sarawak

<http://www.thestar.com.my/Business/Business-News/2015/05/25/Listed-timber-firms-not-affected-by-crackdown-in-Sarawak/?style=biz>

Scanwolf shareholders file suit to stop board from appointing new directors

<http://www.theedgemarkets.com/my/article/scanwolf-shareholders-file-suit-stop-board-appointing-new-directors?type=Markets>

BCorp's offer for Redtone shares gets muted response

<http://www.thestar.com.my/Business/Business-News/2015/05/22/BCorp-offer-for-Redtone-shares-gets-muted-response/?style=biz>

Petronas: Lower dividend payment to government this year

<http://www.thesundaily.my/news/1429046>

AirAsia: MyCC failed to consider submission on procedural fairness

<http://www.thesundaily.my/news/1429051>

No plans to up Perdana Petroleum offer: Dayang

<http://www.thesundaily.my/news/1427276>

Govt targets annual GDP growth OF 5-6%

<http://www.thesundaily.my/news/1427279>

EPF's 1Q investment income up 20.33% to RM10.63b

<http://www.theedgemarkets.com/my/article/epf%E2%80%99s-1q-investment-income-2033-rm1063b?type=Markets>

International Reserves of Bank Negara Malaysia as at 15 May 2015

http://www.bnm.gov.my/index.php?ch=en_press&pg=en_press_all&ac=3206&lang=en

Consumer Price Index Malaysia April 2015

https://www.statistics.gov.my/index.php?r=column/cthemByCat&cat=106&bul_id=MWdLU0M2QjFWUll3cjI5QlpiYzRrdz09&menu_id=bThzTHQxN1ZqMVf6a2I4RkZoNDFkQT09

Cocoaland gets takeover offer from Navis Asia Fund

<http://www.themalaymailonline.com/money/article/cocoaland-gets-takeover-offer-from-navis-asia-fund>

GLOBAL NEWS AND DEVELOPMENTS

Greece will not make June IMF repayment: interior minister

<http://www.cnn.com/id/102704273>

John Nash, 'A Beautiful Mind' That Changed Economics, Dies With Wife in Crash

<http://www.wsj.com/articles/john-nash-mathematician-in-a-beautiful-mind-dies-in-crash-1432489334>

Japan's April exports climb 8.0% on-year, topping expectations

<http://www.cnn.com/id/102704577>

China's richest man bet his company's shares would fall

http://money.cnn.com/2015/05/22/investing/hanergy-li-shorts-stock/index.html?iid=SF_LN

Which States Are Employee Engagement Winners and Losers?

<http://www.forbes.com/sites/causeintegration/2015/05/17/which-states-are-employee-engagement-winners-and-losers/>

Yellen: Rate hike appropriate this year if economy improves

<http://www.cnbc.com/id/102701500>

Pakistan Unexpectedly Cuts Benchmark Rate to 42-Year Low

<http://www.bloomberg.com/news/articles/2015-05-23/pakistan-cuts-benchmark-rate-to-42-year-low-as-inflation-slows>

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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 China Automobile Parts Holdings Limited.*

Feedback

We welcome your feedback on our newsletter and our work. Email us at mswg.ceo@mswg.org.my with your comments and suggestions.

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