MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
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The Observer

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❖ Authority to directors to allot new shares – for or against?

Recent news of Permodalan Nasional Berhad's (PNB) decisions to vote against the routinely proposed resolution for directors to issue and allot new shares has thrust the topic into the limelight.

The press has highlighted that the institutional investor had voted "against" the resolution to seek a general mandate for new shares issuance at Bermaz Auto Berhad's annual general meetings (AGM). It also plans to vote the same at the upcoming AGM of Hong Leong Bank Berhad.

It is worth noting that PNB has voted "against" the same resolution proposed by a few of its investee companies previously.

In Asia, it is not unusual to see companies seeking mandates from shareholders to issue new shares. Such mandates dilute the shareholdings of existing shareholders as they are unable to subscribe for the new placement shares. At the same time, it empowers the board with the right to issue shares (at a discount) to third-party investors at the board's discretion. The mandate expires annually, but fresh mandates can be sought at each succeeding AGM.

In Malaysia, the mandate for directors to issue and allot new shares falls under Sections 75 and 76 of the Companies Act 2016 (CA2016), which gives directors the authority to issue not more than 10% of the total number of issued shares until the conclusion of the next annual general meeting (AGM) of the company. The general mandate for new share issuance is passed by a simple majority of members present and proxies at the AGM.

Section 75 states that unless prior approval by way of resolution has been obtained, company directors shall not exercise any power:

- To allot shares in the company;
- To grant rights to subscribe for shares in the company;
- To convert any security into shares in the company; or
- To allot shares under an agreement or option, or offer.

Voting stance

According to PNB voting guidelines, effective 1 May 2022, PNB may vote "against" the resolution under Sections 75 and 76 of CA2016 if it finds insufficient disclosure on the manner of issuance and planned utilisation of the proceeds of the share issuance or the proposed issuance is deemed detrimental to the company and is not in the best interests of shareholders.

However, exceptions are made if the investee company explicitly disclose the purpose of seeking this mandate, e.g., regulatory capital requirements, funding of investment projects, working capital, acquisition, strategic opportunities, et cetera.

PNB's stance is similar to the voting stance of Retirement Fund Inc, or KWAP. The pension fund says it shall vote "against" such a resolution if the company fails to state the purpose expressly and planned utilisation of the proceeds to be raised from such a mandate (Source: KWAP's Voting Guidelines for Domestic Listed Equity Investments, 2022 edition).

From MSWG's point of view, we will also vote "against" the resolution on the general mandate if the company is "cash rich" and there are no plans /projects identified to utilise the cash accumulated.

The pros and cons

The standard argument for the need to obtain prior shareholders' approval to issue shares is that it would provide directors with the necessary flexibility to take swift action for corporate exercises, especially when market conditions are favourable. This would enable the company to speed up the process of issuing and allotting new shares (by way of private placement) without having to convene an extraordinary general meeting for shareholders' approval.

Besides, the board and management also argue that they could not expressively state the purpose and planned utilisation of the proceeds for the general mandate as they deem such information commercially sensitive.

Waiver of pre-emptive rights

Under Section 85(1) of the Companies Act 2016 (CA2016), shareholders have pre-emptive rights to be offered any new shares in a company which rank equally to the existing issued shares in the company.

In the past, PLCs had routinely tabled the resolution to seek approval for the general mandate to issue new shares under Sections 75 & 76 of CA2016 without specifically informing shareholders of their statutory pre-emptive rights set out in Section 85(1) of CA2016.

However, we have seen a change in such practice with an increased number of companies (e.g., JOE Holdings Berhad, Hong Leong Bank Berhad) expressively informing shareholders of the waiver of such right should they pass the resolution in AGM.

The changes occurred after the recent Court of Appeal's decision in *Concrete Parade Sdn Bhd v Apex Equity Holdings Bhd & Ors (2021)*, which held that an existing shareholder could not be denied its pre-emptive rights unless there is "direction to the contrary" given during a general meeting, before such new shares being offered to outsiders.

