

CONTENTS

- 2 Court of Appeal upholds jail sentence on former directors of MEMS
- 2 Former Transmile directors jailed and fined for misleading disclosure
- 3 Two former directors of Multicode jailed and fined for CBT
- 3 INIX's former CEO and directors fined for submitting false statements
- 4 Rantau Simfoni director charged for trading in futures contracts without a licence
- 4 Kenanga Deutsche Futures fined
- 5 Enforcement highlights

Executive Summary

Disclosure and transparency are essential elements of a robust corporate governance framework. Boards, as active and responsible fiduciaries, have the obligation to ensure timely and meaningful disclosure of information to enable shareholders and investors to make informed investment decisions.

In this regard, directors or officers of companies who fail to fulfil this obligation must be taken to task. The imposition of custodial sentences on directors for providing or authorising the furnishing of misleading statements serves as a timely reminder on the importance of full and frank disclosure and transparency. This was seen in MEMS Technology Bhd, Transmile Group Bhd and INIX Technologies Bhd.

Where directors grossly misuse their position and influence to defraud the company and shareholders, criminal prosecution will be brought against them. In the case of Multicode Electronics Industries (M) Bhd, the Sessions Court imposed custodial sentences against two of its former directors for committing criminal breach of trust.

Companies and individuals who are licensed to undertake capital market activities must satisfy the fit and proper criteria as stipulated under sections 64(1) and 65(1) of the *Capital Markets and Services Act 2007* (CMSA) and the *Licensing Handbook*. On 28 October 2011, a director in Rantau Simfoni Sdn Bhd was charged for trading in futures contracts without a licence.

As part of the SC's ongoing supervisory efforts over licensed intermediaries, the SC took administrative action against Kenanga Deutsche Futures Sdn Bhd, a futures broker, for failure to comply with anti-money laundering requirements as required by the SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries*.

Boards have the obligation to ensure timely and meaningful disclosure of information

Imposition of custodial sentences on directors providing/authorising the furnishing of misleading statements

Criminal prosecution against directors for committing criminal breach of trust.

Director charged for trading in futures contracts without a licence

Administrative action for failure to comply with anti-money laundering requirements

Court of Appeal upholds jail sentence on former directors of MEMS

On 4 November 2011, the Court of Appeal upheld a six-month jail term imposed by the High Court on two former directors of MEMS Technology Bhd (MEMS), for authorising the furnishing of a misleading statement to Bursa Malaysia in MEMS' Condensed Consolidated Income Statement for the 12-month period ended 31 July 2007.

Ooi Boon Leong and Tan Yeow Teck had in February 2010 pleaded guilty to charges of providing misleading statements to Bursa Malaysia in relation to the company's reported revenue of RM73.4 million which contained over RM30 million of fictitious sales. They were fined RM300,000 each by the Sessions Court upon which the Public Prosecutor appealed to the High Court on the ground that the sentence was manifestly inadequate.

In enhancing the sentence, High Court Judge Justice Dato Hj Ghazali Cha had cited public interest as a reason for the enhanced sentence, pointing out that the offence affected the integrity of the capital market. Ooi and Tan then appealed against the sentence.

The Court of Appeal agreed with the decision of the High Court judge to impose a six-month jail term as a mere fine did not adequately reflect the seriousness of the offence. In reaching its decision, the Court of Appeal emphasised that knowingly furnishing misleading information to the stock exchange is a serious offence as potential investors, both foreign and local, rely on such information in making investment decisions. In addition, the Court of Appeal stated that a custodial sentence was necessary to preserve investor confidence and deter potential wrongdoers.

Former Transmile directors jailed and fined for misleading disclosure

The Kuala Lumpur Sessions Court convicted two former independent directors of Transmile Group Berhad (Transmile) for having authorised the furnishing of a misleading statement to Bursa Malaysia in Transmile's Quarterly Report on Unaudited Consolidated Results for the Financial Year Ended 31 December 2006 under section 122B(b)(bb) of the *Securities Industry Act 1983* (SIA). They were each sentenced to a year imprisonment and a fine of RM300,000 (in default six months imprisonment).

