

The

# Reporter

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## Executive Summary

The Malaysian capital market continues to register rapid growth with 2013 registering an increase in size to RM2.5 trillion from RM2.1 trillion in the previous year. 2013 saw 17 new listings on the stock exchange, totalling to 911 listed companies on both, Main and ACE markets. Transparency and integrity of information remain the cornerstone in ensuring that the capital market continues to facilitate capital raising and contribute to the real economy. In this regard, directors, promoters, principal advisers and experts are expected to exercise due diligence in ensuring that information provided to investors pursuant to an Initial Public Offering or post listing obligation are true and accurate.

In this respect, the SC recently imposed a fine on Ranhill Energy and Resources Berhad (Ranhill) for failure to disclose material changes related to its listing application. Since this obligation is also incumbent on promoters, Ranhill's promoter was also reprimanded and fined for the same breach.

Two former directors of Silver Bird Group Berhad were also recently charged under Section 369(b)(B) of the *Capital Markets and Services Act 2007* (CMSA) for furnishing false information relating to the financial affairs of the company to Bursa Malaysia Securities Berhad. This case is still ongoing.

Auditors play a key role in ensuring that financial statements issued by Public Interest Entities reflect the true and fair view of the financial position of the entity. In this regard, the Audit Oversight Board (AOB) had sanctioned 6 individual auditors for failure to comply with auditing and ethical standards in the discharge of their function.

*Company fined;  
promoter reprimanded  
for disclosure offence*

*Directors charged  
for furnishing false  
information*

*Enforcement action  
taken by AOB against  
auditors*

## **Administrative fines imposed on Ranhill Energy and Tan Sri Hamdan Mohamad**

The SC imposed a fine of RM200,000 on Ranhill Energy and Resources Bhd (Ranhill) and reprimanded as well as fined Tan Sri Hamdan Mohamad RM300,000 for failure to disclose to the SC material changes related to Ranhill's listing.

Both Ranhill and Tan Sri Hamdan, the latter being the Executive Director/President and Chief Executive of Ranhill, were found to have breached section 215(3) read with section 354(1) of the CMSA, for failing to immediately inform the SC about the suspension of the licence issued by Petroliaam Nasional Bhd (Petronas) to Perunding Ranhill Worley Sdn Bhd (PRW), a company controlled by Tan Sri Hamdan. The notice of suspension was received on 17 July 2013.

Ranhill relies on PRW for contracts secured from Petronas. This contract represents a material contribution to the revenue of the Ranhill group of companies. The suspension of the licence was therefore deemed as a material change in circumstance as it posed potential adverse implications on Ranhill's oil and gas business. Under the circumstances, Ranhill and Tan Sri Hamdan were required to immediately inform the SC of the material change in circumstance under section 215(3) of the CMSA as the earlier disclosures in the listing prospectus of Ranhill would no longer be considered accurate or reflective of the prevailing circumstances, and potentially misleading.

The SC views timely and transparent disclosure of material information by companies and promoters seeking to raise funds via an initial public offering as fundamental to ensuring trust and confidence in the capital market. Companies, promoters and advisers are reminded to exercise vigilance in this regard.

## **Audit Oversight Board's administrative actions**

In August 2013, Tan Chin Huat and Yeo Eng Hui of STYL & Associates, Wong Shan Ty of Ong & Wong (WST) and Dr Abdul Halim Husin of Wong Weng Foo & Co. were reprimanded for the breach of the AOB's registration condition imposed under section 31O(4) of the SCA.

The four individual auditors were sanctioned for failures to comply with the relevant requirements of the auditing standards in Malaysia, i.e. the International Standards on Auditing (ISA), in the performance of the audit of public-interest entities (PIEs).

AOB also reprimanded Cheah Choong Keong of C.K. Cheah & Co. (CCK) and Mohd Neezal Md Noordin of AljeffriDean for failure to comply with the relevant requirements of the recognised ethical and auditing standards in Malaysia, i.e. Malaysian Institute of Accountants' By-Laws and the ISA, in the performance of the audit of the PIEs. Monetary penalty was also imposed on the auditors due the severity of the breaches.

In September 2013, pursuant to section 31ZB of the SCA, CCK and WST appealed the decision made against them by the AOB Board. Their respective appeals were rejected and the sanctions imposed on them by the AOB were affirmed by the SC in October 2013.

In addition to the sanctions, AOB had also requested the respective auditors who continued to audit the respective PIEs to furnish evidences from their audit working papers to prove that all significant deficiencies were rectified in their subsequent year audit.

The publications of the sanctions are available in the AOB's website.

