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## Executive Summary

In July, the SC charged Dato' Sreesanthan, a senior corporate lawyer with insider trading in the shares of four listed companies between 2006 and 2008. This is the first time that a lawyer of corporate deals is prosecuted by the SC for insider trading. An insider trading offender, if convicted, may be liable to a fine of not less than RM1 million and imprisonment of up to 10 years.

*A charge on insider trading in July*

The Court of Appeal has in a landmark decision recently imposed a jail term of 12 months and a fine of RM1.3 million on Dato' Chin Chan Leong for market manipulation involving Fountain View Development Bhd shares. The custodial sentence imposed by the Court shows the seriousness in which the Court viewed market misconduct such as market manipulation.

*Landmark court decision for market manipulation*

Given the key role of credit rating agencies (CRA) in the capital markets, amendments have been made to the *Securities Commission Act 1993* (SCA) in October 2011 to grant examination power to the SC over CRAs. As part of its supervisory and oversight effort, the SC has embarked on the examination of CRAs starting May 2012. Under the *Guidelines on the Registration of Credit Rating Agencies* issued on 30 March 2011, the SC has the power to refuse registration of a CRA if it is of the view that relevant requirements are not met. It also has the power to impose conditions on a CRA when it approves the registration of a CRA.

*Registration and examination of CRAs by SC*

This issue of *The Reporter* also covers other examination, inspection and supervisory efforts initiated by the SC including the number of examinations conducted on fund management and stockbroking companies.

## Landmark decision in market manipulation case

The recent decision by the Court of Appeal in the case of *PP v. Chin Chan Leong* has set an important precedent in terms of sentencing for market manipulation cases. In this case, the Sessions Court had originally sentenced Chin to a fine of RM1.3 million and one-day imprisonment for market manipulation involving Fountain View Development Bhd shares. The High Court affirmed the sentence meted out by the Sessions Court leading to the SC filing an appeal to the Court of Appeal. On 24 June 2012, the Court of Appeal enhanced the sentence against Chin by imposing a 12-month imprisonment term on him. In addition, the court upheld the fine of RM1.3 million that was earlier imposed by the Sessions Court.

This is the third conviction for market manipulation which the SC has successfully prosecuted. It serves as a strong reminder to the public not to engage in market misconduct (such as manipulation, market rigging and insider trading) which could severely undermine investor confidence in the Malaysian capital market.

## Senior corporate lawyer charged for insider trading

Dato' Sreesanthan Eliathamby, a corporate lawyer who sits on the boards of several public-listed companies, was charged by the SC on 20 July 2012 with seven counts of insider trading in the shares of four listed companies between 2006 and 2008.

The charges involved three counts of insider trading in the shares of Sime Darby Bhd in 2006, ahead of the acquisition by Synergy Drive of companies within the Sime Darby, Guthrie and Golden Hope groups. The two counts of insider trading in the shares of Maxis Communications Bhd, which were preferred under the *Securities Industry Act 1983* (SIA), were alleged to have taken place during the privatisation of Maxis in 2007.

Two other charges were preferred for insider trading under section 188(2) of the CMSA involving the shares of UEM World Bhd and VADS Bhd in 2008. Dato' Sreesanthan's trades in UEM World were alleged to have been made with his knowledge of the corporate restructuring of the UEM group, while his trades in VADS allegedly involved his knowledge relating to VADS's proposed privatisation. The offences under both Acts carry a punishment of a fine of not less than RM1 million and imprisonment of a term not exceeding 10 years.

Dato' Sreesanthan claimed trial to the charges preferred and bail was set at RM300,000 with one surety. He was also ordered by the Court to surrender his passport.

## Examination, inspection and supervisory initiatives

### Stockbroking companies and fund managers

During the period of January – June 2012, as part of its risk-based approach supervision, the SC had conducted a total of 12 risk-focused examinations on seven stockbroking companies and five fund management companies. In addition, two surprise inspections were conducted on stockbroking companies focusing on areas of significant compliance, operational and financial risks. Supplementing these examinations were on-site engagements with 10 fund management companies focusing on specific risk areas ranging from business operational to risk management framework.