The misleading statement was in relation to the unaudited revenue figures, which were reported to the stock exchange for both the fourth quarter of 2006, as well as the cumulative period of 2006.

Both directors, Jimmy Chin Kim Feung and Shukri Sheikh Abdul Tawab, charged in 2007, were also members of the Audit Committee of Transmile at the material time.

In passing the sentence, the Sessions Court Judge stressed that public interest is paramount, and that the audit committee is essential in the corporate governance of a company.

Chin and Shukri have both appealed against the Sessions Court's decision and the sentence of imprisonment has been stayed pending the disposal of their appeal at the High Court.

Two former directors of Multicode jailed and fined for CBT

Gordon Toh Chun Toh and Dato' Abul Hassan Mohamed Rashid, former directors of Multicode Electronics Industries (M) Bhd (Multicode), were convicted by the Sessions Court of committing criminal breach of trust (CBT) under section 409 of the *Penal Code* involving over RM26 million of funds belonging to the company.

Gordon was sentenced to 12 years imprisonment and a fine of RM1 million (in default two years imprisonment) while Dato' Abul received six years imprisonment.

The Sessions Court Judge stressed that the sentence must send a strong message to both offenders and potential offenders that crime does not pay. The Judge also pointed out that as a result of the offence, Multicode, a public-listed company lost millions which in turn caused its public shareholders to suffer as well.

Gordon and Dato' Abul Hassan had been charged at the Kuala Lumpur Sessions Court back in March 2009 with having engaged in an act which operated as a fraud on Multicode by causing the uplifting of fixed deposits belonging to the company, under section 87A of the SIA. A charge of CBT was also preferred in the alternative.

INIX's former CEO and directors fined for submitting false statements

The Kuala Lumpur Sessions Court convicted and fined the former chief executive officer, two directors and a senior executive of INIX Technologies Bhd (INIX) for providing false statements to Bursa Malaysia Securities Bhd.

Jimmy Tok Soon Guan, Mok Chin Fan, Cheong Kok Yai and Normah Sapar pleaded guilty to charges of providing false statements to the stock exchange in INIX's four quarterly reports for the financial year ended 31 July 2006 under Section 122B(b)(bb) SIA. The false statement was in relation to the revenue figures contained in the said quarterly reports. In addition, they were also convicted for the issuance of INIX's prospectus which contained false information pertaining to INIX's revenue for the six-month financial period ended 31 January 2005.

Jimmy, former CEO and Executive Director of INIX, was sentenced to a total fine of RM700,000 (in default between 12 to 18 months imprisonment) for four offences under section 122B SIA and RM400,000 (in default two years imprisonment) for the offence under section 55 of the *Securities Commission Act 1993* (SCA).

Mok, a substantial shareholder and former director of INIX and Cheong, former Executive Director and Chief Technical Officer of INIX, were both fined RM50,000 (in default six months imprisonment) each for the four offences under section 122B SIA and RM125,000 (in default one year imprisonment) for the offence under section 55 SCA.

Normah, an accounts executive of INIX, who was convicted for abetting Jimmy, was fined RM50,000 (in default six months imprisonment) each for the four offences under section 122B SIA and RM150,000 for the offence under section 55 SCA. She was also convicted and fined for failing to provide a statement to the SC in the course of the investigation into the offences committed involving INIX (see page 5)

Following the investigation into INIX's financial affairs, Normah, Chong Poh Ying and Helen Soon Shiau Yen were charged under section 134(5)(a) of the SCA for failing to appear before the SC's Investigation Officer to provide an oral statement. Normah and Helen were Accounts Executives of INIX at the material time while Chong was the sole proprietor of the company said to be the purported supplier of INIX. It is the SC's belief that all three individuals would be able to provide cogent evidence concerning fictitious sales recorded by INIX in its accounting records.

