MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia . Registration No. 200001022382 (524989-M))

The Observer

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❖ Repeated breaches despite reprimands and fines

Complying with the applicable legal requirements is a fiduciary duty of directors who sit on the board of companies. More so when they are appointed to the board of publicly listed companies which means more stringent rules and regulations to abide by.

Despite this, some boards may not fully understand or appreciate the importance of their obligations with respect to compliance. Worse still, some boards repeatedly disregard the requirement to comply with the rules and properly discharge their duties, despite repeated fines and reprimands.

This is evident in the case of Pasdec Holdings Berhad (Pasdec) which repeatedly committed the same offences in recent years. Pasdec is a Kuantan-based property developer which counts the Pahang State Government (via Perbadanan Kemajuan Negeri Pahang, PKNP) as one of its major shareholders with a 26.57% stake.

On 1 September 2022, Bursa Malaysia Securities has publicly reprimanded Pasdec and seven of its directors for breaches of the Main Market Listing Requirements (MMLR).

The seven directors including its executive deputy chairman Dato' Sri Tew Kim Thin and group managing director Tew Kim Kiat, were imposed a total fine of RM468,000. Pasdec is also required to carry out a limited review on the Company's quarterly report submission. In addition, all the seven directors and its relevant personnel are required to attend a training programme in relation to compliance with the MMLR pertaining to financial statements.

The breaches

Pasdec and the seven directors were reprimanded by Bursa Malaysia Securities for their breaches of:

- Paragraph 9.23(1) of the MMLR for failing to issue the annual report that included the audited financial statements (AFS) together with the auditors' and directors' reports for financial year ended 31 December 2019 (AR 2019) within the extended timeframe of 31 July 2020 (2019 Delay Breach). Pasdec had only issued the AR 2019 on 27 October 2020, after a delay of 59 market days (2019 Delay Breach).

- Paragraph 9.35A(1)(a) of the MMLR for failing to ensure that Pasdec's fourth quarterly report for FYE 31 December 2019 (Q4FY2019) announced on 28 February 2020 took into account the adjustments stated in the Company's announcement dated 27 October 2020 (2019 Deviation Breach).

  Pasdec had reported an unaudited net loss of RM16.362 million for FY2019 in its announcement of Q4FY2019 quarterly result announced on 28 February 2020. However, it report an audited net loss of RM27.502 million in the AFS for FY2019 announced on 27 October 2020. The difference of RM11.14 million represented a variance of 68.1%.

  The failure to take into account the adjustment was in contravention of Paragraph 9.35A(1)(a) of MMLR that a listed issuer must ensure that each announcement made is factual, clear, unambiguous, accurate, succinct and contains sufficient information to enable investors to make informed investment decisions.

- Paragraph 16.17A of the MMLR for failing to comply with the enforceable undertaking dated 26 August 2019 provided by Pasdec to Bursa Malaysia Securities pursuant to paragraph 16.29(2) of the MMLR (Undertaking).

Notably, this is not the first time that Pasdec and its directors have been sanctioned for the same offences.

Back in November 2020, the Company and Kim Thin (who was then the group managing director of Pasdec) were reprimanded and fined by Bursa Malaysia Securities for the delay in the issuance of Annual Report 2018 as well as their failure to include the adjustment of a 28% profit deviation between the unaudited and audited net profit in FY2017. With that, they had breached Paragraph 9.23(1) and Paragraph 9.16(1)(a)* of the MMLR. Kim Thin was fined RM12,500 over the breaches.

Kim Thin was appointed to the Board of Pasdec on 10 October 2017. He has served as the executive deputy chairman of the Company since 1 September 2019.

**Paragraph 9.16(1)(a) dealt with the requirement that a listed issuer must ensure each announcement is factual, clear, unambiguous, accurate, succinct and contains sufficient information to enable investors to make informed investment decisions. This LR was revised in Bursa Malaysia Securities' amendments to MMLR dated 3 June 2019.*

On another occasion, on 22 July 2020, Pasdec and its board of directors were reprimanded by the Securities Commission Malaysia for breaching Section 354(1)(a) of the Capital Markets and Services Act 2007 (CMSA) read together with Section 246(1)(b) of the CMSA and Paragraph 1.06, Chapter 1, Part 1 of the Prospectus Guidelines.

The misconduct was related to Pasdec, through its Board of Directors, having authorised the issuance of its Abridged Prospectus which contains information from which there is a material omission in respect of the pending approval from the Ministry of Finance (MoF) for PKNP to subscribe for the PKNP Entitlement at the issue price of 35 sen per rights share; and Pasdec had failed to ensure the Abridged Prospectus contained the information that the MoF approval for PKNP to subscribe for the PKNP Entitlement was still pending hence rendering the Abridged Prospectus incomplete and inaccurate.

Its 4 non-independent non-executive directors at the material time of the breach were reprimanded and imposed a total penalty of RM84,000, while the 4 independent non-executive directors were reprimanded for the breach without a penalty. Pasdec's chief executive officer and chairman of the due diligence working group for the rights issue (at the material time of breach) was also reprimanded and fined for RM94,500.

Other than that, listed issuers should also take note that as per Paragraph 9.19(35) of MMLR, PLCs are required to make immediate announcement to Bursa Malaysia when there is any deviation of 10% or more between the profit or loss after tax and non-controlling interest stated in the announced unaudited financial statements and the audited financial statements. They must provide an explanation for the deviation and provide a reconciliation for the deviation.

