

MINORITY SHAREHOLDER WATCHDOG GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Company No. 524989-M)

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Transmile verdict a step in the right direction



Comment

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ON Oct 28, the Securities Commission issued a short but highly significant press release.

It announced that the Sessions Court had found two former independent directors and audit committee members of Transmile Group Bhd, Jimmy Chin Kim Feung and Shukri Sheik Abdul Tawab, guilty under the Securities Industry Act 1983 for authorising the release of misleading financial statements to the stock exchange.

They were each sentenced to one year in prison and a fine of RM300,000. And if either is unable to come up with the money, an additional six months' imprisonment will be added.

The charge was under Section 122B(b)(bb) of the Securities Industry Act, which states that anyone found guilty of knowingly furnishing false or misleading statements can be liable to a fine of as much as RM3mil and imprisoned for up to 10 years.

The sentence meted out in this case was one-tenth the maximum jail sentence and financial penalty.

The Sessions Court's decision came six years after the actual financial period of the act, in 2005.

Transmile initially reported revenue of RM550mil, only to later restate them to RM356mil. In other words, 35% of the reported revenue was fraudulent.

Many observers of corporate Malaysia will view the decision as a step in the right direction.

The Sessions Court judge pointed out that the public interest factor must be given paramount consideration. He stated that the

directors were not decorative pieces. He also emphasised that the audit committee had specific duties, functions and responsibilities over the company accounts, and their point of view was heavily relied upon by the investing public.

According to the judge, the case showed blatant disregard of the seriousness of the concerns when the audit committee was told by the auditors that the contra transactions were unusual and lacked commercial justification.

These were sufficient warning bells to raise the concerns at the board which the audit committee members failed to do.

Transmile was a case where many individuals lost a significant amount of capital.

Right now, we know that the case against two other former directors of Transmile (Gan Boon Aun and Khiudin Mohammed), who were executive directors at the time, is currently pending at the Kuala Lumpur Sessions Court. The charges brought by the SC against Gan and Khiudin were similar: reporting misleading statements.

Ultimately our courts are one of the essential gatekeepers of our capital markets and together with the other gatekeepers, they should protect the integrity of the capital market.

If the integrity of our stock market is not protected as sacrosanct, it is entirely conceivable that we will end up with a market light on fundamental stocks and there would be a lack of trust, especially for long-term shareholders.

Obviously, we don't think that this is the way forward.

More of these cases need to be investigated and tried, with the appropriate sentences meted out.

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