

The

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## CONTENTS

- 2 Corporate Governance Blueprint 2011
- 3 Two directors charged for failing to register prospectus
- 3 Jail sentence for unlicensed fund manager upheld
- 3 Trio charged for providing false statements to Bursa Malaysia
- 4 Remisier imprisoned for short selling
- 4 HwangDBS Investment Bank sanctioned
- 4 Licensed representative reprimanded and suspended
- 5 Enforcement Highlights

## Executive Summary

The SC's commitment to fostering strong corporate governance among market participants was reinforced by the launching of the *Corporate Governance Blueprint 2011* on 8 July 2011. The Blueprint, among others, underlines the crucial role of enforcement in ensuring that corporate governance transgressors are held accountable for their actions. Indeed, corporate transgressions harm the integrity of the market and investor confidence.

There is therefore, a need for all market participants to subscribe to the highest standard of professional integrity. In this issue, we feature charges brought against five individuals for breaches of securities laws mainly in relation to failure to register a prospectus on a corporate exercise, as well as for the submission of false financial statements. Four of the individuals were formerly directors of PLCs.

There is also increased focus on the role intermediaries play to ensure a vibrant and well-functioning capital market. The SC seeks to ensure that intermediaries adhere to ethical conduct and high standards of integrity. In this quarter, the SC took administrative action against HwangDBS Investment Bank Bhd for failure to comply with the SC's anti money laundering and market conduct guidelines. The SC also reprimanded and suspended a licensed representative who had conducted dealing activities on behalf of his client in a manner that ultimately jeopardised his client's interests by causing his client to bear a higher purchase price for the securities.

In respect of the SC's criminal enforcement action against intermediaries, the conviction by the High Court of a former remisier was upheld by the Court of Appeal. In this case, the intermediary concerned had committed 30 counts of short selling involving 960,000 units of shares in a particular counter in a single day.

The SC was also successful in a separate appeal involving Phazaluddin Abu who was convicted and sentenced to four years imprisonment in the Sessions Court. On appeal, the High Court affirmed the conviction and sentence imposed against Phazaluddin Abu for holding himself out as a fund manager without a valid licence.

*Corporate Governance Blueprint 2011 launched*

*Former directors of PLCs charged for breach of securities laws*

*Administrative actions against market intermediaries*

*Court of Appeal upheld decision against former intermediary over short selling.*

*Unlicensed fund manager's appeal dismissed by High Court*

## Corporate Governance Blueprint 2011

On 8 July 2011, the SC launched the *Corporate Governance Blueprint 2011* (CG Blueprint). The CG Blueprint is aimed at promoting excellence in governance in Malaysia and represents the first major deliverable under the Capital Market Masterplan 2. Among the CG Blueprint's strategic priorities and recommendations is enhancing the standards of board governance. Heightened focus on these standards is crucial, as attested to in this edition of *The Reporter*, which highlights actions taken against directors for failing to register a prospectus, for providing misleading information to Bursa Malaysia and other examples of corporate mismanagement.

The CG Blueprint, which will be implemented over the next five years, also covers ways to further enhance shareholder participation, ensuring equitable shareholder treatment, promoting greater diversity on boards of public listed companies, strengthening the role and accountability of gatekeepers and influencers and generally enabling more active stakeholder and market participants' accountability and participation to strengthen market and self-discipline.

The 35 recommendations contained in the Blueprint covers key areas namely shareholder rights, the role of institutional investors, the board's role in governance, disclosure and transparency, the role of gatekeepers and influencers as well as public and private enforcement. These recommendations were developed through extensive research, international benchmarking and intensive engagements to ensure that they are sufficiently robust to bring about positive changes to the Malaysian corporate governance landscape.

The Blueprint considers approaches aimed at strengthening self and market discipline, and promoting the internalisation of corporate governance culture to underpin the sustainable growth of corporate Malaysia. Most of the recommendations will be implemented through a new Malaysian Code on Corporate Governance as well as changes to the Listing Requirements. Others will be effected through amendments to the regulatory framework and the remaining recommendations will be driven by industry. A number of recommendations will need to be examined and further studied through the formation of taskforces and working groups expected to be driven by industry in collaboration with the SC.

