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Accounting scandals have brought into sharp focus the critical role of external auditors in ensuring the integrity and reliability of audited financial statements of PLCs and other public-interest entities (PIEs) such as capital market intermediaries, banking institutions and insurance companies. The recent amendments to the *Securities Commission Act 1993* (SCA) paved the way for the establishment of the Audit Oversight Board (AOB), which came into operation on 1 April 2010. The AOB will develop a robust audit oversight framework for Malaysia over PLCs and other PIEs through the registration and monitoring of auditors.

The amendments to the *Capital Markets and Services Act 2007* (CMSA) also introduced two key provisions. Section 317A empowers the SC to act against errant directors and officers of PLCs for causing wrongful loss to the company. Section 320A, on the other hand, allows the SC to act against anyone who influences the preparer and auditor of financial statements, causing them to be false or misleading.

Maintaining high standards of disclosure is key to ensuring good corporate governance in the capital market. In this regard, the SC's successful prosecutions in governance-related cases, namely MEMS and Granasia demonstrate its unrelenting efforts in enforcement.

The SC continues to closely monitor the conduct of all market intermediaries to promote investor protection and maintain fair and orderly markets. Routine examination of intermediaries enabled the SC to address weaknesses and take appropriate actions in those cases.

The administrator of the Swisscash investment scam commenced restitution of 20,659 claimants in April following the High Court's determination of eligible criteria for the payout.

AOB established to develop robust audit oversight framework for Malaysia

Introduction of sections 317A and 320A to enhance corporate governance

SC secures convictions for governance related offences

SC closely monitors market intermediaries; takes appropriate action against offenders

Swisscash-SC restitutes eligible investors

Robust Audit Oversight in Malaysia with the Setting up of AOB

Efficient functioning of the capital market depends on the integrity of financial information. Past accounting scandals in the international and domestic arenas serve to emphasise the important role of external auditors in providing reliable and credible financial statements. The auditors involved in these scandals demonstrated a lack of compliance with auditing standards and procedures.

Malaysia has taken a major step forward in terms of corporate governance by setting up the Audit Oversight Board (AOB). The AOB commenced its operations on 1 April 2010, following an amendment to the *Securities Commission Act 1993*. The government has appointed seven members to the Board, including the Executive Chairman. The other six members are non-executive.

The AOB will carry out its mission through registration, inspection, inquiry, enforcement and standard setting programmes. In addition, it will provide education and awareness to the market on domestic and international auditing and quality standards.

The AOB's mission is to oversee the auditors of public-interest entities (PIEs), and to protect the interests of investors by promoting confidence in the quality and reliability of audited financial statements of PIEs.

The AOB will register and monitor auditors of PLCs and other PIEs, such as capital market intermediaries, banking institutions and insurance companies. The main objective of AOB is to promote and develop an effective and robust audit oversight framework for Malaysia. It is established as a means to—

- further strengthen the independent oversight of auditors;
- ensure only fit and proper persons are allowed to audit financial statements of PIEs; and
- carry out enforcement through a broad range of sanctions.

The AOB will carry out its mission through registration, inspection, inquiry, enforcement and standard setting programmes. In addition, it will provide education and awareness to the market on domestic and international auditing and quality standards.

The AOB is mandated to co-operate with other regulatory agencies, such as the Companies Commission of Malaysia, Bank Negara Malaysia, the Malaysian Institute of Accountants and various industry groups for wider regulatory and enforcement reach to all players in the industry and hence, increase robustness in its implementation of an independent audit oversight framework. The AOB will also enhance the SC's supervision over capital market intermediaries.

Swisscash-SC Restitutes Investors

On 8 April 2010, the SC obtained the approval of the High Court on the eligibility criteria for restituting Swisscash investors.

The restitution was made possible following a settlement on 6 November 2009 with two defendants, Albert Lee Kee Sien and Amir Hassan, in the civil enforcement action filed by the SC over the Swisscash scam. Following the settlement, PricewaterhouseCoopers Advisory Services Sdn Bhd (PwCAS), was appointed as the administrator to manage the restitution process.

