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Executive Summary

In its efforts in maintaining market integrity, the SC recently secured convictions against Ashari Rahmat, a former operations manager of Malaysian Issuing House (MIH) and Wahid Ali Kassim Ali, a former fund manager of Aiwanna Asset Management Sdn Bhd for being involved with fraud relating to balloting of initial public offerings and false disclosure of information to the authorities respectively. The directors and advisor of AXIS Incorporation Bhd were also charged with offences under the *Securities Industry Act 1983* (SIA) and the *Capital Markets and Services Act 2007* (CMSA) relating to false disclosure of information.

Secured convictions of fraud and false disclosure of information

In February 2013, the Court of Appeal ordered Low Thiam Hock of Repco Holdings Bhd (Repco) to enter his defence to a charge under section 84(1) of the SIA for manipulating the share price of Repco. The offence carries a penalty of a minimum fine of RM1 million and maximum jail term of up to 10 years.

In discharging its functions in protecting investors, the SC is empowered under the CMSA to take civil action against wrongdoers and seek restitution to the affected investors. On 23 January, the SC filed a civil action against RBTR Asset Management Bhd for restitution of investments amounting to approximately RM13 million to the Euro Deposit Investment (EDI) scheme investors.

Civil action against RBTR Asset Management

SC also seeks remedial action by deploying the appropriate administrative powers to sanction persons in breach, rectify shortcomings or gaps and reinforce compliance. In this regard, the SC's ongoing supervisory efforts over market intermediaries from January 2013 to date have resulted in the SC issuing six supervisory letters for breaches and non-compliance of the relevant securities laws, rules and the SC's guidelines.

Supervisory letters issued for non-compliance

High Court upholds conviction and sentence of former fund manager, Wahid Ali

On 14 January 2013, the High Court dismissed the appeal of Wahid Ali Kassim Ali, a former director and fund manager of Aiwanna Asset Management Sdn Bhd (Aiwanna), against his conviction and sentence for securities fraud which were committed between the year 2001 and 2002.

Wahid Ali was convicted by the Kuala Lumpur Sessions Court in October 2005 for 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, Wahid Ali was sentenced to one year imprisonment and a fine of RM1 million (in default of the total RM3 million fine, a one year imprisonment).

Between the period of 31 December 2001 and 11 March 2002, EPIC had received three monthly statements of account signed by Wahid Ali stating that EPIC's investment was placed in a bond fund, when in fact RM5 million of EPIC's monies had already been dissipated at the material time and was no longer managed by Aiwanna.

High Court Judge Dato' Mohd Azman Husin dismissed the appeal against conviction and sentence and upheld the decision of the Sessions Court. Pending appeal to the Court of Appeal, Wahid Ali was ordered to execute a bond of RM1 million to stay the execution of the sentences.

SC files a civil suit against RBTR Asset Management Bhd

On 23 January 2013, SC filed a civil suit against RBTR Asset Management Bhd (RBTR) and seven defendants following its investigations into the affairs of RBTR in 2009.

The seven defendants were Locke Guarantee Trust (NZ) Limited (LGT), Locke Capital Investments (BVI) Ltd (LCI), RBTR's directors, namely, Al Alim Mohd Ibrahim and Valentine Khoo (who also held Fund Manager's Representative Licences), Nicholas Chan Weng Sung and Joseph Lee Chee Hock (directors of LGT and LCI respectively) and Isaac Paul Ratnam who was an individual associated with the operations of these two companies.

Among the relief sought by the SC in the civil suit was for the defendants to make restitution of approximately RM13 million to the EDI Scheme investors who have not been repaid their investments and that the defendants' assets be traced and paid over to the SC for purposes of compensating the EDI Scheme investors.

SC's appeal against acquittal of former company chairman, Low Thiam Hock allowed

On 28 February 2013, the Court of Appeal overturned the decision of the High Court and Sessions Court in acquitting Low Thiam Hock, former executive chairman of Repco Holdings Bhd (Repco), for manipulating the price of Repco shares on the then Kuala Lumpur Stock Exchange (KLSE) on 3 December 1997.

Low was ordered to enter his defence against the charge of instructing a dealer's representative at Sime Securities Sdn Bhd to purchase Repco shares by taking up any offer price of the said shares offered by the sellers, which act was calculated to create a misleading appearance with respect to the price of Repco shares on the KLSE.

The Bench presided by Justice Dato Sri Haji Apandi Haji Ali, Justice Datuk Linton Albert and Justice Datuk Dr Haji Hamid Sultan Abu Backer allowed the appeal by the SC and unanimously held that the charge against Low, as it stood, is sufficient to describe and sustain the offence under section 84(1) of the SIA which carries a penalty of minimum fine of RM1 million and maximum jail term of up to 10 years.

The case is fixed for continued hearing on 31 July, 1 and 2 August, 24 September, 16, 17 and 18 October 2013.

Supervision measures by the SC

From January to April 2013, the SC issued six supervisory letters against market intermediaries and licensed persons for breaching relevant requirements of the securities laws, rules and guidelines.

Three supervisory letters were issued against corporate advisers for failure to discharge their duty when they failed to disclose material information and perform adequate due diligence on the proposal submitted to the SC.

One supervisory letter was issued against a company for non-compliance with the *Malaysian Code on Take-overs and Mergers 2010* (TOM Code) when the said company applied for exemption from undertaking a mandatory offer to the SC (if it is triggered). The TOM Code requires an application for exemption to be made to the SC before a mandatory offer is triggered.