## Silver Bird's former directors charged

SC charged two former directors of Silver Bird Group Bhd (Silver Bird), a manufacturer and distributor of bakery and confectionary products, for furnishing false information to Bursa Malaysia Securities Bhd (Bursa Malaysia) between 2010 and 2011.

Dato' Jackson Tan Han Kook, 59 and Derec Ching Siew Cheong, 51, were each charged with seven and eight counts respectively, of furnishing false statements relating to the revenue of Silver Bird in 2010 and 2011, to Bursa Malaysia. The charges under section 369(b)(B) of the CMSA were made following SC's investigation in relation to false statements contained in Silver Bird's eight unaudited quarterly financial accounts for the financial years ended 31 October 2010 and 2011.

Following the company's discovery of financial irregularities, Silver Bird announced in February 2012 that the company was deemed to be an affected listed issuer under Practice Note 17 of the *Listing Requirements*. Shortly after, the company removed both Tan and Ching from its board of directors.

Tan and Ching were each granted bail of RM250,000 with one surety each by Sessions Court Judge Tuan Murtazadi Amran and were required to surrender their passports to the Court.

If convicted, Tan and Ching will be liable to imprisonment for a term not exceeding 10 years and a fine not exceeding RM3 million.

## SC succeeds in High Court on constitutional challenges

On 20 July 2012, the SC charged corporate lawyer, Dato' Sreesanthan Eliathamby (the accused) with seven counts of insider trading on the shares of four listed companies, namely Maxis Communication Bhd, Sime Darby Bhd, VADS Bhd and UEM World Bhd. The offences took place between 2006 and 2008 and related to various corporate proposals.

In an application which was filed in the Sessions Court on 19 September 2012, the accused mounted constitutional challenges to various laws, including the securities laws, comprising ten questions of constitutional law. The constitutional challenges questioned the validity of section 128 of the *Securities Commission Act 1993* (SCA) (affecting the SC's powers of investigation), section 134 of the SCA (affecting SCA's power to record statements from witnesses and determine who may be present during the recording of such statements), sections 172A and 172B of the *Criminal Procedure Code* (being recent amendments passed by Parliament in 2012 affecting pre-trial procedure) and section 376(3) of the same Code (relating to the power of the Attorney General to delegate the institution of criminal proceedings). Ultimately, the accused sought a declaration from the court that the relevant provisions of law were invalid and to acquit him of all charges of insider trading.

The SC successfully won the arguments on the constitutional challenges after the High Court heard submissions from the defence and prosecution. On 27 November 2013, the High Court decided in SC's favour by dismissing the constitutional challenges. The defence has since filed on appeal to the Court of Appeal against the decision of the High Court. The case is currently pending a hearing date at the Court of Appeal.

## SC succeeds at the Federal Court against accused's application

On 13 September 2013, the Court of Appeal, after hearing submissions from the parties, dismissed the appeal filed by the second accused, Siow Chung Peng to quash the charge against him on the basis that he is provided with immunity from prosecution under the provisions of the *Whistleblower Protection Act 2010*. The Court of Appeal, in handing down its decision, affirmed the High Court's decision made on 5 February 2013.

On 14 October 2013, Siow's counsel filed an application for leave to appeal to the Federal Court against the decision of the Court of Appeal. On 13 January 2014, the Federal Court after hearing submissions from Siow's counsel and the Prosecution, decided in the SC's favour and dismissed Siow's application.

Siow, a businessman, was charged on 4 September 2011 under section 122C(c) of the *Securities Industry Act 1983* (SIA) read together with section 84 of the same Act for abetting former remisier, Dato' David Goh Hock Choy, for causing the creation of misleading appearance of active trading in Lii Hen Industries Bhd shares on Bursa Malaysia where he was indirectly concerned in transactions of the sale and purchase of Lii Hen shares that did not involve any change in the beneficial ownership.

## Court of Appeal convicts Mohamed Abdul Wahab for misleading disclosure to the SC

On 13 December 2013, the Court of Appeal convicted Mohamed Abdul Wahab for the charges under section 122B(b)(cc) of the SIA.

Mohamed was sentenced to a fine of RM500,000 for each charge, making the total fine of RM1 million (in default of one year imprisonment) for authorising the furnishing of misleading statements to the SC in Metrowangsa's semi-annual report from 2000 to 2001. He was at the material time, a licensed fund manager and Executive Director of Metrowangsa Asset Management Sdn Bhd.