To obtain the "direction to the contrary", a company must expressively set out all the requisite information regarding the existing shareholders' pre-emptive rights under Section 85(1) of the CA 2016.

Existing shareholders must be expressly informed of their statutory pre-emptive rights. By voting in favour of the resolution for the issuance of new shares, the existing shareholders would be waiving their pre-emptive rights.

Lastly, the waiver is only effective if shareholders are aware of their legal rights and consciously choose not to exercise their rights as set out in Section 85(1) of CA2016.

However, the other side of the coin is that shareholders' interest is at stake when the board carries out multiple placements at their discretion in a carefree manner, which would erode the long-term shareholders' value significantly.

Dilution of ownership is a primary concern for shareholders when they grant the general mandate for new shares issuance if they do not participate or renounce their pre-emptive rights from taking part in the new issuance of shares (refer to the sidebar *Waiver of Pre-Emptive Rights* for more detailed explanation).

Often minority shareholders grant these mandates without fully understanding the impact of their actions. As a result, the board and management are not pressured to make clear and transparent disclosure on how the share issuance proceeds would be utilised.

Before voting on the mandate for directors to issue new shares, shareholders should take note that when a general mandate is sought, the proposed resolution must be accompanied by the following information: -

- Whether such mandate is new or a renewal
- If a renewal, specify the proceeds raised from the previous mandate (if any) and give the details and status of the utilisation of proceeds

Shareholders should also review the rationale behind the proposed resolution. Some critical considerations are the prospect of the company's businesses, the track record of equity fundraising by issuing new shares, the utilisation of proceeds raised earlier, the financing options available to the management, and the potential dilution arising from new shares issuance. Shareholders should also examine the company's financial position to determine whether fundraising is necessary.

Meanwhile, the board and management should ensure clear and adequate disclosures when seeking approval for the general mandate.

At the end of the day, minority shareholders must be well-informed to better understand the implications of their decisions and participate with greater awareness.

By Lim Cian Yai
Manager, Corporate Monitoring

MSWG AGM/EGM Weekly Watch 25 – 28 October 2022

For this week, the following are the AGMs/EGMs of companies which are on 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
26.10.22 (Wed) 10.30 am	Saudee Group Berhad (EGM)	The EGM is to seek shareholders' approval for a proposed private placement of up to 347 million new shares, representing 35% of the total

		number of issued Saudee shares to third-party investors. Also, shareholders' approval is sought for the proposed establishment of a share issuance scheme of up to 15% of the total number of issued shares of Saudee to the eligible directors and eligible employees of the Saudee Group.
27.10.22 (Thur) 09.00 am	Apollo Food Holdings Berhad (AGM)	The Group registered a turnover of RM188.27 million for FY2022, representing an 11% decrease compared to RM190.39 million in the previous financial year. The local market contributed about 74% of the turnover. Meanwhile, its net profit had decreased by 42.50% to RM9.97 million from RM17.34 million due to a lower gross profit margin because of higher raw material costs than the previous financial year.
27.10.22 (Thur) 09.30 am	Nylex (Malaysia) Berhad (AGM)	During FY2022, Nylex completed the disposal of its polymer, industrial chemical and logistics businesses, representing its entire core businesses, to Ancom Nylex Berhad for RM179.3 million. Subsequently, it has been classified as an affected listed issuer under Paragraph 8.03A(2) of the Main Market Listing Requirements. It has a 12-month period from 26 January 2022 to submit its proposal to acquire a new core business to regularise its condition and to maintain the listing status on Bursa Securities.
27.10.22 (Thur) 10.00 am	Fibon Berhad (AGM)	For FY2022, FIBON's revenue increased by 21.23% to RM15.14 million as pared to RM12.49 million in FY 2021. Its net profit rose from RM1.72 million in FY2021 to RM3.35 million in FY 2022, the highest level recorded in the last five years. The better topline performance was a result of the recovery in domestic-oriented sectors as almost all economic and social sectors returned to normalcy following the lifting of the Covid-19 restriction. The growth is also driven by the reopening of

