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MSWG**MINORITY SHAREHOLDER WATCHDOG GROUP****Badan Pengawas Pemegang Saham Minoriti Berhad**

Incorporated in Malaysia * Company No. 524898-M

The Observer

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MESSAGE FROM THE CEO



The [Malaysian Code on Corporate Governance 2012](#), one of the first deliverables of the **Corporate Governance Blueprint 2011**, was launched at end March 2012. Among the more pertinent best practices are the ones related to Independent Directors (IDs). Given the recent spate of fraudulent and irregular financial acts by some companies, we see the beefing up of IDs as critical. In particular, the recommendation to cap the tenure of IDs at a cumulative period of nine years, beyond which point further appointments need to be justified.

The aspect of limiting individual Directors to a maximum of five (5) directorships in listed companies, as recommended by the Blueprint, was not specifically dealt with in the Code. However, Recommendation 4.1 of the Code says that Boards should obtain the commitment of their members at the time of their appointment, and Directors should notify the Chairman before accepting any new directorships. We hope that Bursa's Listing Requirements would address this matter more specifically.

In addition, Boards will be required to develop and disclose a Board Charter, which is to include the establishment of clear functions reserved for the Board, the Board's roles & responsibilities in discharging its fiduciary and leadership functions, and the formalisation of ethical standards.

Recommendation 3.4 aims for the positions of Chairman and CEO to be held by different individuals. We have always stated that this is a critical element in a company's governance, since separation of these two and very distinct roles promotes accountability and facilitates the division of responsibilities to provide checks and balances. Merging the two is a governance red flag, and rightly so. We would, however, also like to see the Chairman being independent. If not, a company must ensure that a Senior Independent Director is appointed to look after minority interests. This was not addressed in the Code, but it was stated that the Nomination Committee must be chaired by a Senior Independent Director.

Many other recommendations, such as those aimed at beefing up the roles and responsibilities of the board, are contained in the Code. We are looking forward to a new era of disclosure and transparency.

In a separate matter, the arrest of Raymond and Thomas Kwok - the billionaire brothers behind Sun Hung Kai Properties - on charges of corruption, warrants mention. Despite Hong Kong being among the more regulated

of Asia's stock exchanges, misdeeds can and do occur - as the Sun Hung Kai case illustrates. Sun Hung Kai has the most solid financial base in the Hong Kong property sector, was rated A-plus by Standard & Poor's as recently as this month, and was second only to the Hong Kong government's urban renewal authority. Thus, the auditors, shareholders, and other overseers must always be on their guard.

On the local front, a special audit conducted on the accounts of Xian Leng Holdings Berhad, an exporter of Arowana fish, discovered an irregularity in RM85.7 million paid to contractors. See our "**Quick Take**", below, on the findings.

We have also observed the latest series of overtures to consolidate the banking sector. In the longer-term, we hope to see CIMB gain from its capture of RBS' Asian assets, while we anticipate Singapore's DBS would make a positive and valuable contribution to the local banking scene, if its larger stake sought in Alliance Bank comes through.

These truly are exciting times in the Malaysian market and we at MSWG are proud to be playing a significant part in its evolution.

Regards...

Rita

MSWG's Quick Take on Ongoing Corporate Transactions

Xian Leng Holdings Berhad (XIANLNG): A special audit was conducted to ascertain the nature and extent of irregularities after the Board announced that there might be some possible financial irregularities pertaining to capital expenditure. It was found that total payments of RM85.7 million to four (4) contractors were made via cash cheques and there was a lack of corroborative evidence showing that the amount was paid to and/or received by the contractors. Other than the former Managing Director (resigned on 3 April 2012) who authorised the payments, and two former executive directors who signed the cheques, none of the other directors were aware of the issuance of the cash cheques and the high CAPEX. Cash cheques for a substantial portion of the total payments were drawn by a licensed money changer company, in which one of the executive directors has an 80% interest. The related party transactions were not disclosed in the Company's audited financial statements.

MSWG's Comment: *In view of several irregularities and the substantial amount of money involved, the issues at hand are the system of internal controls, the internal and external audit processes and the integrity of data. In this regard, the Audit Oversight Board (AOB) and other regulatory authorities have to look into the matter.*

How could this have happened and why was it not discovered earlier? Pertinent issues are in regard to:

- **How payments could be made via cash cheques, particularly for such substantial amounts. Moreover, the practice is not in compliance with the procedures prescribed in the XIANLNG Group Financial Manual.**
- **The non-disclosure of related party transactions.**
- **The lack of corroborative evidence showing that the amounts were paid to, and/or received by, the contractors.**

Mahajaya Berhad (MAHJAYA): The closing date for the take-over offer to acquire all the remaining shares of MAHJAYA at RM0.85 per MAHJAYA share has been extended to 30 April 2012.

MSWG's Comment: As of 4 April 2012, the joint offerors held 96.25% of the total shares of MAHJAYA, approximately 1% short of the threshold to trigger a compulsory acquisition under Section 222 of the Capital Markets and Services Act. As the offeror has no intention of maintaining MAHJAYA's listing status, trading in the stock was suspended on 27 March 2012, five (5) trading days after the joint offerors had secured more than 90% of the company's total shares.

Asiaep Resources Berhad (ASIAEP): The party that requisitioned an EGM to consider the proposed removal of all ASIAEP Board members, along with the simultaneous nomination of five (5) candidates seeking election to the Board, has made a last minute withdrawal of its requisition due to a new development with respect to the proposed resolutions which were supposed to be tabled at the EGM.