The administrator processed close to 24,000 claims and assisted the SC in determining eligibility criteria for investors which were later approved by the court. A total of 20,659 claims meet the criteria for payout.

The more pertinent of the approved criteria are–

- date of investment;
- the claim must be supported by evidence of investment and proof of remittance or payment to the scheme; and
- a pre-condition that the claimant could not be involved as an upliner of the scheme.

Maintaining Fair and Orderly Markets

The SC adopts a risk-based approach towards market supervision to maintain fair and orderly markets and promote investor protection. A fundamental element in ensuring effective supervision resides in having timely, accurate and relevant information. Accordingly, engagements with stakeholders have been intensified to enhance co-operation and identify emerging risks.

In the past few months, routine examinations carried out by the SC had revealed breaches of regulatory requirements by two licensed intermediaries: a stockbroker and a futures broker. The examinations also revealed internal control weaknesses and inadequate oversight by the respective intermediaries.

Accordingly, the SC instituted formal disciplinary action, which included–

- the imposition of reprimands on the boards of directors; and
- the imposition of financial penalties ranging between RM125,000 and RM275,000.

In addition, administrative action was taken against a remisier for engaging in intra-day short-selling and for using another's account to execute the trades. The remisier's licence was suspended for four weeks and he was fined RM60, 000 and imposed an extra 10 CPE points.

Enforcement Highlights

Convictions

For the period under review, the SC secured seven convictions. Three of these involved disclosure offences in relation to initial fund-raising and post-listing exercises. In a case involving the manipulation of Fountain View shares, both the accused pleaded guilty and were convicted of the offences.

- February 2010 – Chin Chan Leong was convicted for an offence under section 84(1) of the *Securities Industry Act 1983* (SIA) for creating a misleading appearance of active trading of Fountain View Development Bhd shares on the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Bhd) through at least 20 CDS accounts owned by the companies that he controlled. Chin pleaded guilty and he was convicted and sentenced to one day imprisonment and RM1.3 million fine (in default, 13 months imprisonment). Another accused, Hiew Yoke Lan also pleaded guilty to abetting Chin and she was fined RM1 million (in default, 10 months imprisonment).
- February 2010 – Ooi Boon Leong and Tan Yeow Teck, former directors of MEMS Technology Bhd pleaded guilty to the offence of authorising the furnishing of a misleading statement to Bursa Malaysia, under section 122B(b)(bb) of the SIA. The misleading statement was in relation to the revenue the company reported in its unaudited financial statements for the financial year ended 31 July 2007 involving approximately RM30 million. Each accused was sentenced to a fine of RM300,000 (in default, two years imprisonment).
- March 2010 – The Sessions Court convicted Chan Kok Suan after he pleaded guilty to the offence of submitting false statements to the SC involving the initial public offering (IPO) of Granasia Corporation Bhd, under section 32B(1)(c)(aa) read together with section 138(2) of the *Securities Commission Act 1993* (SCA). Chan was fined RM500,000 (in default, 10 months imprisonment).
- April 2010 – The Sessions Court convicted Ashari Rahmat and Fauzi Ibrahim after they pleaded guilty to the alternative charge of engaging in a deceitful act on UPA Corporation Bhd (UPA). Ashari participated in a scheme that switched successful applications for UPA shares with those that were not put through the balloting process. Fauzi, on the other hand, deceived UPA into believing that 80 persons had applied for the IPO shares of UPA when in fact Fauzi was the person behind those applications. Ashari was sentenced to an imprisonment of one day and a fine of RM35,000 (in default, 15 days imprisonment) while Fauzi was imprisoned for one day and fined RM30,000 (in default, 15 days imprisonment). The Sessions Court also forfeited the ill-gotten gains of Fauzi amounting to more than RM800,000.

Ongoing Trials

The SC closed the Prosecution's case in three of the trials before the Sessions Court. In the Phazaludin case involving Danafutures, charges had also been brought under the *Anti Money Laundering and Anti Terrorism Financing Act 2001* (AMLATFA). Trial commenced in the Multi-Code case which involved securities fraud and continued in two cases; Megan Media and Suremax.

