

The

Reporter



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Executive Summary

The integrity of the capital market is a vital element in promoting investor confidence and to ensure vibrancy and liquidity. Market integrity regulation are directed towards—

- ensuring true, fair and timely disclosures to keep investors and the market informed; and
- prohibiting serious market misconduct such as market manipulation and insider dealing.

In this regard, auditors and accountants are regarded as gatekeepers to the securities market because the capital formation process hinges on the willingness of investors to make investments in the securities of public-listed companies. Investors commit their personal funds to companies relying, among others, on the board's representation and the auditor's opinion that a company's financial statements fairly reflect the financial position, results of operations, and cash flows of a company. The behaviour and ethics of boards are also important in creating entities that investors have confidence in.

In a market-led financial system, market discipline has come to play a greater role in maintaining market integrity and ensuring financial stability. The Securities Commission Malaysia (SC)'s supervision and oversight over intermediaries emphasised their compliance with securities laws and regulations because this forms the essential foundation of fair and orderly markets as well as investor protection.

During this quarter, the Audit Oversight Board imposed administrative sanctions against two auditors for failing to comply with the International Standards on Auditing (ISAs) while auditing the financial statements of public-interest entities (PIEs).

A former Chief Executive Officer of Malaysia Pacific Corporation Bhd (MPAC) was charged for being involved in insider trading of MPAC shares.

The quarter also saw the SC successfully defending the conviction recorded by the Sessions Court in 2011 against two Executive Directors of Impetus Consolidated Sdn Bhd, for their involvement in the manipulation of Suremax Group Bhd shares. SC had also imposed a fine of RM100,000 against AmInvestment Bank Bhd for allowing seven unlicensed person to carry out regulated activities.

Investor confidence to ensure vibrancy and liquidity

Auditors and accountants as gatekeepers to securities market

Role of market discipline in integrity and financial stability

Administrative actions against auditors

Conviction against manipulation and imposition of fine

Penalty imposed on AmInvestment Bank

In January 2014, AmInvestment Bank Bhd (AIBB) was found to be in breach of paragraph 7.02(9) of the SC's *Licensing Handbook* for its failure to ensure that the carrying on of any licensed regulated activity on its behalf is performed by persons who are appropriately licensed. AIBB has allowed seven unlicensed persons to carry out regulated activities, such as soliciting fund management clients and receiving trading orders directly from such clients, which require a Capital Markets Services Representative's Licence from the SC. The SC thus imposed a RM100,000 fine against AIBB for the said breach.

SC charges former CEO for insider trading

On 10 January 2014, the SC charged Dato' Ch'ng Chong Poh, the former Chief Executive Officer (CEO) of Malaysia Pacific Corporation Bhd (MPAC) with 58 counts of insider trading of MPAC shares under section 188(2) of the *Capital Markets and Services Act 2007* (CMSA).

Dato' Ch'ng is alleged to have acquired the MPAC shares between 14 May 2008 and 20 August 2008, ahead of the entering into of a multi-million ringgit joint venture project between Oriental Pearl City Properties Sdn Bhd, a wholly-owned subsidiary of MPAC and Amanahraya Development Sdn Bhd (ADSB), a wholly-owned subsidiary of Amanah Raya Bhd. The project was entered into to undertake and manage several projects in the Iskandar Development Region in Johor. He claimed trial to all 58 charges and bail was set at RM300,000 with one surety. Dato' Ch'ng was also required to surrender his passport to the Court.

High Court upholds conviction for manipulation of shares

On 18 March 2014, the High Court dismissed the appeals by Dato' Phillip Wong Chee Keong and Francis Bun Lit Chun and affirmed the convictions imposed by the Sessions Court for their involvement in the manipulation of Suremax Group Berhad (Suremax) shares, between 24 November 2004 and 22 March 2005.

Dato' Phillip and Francis Bun, who were charged in 2005, were convicted by the Sessions Court in 2011 under section 84 of the *Securities Industry Act 1983* (SIA) for creating a misleading appearance of active trading in Suremax shares on Bursa Malaysia. They were found to have executed trades in nine accounts that did not involve any change in the beneficial ownership of the said shares.

The High Court maintained the sentence of two years' imprisonment and a fine of RM3 million against Dato' Phillip Wong Chee Keong, but reduced the imprisonment sentence against Francis Bun from three months' imprisonment to one day, whilst maintaining the fine of RM2 million. The SC has filed an appeal against the sentence imposed by the High Court against Francis Bun.