Furthermore, a fund management company was issued a supervisory letter for weaknesses in supervisory framework relating to risk management and enhancements required on operational matters.

Another supervisory letter was issued against a licensed representative for facilitating unlicensed regulated activities to be carried out by a trading clerk.

Enforcement Highlights

Ongoing Trials from January – April 2013

Sessions Court:

- January – March 2013: *PP v William Yue Chi Kun*. 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 *Securities Industry Act 1983* (SIA) for abetting U-Li in submitting a false report to Bursa Malaysia Securities Bhd. On 8 January 2013 the Court decided to reject the Defence's application to impeach the credit of the twelfth prosecution witness, being the former Finance Manager of U-Li, on the basis that the alleged contradictions in her testimony were not material. The trial against William Yue continued on 22–23 January, 26–27 February and 18–20 March 2013. The trial is now scheduled to continue on 15–16 May and 5–6 June 2013.
- January – February 2013: *PP v Dato' David Goh Hock Choy and Siow Chung Peng*. On 4 September 2012, the SC charged former remisier, Dato' David Goh Hock Choy, under section 84(1) of the SIA, for manipulating Lii Hen Industries Bhd (Lii Hen) shares between March to October 2004. Another individual, Siow Chung Peng, was charged in the same court under section 122C(c) of the same Act for abetting with Goh in the commission of the offence. On 23 January 2013, the High Court heard submissions from the parties on Siow's Notice of Motion to strike out the charge against him on the basis that he was immune from criminal prosecution under the *Whistleblower Protection Act 2010*. The learned High Court Judge accordingly ruled in the SC's favour on 5 February 2013 by dismissing Siow's Notice of Motion. Siow has since filed an appeal to the Court of Appeal against the said decision. Subsequently, the Sessions Court allowed Siow's application to stay the trial pending the determination of his appeal to the Court of Appeal.
- January 2013: *PP v Dato' Sreesanthan all Eliathamby*. The SC charged prominent corporate lawyer, Dato' Sreesanthan Eliathamby on 20 July 2012 under section 89E(2)(a) of the SIA and section 188(2)(a) of the CMSA for seven counts of insider trading on the shares of four listed companies, namely Maxis Communications Bhd, Sime Darby Bhd, VADS Bhd and UEM World Bhd, before three Sessions Courts. In November 2012, Sreesanthan filed a number of applications, mounting legal challenges to various laws, including the securities laws and sought for these issues to be heard by the High Court (the legal challenges). On 8 January 2013, the Sessions Court Judges ordered that the criminal proceedings be stayed pending the disposal of the legal challenges. The High Court has fixed for 25 and 26 June 2013 to hear the legal challenges in full submissions from the parties.
- January – April 2013: *PP v Zamani Hamdan*. Zamani Hamdan, a director of Rantau Simfoni Sdn Bhd (Rantau Simfoni), was charged on 28 October 2011 under section 59(1) of the Capital Markets & Services Act 2007 (CMSA) for holding himself out as a representative of an investment bank to trade in futures contracts. Zamani was also charged in the alternative under section 58(1) of the CMSA for carrying on the business of trading futures contracts without a licence through his company, Rantau Simfoni (the alternative charge). On 23 January 2013, the court ruled that the prosecution had proven a *prima facie* case under the alternative charge. The defence stage of the trial proceeded on 21 March and 16–17 April 2013 where the four defence witnesses, including the accused, testified on oath and were cross-examined by the SC's prosecutors. On 17 April 2013, the Court heard submissions from the parties. Decision for the case is fixed on 30 April 2013.

- January 2013: *PP v Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai*. Chee Kok Wing and Shamsul Khalid Ismail were charged in 2007 under section 122B read together with section 122(1) of the SIA for causing the issuance of NasionCom Holdings Bhd's (NHB)'s Annual Report 2005 which contained false information, namely the revenue of NHB for the financial period ended 31 July 2005. Chee was also charged under section 55 of the SCA with causing the issuance of NHB's prospectus which was alleged to contain misleading information, namely the top 10 customers of NHB for the period ended 31 July 2005. He was also charged with an offence under section 364(2) of the *Companies Act 1965* for authorising the making of false statements in documents which were used in the preparation of financial statements contained in NHB's 2005 Annual Report. Mah Soon Chai was charged under section 122B read together with section 122C of the SIA for abetting NBH in submitting false information contained NHB's 2005 Annual Report to the SC. The trial continued on 16, 17, 19 to 22 January 2013 with the testimony of an important witness. Dates for continued hearing have been fixed on 14 to 15 May, 12 and 14 June and 5, 18 and 19 July 2013.
- April 2013: *PP v Alice Poh Gaik Lye and Goh Bak Ming*. Alice Poh Gaik Lye, a former business co-ordinator of Liqua Health Corporation Bhd (Liqua), was charged in 2010 under section 87A(a) of the SIA for allegedly committing a scheme to defraud Liqua. The fraud related to a sum of RM12 million which Liqua was said to have paid to an entity called Wynsum Sdn Bhd. Out of this sum, a total of RM9.75 million was alleged to have been used by Alice Poh to finance the purchase of 45 million Liqua shares. Besides Alice Poh, Goh Bak Ming, a former director of Liqua was charged under section 87A(a) read together with section 122C(c) of the SIA for abetting her. Trial proceeded on 16–18 April 2013 where the prosecution called, inter alia, the former Executive Director of Liqua. The trial is scheduled to continue on 7 and 8 May 2013.

FOR MORE INFORMATION

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