The offences under section 122B(b)(cc) of the SIA were in relation to misleading statements provided to the SC regarding the amount of funds managed by Metrowangsa in 2000 and 2001. During the material time, Metrowangsa had in its reports made to the SC, excluded funds received from two of its clients, Lembaga Tabung Haji and Mimos Bhd, amounting to RM134.2 million for the year 2000 and RM231 million for the year 2001.

Mohamed was charged in 2003 with two offences under section 122B(b)(cc) of the SIA for authorising the misleading statements to be made to the SC and one offence under section 47C(5) of the SIA for having abetted Metrowangsa in using RM50 million of Lembaga Tabung Haji's moneys to pay its other clients. On the charges under section 47C, he was convicted by the Sessions Court on 1 April 2009, together with Dr Ghazali Atan, the then Managing Director of Metrowangsa and ordered to pay a fine of RM200,000 (in default of one year imprisonment).

## Enforcement Highlights

### Ongoing trials from September – December 2013

#### Sessions Court:

- August 2013 – *PP v Ngu Tieng Ung*. The Prosecution closed its case against Ngu Tieng Ung on 28 November 2012 after having called 33 witnesses. Ngu was charged in 2005 with two counts of securities fraud under section 87A(b) of the SIA and one count of criminal breach of trust under section 409 of the *Penal Code*. After considering full submissions from the parties, on 20 August 2013 the Court found that the Prosecution had successfully proven a prima facie case for the alternative charge under section 409 of the *Penal Code* and ordered Ngu to enter his defence. Case is fixed for continued hearing on 19–21 February and 7 March 2014.
- September 2013 – *PP v Tan Han Kook and Ching Siew Cheong*. Dato' Jackson Tan Han Kook, 59, and Derec Ching Siew Cheong, 51, were each charged on 11 September 2013 with seven and eight counts respectively, of furnishing false statements relating to the revenue of Silver Bird Group Bhd in 2010 and 2011, to Bursa Malaysia. The charges, under section 369(b)(B) of the CMSA, were in relation to false statements contained in Silver Bird Group Bhd's eight unaudited quarterly financial accounts for the financial years ended 31 October 2010 and 2011.

Both Tan and Ching were each granted bail of RM250,000 with one surety each by Sessions Court Judge and were required to surrender their passports to the Court. The matter has been fixed for case management on 21 February 2014.

- September 2013 – *PP v Low Thiam Hock*. The accused was charged for creating a misleading appearance with respect to the price of Repco Holdings Bhd (Repco) shares on 3 December 1997 on the Kuala Lumpur Stock Exchange by instructing a dealer's representative of Sime Securities Sdn Bhd to purchase Repco shares. This case was reverted back to the Sessions Court on 28 February 2013 after the Court of Appeal upheld SC's appeal against the acquittal of the accused. The defence case began on 18 October 2013 with the testimony of the accused. Trial is scheduled to resume on 24–25 February 2014 and 10–11, 24–25 March 2014.
- September 2013 – *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) Annual Report 2005 which contained false information, namely the revenue of NHB for the financial period ended 31 December 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 2004. 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 NHB in submitting false information contained NHB's 2005 Annual Report to the SC. The trial continued on 14–15 May, 12 and 14 June, and 1–5 and 19 July 2013. On 13 September 2013, the Sessions Court acquitted all accused of all charges. The Prosecution has filed an appeal against the decision of the Sessions Court on 24 September 2013.
- October 2013 – *PP v Alice Poh Gaik Lye and Goh Bak Ming*. 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. 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 21–23 October 2013. The trial is scheduled to continue on 14–16 May, 3-5 and 10–11 June 2014.

- November 2013 – *PP v William Yue Chi Kin*. 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 SIA read together with section 122C(c) of the same Act for abetting U-Li in submitting a false report to Bursa Malaysia. On 26 November 2013, the Sessions Court heard submissions and clarifications from the parties.
- October – November 2013 – *PP v. Norhamzah Nordin, Mohd Azham Mohd Noor and Lim Hai Loon*. 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 Azham 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 proceeded on 24-25 October, 13–15 November 2013 where the prosecution called 11 witnesses. The case is fixed for continued hearing on 13–14, 24–25 February 2014.

## Appeals and Applications

### High Court

- November 2013 – *Dato' Sreesanthan all Eliathamby v PP*. On 20 December 2012, the Court allowed the accused's application to refer various constitutional issues for determination by the High Court and stayed the main proceedings pending the determination of the said issues. On 27 November 2013, the High Court determined the constitutional issues in SC's favour and dismissed the accused's application. The accused has filed an appeal to the Court of Appeal against the decision of the High Court.

