



The Observer

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❖ Impasse between SCBuild's board and shareholders

On the last trading day of 2021, the market was taken aback by the twists and turns of events at SC Estate Builder Berhad (SCBuild). Shareholders rejected the re-election of eight incumbent directors at the AGM on 31 December 2021. The remaining Board members, immediately after the AGM, re-appointed the eight ousted directors back onto the Board. The said directors comprised executive directors and independent non-executive directors.

The Company's filing to Bursa Malaysia Securities on the outcome of its AGM indicated that the shareholders rejected the re-election of the eight directors with 54.8% of shares voting "Against" their re-election.

In an announcement to Bursa Malaysia, the Company said that the remaining directors who did not stand for re-election during the AGM later convened a special meeting of the Board of Directors and re-appointed the eight unelected individuals as SCBuild's directors.

This development came two days after tycoon Tan Sri Lee Kim Yew accused the 10 directors of acting unlawfully in rejecting the nomination of eight candidates aspiring to be new directors of the company. Lee himself was among those seeking nomination to stand as a candidate for SCBuild's Board.

In a statement, Lee claimed that the 10 existing directors rejected his candidacy without providing proper justification. SCBuild has stated that it was of the preliminary view that the statements by Lee could be construed as defamatory and that it was seeking legal advice on the matter.

SCBuild had also previously filed a suit to block an extraordinary general meeting, to replace four directors, from taking place on 3 June but this was dismissed by the High Court on 20 September.

Listed on 29 November 2005, SCBuild's core business is construction and related industries including renewable energy, building of affordable houses, and undertaking of infrastructure works and related businesses.

For its financial year ended 31 July 2021 (FY2021), SCBuild incurred a net loss of RM1.86 million (FY2020: net loss of RM749,452) while its revenue dipped 53.41% to RM3.35 million (FY2020: RM7.19 million).

The nitty gritty of director's appointment, re-election and removal

Minority shareholders may be baffled by such development. As we have seen in many AGMs, directors retire from the Board and offer themselves for re-election at AGMs. Their retirement and re-election are in accordance with the company's Constitution.

A Constitution outlines the relationships between the company and each of its members, its directors, and the company secretary. It encompasses the duties governing a company such as power, responsibilities, roles, principal activities, appointment/re-election/removal of directors and conduct of meetings, amongst others.

It must be borne in mind that the Board of Directors may, at any time, subject to the company's Constitution, appoint additional directors onto the Board. Such appointed directors shall hold office until the next AGM where they may offer themselves for re-election. This right is enshrined in Section 202 of the Companies Act 2016.

As for the removal of directors, a company may remove a director before the expiration of the director's tenure by ordinary resolution at a meeting. A special notice is required for a resolution to remove a director.

What does all this mean to shareholders?

Although what transpired at SCBuild constitutes disregard for the voice of the majority shareholders, it must be borne in mind that directors have the power to appoint additional directors to the board.

What happened at SCBuild is a tussle between the board and the majority shareholders who voted at the AGM. Such situations could easily occur in any tightly knit family-run business where the family does not control a sizeable majority of the shares.

Minority shareholders must wise up to the fact that the current directors have the authority to appoint additional directors. They construe this as the fulfilment of their fiduciary duty to act in the best interest of the company.

Shareholders who voted against the eight directors can call for an extraordinary general meeting (EGM) to reconstitute the board – to remove some or all the existing directors from the Company's board and to appoint new directors.

The shareholders who are seeking changes to the board should formally request the Company to convene an EGM. At such an EGM, the shareholders may propose resolutions to make the desired changes to the board.

Devanesan Evanson
Chief Executive Officer

MSWG AGM/EGM Weekly Watch 10 – 14 January 2022

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
10.01.22 (Mon) 02.30 pm	UWC Bhd (AGM)	UWC experienced strong growth in profitability in FYE 2021 where its net profit rose by 58% to RM91.5 million due to expansion in the semiconductor and health industries. The outlook for UWC looks bright as the 5G and autonomous car industries are poised to register rapid growth and this will propel the demand for its products.
12.01.22 (Wed) 10.00 am	Concrete Engineering Products Bhd (AGM)	The Group's LBT decreased by 6.89% from RM18.06 million in FY2020 to RM16.82 million in FY2021. The loss was mainly due to slow take-off from secured orders and far more damaging with the nationwide mandatory business shutdown or under the MCO to battle the COVID-19 pandemic.
13.01.22 (Thur) 10.00 am	KESM Industries Bhd (AGM)	KESM's revenue increased by 3% y-o-y to RM248.3 million (FY2020:RM241.0 million) attributable by higher orders for electronic manufacturing services (EMS), but lower sales from burn-in and test services. Net profit improved to RM7.3 million, from a breakeven position last year. The Group is optimistic that it will continue to perform well as the semiconductor industry indicators return positively.

One of the points of interest to be raised:

Company	Points/Issues to Be Raised
UWC Bhd (AGM)	<p>One of the key long-term strategy for UWC is venturing into automotive chip testers for autonomous cars in coming years where the adoption and implementation cycle of these technologies will be lengthy. For the autonomous vehicle reliability chip testers, the Group expects to ramp production by end 2021. With the emergence of smart vehicle electronic devices, the Group anticipates the proliferation of EV and autonomous driving will continue to provide impetus to the Group's exposure in the automotive industry. (Page 16 of AR 2021)</p> <p>a) How much is the investment made by the Company for the manufacture of reliability chip testers in FYE 2021?</p> <p>b) What is the projected revenue from the EV and the autonomous driving segment in FYE 2022?</p>
Concrete Engineering Products Bhd (AGM)	<p>To improve the Group's market position, CEPCO constantly seeks to uphold and further improve its products' qualities and standards of services to its customers (Page 16 of the Annual Report 2021).</p> <p>a) What is the Group's current market position in the industry?</p> <p>b) In the efforts to further improve its products' qualities and standard of services to its customers, what are CEPCO's plans for FY2022?</p>
KESM Industries Bhd (AGM)	<p>The Group invested in a new facility in Malacca to expand its services for a wider range of market segments (page 6 of AR2021).</p> <p>a) What is the status of operations of the new facility in Malacca?</p> <p>b) What are the market segments that the new facility in Malacca will cater to?</p> <p>c) Will the production capacity of the new facility be dedicated to existing customers or new customers?</p> <p>d) What is the current utilisation rate of the new facility in Malacca?</p>

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DISCLOSURE OF INTERESTS

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

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