MSWG's Comment: We attended AsiaEP's EGM held on 6 April 2012. The Meeting was called under a requisition made pursuant to Section 144 of the Companies Act, 1965 (CA). The Meeting was held given that the majority of shareholders present voted to proceed with the Meeting, despite the requisitionists withdrawing their requisition at the eleventh-hour, a day before the EGM. The three (3) ordinary resolutions were tabled and voted by poll upon the demand of the Chairman. All the resolutions were not carried, with more than 75% voting against.

Commentaries

CIMB Holdings: Has acquired most of the Asia Pacific cash equities and associated investment banking businesses of the Royal Bank of Scotland (RBS), to become the largest investment banking franchise in Asia outside Japan. Following the acquisition, CIMB will have a new on-shore presence in Taiwan and Australia, as well substantially enlarged operations in Hong Kong, India and China. CIMB will pay RBS a gross amount of approximately RM432 million and inject a further RM418 million in new capital.

Alliance Financial Group Bhd: Singapore's DBS Bank Ltd has obtained Central Bank approval to start talks to buy a stake in Alliance. DBS' subsidiary, DBS Bank Ltd., will commence discussions with Duxton Investments Pte. Ltd., a wholly-owned subsidiary of Temasek Holdings, to acquire its 49 per cent stake in Vertical Theme SB, which holds a 29.1 per cent equity interest in Alliance Financial.

On MSWG's Watchlist...

Proton Holdings Berhad (PROTON) DRB-HICOM Berhad (DRBHCOM): The offer document related to the unconditional mandatory take-over offer by DRBHCOM to acquire all the remaining shares (approximately 49.99%) in PROTON that it does not already own, for a cash offer price of RM5.50 per offer share, was issued on 4 April 2012. The offer's first closing date is 25 April 2012, unless it is extended or revised by the offeror. DRBHCOM does not intend to maintain PROTON's listing status, and intends to undertake the necessary steps to de-list PROTON if it ends up holding more than 75% of PROTON'S total shares. Minority shareholders are advised to read the offer document and also consider the recommendation in the independent advice circular (which will be issued soon), before making a decision on the offer.

MSWG In The News

[MSWG lauds new code on corporate governance](http://biz.thestar.com.my/news/story.asp?file=/2012/3/31/business/11023343&sec=business)

<http://biz.thestar.com.my/news/story.asp?file=/2012/3/31/business/11023343&sec=business>

Local News and Developments

[SC introduces new code on corporate governance](http://www.btimes.com.my/Current_News/BTIMES/articles/jrssc/Article/)

http://www.btimes.com.my/Current_News/BTIMES/articles/jrssc/Article/

[SC lays down the law](http://www.theedgemaalaysia.com/in-the-financial-daily/211230-sc-lays-down-the-law.html)

<http://www.theedgemaalaysia.com/in-the-financial-daily/211230-sc-lays-down-the-law.html>

[SC feels more can be done to attract retail investors](http://biz.thestar.com.my/news/story.asp?file=/2012/3/30/business/11016683&sec=business)

<http://biz.thestar.com.my/news/story.asp?file=/2012/3/30/business/11016683&sec=business>

[Bursa to start exchange-traded bonds](http://biz.thestar.com.my/news/story.asp?file=/2012/3/30/business/11014674&sec=business)

<http://biz.thestar.com.my/news/story.asp?file=/2012/3/30/business/11014674&sec=business>

Global News and Developments

[Citi reaches outside to tap a new lawyer](http://www.businessweek.com/ap/2012-04/D9TTJ57G0.htm)

<http://www.businessweek.com/ap/2012-04/D9TTJ57G0.htm>

[News Corp faces proxy call for independent chairman](http://www.reuters.com/article/2012/04/02/us-newscorp-chairman-idUSBRE83112B20120402)

<http://www.reuters.com/article/2012/04/02/us-newscorp-chairman-idUSBRE83112B20120402>

REMINDER! Upcoming Seminar: Corporate Governance

- The Competitive Advantage (16 April 2012)

MSWG will be presenting the one-day seminar **Corporate Governance - The Competitive Advantage** on 16 April 2012 at the Sime Darby Convention Centre, Kuala Lumpur.

Our event programme, now finalized, includes the following session topics:

- MSWG's MCG Index 2011: Presentation of Findings
- Corporate Governance Scorecards - Substance vs. Form?
- Corporate Governance vs. Corporate Performance - The Role of Independent Directors
- Universal Adoption of CG Best Practices - Opportunities and Challenges for Small and Mid-Cap Companies.

We have brought together a great line-up of corporate leaders from some of Malaysia's top PLCs, in addition to capital market players and regulators, to share their experience and views on how corporate governance best practices and scorecards can be used to achieve a competitive advantage through operational excellence and business sustainability.

As of this afternoon, over 50 CEOs, company directors, and other participants have registered to

attend. Register now and join them at this informative and thought-provoking event!

To register, please [download a programme and registration form](#) from our website (URL: www.mswg.org.my/web/iep.php).

Seminar fees are RM950 and include a complimentary copy of MSWG's **Malaysia Corporate Governance Index 2011 Report** (retail value: RM250).

Feedback

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

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Our mailing address is:

Minority Shareholder Watchdog Group
Tingkat 11, Bangunan KWSP,
No. 3, Changkat Raja Chulan, Off Jalan Raja Chulan
Kuala Lumpur, Wilayah Persekutuan 50200
Malaysia

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