

The

# Reporter

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## Executive Summary

Over and above compliance with the relevant rules and regulations, the challenge for all market participants continues to be growing and developing a good corporate governance culture that encapsulates not only the aspect of compliance but also the assurance and accountability of the player's integrity in the broadest sense.

Such values of compliance and corporate governance in general apply to all market participants, including professional advisers who are employed by companies to advise on a broad range of areas straddling legal, financing and investment issues. They exercise the role of transactional gatekeepers and must recognise that their information or advice to the companies they are engaged to represent is of paramount importance. Failure to exercise this responsibility seriously will attract consequences. For example, in the first quarter of 2012, the SC took administrative action against an investment bank for its failure to conduct proper due diligence as a principal adviser of a company that submitted a corporate proposal to the SC.

*Administrative action  
against an investment  
bank*

## **Investment bank reprimanded for failure as principal adviser**

Affin Investment Bank Bhd (Affin IB) was reprimanded by the SC on 21 March 2012 for its failure to conduct proper due diligence as a principal adviser in relation to a conflict-of-interest situation, resulting in a material omission in a corporate proposal. In this regard, Affin IB was found by the SC to have breached section 214(1) of the CMSA which imposes an obligation on persons submitting information to the SC, not to submit any statements or information which contains a material omission.

In addition, Affin IB failed to immediately inform the SC of any material change or development in circumstances that would affect the consideration of the SC, and to submit a proposal to resolve, eliminate or mitigate such conflict-of-interest situation.

## Enforcement Highlights

### Ongoing Trials

- April 2012 – *PP v Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. The trial against the accused persons continued in February, March, April and May 2012. On 7 June 2011, Norhamzah, 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, 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, the company's accounts manager was charged with abetting the company to furnish the false statements. Trial is scheduled to continue in June and July 2012.
- February 2012 – *PP v Ravandran and Kenneth Tan Kam Sang*. In this case, the Prosecution closed its case on 22 February 2012 after calling 23 witnesses. Ravandran and Kenneth were both charged in 2004 under section 32B(1) of the *Securities Commission Act 1993* (SCA) for their alleged false reports in the Follow-up Questionnaire to the SC concerning the utilisation of Kiara Emas Asia Industries Bhd's rights issue proceeds.
- April 2012 – *PP v Alan Rajendram and Eswaramoorthy Pillay*. The Prosecution closed its case against the accused persons on 24 February 2012 after calling 35 witnesses. Alan was charged on 24 June 2010 for submitting false statements to Bursa Malaysia 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 ordered Alan to enter his defence for the offence of false submissions to Bursa Malaysia. The court acquitted him and Eswaramoorthy on CBT charges. Trial is scheduled to continue from 11–13 and 22 June 2012.
- March 2012 – *PP v William Yue Chi Kun*. The trial against William Yue continued in March 2012. 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. Trial is scheduled to continue on 21 June and 17–18 July 2012.
- March 2012 – *PP v Chee Kok Wing, Shamsul Khalid Ismail and Mah Soon Chai*. Chee and Shamsul were charged in 2007 for causing the issuance of NasionCom Holdings Bhd's (NHB) prospectus which contained misleading information concerning the top ten customers of NHB for the financial period ended 31 July 2005. This information was required to be submitted to the SC in connection with NHB's proposal for listing on the MESDAQ Market of Bursa Malaysia. 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 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. Following the dismissal of the first and second accused persons appeal for separate trials by the Court of Appeal, the Sessions Court on 30 March 2012 fixed trial dates for 25–29 June 2012, 30–31 July 2012, 1–2 August 2012 and 13–15 August 2012.
- March 2012 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. The trial against Poh and Goh continued in February and March 2012. Poh, the 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 SC's investigations revealed that Liqua paid RM12 million to an entity called Wynsum Sdn Bhd which she controlled. Out of this sum, a total of RM9.75 million was 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. Trial is scheduled to continue on 18 June 2012.

- April 2012 – *PP v Zamani Hamdan*. The trial against Zamani commenced on April 9 2012. Zamani, a director of Rantau Simfoni Sdn Bhd, was charged on 28 October 2011 under section 59(1) and section 58(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. Zamani was also charged in the alternative for carrying on the business of trading futures contracts without a licence through his company, Rantau Simfoni. Trial is scheduled to continue from 18 to 21 June 2012.
- April 2012 – *PP v Ngu Tieng Ung*. The retrial against Ngu, a former director of Pancaran Ikrab Bhd (PIB) commenced on 16 January 2012. He was charged in 2005 for securities fraud under section 87A(b) SIA and for CBT section 409 of the *Penal Code*. In October 2010, he pleaded guilty to utilising RM15.5 million of PIB's funds to purchase a controlling block of shares in the company. The Prosecution filed an appeal to the High Court against the sentence imposed by the Sessions Court. On 26 August 2011, the High Court quashed the conviction and sentence on the basis that Ngu's plea of guilt was a qualified plea and remitted the matter for a retrial to the Sessions Court. The trial is scheduled to continue on 9 and 10 July 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 21 June 2012.
- April 2012 – *PP v Tan Hooi Chong*. Tan Hooi Chong, a director of Kiara Emas Asia Industries Bhd (KEAIB), was convicted on three counts of abetting KEAIB in misappropriating its rights issue proceeds amounting to RM16.9 million. He was sentenced to a fine of RM200,000 (in default, six months imprisonment) with respect to each charge. 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 March 2012, the High Court remitted the matter to the Sessions Court for retrial. Tan has since filed an appeal to the Court of Appeal against the High Court's order for the retrial.

### Civil settlements

In February 2012, a former corporate finance executive in K&N Kenanga Investment Bank Bhd entered into a regulatory settlement with the SC following the initiation of a civil action against her by the SC. The SC had issued a letter of demand to Lim Chin Chin for her role in the insider trading of Sin Chew Media shares in January 2007. The settlement, in the sum of RM232,320 was reached when she agreed to settle a civil claim that the SC was proposing to institute against her for a disgorgement amount which was equivalent to three times the gains made by the individuals whom she tipped. The SC had earlier issued letters of demand to Lim Chin Chin's 'tippees' namely Ong Sew Teng and Chong Hiong Lim who had, in October 2011 entered into regulatory settlements for their insider trades in Sin Chew shares.

FOR MORE INFORMATION

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

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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](mailto:cau@seccom.com.my)