MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia . Registration No. 200001022382 (524989-M))

The Observer

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***The Minority Shareholders Watch Group is now on Twitter. The presence at Twitter is the first step for us to create strong social media presence and engage with our stakeholders more effectively. Do follow MSWG's Twitter account at @MSWGMalaysia and share your thought on our tweets from time to time.***

## ❖ Independent directors – the last bastion of hope for minority shareholders

Under the Companies Act 2016, all directors owe a fiduciary duty to act in the best interest of the company. However, the Bursa Securities Listing Requirements (LR) take a more pragmatic approach by distinguiAshing independent directors (IDs) from non-independent directors.

Independent directors are classified as independent non-executive directors (INEDs) while non-independent directors are classified as either non-independent non-executive directors (NINEDs) or executive directors (EDs). A Non-independent director who has no executive capacity is a NINED.

The non-independent directors are deemed so under the LR for a few reasons e.g., they are holding more than 5% shares, they are EDs, they are nominee directors, they are 'related' to each other. In each of these instances, it is obvious that they may face challenges to their independence. Though they can be independent, the LR is being objective by classifying them as non-independent directors.

It therefore becomes obvious why minority shareholders place a lot of hope and trust on IDs and why they are considered the last bastion of hope at the corporate level.

### Major shareholders elect IDs – a paradox

Major shareholders can elect IDs – unlike an RPT, where interested directors cannot vote.

Thus, a shareholder who hold more than 50% stake in a company can elect IDs of their choice. And obviously, there may be a temptation for these shareholders to appoint friendly parties or subservient parties as IDs.

Minority shareholders cannot do much in such instance even when the elected IDs are evidently 'friendly parties' or 'connected' in some way as they have not breached the definition of IDs. These so-called IDs fulfil the definition of IDs in form but not in substance.

The most the minority shareholders can do is to question the Board and the Nomination Committee during annual general meeting. This is the first red flag for minority shareholders – is the independence of the ID questionable?

**Remuneration impacting independence**

Sometimes, IDs are handsomely remunerated in exchange for their allegiance and patronage. These IDs are heavily dependent on the remuneration to the extent that they become dependent in substance while fulfilling the definition of IDs in form.

In fact, a true ID is one who is prepared to walk away from the remuneration if he senses something is not right – the ID is not dependent on the remuneration to balance his financial position.

**ID resigns mid-tenure may be a red flag**

Another red flag is the reaction of IDs, if any, when issues surface and how soon they react when these issues surface. These will be the tell-tale signs for minority shareholders when making informed investment decisions.

Every ID has his own risk threshold, which will trigger his resignation and whistleblowing when problems arise in a company.

We have seen this in the corporate circles where some IDs resign at the first signs of trouble while others, due to their risk appetite, stay on and resign at later stages as the problems fester to varying degrees.

Minority shareholders, as investors, must perform their due diligence on the background and track record of IDs sitting at the Board of PLCs. Prominent and reputable directors are of some comfort but is not an absolute guarantee. Angels who walk on to boards may turn out to be devils. Perhaps, continued due diligence is the order of the day when evaluating IDs.

**Multiple Resignations**

Multiple resignations from the board, at any one time or consecutively in short interval is another wake-up call especially when it involves IDs. The inference is that perhaps all is not well in the company and these directors want out before things blow up. This may be an attempt to avoid regulatory sanctions.

Resigning directors often cite boiler-plate reasons such as 'pursuing other interests' as the reason for their resignation. Maybe, they do not want to burn their bridges by stating the actual reason. However, minority shareholders and the stock market are often able to read between the lines and draw their own inference.

There are a few instances where the directors have the integrity to state the actual reason as to why they are resigning. Such resignations are surely another red flag to be considered by minority shareholders.

**The three disciplines of good CG**

The best discipline is to have self-discipline. There are companies, even those with major shareholders, which end up with IDs perceived by the market as independent. Both the major shareholder and the company has exercised the self-discipline to ensure this.

And if there is no self-discipline, the market will step in to discipline the PLC. Where the market perceives that something is amiss, whether in the appointment of IDs or in their resignation, the market disciplines these PLCs by 'sell-downs' of the shares, both by institutional shareholders and even minority shareholders. This can be quite painful, not only in terms of share price reaction, but also by damage to reputation which is easy to lose and hard to regain.

The third discipline is regulatory discipline whereby the regulators will impose their sanctions on the PLC and/or directors in their personal capacity.