- January 2010 – *PP v Muhamad Khalid Ismail and Anuar Abdul Aziz*. Muhamad Khalid was charged in 2003 for criminal breach of trust, providing false statements relating to the business activity of

Corporate Eight Asset Management Sdn Bhd (Oasis), concealment of records and for failure to maintain a trust account for the funds invested by Koperasi Angkatan Tentera Malaysia Bhd. Anuar was charged in the same year for acting as a fund manager's representative for Oasis without a licence. The SC closed its case in January.

- January 2010 – *PP v Mohd Adam Che Harun*. The SC continued with the trial of Mohd Adam for furnishing false information to Bursa Malaysia in relation to Megan Media Holdings Bhd's quarterly report. Trial will resume on 21–23 June 2010.
- January 2010 – *PP v Raja Noor Asma Raja Harun*. The accused was charged on 17 December 2008 for employing a scheme to defraud investors of FX Capital Sdn Bhd and FX Consultant, and trading without a licence. The case was postponed at the request of the defence counsel. New trial dates were fixed for 2–6 August 2010, 25–27 August 2010, 27 September 2010 and 1 October 2010.
- March 2010 – *PP v Bun Lit Chun and Wong Chee Kheong*. The SC continued with the trial of the case for market manipulation involving shares of Suremax Bhd.
- March 2010 – *PP v Tan Chin Han, Ang Sun Beng and Ang Soon An*. The three accused persons were charged on 15 April 2008 for furnishing to the SC and Bursa Malaysia misleading statements in the 2005 and 2006 annual and quarterly reports of Welli Multi Corporation Bhd. Trial dates have been fixed for 5–7 July 2010, 9–11 August 2010 and 27–29 September 2010.
- March 2010 – *PP v Ngu Tieng Ung and Wong Jit Kiang*. In this case, both accused were charged on 5 May 2005 for engaging in a fraudulent act against Pancaran Ikrab Bhd (PIB) by utilising RM15.5 million of PIB's funds to finance the purchase of PIB shares when the money was not meant to be utilised for that purpose, under section 87A(b) of the SIA. Ngu was also charged for committing criminal breach of trust involving RM21.5 million of PIB's funds. Ngu is also faced with an alternative charge of committing criminal breach of trust involving RM37 million of PIB's funds. Wong was charged as an abettor to Ngu on all the charges. However, on 24 March 2010, Wong was given a discharge not amounting to acquittal due to his continued absence in court since 23 March 2009 and the court on 4 August 2009 issued a warrant of arrest against him at the SC's request. Wong has also been placed on Interpol's Red Notice. As for the case against Ngu, the court fixed trial dates for 4–8 October 2010, 27–28 October 2010, 10–11 November 2010 and 29–30 November 2010.
- April 2010 – *PP v Gordon Toh Chun Toh and Abul Hassan Mohamed Rashid*. Trial commenced against Gordon and Abul Hassan for engaging in a fraudulent act against Multi-code Electronics Industries (M) Bhd by utilising the company's fixed deposit to purchase the company's shares. Trial will resume on 17–19 May 2010, 16–18 June 2010 and 14–16 July 2010.
- April 2010 – *PP v Phazaludin Abu*. The accused was charged on 29 February 2008 for acting as a fund manager without a licence via the use of a website www.danafutures.com. A charge was also preferred against him for money laundering under section 4(1) of the AMLAFTA. On 14 April 2010, the court decided the case in the SC's favour by ruling that the Prosecution had proven a *prima facie* case and called the accused to enter his defence.
- April 2010 – *PP v Jamaluddin Hassan*. Charges were preferred against Hakim Sukiman, Gan Chin Sam and Jamaluddin Hassan on 12 December 2008 for submitting misleading information in connection with the revenue declared by the company, Satang Holdings Bhd to Bursa Malaysia in four of its quarterly financial reports ended 30 September 2007. The SC closed the Prosecution's case in April.

- April 2010 – *PP v Gan Boon Aun and Khiuddin Mohd.* Both accused were charged on 12 July 2007 for abetting Transmile Group Bhd in making a misleading statement relating to the revenue of Transmile Group Bhd in its quarterly report on unaudited consolidated results for the financial year ended 31 December 2006. Trial dates have been fixed for 22 July 2010, 23–24 August 2010, 27 September–1 October 2010 and 11–12 October 2010.