### Auditors of public-interest entities

The Audit Oversight Board (AOB) issued seven supervisory letters to registered auditors for breach of the MIA By-Laws on the five-year partner rotation rule.

Arising from regular inspection carried out by the AOB on UHY, an engagement partner, Alvin Tee Guan Pian was reprimanded on 12 July 2012 for failure to comply with relevant requirements of recognised auditing standards in Malaysia (the International Standards on Auditing) in the performance of an audit of a public interest entity for the financial year ended 31 July 2010. This is a breach of the AOB's registration condition imposed under section 31O(4) of the SCA whereby all registered individual partners are required to comply with the recognised auditing standards in the performance of an audit.

### Credit rating agency examination

Credit rating agencies (CRA) play an important role in the development of corporate bond market in Malaysia. As credit ratings are used by investors, borrowers and issuers to make investment and financing decisions, it is important that CRAs conduct their credit rating activities in accordance with principles of integrity, transparency, quality and good governance.

On 30 March 2011, the SC revised and issued the *Guidelines on Registration of Credit Rating Agencies* (CRA Guidelines) to further enhance the independency and quality of ratings of the CRAs. Malaysian Rating Corporation Bhd (MARC) and RAM Rating Services Bhd (RAM) were subsequently registered by the SC.

Arising from the amendments to section 126 *Securities Commission Act 1993* (SCA) in October 2011, the SC has been granted powers to examine CRAs in line with the newly introduced IOSCO principle of securities regulation relating to the supervision of CRAs. Following this, the SC established an examination framework for CRAs and commenced on-site examination on MARC in May 2012. The examination framework encompasses key areas such as corporate governance, rating policies and procedures, transparency and disclosure, independence and conflicts of interest as well as operational capabilities.

The SC has recently commenced its examination on RAM on 6 August 2012.

## Improper business practices by a licensed representative

Tye Lim Huat, a Capital Markets Services Representative's Licence (CMSRL) holder dealing in securities at Malacca Securities Sdn Bhd, was found to have facilitated the use of names and accounts of several Bumiputera individuals by another client of Malacca Securities Sdn Bhd for application of IPO shares. He was also found to have facilitated the transfer of sale proceeds of the IPO applications to that client's account. This constituted a breach of sections 65(1)(g)(iv) and 65(1)(l) of the CMSA for engaging in improper business practices and failure to carry out regulated activity in an honest and fair manner respectively. Such misconduct also contravened paragraphs 4.05(2) and 7.03(1) of the *Licensing Handbook* for failure to meet the minimum fit and proper criteria to be a CMSRL holder. The SC imposed a RM60,000 penalty against him and suspended his licence for one month from 6 July 2012 to 5 August 2012.

## Enforcement Highlights

### Ongoing Trials

- March 2012 – *PP v. Alice Poh Gaik Lye and Goh Bak Ming*. The trial against Poh and Goh continued in June 2012. Poh, 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) SIA for abetting her. The trial is scheduled to continue on 10 September 2012.
- April 2012 – *PP v. Alan Rajendram and Eswaramoorthy Pillay*. The Defence closed its case on 29 June 2012 after calling four witnesses. The Court then ordered parties to file their submissions by 14 September 2012. In this case, Alan was charged on 24 June 2010 for submitting false statements to the Bursa contained in LFE Corporation Bhd (LFE)'s unaudited financial results for all quarters of the financial year ended 2007 and also for criminal breach of trust (CBT) of RM18.99 million of LFE's monies. Eswaramoorthy, who was charged on 29 June 2010, was charged with abetting Alan in committing the CBT offence. On 14 May 2012, the Sessions Court held that the Prosecution had proven a prima facie case against Alan for the submission of false statements to Bursa Malaysia contained in LFE's unaudited financial results for all quarters of the financial year ended 2007. Alan and Eswaramoorthy were both acquitted and discharged of CBT.
- April 2012 – *PP v. Zamani Hamdan*. The trial against Zamani continued in June and July 2012. Zamani, a director of Rantau Simfoni Sdn Bhd, was charged on 28 October 2011 under sections 59(1) and 58(1) of the CMSA for holding himself out as a representative of an investment bank to trade in futures contracts. Zamani was also charged in the alternative for carrying on the business of trading futures contracts without a licence through his company, Rantau Simfoni. The trial is scheduled to continue on 3 September 2012.
- May 2012 – *PP v. Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai*. The trial against Chee, Shamsul and Mah commenced in May and continued in June, July and August. Chee and Shamsul were charged in 2007 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 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 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 was charged for abetting NBH in submitting false information contained NHB's 2005 Annual Report to the SC. The trial is scheduled to continue in October 2012.
- June 2012 – *PP v. Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. The trial against the accused persons continued in February, March and April 2012. On 7 June 2011, Norhamzah, the then 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. 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. Trial is scheduled to continue in 8 November 2012.