A copy of the CG Blueprint can be downloaded at [www.sc.com.my](http://www.sc.com.my). The SC invites comments on the CG Blueprint. The consultation period will end on 15 September 2011. Comments could be e-mailed to [CGblueprint@seccom.com.my](mailto:CGblueprint@seccom.com.my) or in writing to the SC.



Tun Mohamed Dzaiddin (Bursa Malaysia Chairman), Dato' Seri Hj Ahmad Husni Hanadzlah and Tan Sri Zarinah Anwar (SC Chairman) during the CG Blueprint launch

## Two directors charged for failing to register prospectus

On 21 April 2011, Chong Yuk Ming and Balachandran a/l A. Shanmugam were charged under section 232(1) of the *Capital Markets and Services Act 2007* (CMSA) for failing to register a prospectus with the SC in relation to the issuance of Bestino Group Bhd (Bestino)'s redeemable preference shares between 3 November 2008 and 16 June 2009. Chong and Balachandran were directors of Bestino at the material time.

If convicted they will be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or both. Chong and Balachandran were granted bail of RM300,000 with one surety. The court also impounded Balachandran's passport. The case has been fixed for trial from 11 to 14 October and 18 to 21 October 2011.

## Jail sentence for unlicensed fund manager upheld

On 5 May 2011, the Kuala Lumpur High Court affirmed the conviction and sentence imposed against businessman Phazaluddin Abu for acting as a fund manager without a licence through the website, [www.danafutures.com](http://www.danafutures.com) and for money-laundering activities of receiving a sum of RM1.3 million from the illegal activities of the online investment scam.

The Sessions Court, on 9 July 2010, convicted Phazaluddin under section 15A of the *Securities Industry Act 1983* (SIA) for acting as a fund manager without a licence. He was also convicted on three charges under the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* (AMLATFA) for dealing with the moneys collected via the unlicensed scam. Phazaluddin was sentenced by the Sessions Court to four years imprisonment under the SIA and two years imprisonment for each of the three convictions under AMLATFA.

The High Court maintained the conviction which found Phazaluddin as the mastermind behind the investment online scheme and that he had collected the moneys. The sentences imposed upon him were also upheld.

High Court Judge, Justice Dato Hj Ghazali Hj Cha directed Phazaluddin to serve his imprisonment sentence immediately as his request for a stay of execution pending appeal to the Court of Appeal was dismissed.

## Trio charged for providing false statements to Bursa Malaysia

Two directors and an accounts manager of Kosmo Technology Industrial Bhd (Kosmo Tech) were charged for providing misleading information to Bursa Malaysia. One of the directors, Mohd Azham Mohd Noor and the accounts manager, Helen Lim Hai Loon were charged on 26 May 2011 while the group managing director, Dato' Norhamzah Nordin was charged on 7 June 2011. Kosmo Tech was listed on the Second Board of Bursa Malaysia on 30 May 2005 and was delisted in 2009.

Both directors were preferred with six charges under section 122B(a)(bb) SIA and two charges under section 369(a)(B) of the CMSA for submitting false statements in Kosmo Tech's eight quarterly unaudited consolidated results for the financial years 2006 and 2007. Helen Lim was charged for abetting Kosmo Tech in submitting the false statements in the same eight quarterly reports. If convicted they will be liable to a fine not exceeding RM3 million and imprisonment for a term not exceeding 10 years for each charge.

Mohd Azham and Helen Lim were released on bail of RM150,000 with one surety each. Dato' Norhamzah was also released on bail at RM300,000 with one surety.

The three accused will be tried jointly from 14 to 18 November and 21 to 25 November 2011.

## Remisier imprisoned for short selling

On 23 June 2011, the Court of Appeal, presided by Justices Dato Hasan Lah, Datuk Hj Abdul Malik Hj Ishak and Dato Balia Yusof Hj Wahid, rejected an appeal by Lua Yik Hor against his conviction and a jail sentence of two-years. Lua, a former remisier at KAF Seagrott Campbell Sdn Bhd, was subsequently ordered to commence his jail sentence on the same day.