On 7 October 2011, Normah, Chong and Helen were convicted after pleading guilty to the said charges. Normah was fined RM25,000 each for two offences under the said section while Helen was fined RM20,000 for the offence. Chong was fined RM25,000 for the offence. This is the first time that the SC has pursued action under section 134 of the SCA.

Rantau Simfoni director charged for trading in futures contracts without a licence

On 28 October 2011, Zamani Hamdan, a company director was charged by the SC at the Kuala Lumpur Sessions Court for trading in futures contracts without a licence.

Zamani was charged under section 59(1) of the *Capital Markets and Services Act 2007* (CMSA), for holding himself out as a representative of an investment bank to trade in futures contracts without holding the requisite Capital Markets Services Representative's Licence (CMSRL). Alternatively, he was also charged under section 58(1), read together with section 367(1) of the same Act, for carrying on the business of trading in futures contracts without a Capital Markets Services Licence (CMSL) through his company, Rantau Simfoni Sdn Bhd.

The accused claimed trial to the charges and the court granted him bail of RM100,000, with the condition that he is to report to a police station periodically.

The charge under section 59(1) of the CMSA carries a maximum fine of RM5 million, five years imprisonment or both. A conviction under section 58(1) of the CMSA attracts a maximum fine of RM10 million, 10 years imprisonment or both.

Kenanga Deutsche Futures fined

Kenanga Deutsche Futures Sdn Bhd (KDF) was fined RM200,000 for failure to comply with the *Licensing Handbook* and the SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries* (AML Guidelines).

The sanction was imposed on KDF for its failure to identify and report suspicious transactions when it facilitated the transfer of a client's funds to third parties, failure to put in place an effective system for detecting and reporting suspicious transactions, failure to provide adequate training on requirements of AML Guidelines and failure to conduct independent audit on its compliance programme. In addition to that, KDF had also allowed an unlicensed person to carry out regulated activity.

Enforcement Highlights

New Criminal Prosecution

- October 2011 – PP v Zamani Hamdan. The accused was charged on 28 October 2011 under section 59(1) of the CMSA for holding himself out as a representative of an investment bank to trade in futures contracts without holding the requisite licence. Zamani was also charged under section 58(1) of the same Act for carrying on the business of trading in futures contracts without a licence through his company, Rantau Simfoni. The case was fixed for mention on 9 February 2012.

Convictions

- September 2011 – PP v Gordon Toh Chun Toh and Abul Hassan Mohamed Rashid. On 22 September 2011, Gordon and Abul were convicted by the Sessions Court for committing criminal breach of trust under section 409 of the Penal Code involving over RM26 million of funds belonging to the company. Gordon was sentenced to 12 years imprisonment and a fine of RM1 million (in default two years imprisonment) while Abul was sentenced to six years imprisonment. (see article on page 3)
- September 2011: PP v Mok Chin Fan, Jimmy Tok Soon Guan, Cheong Kok Yai and Normah Sapar. Jimmy Tok Soon Guan, Mok Chin Fan, Cheong Kok Yai and Normah were convicted under section 122B(b)(bb) of the SIA for providing false statements to the stock exchange in INIX's four quarterly reports for the financial year ended 31 July 2006. They were also convicted for the issuance of INIX's prospectus which contained false information pertaining to INIX's revenue for the six month financial period ended 31 January 2005 under section 55 of the SCA. Jimmy was sentenced to a total fine of RM700,000 (in default between 12 to 18 months imprisonment) for four offences under section 122B SIA and RM400,000 (in default two years imprisonment) for the offence under section 55 SCA. Mok and Cheong were both fined RM50,000 (in default six months imprisonment) each for the four offences under section 122B SIA and RM125,000 (in default one year imprisonment) each for the offence under section 55 SCA. Normah was fined RM50,000 (in default six months imprisonment) each for the four offences under section 122B SIA and RM150,000 for the offence under section 55 SCA. (see article on page 3)
- September 2011: PP v Chong Poh Ying, Helen Soon Shiau Yen, and Normah Sapar. Chong, Helen and Normah were convicted under section 134(5)(a) of the SCA after pleading guilty to charges for failing to appear at the SC in order to provide a statement in connection with the SC's investigation into INIX's affairs. Chong and Helen were fined RM25,000 and RM20,000 respectively (in default three months imprisonment). Normah was fined a total of RM50,000 for the two charges under section 134(5)(a) of the SCA (in default three months imprisonment for each offence). (see article on page 3)
- September 2011 – PP v Chin Khim Feung and Shukri Sheikh Abdul Tawab. Chin and Shukri, former Independent Non-Executive Directors of Transmile Group Bhd (Transmile) were found guilty of having knowingly authorised the furnishing of misleading statements to Bursa Malaysia. The misleading statement was in relation to Transmile's revenue and was contained in Transmile's Quarterly Report on Unaudited Consolidated Results for the Financial Year Ended 31 December 2006. They were both sentenced to one year imprisonment and a fine of RM300,000 (in default six months imprisonment). (see article on page 2)
- November 2011 (Appeal at Court of Appeal) – PP v Ooi Boon Leong and Tan Yeow Teck. On 4 November 2011, Ooi and Tan's appeal against the High Court's decision to impose a six month imprisonment term in addition to the fine of RM300,000 imposed by the Sessions Court was dismissed by the Court of Appeal. (see article on page 2)