**Conclusion**

Minority shareholders must do their due diligence, not only on the PLC, but also on the directors of the PLC, especially the IDs who are the last bastion of hope for minority shareholders. We all know that the company is a legal person devoid of emotions – it is the directors who manage the company. Since, it is the directors, under whose directions the company operates, it makes absolute sense to spend some time performing due diligence on the directors, especially the IDs.

It is said that there are 2 types of IDs – independent directors and independent 'independent directors'- minority shareholders prefer the latter.

**Devanesan Evanson**
**Chief Executive Officer**

## MSWG AGM/EGM Weekly Watch 16 – 20 August 2021

For this week, the following are the AGMs/EGMs of companies which are in the Minority Shareholders Watch Group's (MSWG) watch list.

The summary of points of interest is highlighted here, while the details of the questions to the companies can be obtained via MSWG's website at www.mswg.org.my.

| Date & Time | Company | Quick-take |
|---|---|---|
| 18.08.21 (Wed)<br>10.00 am | Pantech Group Holdings Bhd (AGM) | Pantech Group recorded RM486.26 million in revenue, which was a 19.30% decline from the preceding year. Profit before tax (PBT) was RM36.01 million, a RM10.01 million slide from the RM 46.02 million recorded in FY2020. With prudent management, |

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| | | Pantech Group returned a PBT margin of 7.41%, a marginal reduction of 0.23% from the 7.64% posted in the previous financial year. The year-on-year decline in revenue and PBT bore witness to the adverse market situation. |
| 18.08.21 (Wed)<br>02.00 pm | Opcom Holdings Bhd (EGM) | The EGM is to seek shareholders' approval for the Proposed Private Placement of up to 53,212,400 new ordinary shares in Opcom representing approximately 30% of the total number of issued shares of Opcom and the Proposed establishment of an Employees' Share Option Scheme of up to 30% of the total number of issued shares of Opcom for eligible directors and employees. |
| 19.08.21 (Thur)<br>10.00 am | Priceworth International Bhd (EGM) | Priceworth International Berhad intends to undertake the following:<br><br>a) Proposed Share Consolidation, which entails the consolidation of every 10 existing PWI Shares into 1 Consolidated Share.<br>b) Proposed Notes Issue, which entails the issuance of redeemable convertible notes with an aggregate principal amount of up to RM100 million. The bulk of the proceeds from the exercise will be utilising for the repayment of bank borrowings and Infrastructure cost for timber logging. |

| **One of the points of interest to be raised:** | |
|---|---|
| **Company** | **Points/Issues to Be Raised** |
| Pantech Group Holdings Bhd (AGM) | 1) What are the reasons for the sharp increase in other expenses from RM1,104,784 in FY2020 to RM2,448,350 FY2021 (Page 63 of the Annual Report 2021)? |

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| | 2) In FY2021, Pantech Group recorded an allowance for impairment on receivables of RM1,579,906 (FY2020: Reversal of RM656,554), comprising both trade and other receivables (Page 63 & Pages 116-117 of the Annual Report 2021).<br><br>a) Which trade and other receivables are involved in the allowance for the impairment?<br><br>b) Is the amount recoverable?<br><br>c) What are the measures taken to collect the receivables?<br><br>d) How much of the receivables have been recovered to-date? |

**MSWG TEAM**


Devanesan Evanson, Chief Executive Officer, (devanesan@mswg.org.my)
Linnert Hoo, Head, Research & Development, (linnert.hoo@mswg.org.my)
Norhisam Sidek, Manager, Corporate Monitoring, (norhisam@mswg.org.my)
Lee Chee Meng, Manager, Corporate Monitoring, (chee.meng@mswg.org.my)
Elaine Choo Yi Ling, Manager, Corporate Monitoring, (elaine.choo@mswg.org.my)
Lim Cian Yai, Manager, Corporate Monitoring, (cianyai@mswg.org.my)
Ranjit Singh, Manager, Corporate Monitoring, (ranjit.singh@mswg.org.my)
Rita Foo, Manager, Corporate Monitoring, (rita.foo@mswg.org.my)
Nor Khalidah Mohd Khalil, Executive, Corporate Monitoring, (khalidah@mswg.org.my)


***DISCLOSURE OF INTERESTS***

*•With regard to the companies mentioned, MSWG holds a minimum number of shares in all these companies covered in this newsletter.*

## *DISCLAIMER*

*advised to obtain legal or other professional advice before taking any action based on this newsletter.*