Lua is the first remisier to be jailed for a securities related offence.

Lua was charged on 21 May 1996 at the Kuala Lumpur Sessions Court for short selling 960,000 units of North Borneo Timber Bhd (NBT) shares on 27 March 1995. NBT was a company listed on the Main Board of the then Kuala Lumpur Stock Exchange at the material time. In 2000, after a full trial, Lua was convicted of all the 30 charges of short selling. He was sentenced to two years imprisonment on each charge, all to run concurrently.

Lua filed an appeal to the High Court against his conviction and jail sentence. However, the appeal was dismissed by the High Court in 2009. He then appealed to the Court of Appeal.

The SC has maintained that all the 30 charges were proper and lawful as there were 30 offences of short selling amounting to 960,000 units of NBT shares on that day. Each particular offence was completed when his order to sell matched on the market and at that material time he did not own such shares.

## HwangDBS Investment Bank sanctioned

HwangDBS Investment Bank (HDBSIB) was reprimanded and fined RM250,000 for failure to comply with the SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing For Capital Market Intermediaries* (AML Guidelines) and the *Guidelines on Market Conduct and Business Practices for Stockbrokers and Licensed Representatives* (Market Conduct Guidelines). HDBSIB was also directed to develop and implement a comprehensive anti-money laundering and anti-terrorism financing training programme for its staff to enhance their level of knowledge and compliance.

These sanctions were imposed on HDBSIB for its failure to identify and report suspicious transactions and to take reasonable steps to minimise its exposure to money-laundering risk. In addition, HDBSIB had also failed to conduct enhanced customer due diligence as required by the AML Guidelines, on clients whose profile represents high risk in terms of money-laundering and anti-terrorism financing.

## Licensed representative reprimanded and suspended

On 21 April 2011, the SC reprimanded and suspended Ranjit Singh a/l Nashter Singh of AmInvestment Bank Bhd for jeopardising the interest of his client when he amended the purchase orders of his client that were matched at a lower price, with purchase orders he made through his daughter's account, which were matched at a higher price, thereby disadvantaging his client and acting contrary to his client's interest. Ranjit's licence was suspended for three months from 6 May to 6 August 2011.



## Enforcement Highlights

### Charges

- April 2011 – *PP v Chong Yuk Ming and Balachandran all A. Shanmugam*. Both accused were charged on 21 April 2011 under section 232(1) read together with section 367(1) of the Capital Markets and Services Act 2007 (CMSA). Chong and Balachandran were charged for failing to register a prospectus with the SC when Bestino Group Bhd (Bestino) issued 400 million redeemable preference shares. The case is fixed for trial from 11 to 14 October and 18 to 21 October 2011. (see full article on page 3 - Two directors charged for failing to register prospectus)
- May & June 2011 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. On 7 June 2011, Norhamzah bin 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 charged with the same eight charges while Lim Hai Loon, the company's accounts manager was charged for abetting the company to furnish the false statements. The case is fixed for trial from 14 to 18 November and 21 to 25 November 2011. (see full article on page 3 – Trio charged for providing false statements to Bursa Malaysia).

### Acquittal

- June 2011 – *PP v Yip Yee Foo and Chung Wai Meng*. Yip and Chung were charged in 2004 under section 87A(a) of the Securities Industry Act 1983 (SIA) for allegedly defrauding Cold Storage (Malaysia) Bhd (CSM) of RM185 million in connection with their purchase of CSM shares. They were also charged for criminal breach of trust (CBT) under section 409 of the *Penal Code* as an alternative charge in relation to the same sum of RM185 million. On 11 March 2011, Yip and Chung were ordered to enter their defence on the alternative charge of CBT. At the end of the trial on 20 June 2011, the Sessions Court acquitted and discharged both accused persons of the CBT charge. The Prosecution has filed an appeal against the acquittal to the High Court.