Ongoing Trials

- October 2011 – *PP v Mohd Adam Che Harun*. The trial against Mohd Adam Che Harun continued in October. In 2007, Mohd Adam, the director of Megan Media Holdings Bhd (MMHB) was charged under section 122B(a)(bb) of the SIA read together with section 122(1) SIA for allegedly submitting a false statement to Bursa Malaysia. The false statement consisted of the inflated revenue in MMHB's quarterly financial statements for the financial periods ended 31 July 2006, 31 October 2006 and 31 January 2007 respectively. Further trial dates have been fixed for 29 February 2012 and 1 March 2012.
- October–November 2011 – *PP v Ravandran and Kenneth Tan Kam San*. The trial against Ravandran and Kenneth continued. They were both charged in 2004 under section 32B(1) of the SCA for their alleged false reports to the SC concerning the utilisation of Kiara Emas Asia Industriest Bhd's rights issue proceeds. Further trial dates have been fixed for 2 and 3 February 2012.
- October 2011 – *PP v William Yue Chi Kun*. The trial against William Yue continued between September and December 2011. 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 under section 122B(b)(bb) of the SIA for abetting U-Li in submitting a false report to Bursa Malaysia. Further trial dates have been fixed for 7, 21, 22, 27 and 28 March 2012.
- November 2011 – *PP v Alan Rajendram and Eswaramoorthy Pillay*. The trial against Alan and Eswaramoorthy continued between the months of September and December. The SC charged Alan, a former director of LFE Corporation Bhd (LFE) for committing securities fraud under section 87A(b) SIA. Alan has been charged for defrauding LFE by using RM9 million of LFE's monies to finance his purchase of LFE shares. At the same time, Alan was also charged with eight other charges under the SIA, CMSA and the Penal Code for cheating and committing CBT. Pillay, Alan's former business partner was charged under section 87A(b) read together with section 122(C)(c) SIA for allegedly abetting Alan in the offence, as well as for CBT. Further trial dates have been fixed for 8–10 and 20–24 February 2012.
- November 2011 – *PP v Gan Boon Aun and Khiuddin Mohd*. Both accused were ordered to enter their defence on 16 March 2011 with respect to the alternative charge under section 122B(a)(bb) of the SIA read together with section 122(1) of the SIA. On 21 June 2011, the accused persons applied to the Sessions Court to refer to the High Court a constitutional issue, that section 122(1) of the SIA is ultra vires the Federal Constitution. The Sessions Court allowed the referral application. On 14 November 2011, the High Court ruled that section 122(1) is ultra vires the Federal Constitution. Nevertheless, the decision of the High Court has been stayed pending the disposal of the Prosecution's appeal to the Court of Appeal. In the meantime, the trial at the Sessions Court has been stayed.
- November 2011 – *PP v Ngu Tieng Ung*. In 2010, Ngu was convicted on two counts of securities fraud under section 87A(b) of the SIA after he pleaded guilty to utilising RM15.5 million of Pancaran Ikrab Berhad (PIB)'s funds to purchase a controlling block of shares in the company. In sentencing Ngu, the court took into consideration the third charge for CBT of RM21 million which was preferred against him. For each offence, Ngu was sentenced to one day imprisonment (to run concurrently) and a fine of RM1 million. The Prosecution subsequently filed an appeal against the inadequacy of the sentence to the High Court and on 26 August 2010, the High Court held that Ngu's plea was conditional. The case was remitted to the Sessions Court for retrial. Trial dates have been fixed for 27–28 February 2012, 21–23 March 2012, 3–5 and 26–27 April 2012, 9–11 and 29–30 May 2012.