### Court of Appeal

- August 2013 – *Anuar Abdul Aziz v PP*. Anuar was charged for acting as a fund manager's representative for Corporate Eight Asset Management Sdn Bhd without a licence. On 15 August 2013, the Court of Appeal dismissed the Prosecution's appeal against the High Court's decision to acquit Anuar.
- August 2013 – *Wahid Ali Kassim Ali v PP*. Wahid Ali was convicted by the Kuala Lumpur Sessions Court in October 2005 of 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). On 14 January 2013, the High Court dismissed the appeal of Wahid Ali Kassim Ali, a former director and fund manager of Aiwanna Manage Assets Sdn Bhd (Aiwanna), against his conviction and sentence for securities fraud which were committed between the year 2001 and 2002. The accused has filed an appeal to the Court of Appeal against the conviction and sentence ordered by the High Court and Sessions Court.
- September – October 2014 – *Siow Chung Peng v PP*. On 13 September 2013, the Court of Appeal, after hearing submissions from the parties, dismissed the appeal filed by the second accused, Siow Chung Peng to quash the charge against him on the basis that he is provided with immunity from prosecution under the provisions of the *Whistleblower Protection Act 2010*. The Court of

Appeal, in handing down its decision, affirmed the High Court's decision made on 5 February 2013. On 14 October 2013, Siow's counsel filed an application for leave to appeal to the Federal Court against the decision of the Court of Appeal.

- December 2013 – *PP v Mohamed Abdul Wahab*. Abdul Wahab was charged under section 122B(b) (bb) of the SIA for submitting false information to the SC. On 19 February 2013, the SC filed an appeal to the Court of Appeal against the decision of the High Court Judge who dismissed the SC's appeal and upheld the decision of the Sessions Court to acquit and discharge the accused after full trial. On 13 December 2013, the Court of Appeal unanimously overturned the decision of the High Court to acquit Mohamed Abdul Wahab for the charges under section 122B(b)(cc) of the SIA. Mohamed was sentenced to a fine of RM500,000 for each charge, making the total fine of RM1 million (in default of one year imprisonment) for authorising the furnishing of misleading statements to the SC in Metrowangsa Asset Management Sdn Bhd's (Metrowangsa) semi-annual report from 2000 to 2001. He was at the material time a licensed fund manager and executive director of Metrowangsa.

## Regulatory Settlements

### OCBC Bank

In this quarter, SC entered into a regulatory settlement with OCBC Bank (M) Bhd when the latter agreed without admission or denial of liability, to settle a civil claim that the SC was proposing to institute against it with respect to the manipulation of DRB-Hicom Bhd shares on 25 July 2011, contrary to section 176 of the CMSA. The settlement was reached following a letter of demand sent by the SC pursuant to its civil enforcement powers whereby the SC had claimed three times the gains made by OCBC from the manipulation activities. OCBC agreed to pay RM2.475 million to the SC being three times the pecuniary gains made by them as a result of the breach. The SC will use the amount disgorged from OCBC to compensate investors who were aggrieved as a result of the misconduct.

### Orisoft Technology Bhd

On 1 August 2013, SC entered into a settlement with Tan Yeong Kim and She Tu Shwu Fen in the sum of RM106,550.31 when they agreed without admission or denial of liability, to settle a claim by the SC against them for contravention of section 89E of the SIA and section 188 of the CMSA in relation to insider trading in the shares of Orisoft Technology Bhd between 17 May 2007 and 29 October 2008.

### Worldwide Holdings Bhd

On 26 August 2013, SC entered into a settlement with Lew @ Leow Muy Lai in the sum of RM122,436 when she agreed without admission or denial of liability, to settle a claim by the SC against her for contravention of section 89E of the SIA in relation to insider trading in the shares of Worldwide Holdings Bhd on 9 July 2006.

The settlement was reached following a letter of demand sent by the SC pursuant to its civil enforcement powers under the securities laws, where the amount disgorged from the defendant was two times the difference between the price at which the shares were acquired by her and the price at which they would have been acquired if the information had been generally available.

**Apology and public retraction by journalist from the Malaysian Insider with regard to a publication in relation to the SC**

On 24 October 2013, K.A Jahabar Sadiq a/l K.A Abdul Kader issued an apology and a public retraction to the SC on The Malaysian Insider's website with regard to an article published on 10 August 2012 headlined "SC to order Sime general offer for E&O, say sources".

The settlement was made following a letter of demand issued by the SC to K.A Jahabar Sadiq a/l K.A Abdul Kader requesting him to make a full and unequivocal retraction of the said article which was attributed to the SC and to publish a statement by him that the article dated 10 August 2012 was untrue and published without prior verification with the SC.



FOR MORE INFORMATION

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

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