### Ongoing Trials

- June 2011 – *PP v Shukri Sheikh Abdul Tawab and Chin Khim Feung*. On 22 March 2011, both accused were ordered to enter their defence against the charge under section 122B of the SIA for submitting a misleading statement to Bursa Malaysia in Transmile Group Bhd's financial statements. The defence closed its case on 9 September 2011. The Court then fixed 26 August 2011 for submissions to be made at the end of the defence case.
- June 2011 – *PP v Alan Rajendram and Eswaramoorthy Pillay*. The SC charged Alan, a former director of LFE Corporation Bhd (LFE) for committing securities fraud under section 87A(b) of the SIA. Alan had been charged for defrauding LFE by using RM9 million of LFE's monies to finance his purchase of LFE shares. Alan was also charged for CBT under section 409 of the *Penal Code* as an alternative charge. At the same time, Alan is facing four other charges under the securities laws for submitting false statements in LFE's quarterly report to Bursa Malaysia as well as one charge under the *Penal Code* for committing CBT in relation to a further sum of RM9.99 million of LFE's monies. Pillay, Alan's former business partner was charged under section 87A(b) read together with section 122C(c) of the SIA for allegedly abetting Alan in the securities fraud and alternatively under section 409 of the *Penal Code* for abetting Alan to commit CBT in relation to the sum of RM9 million of LFE's monies. Pillay was also charged for abetting Alan to commit a CBT in relation to the sum of RM9.99 million of LFE's monies. **Further trial dates have been fixed for 10 to 11 October 2011, 1 to 4 November 2011, 15 to 25 November 2011, 23 to 27 January 2012, 6 to 10 February 2011 and 20 to 24 February 2012. Earlier fixed trial dates on 2 to 5 August were vacated by the court.**
- June 2011 – *PP v Mohd Adam Che Harun*. The trial against Mohd Adam Che Harun, which commenced in December 2009, continued between the months of January to August this year. Mohd Adam, the Executive Chairman of Megan Media Holdings Bhd (MMHB) was charged in 2007 under section 122B of the SIA read together with section 122(1) of the 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.

- June 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 defence counsel applied to the Sessions Court to refer a constitutional issue that section 122(1) of the SIA is ultra vires the Federal Constitution. The Sessions Court allowed the referral application. Pending the disposal of the constitutional issue by the High Court, the trial dates at the Sessions Court in June and July are vacated. The case in the Sessions Court is fixed for mention on 8 September 2011. The court also fixed further trial dates on 7 to 9 December 2011.
- July 2011 – *PP v Gordon Toh Chun Toh and Abul Hassan Mohamed Rashid.* The case against both directors of Multi-Code Electronics Industries (M) Bhd (Multi-Code) for using RM17.55 million of Multi-Code's funds to purchase the company's shares was fixed for decision on 15 July 2011. However, the court has since fixed 22 September 2011 for decision as the Court was informed that the accused was unable to travel due to illness.
- July 2011 – *PP v Ravandaran and Kenneth Tan Kam Sang.* The trial against Ravandaran and Kenneth Tan continued between the months of January to August this year. They were both charged in 2004 under section 32B(1) of the *Securities Commission Act 1993* (SCA) for their alleged false reports to the SC concerning the utilisation of Kiara Emas Asia Industries Bhd's rights issue proceeds.
- July 2011 – *PP v William Yue Chi Kun.* On 28 April 2009, trial commenced against William Yue, the engaging and signing partner of the audit firm which audited United U-Li Corporation (U-Li)'s financial statements for the financial year ended 31 December 2004. William Yue was charged on 28 April 2009 under section 122B of the SIA for abetting U-Li in submitting a false report to Bursa Malaysia. Further trial dates have been fixed for 18, 19 and 21 October 2011.
- July 2011 – *PP v Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai.* Chee and Shamsul were charged for furnishing false statement in the NasionCom Holdings Bhd's Annual Report 2005 to the SC. Chee was also charged for causing the issuance of NasionCom Holdings Bhd's (NHB) prospectus which contained misleading information, namely the top ten customers of NHB for the financial period ended 31 July 2005. Chee was also charged for an offence under the *Companies Act 1965* for authorising the making of false statements in documents which were used in the preparation of the financial statements contained in the 2005 Annual Report. Mah was charged with abetting NBH in submitting false information contained NHB's 2005 Annual Report to the SC. Pursuant to a revision application made by the SC against the Sessions Court ruling to sever the trial of the three accused, on 10 February 2011, the High Court overturned the Sessions Court's ruling and ordered the trial of the three accused to be jointly heard. Chee however has filed an appeal to the Court of Appeal which is scheduled to be heard on 29 September 2011. On 19 August 2011, the Sessions Court fixed 7 October 2011 for mention upon the disposal of Chee's appeal at the Court of Appeal.