Audit Oversight Board sanctions

The Audit Oversight Board (AOB) in February 2014, publicly reprimanded two registered auditors, Lim Kok Beng of Ong Boon Bah & Co and Chan Kee Hwa of Khoo Wong & Chan for failing to comply with the International Standards on Auditing (ISAs) while auditing the financial statements of public-interest entities (PIEs).

The two auditors were also found to have breached the registration conditions imposed by the AOB under section 31O(4) of the *Securities Commission Act 1993* (SCA).

In addition to the reprimand, a monetary penalty of RM10,000 was imposed on Lim Kok Beng of Ong Boon Bah & Co. The AOB had also requested the audit firm (which continued to audit the PIE) to furnish evidences from the audit working papers to prove that all significant deficiencies were rectified in the subsequent year audit.

The two auditors are the first to be reprimanded by the AOB in 2014 and AOB had in previous years taken action against eight individual auditors for failing to comply with auditing and ethical standards. The AOB emphasises that the reprimands do not necessarily suggest that the financial statements of the affected PIEs contained any material error or their financial reporting controls are weak.

The details of the sanctions are available at the SC's website.

Application for judicial review filed against SC

In January 2014, an application for leave for judicial review was filed against the SC by Crowe Horwath. The application for leave for judicial review (herein referred to as the "First Application for Judicial Review") was in respect of AOB's inquiry against Lee Kok Wai of Crowe Horwath. AOB is in the midst of conducting an inquiry against Lee in his capacity of engagement partner in the audit of Silver Bird Group Bhd's financial statement for the financial year ended 31 October 2010.

The Court on 8 February 2014 dismissed the 1st Application for Judicial Review. Subsequent to this, Crowe Horwath and Lee filed another application for leave for judicial review against the SC in the High Court on 20 March 2014 (herein referred to as the "Second Application for Judicial Review"). On 7 April 2014, the High Court dismissed the second Application for Judicial Review with costs.

Crowe Horwath and Lee have appealed against the decisions of the Court with respect to both the first and second Application for Judicial Review. The Court of Appeal is scheduled to hear the appeal on 7 July 2014.

Following this, Crowe Horwath and Lee have also filed an application with the Court on 23 April 2014 for stay of AOB's inquiry, decision and notification of the decision of the said inquiry pending their appeal.

Prima facie case made out against external auditor for disclosure offence

On 9 January 2014, the Kuala Lumpur Sessions Court held that the prosecution had established a prima facie case against William Yue Chi Kin, and ordered him to enter his defence on the charge of abetting United U-li Corporation Bhd (United U-li), a public-listed company in making a misleading statement to Bursa Malaysia in the financial statement of the company for the year ended 31 December 2004.

William Yue was charged at the Kuala Lumpur Sessions Court in 2009 and he was at the material time the engaging partner of the Roger Yue, Tan & Associates which audited financial statements of United U-li for the year ended 31 December 2004. United U-li, was at the material time, a public-listed company.

The SC called 15 witnesses to prove its case and the court is currently in the midst of hearing the accused's testimony.

Enforcement Highlights

Ongoing trials from January – March 2014

Sessions Court:

- January 2014 – *PP v Dato' Ch'ng Poh @ Ch'ng Chong Poh*. Dato' Ch'ng was charged with 58 counts of insider trading for trading in Malaysian Pacific Corporation Bhd (MPAC) shares whilst in possession of material non-public information, an offence under section 188(2)(a) CMSA. At the time of the commission of the offence, the accused was the CEO of MPAC. The accused pleaded not guilty to the charges and was granted a bail of RM300,000 with one surety and for his passport to be surrendered to the court.
- April 2014 – *PP v William Yue Chi Kin*. William Yue, the engaging and signing partner of the audit firm which audited United U-Li Corporation Bhd (U-Li)'s financial statements for the financial year ended 31 December 2004, was charged in 2009 under section 122B(b)(bb) of the SIA read together with section 122C(c) of the same Act for abetting U-Li in making a misleading statement to Bursa Malaysia. On 9 January 2014, the Court held that the Prosecution had made out a prima facie case against the accused on the offence charged, and called upon the accused to enter his defence. The case has been fixed for continued hearing of the defence case on 15, 16 and 29 May 2014.
- April 2014 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. On 7 June 2011, Norhamzah, then Managing Director of Kosmo Technology Industrial Bhd (Kosmo Tech), was charged with furnishing false statements in eight of Kosmo Tech's quarterly reports for financial years 2006 and 2007 to Bursa Malaysia. Earlier, on 26 May 2011, Mohd Azham, a director of Kosmo Tech was also charged with furnishing false statements in eight of Kosmo Tech's quarterly reports to Bursa Malaysia Bhd while Lim Hai Loon, the company's accounts manager was charged with abetting the company to furnish the false statements. The trial proceeded on 24 and 25 February where the prosecution called three witnesses. The case has been fixed for continued hearing on 8, 9, 19 and 20 May, and 5, 6 and 16 June 2014.
- April 2014 – *PP v Ngu Tieng Ung*. Ngu was charged in 2005 with two counts of securities fraud under section 87A(b) SIA and one count of criminal breach of trust under section 409 of the *Penal Code*, and an alternative charge to all three charges for criminal breach of trust. Ngu, a director of Pancaran Ikrab Bhd (PIB) during the material time, was alleged to have misappropriated RM37 million of Pancaran Ikrab Bhd's funds between 8 October and 21 October 1997. On 20 August 2013, the Sessions Court ordered Ngu to enter his defence after the SC had successfully proven a prima facie case for the alternative charge of criminal breach of trust of RM37 million under section 409 of the *Penal Code*. The case has been fixed for continued hearing on 28 April 2014.
- March 2014 – *PP v Low Thiam Hock*. The Accused was charged in 1999 for creating a misleading appearance with respect to the price of Repco Holdings Bhd (Repco) shares on 3 December 1997. He was alleged to have committed the offence by instructing a dealer's representative of Sime Securities Sdn Bhd to purchase 227 lots of Repco shares by taking up any offer prices of the said shares offered by the sellers on the then Kuala Lumpur Stock Exchange. This case was reverted to the Sessions Court on 28 February 2013 for the accused to enter his defence after the Court of Appeal allowed the SC's appeal against the acquittal of the accused at the end of the Prosecution's case in 2006. The defence case began on 18 October 2013 with the testimony of the accused. The trial is scheduled to resume on 7, 8 and 9 May and 19, 20 June 2014.

Appeals and applications

High Court

- April 2014 – *Phillip Wong Chee Keong and Bun Lit Chun v PP* – Dato’ Phillip, 52, Francis Bun Lit Chun, 43, were charged on 25 October 2005 for the manipulation of Suremax Group Bhd shares between 24 November 2004 and 22 March 2005, an offence under section 84 of the SIA. (See full article on page 2).

Court of Appeal

- March 2014 – *Wahid Ali Kassim Ali v PP*. On 30 June 2009, Wahid Ali, a director and fund manager of Aiwanna Manage Assets Sdn Bhd (Aiwanna) at the material time, was convicted of three charges under section 87A(c) of the SIA for omitting to provide material facts in the statements of account to its client, Eastern Pacific Industrial Corporation Bhd (EPIC). For each charge, he was sentenced to one year’s imprisonment (to be served concurrently) and a fine of RM1 million (in default of the total RM3 million fine, one year’s imprisonment). He then appealed to the High Court against the conviction and sentence imposed by the Sessions Court. On 14 January 2013, the High Court dismissed Wahid Ali’s appeal against conviction and sentence and upheld the decision of the Sessions Court. Pending his appeal to the Court of Appeal against the said High Court decision, Wahid Ali was ordered to execute a bond of RM1 million to stay the execution of the sentence. The appeal has been fixed for hearing on 3 July 2014.
- March 2014 – *Dato’ Sreesanthan all Eliathamby v PP*. On 20 December 2012, the Sessions Court allowed the accused’s application to refer various constitutional issues relating to provisions on the SC’s investigative powers, pre-trial conference and consent to charge by a Deputy Public Prosecutor for determination by the High Court and stayed the main proceedings pending the determination of the said issues. On 27 November 2013, the High Court determined the constitutional issues in the SC’s favour and dismissed the accused’s application to strike out the charges against him due to the unconstitutionality of the provisions challenged. The accused has filed an appeal to the Court of Appeal against the decision of the High Court. The matter has been fixed for hearing of the constitutional issues by the Court of Appeal on 11 July 2014.

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