- August 2012 – *PP v William Yue Chi Kun*. In March 2012, William Yue, the engagement 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. The trial against William Yue continued in the months of May, June and July. Trial dates have been fixed on 16 October 2012.
- August 2012 – *PP v Ngu Tieng Ung*. The retrial against Ngu, a former director of Pancaran Ikrab Bhd (PIB) continued in the months of May to August 2012. He was charged in 2005 for securities fraud under section 87A(b) SIA and for CBT under section 409 of the Penal Code. The trial is scheduled to continue on 13 September 2012.

## Appeals

### High Court

- January 2012 – *Ashari Rahmat v. PP*. On 4 January 2012, the High Court struck off Ashari's appeal against his conviction and sentence on the basis that the notice of appeal which he had filed was defective. His conviction was confirmed and he was ordered to pay a fine of RM1 million. The jail sentence of three years imposed by the Sessions Court has been stayed pending the disposal of Ashari's appeal to the Court of Appeal. The appeal by Ashari at the Court of Appeal is fixed for hearing on 4 September 2012.
- June 2012 – *PP v. Chee Kok Wing and three others*. On 28 May 2007, two of the accused persons, Chee Kok Wing and Shamsul Khalid were charged under section 122B and section 122(1) of the SIA. Chee Kok Wing was also charged under section 55 SCA and section 364 (2) of the *Companies Act 1965*. On 29 May 2012, the Sessions Court made an order of discharge not amounting to acquittal (DNAA) against both the accused persons in respect of the charges under section 122B SIA read together with section 122(1) SIA. The court ordered this on the basis that the charges were said to be groundless as section 122(1) had been declared unconstitutional by the High Court. The Prosecution filed a revision against the order of the Sessions Court at the High Court. On 13 June 2012, the High Court ruled in favour of the prosecution and held that the decision of the Sessions Court to DNAA, the charges against the accused person was wrong in law and ordered the charges to be reinstated.
- June 2012 – *Anuar Abdul Aziz v. PP*. The accused was charged for acting as a fund manager's representative for Corporate Eight Asset Management Sdn Bhd without a licence. The Sessions Court acquitted and discharged Anuar at the end of defence case, upon which the prosecution appealed against the acquittal to the High Court. On 12 June 2012, the High Court heard submissions from both parties and fixed 6 September 2012 for decision.

### Court of Appeal

- June 2012 – *PP v. Chin Chan Leong*. The Sessions Court had originally sentenced Chin to a fine of RM1.3 million as well as a one-day imprisonment term upon his plea of guilt to the charge under section 84(1) of the SIA for market manipulation involving the shares of Fountain View Development Bhd. Upon the prosecution's appeal to the High Court, the court affirmed the sentence meted out by the Sessions Court leading to the SC's further appeal to the Court of Appeal. The prosecution then filed an appeal to the Court of Appeal. On 24 June 2012, the Court of Appeal enhanced the sentence against Dato' Chin by imposing a 12-month jail term on him. In addition, the Court of Appeal upheld the fine of RM1.3 million that was earlier imposed by the Sessions Court.

- July 2012 – *PP v. Ahmad Shkri*. The accused was convicted by the Sessions Court for two charges of short-selling involving 202 lots of AKN Technology Bhd shares and was fined RM150,000 for each charge, in default six months imprisonment. His appeal to the High Court was dismissed on 4 August 2009. He then filed a further appeal to the Court of Appeal. The Court of Appeal, upon hearing the matter on 24 July 2012 unanimously dismissed the appeal against sentence and upheld the conviction and sentence set by the Session Court.

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

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