### High Court

- May 2011 – *Phazaluddin Abu v PP.* On 5 May 2011, the High Court upheld the conviction and sentence of the Sessions Court and ordered that the jail sentence commence immediately. Phazaluddin Abu was convicted for operating an online investment scam without a fund manager's licence under section 15A(1) of the SIA and sentenced to four years imprisonment at the Sessions Court. (see full article on page 3 – Jail sentence for unlicensed fund manager upheld)
- May 2011 – *PP v Tan Hooi Chong.* Tan Hooi Chong, a director of Kiara Emas Asia Industries Bhd (KEAIB), was convicted of three counts of abetting KEAIB in misappropriating the rights issue proceeds amounting to RM16.9 million. He was sentenced to a fine of RM200,000 for each of the three charges (in default, six months imprisonment). The SC filed an appeal against the sentence to the High Court while the accused also filed a cross appeal against the sentence. On 23 May 2011, the hearing at the High Court was postponed to 19 August upon the request from Defence Counsel. On 19 August 2011, the court postponed the hearing of the appeal to 6 and 16 December 2011.
- June 2011 – *Ashari Rahmat v PP.* Ashari was convicted under section 87A of the SIA and sentenced to three years imprisonment and a fine of RM1 million (in default, one year imprisonment) by the Sessions Court on 25 March 2009. Ashari appealed against the conviction and sentence to the High Court. The hearing of the appeal is fixed for 6 September 2011.

- July 2011 – *PP v Chan Kok Suan*. 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 SCA. Chan was fined RM500,000 (in default, 10 months imprisonment). The prosecution appealed against the sentence to the High Court. On 26 July 2011, the High Court maintained the sentence of RM500,000 fine but increased the imprisonment sentence in default of payment to two years.
- July 2011 – *PP v Anuar Abdul Aziz*. Anuar was charged under section 15B(b) of the SIA for acting as a fund manager's representative of Oasis Asset Management Sdn Bhd without a licence. He was acquitted at the end of the Prosecution's case by the Sessions Court. The SC appealed against the acquittal to the High Court. The case is now fixed for case management on 21 October 2011.

### Court of Appeal

- June 2011 – *Lua Yik Hor v PP*. In November 2000, the Sessions Court convicted Lua Yik Hor of 30 charges of short selling North Borneo Timbers Bhd (NBT) shares in 1995. NBT was a company which was listed on the Main Board of the then Kuala Lumpur Stock Exchange at the material time. He was sentenced to two years imprisonment for each charge. Lua appealed to the High Court. In February 2009, the High Court dismissed Lua's appeal and maintained the imprisonment sentence. Following the High Court's decision, Lua filed a further appeal to the Court of Appeal. On 23 June 2011, the Court of Appeal dismissed his appeal and upheld the convictions for 30 charges and sentence. (see full article on page 4 – Remisier imprisoned for short selling)
- June 2011 – *PP v Mohamed Abdul Wahab*. Mohamed was convicted on 1 April 2009 under section 47C of the SIA for mismanaging the funds of Metrowangsa Asset Management Sdn Bhd's (MAM) corporate client. He was fined RM200,000 (in default one year imprisonment). Mohamed was however acquitted of two charges under section 122B(b)(cc) of the SIA. The SC filed an appeal against the acquittal to the High Court while the accused also filed a cross appeal against the acquittal and sentence.