- November 2011 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. An application was made in this case by Alice Poh to the High Court to strike out the charge against her on the basis that the charge is baseless. On 10 November 2011, the High Court dismissed the application and ordered that the trial commence at the Sessions Court. Alice, a businesswoman, was charged under section 87A(a) of the SIA for allegedly using a scheme to defraud Liqua by causing Liqua Health Marketing (M) Sdn Bhd to enter into a Distribution Agreement (DA) with Wynsum, when in fact, the DA was to facilitate the transfer of RM12 million belonging to LHMM to Wynsum's bank account, whereby RM9.75 million of the said money was utilised to finance the purchase of 45,969,450 units of Liqua shares. Further trial dates have been fixed for 29 February 2012, 1–2 and 27–29 March 2012, 7–8 and 21–22 May 2012 and 18–21 June 2012.
- November 2011 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. Trial commenced against the accused persons at the Sessions Court on 15 November 2011. On 7 June 2011, Norhamzah Nordin, the Managing Director of Kosmo Technology Industrial Bhd (Kosmo Tech), a company once listed on the Second Board of Bursa Malaysia, was charged with furnishing false statements in eight of Kosmo Tech's quarterly reports to Bursa Malaysia Bhd. Earlier, on 26 May 2011, Mohd Azam Mohd Noor, 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. Further trial dates have been fixed for 21–22 and 29 February 2012, 6–8 March and 19–20 March 2012, 16–18 and 19 April 2012, and 16–18 May 2012.

Civil Cases

- December 2011 – *Securities Commission Malaysia v Ahmad Nazmi Mohamed, etc.* The SC filed an action against seven defendants in this case seeking among others, an order that they be restrained from holding themselves out as holders of a Capital Markets Services Licence and restraining them from dealing with the monies in several bank accounts. An *ex parte* interim injunction was obtained on 7 April 2011 to freeze the monies in the bank accounts as well as to restrain them from carrying on any business of trading in futures contracts. The trial is scheduled to take place on 23, 24 and 25 April 2012.

FOR MORE INFORMATION

www.sc.com.my

© ALL RIGHTS RESERVED. No part of *The Reporter* may be used, copied, photocopied or duplicated in any form or by any means without the permission of the SC.

The information provided in *The Reporter* is for the purpose of keeping the intended recipients informed of enforcement-related news and developments in the Malaysian capital market. No opinions and articles published in *The Reporter* are exhaustive on the subject or topic they cover and are not intended to be a substitute for legal advice or opinion on the topic. Under no circumstances shall the SC be liable to any person for actions and decisions taken from reliance on any information contained in *The Reporter*.

If you have queries or comments, please contact:

Corporate Affairs Department
Securities Commission Malaysia
3, Persiaran Bukit Kiara, Bukit Kiara
50490 Kuala Lumpur
Malaysia

Tel: 603-6204 8777
Faks: 603-6201 5078
Email: cau@seccom.com.my