Appeals and other matters before the High Court

The SC has been successful in several matters that came before the High Court involving both interlocutory and final proceedings. In the Transmile case, the High Court agreed with the SC's position that its decision to prosecute Khiuddin is not a matter that could be reviewed on constitutional grounds. In Yeoh Guan Yong's case, the High Court overturned the lower court's decision in acquitting the accused who had committed fraud while acting as a remisier in a stockbroking company. In the Polymate trial involving its former group managing director Ng Kim Weng, the SC's appeal against the sentence was dismissed by the High Court.

- January 2010 – the High Court dismissed Khiuddin Mohd's application to determine whether he was discriminated against by virtue of Article 8 of the Federal Constitution as his co-accused, Lo Chok Ping was offered a compound by the SC while he was not. Khiuddin and Lo were both charged for abetting Transmile Group Bhd in making a misleading statement to Bursa Malaysia on 12 July 2007. The High Court ruled that the Public Prosecutor had absolute discretion to initiate criminal proceedings against any person and the decision was not open for review.
- February 2010 – the High Court dismissed the SC's appeal against the sentence meted out by the Sessions Court in the case against Ng Kim Weng. Ng was sentenced to a fine of RM300,000 after pleading guilty to a charge of submitting false information to Bursa Malaysia in relation to the financial statements of Polymate Holdings Bhd.
- February 2010 – the High Court allowed the SC's appeal against the decision of the Sessions Court in ordering the SC to supply untendered documents and evidence to the accused persons in the case against Yip Yee Foo. Yip Yee Foo and the second accused, Chung Wai Meng were charged on 24 September 2004 for engaging in a fraudulent act against Cold Storage (Malaysia) Bhd in the purchase of the company's shares.
- March 2010 – The High Court allowed the SC's appeal against the acquittal of Yeoh Guan Yong and ordered a conviction. Yeoh was charged on 8 September 1999 for engaging in a fraudulent act against Hwang DBS Securities Sdn Bhd in relation to the sale of RM2 million shares of Sin Kean Boon Group Bhd. The sentence against Yeoh was, however, deferred pending the execution of the warrant of arrest against him. Yeoh failed to attend High Court on the day of the decision.
- March 2010 – *PP v Low Thiam Hock.* Low was charged for manipulating the price of Repco Holdings Bhd (Repco) shares on 3 December 1997. The purchases of Repco shares on the said day had caused Repco's share prices to rise from RM103.00 to finally close at RM113.00. On 14 November 2006 the Sessions Court acquitted and discharged Low. The SC appealed against the decision of the Sessions Court and the hearing of the appeal by the SC is now fixed for 3 and 4 August 2010.
- April 2010 – *PP v Haron Jambari and Nik Abdul Aziz Nik Mohd Amin.* Haron, a remisier attached to Arab-Malaysian Securities Sdn Bhd, was charged for making a false statement of a material fact to his client, Majlis Agama Islam Wilayah Persekutuan, in relation to the purchase of

Petronas Dagangan Bhd (PDB) shares, under section 87A(c) of the SIA. Haron was also charged for criminal breach of trust involving RM2 million of Baitulmal funds, under section 409 of the *Penal Code*. Nik, an accountant at Majlis Agama Islam Persekutuan, was charged for abetting Haron in making a false statement to his employer on the purchase of PDB shares, under section 87A of the SIA read together with section 40 of the same Act. Nik was also charged for criminal breach of trust of the same funds and for corrupt practices. The Sessions Court convicted both accused persons on the charges. Both the accused were sentenced to three years' imprisonment and RM1 million fine (in default, two years imprisonment), for the offence under section 87A and four years' imprisonment and two strokes of whipping for the offence of criminal breach of trust. Nik was also sentenced to a two-year imprisonment for the offence of corrupt practices. Both accused appealed and the High Court dismissed their appeal and upheld the convictions. They then appealed to the Court of Appeal. The hearing of the appeal at the Court of Appeal was fixed on 20 and 21 July 2010.

FOR MORE INFORMATION

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