Conclusion

Pasdec's repeated failures to issue annual reports on time and provide factually correct information to the investing public suggest that something is not right at the Company and the Board level when it came to timely and continuing disclosure.

The sanctions seem to indicate the absence of robust oversight and supervision on the critical disclosures of the Company.

It is inevitable that shareholders will form a view as to the directors' ability to perform their roles and duties in accordance with the rules of the stock exchange.

It is unsure whether Pasdec's team of fellow professionals such as the company secretary, senior management, and principal adviser (for the rights issue exercise) played their roles in a diligent and professional manner. Maybe, the Board was ill-advised. Whatever the situation, the Board must take steps to ensure that the Board does not breach the MMLR and CMSA.

Furthermore, Practice 1.5 of the Malaysian Code of Corporate Governance also guides that the board to be supported by a suitably qualified and competent company secretary to provide sound governance advice, ensure adherence to rules and procedures, and advocate adoption of corporate governance best practices.

Again, it is unsure what the company secretary's role was in relation to the breaches – whether the company secretary did not provide the correct advice or whether such correct advice was provided, but the Board chose to disregard the advice.

Whatever, the actual situation that contributed to the repeated breaches and sanctions, it is timely for the Board to examine itself and its support functions so that it may fulfil its duties and obligations as a responsible corporate citizen. Repeated sanctions do not instil confidence in shareholders.

Devanesan Evanson
Chief Executive Officer

MSWG AGM/EGM Weekly Watch 12 – 16 September 2022

For this week, the following are the AGMs/EGMs of companies which are 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
14.09.22 (Wed) 10.00 am	Datasonic Group Berhad (AGM)	Datasonic's FY2022 revenue remained relatively stable on a y-o-y basis at RM136.4 million versus RM138.4 million a year ago. The Group delivered a net profit of RM10.2 million up from RM7.3 million in FY2021. The larger-than-proportionate increase was chiefly driven by higher operational efficiencies, other income and lower finance costs. Datasonic is poised to benefit from the reopening of borders given that it is the total solution provider of passports to the Immigration Department of Malaysia.
15.09.22 (Thur) 10.00 am	Bintai Kinden Corporation Berhad (AGM)	Bintai Kinden recorded a net profit of RM3.25 million for FY2022 compared to a net loss of RM10.3 million a year ago, mainly attributed to an increase in other income. Its core business, mechanical & electrical engineering segment has been loss making for the past few years. The Group continues to look out for opportunities to diversify its income stream to ensure sustainable growth. Its diversification into energy and property development segments are expected to contribute to the future earnings of the Group.
15.09.22 (Thur) 10.00 am	Land & General Berhad (AGM)	Year-on-year, the Group posted a higher revenue of RM192.92 million for FY2022 from RM134.89 million in FY2021, while profit before tax decreased to RM30.32 million from RM38.26 million for the same period. The property division recorded a revenue of RM161.12 million for FY2022 (FY2021: RM107.91 million) and an operating profit of RM31.64 million for FY2022 (FY2021: RM24.21 million) for the same period.

		The property division's revenue and operating profit were higher compared to the corresponding period of the preceding year mainly due to the construction progress and sales of Seresta and sales of completed units of Sena Parc Phase 1A and 1C, and Astoria Ampang Phase 1.

One of the points of interest to be raised:	
Company	**Points/Issues to Be Raised**
Datasonic Group Berhad (AGM)	Datasonic Smart Solutions Sdn Bhd ("DSSSB"), a wholly-owned subsidiary of Datasonic, was granted Multimedia Super Corridor status which qualified for Pioneer Status incentive for the period from 18 May 2012 to 17 May 2017 whereby the statutory income from approved activities were exempted from tax. The application for an extension of another five years was approved for the years from 18 May 2017 to 17 May 2022. For shareholders to assess the tax impact on DSSSB after the expiry of the pioneer status, please provide the tax exemption amount for each of the past five financial years.
Bintai Kinden Corporation Berhad (AGM)	There is an impairment loss of the group's trade receivables amounting to RM6.1 million (FY2021: RM Nil) in FY2022. These impaired receivables are mainly related to contract customers which are facing difficulties in cash flow. (Note 30 to the financial statements, page 112 of the AR2022) a) How much of these impairments have been recovered to-date? What are the efforts made by management to recover these outstanding trade receivables? b) What percentage of these impairments are expected to be non-recoverable? c) Are impairments expected to increase, going forward?
Land & General Berhad (AGM)	The rising building and construction costs, labour shortage and the recent hike in Overnight Policy Rate ("OPR") to 2.25% by Bank Negara will have a compounding effect on both property developers and house buyers. a) How does the Company plan to mitigate the effect of both rising building and construction costs and labour shortage. b) By how much will the rising building and construction costs as well as labour shortage impact the bottom line of the Company by way of percentages respectively. c) How does the Company plan to position itself to attract house buyers as less demand is expected from house buyers due to the rising OPR as house buyers borrowing cost has gone up?

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DISCLOSURE OF INTERESTS

• *With regard to the companies mentioned, MSWG holds a minimum number of shares in all* the companies covered in this newsletter.

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