		international borders and trade globally.
27.10.22 (Thur) 10.00 am	KUB Malaysia Berhad (AGM)	Shareholders should take heed of the ongoing legal disputes between the minority shareholders and KUB Malaysia on its 60%-owned associate company KUB Sepadu Sdn Bhd (KUBS). Previously classified as a subsidiary of KUB Malaysia, KUBS was deconsolidated from the Group's account and subsequently classified as an associate company after the latter was served a winding-up order by its minority shareholders on 15 June 2022. KUBS is a key operating subsidiary of KUB Malaysia involved in the operation of two oil palm estates totalling 4,616 hectares in Mukah, Sarawak. The oil palm business, in turn, was the most significant profit contributor to the Group in FY2022, with a net profit of RM18.52 million.
27.10.22 (Thur) 10.00 am	TAS Offshore Berhad (AGM)	The Group recorded revenue of RM57.50 million for FY2022, an increase of RM22.60 million or 64.74% compared to RM34.90 million recorded for FY2021. The increase in revenue was mainly attributed to the rise in the number of vessels being delivered. Despite the higher revenue recorded, it turned to loss-making in FY2022 with a pre-tax loss of RM0.81 million, compared to a profit of RM2.83 million in FY2021. The loss was mainly due to the loss on changes in the fair value of investment measured at fair value through profit or loss.
27.10.22 (Thur) 10.30 am	Hong Leong Bank Berhad (AGM)	For FY2022, the Bank achieved a total income of RM5,597 million, representing a 2.4% increase y-o-y, while its net profit after tax increased to a record RM3.29 billion, which was 15.0% higher than the previous year (net of the one-off tax provision for Cukai Makmur). The stellar achievement was a result of solid loan/financing growth, tight cost control, lower loan/financing impairment allowances and robust

		contributions across all its overseas operations and associates in China.
27.10.22 (Thur) 11.30 am	Ancom Logistics Berhad (AGM)	The Group posted lower revenue of RM29.9 million in FY2022 compared to RM30.5 million last year. Due to intense inflationary pressure, its customers remained conservative and cautious, affecting the demand for its services and prices. Profit before taxation for FY2022 decreased to RM0.3 million from RM2.3 million last year. The significantly lower profit in FY2022 was primarily due to expenses incurred for the proposals under the Heads of Agreement on S5 Holdings Inc during the year.
27.10.22 (Thur) 02.30 pm	Ancom Nylex Berhad (AGM)	The Group's FY2022 revenue increased by 30.5% y-o-y to RM2.01 billion from RM1.54 billion recorded in the previous year, thanks to higher sales in both the Agricultural Chemicals and Industrial Chemicals Divisions. Consequently, the Group posted a 186% profit increase to RM68.2 million from RM23.8 million in the previous year. It remains optimistic about its prospect and outlook in the new financial year.
27.10.22 (Thur) 02.30 pm	Pensonic Holdings Berhad (AGM)	PENSONIC recorded a 4.2% decline in revenue to RM325.0 million in FY2022, mainly due to the temporary closure of non-essential retail stores from June 2021 to August 2021. On the other hand, its pre-tax profit fell 13.9% to RM14.8 million due to higher logistic costs and the ringgit's depreciation against the greenback. As of 31 May 2022, the ringgit had weakened by 6.1% from RM4.1266 on 1 June 2021. As a result, Pensonic has adjusted the selling prices of its products progressively.
28.10.22 (Fri) 10.00 am	ES Ceramics Technology Bhd (AGM)	Es Ceramics delivered its best-ever financial performance in FY2022 with a record level of revenue and profit. Its pre-tax profit rose to RM54.35 million (FY2021: RM35.46 million) on the back of higher revenue at RM115.89 million (FY2021: RM92.91 million). In May 2022, the Group decided to diversify its existing business to include

		manufacturing and trading of construction materials via the acquisition of Evermix Concrete Sdn. Bhd. Meanwhile, the continued demand growth for gloves would benefit its business activities.