### Civil cases

- May 2011 – *SC v Lim Chiew*. The SC filed a civil action in 2005 against Lim Chiew, a former non-executive director of Magnum Corporation, an associate company of Multi Purpose Holdings Bhd for allegedly breaching section 89E(2) of the SIA when he traded in the shares of Bolton Bhd as an 'insider'. In the civil action, the SC is seeking damages in the amount of RM1.2 million and civil penalties in the amount not exceeding RM500,000. On 18 May 2011, the case was fixed for case management. Trial is fixed for 3 to 7 October, 31 October and 1 to 4 November 2011.
- June 2011 – *SC v Ahmad Nazmi Mohamed, Mohd Shahrul Firdaus Zakaria, Mohd Khalid Sujud, Fakhru Arif Ahmad Husni, Fakhru Arif Ahmad Husni, Fakhru Mukmin Ahmad Husni, Fakhru Razi Ahmad Husni and Ahmad Fauzi Ambran*. The SC filed an action against the seven defendants seeking among others, an order that they be restrained from holding themselves out as holders of a Capital Market 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. On 13 June 2011, the High Court granted the injunction at the inter parte hearing.
- June 2011 – *SC v Aeneas Capital Mgmt, Thomas Grossman, Richard Cohen, John Suglia, Priam H Ltd, Aeneas Evolution Portfolio, Aeneas Portfolio Co, Acadian Worldwide, Tan Mong Sing and Low Thiam Hock*. On 9 April 2008, SC filed a civil suit against eight foreign defendants and two local individuals. The SC is seeking declarations among others, that the defendants conspired to manipulate the market and share price of Iris Corporation Bhd, defrauded investors and that profits earned by the defendants are held in constructive trust for the benefit of the affected investors. On 17 June 2011, the High Court dismissed the ninth and tenth defendants' application for further and better particulars with costs. The two defendants have appealed to the Court of Appeal.
- July 2011 – *SC v Kenneth Vun*. The SC filed a civil suit against Kenneth Vun in 2007 seeking a court order under section 100 of the SIA to compel Vun to restate FTEC Resources Bhd (FTEC) RM2.496 million and any profit made as a result of the personal utilisation of the said sum. The claim followed the SC's investigation that Vun had utilised this sum which is part of the

proceeds raised by FTEC in an initial public offering in 2003 for his personal use. The High Court allowed the SC's claim in November 2009 and Vun appealed to the Court of Appeal. The Court of Appeal dismissed the appeal on 5 April 2011. Vun filed an application for leave to appeal against this decision to the Federal Court, and on 22 August 2011, the Federal Court unanimously dismissed Vun's application for leave. The SC has also taken steps to enforce the judgment obtained at the High Court and has filed an application for committal proceedings against Vun. The hearing for the committal proceedings has been fixed for 6 October 2011.

- August 2011 – *SC v Wimems Corporation Bhd, Flex-P Industries Sdn Bhd and Fong Piau*. A civil suit was filed by the SC against the three defendants in February 2011 seeking, among others, declarations that the Defendants have conspired to defraud the investors of Wimems by publishing false revenue in the company's prospectus and annual report and that profits made from the publication of the false statements be held in constructive trust for the benefit of affected investors. The writ and statement of claim was served to the third defendant, Fong Piau after the SC applied to serve the papers by way of substituted service. The case in the High Court is fixed for case management on 7 September 2011 pending the filing of Fong Piau's appearance and statement of defence.

### Compound

- May 2011 – Surinder Kaur Jessy a/p Piara Singh was compounded RM25,000 for allowing Kanesan a/l Veluppillai to use her CDS account at Arab-Malaysian Securities Sdn Bhd (now known as AmInvestment Bank Bhd) to trade in Nexnews Bhd shares for the period between 7 May 2007 and 10 May 2007. This is in breach of section 25(4) of *Securities Industry (Central Depositories) Act 1991* (SICDA) which provides that any securities account opened must be in the name of the beneficial owner.



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[www.sc.com.my](http://www.sc.com.my)

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