One of the points of interest to be raised:	
Company	**Points/Issues to Be Raised**
Apollo Food Holdings Berhad (AGM)	The government has deferred the implementation of new rulings whereby the monthly salary threshold for employees' entitlement to overtime benefits to be raised from RM2,000 to RM4,000, and the number of weekly working hours to be reduced from 48 to 45, from 1 September 2022 to 1 January 2023. What would be the financial impact to the group for FY2022, on a pro-forma basis, assuming the rulings were implemented from the beginning of FY2022?
Nylex (Malaysia) Berhad (AGM)	During the financial year, the Company has completed the disposal of the entire assets and liabilities of the Company and distribution of the proceeds to the entitled shareholders of the Company. As at 31 May 2022, of the amount of RM50 million cash received, an amount of RM11.25 million was retained for the acquisition of new businesses (page 119 of AR 2022). Considering that the Group needs to embark on a regularisation exercise, would the amount of RM11.250 million be sufficient to succeed in its exercise? Does the Board and Management foresee the need for equity fund raising exercise in the near future?
Fibon Berhad (AGM)	FIBON is principally engaged in the manufacturing of advanced polymer matrix fibre composites for the manufacturing of FIBON® high-amperage insulators. The Group also specialises in the manufacturing and supplying of explosion-proof electrical switchboards and enclosures, and trading in copper busbars. (page 7 of AR 2022) a) Apart from the oil and gas segment, which other main business segments does the Group cater to? b) Is there acute competition in the Group's main business? What competitive advantages does the Group have over its peers?
KUB Malaysia Berhad (AGM)	On 15 June 2022, KUB Sepadu Sdn Bhd (KUBS), a 60%-owned subsidiary of KUB Malaysia was served a winding-up order by the minority shareholders of KUBS. The winding-up petition was filed in the Court against KUBS by its minority shareholders back in November 2019. Following the order granted on 15 June, KUB Malaysia has lost control over KUBS. Subsequently, KUBS' financial position had been deconsolidated from the Group. Currently, KUBS is classified as an associate company of KUB.

	On 17 June 2022, KUB filed an application for a stay of execution of the winding up order (Stay Application) as well as a Notice of Appeal (Winding Up Appeal). On 30 September 2022, the Court dismissed KUB's Stay Application. With the decision, KUB filed an appeal to the Court of Appeal to set aside the decision granted by the Court on 30 September 2022 (the Stay Appeal). KUBS is a key operating subsidiary of KUB Malaysia involved in the operation of two oil palm estates totalling 4,616 hectares in Mukah, Sarawak. The oil palm business was the largest profit contributor to the Group in FY2022, with a net profit of RM18.52 million. (Referring to pages 20 and 153 of AR2022) a) The dismissal of KUB's Stay Application on KUBS by the Court is another legal setback for the Company. Nevertheless, KUB is still hopeful of realising KUBS's financial results in full through the equity accounting method moving forward. What are the remaining legal resorts for KUB to stop KUBS from being wound up? b) What is the likelihood of KUBS being liquidated eventually as per the court order? c) What is the current operating status of KUBS? Has the liquidator initiated any action to wind up KUBS? d) With the legal setbacks experienced, would the Group continue to carry out the planned initiatives to upgrade the oil palm estates and replant old and low-yielding oil palm in FY2023 (page 20 of AR2022)? e) The accounting treatment relating to the investment in KUBS is one of the key audit matters stated in the Independent Auditor's Report (pages 57 – 60 of AR2022). Has the external auditor Deloitte PLT's view on this matter changed after the latest development dated 30 September?
TAS Offshore Berhad (AGM)	The group's fixed deposits, cash and bank balances and other investments (investments in unit trust funds) stood at RM29.967m and RM30.912m respectively as at 31 May 2022. After deducting non-current borrowings of RM3.054m and current borrowings of RM3.621m on the other side of the balance sheet, the group was in a net cash position of RM54.204m as at end-FY2022. a) Why is the company seeking shareholders' approval for renewal of authority for the company to purchase its own shares when the company has suspended payment of

	cash dividend since 2014, except for the payment of one treasury share for every forty existing ordinary shares held earlier this year? Why does the company not prioritise the payment of cash dividend to shareholders over share buy-back? b) "In view of the current depressing global economic condition, there is no plan to incur new capital expenditure as the Group maintains its current operating capacity" (page 12 of Annual Report 2022). Furthermore, given the strong net cash position relative to the group's annual revenue for the past 5 years which fluctuated between RM16.182m and RM57.499m, why is the group still seeking shareholders' approval for authority to issue and allot shares pursuant to Section 76 of the Companies Act, 2016. c) Does the company intend to resume dividend payments in the foreseeable future?
Hong Leong Bank Berhad (AGM)	HLB is committed to ceasing the financing of any greenfield coal-fired power plants and financing of coal-fired power plants effective 1 July 2026. The commitment includes purchasing bonds/sukuk to finance any greenfield coal-fired power plants (page 108 of AR2022). a) What is the size of HLB's existing obligations to finance coal-fired power plants in domestic and foreign markets? b) In FY2022, 20% of HLB's business loan and financing portfolios were internally classified as high environmental & social (E&S) risk, representing a 2% increase compared to 18% in FY2021 (page 75, Sustainability Report 2022). Why is there an increase in HLB's financing exposure to high E&S sectors? What is the targeted limit of the Bank's financing exposure to these E&S-sensitive sectors? c) Has the Bank observed any evident increase in the credit risk of these high E&S risk loans ever since the Bank incorporated the ESG Policy and Assessment Framework in its credit policy with effect from January 2021?
Ancom Logistics Berhad (AGM)	The Heads of Agreement (as supplemented by the Supplemental HOA) with S7 Holdings Sdn Bhd, Merrinton Assets Limited, MY E.G. Capital Sdn Bhd, and Avocat Sdn Bhd relating to the acquisition of new business and disposal of the existing core business of the Company to Nylex (Malaysia) Berhad as part of the group restructuring had expired and lapsed on 15 April 2022. a) Has the company received the refundable deposit of RM10m from S7 Holdings Sdn Bhd? b) At the 54th AGM of the company, it was clarified that the RM10m was funded by repayment of RM2.5m by Ancom Berhad plus a further advance by Ancom Berhad to ANCOMLB of RM7.5m. Was the amount owing to the

	holding company an interest-bearing advance? If yes, what was the interest rate?
Ancom Nylex Berhad (AGM)	The company has not paid any cash dividend since the last cash dividend paid on 23 January 2015. When a question about the possibility of dividend payment was raised at the 52nd AGM last year, the company replied that the group saw the opportunities to strengthen its financial performance, going forward, the group would maintain its focus on cost reduction and conserve cash flow for capital investments for future business growth in the next 2 years. Why did the company spend RM15.898m in net purchase of treasury shares of the company in FY2022 and why is the company seeking shareholders' approval for the proposed renewal of authority for share buy-back mandate at this AGM when i) the group's net gearing ratio jumped from 0.55x as at 31 May 2021 to 0.75x as at 31 May 2022; ii) no cash dividend has been declared since the previous payment on 23 January 2015; and iii) the group would maintain its focus on conserving cash flow for capital investments for future business growth?
Pensonic Holdings Berhad (AGM)	The Group intends to enhance the efficiency of its existing manufacturing activities and increase its manufacturing capacity to cater for future business growth. (Page 10 of AR 2022) a) What is the planned capex for this expansion plan? How much will be the increase in production capacity? b) What was the manufacturing capacity and utilization rate in FY2022? What is the targeted utilization rate in FY2023?
ES Ceramics Technology Bhd (AGM)	The cost incurred in maintaining the outsourced internal audit function for the financial year ended 31 May 2022 is RM18,550. (Page 37 of AR 2022). MSWG had commented on the rather small internal audit costs for the last two financial years. Given that the fee is rather small (approximately RM1,500 per month), how does the audit committee assure itself that there would be adequate coverage and an effective audit function? How many audit reports were issued during the financial year? What were the areas of audit coverage during the year?

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