

MINORITY SHAREHOLDERS WATCH GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD

(Incorporated in Malaysia – Registration No.: 200001022382 (524989-M) The

Edge – April 18 - 24, 2022 **Part 1**

Cover Story 2: Capital market players question decision to compound Serba Dinamik four



SEVERAL corporate and capital market players and observers are questioning the decision by the Attorney General’s Chambers to drop the prosecution against Serba Dinamik and its officials under the Capital Markets and Services Act 2007 (CMSA) and opting instead for a compound of RM3 million each.

The compound constitutes a settlement for the case in which the troubled oil and gas (O&G) outfit and its four top officials were charged with falsifying its financial statement on a whopping RM6.01 billion in revenue.

In a nutshell, the developments at Serba Dinamik indicate that corporates can now “falsify” numbers and documents and not even serve a day in jail — even though incarceration is provided as a penalty under the Capital Market Services Act, the very law that has been breached.

When contacted by The Edge last Thursday, Gerald Ambrose, CEO of abrdn Islamic Malaysia Sdn Bhd, says: “abrdn never held any Serba Dinamik shares, so I’m not following it that closely. However, I note that a lot of asset owners and asset managers feel hard done.

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“After all, they [asset managers] should expect audited numbers to be correct and they based their investment decisions on that. Unitholders of mutual funds and members of pension funds have suffered as a result and the compound fines offer little restitution to them.”

To recap, last Wednesday, the Securities Commission Malaysia (SC) compounded Serba Dinamik and four of its top executives RM3 million each for submitting a false statement involving revenue of RM6.01 billion for its financial period ended Dec 31, 2020 (FY2020), which was previously red-flagged by the company’s external auditor, KPMG. This followed the decision by the public prosecutor to accept the representation made to the Attorney General’s Chambers by Serba Dinamik and the individuals involved regarding the charges pending in court.

The four individuals are Serba Dinamik’s CEO and group managing director Datuk Dr Mohd Abdul Karim Abdullah; executive director Datuk Syed Nazim Syed Faisal, who was chief financial officer (CFO) from June 2016 until mid-2020; current group CFO Azhan Azmi; and vice-president of accounts and finance Muhammad Hafiz Othman.

The compounds settled the criminal charges they faced for submitting a false statement to Bursa Malaysia Securities Bhd on Feb 26, 2021. Muhammad Hafiz was also compounded an additional RM1 million for falsifying the accounting records of one of Serba Dinamik’s subsidiaries, the SC said in a statement.

The compounds were issued under Section 373(1) of the Capital Markets and Services Act (CMSA), with written consent of the public prosecutor.

“This [RM3 million] is the maximum amount of compound permissible under Section 369(a)(B) of the CMSA for submission of false information in the company’s financial statement,” the SC said.

Muhammad Hafiz’s additional RM1 million compound is also the maximum amount permissible under Section 368(1)(b)(i) of the CMSA, for falsifying Serba Dinamik’s accounting records.



**Datuk Mohd Abdul Karim
Abdullah**



**Datuk Syed Nazim
Syed Faisal**



Azhan Azmi



**Muhammad Hafiz
Othman**

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The decision by the SC shocked many observers and participants of the capital markets, especially when the law that Serba Dinamik and its officials had breached provided for a jail term of a maximum 10 years.

The quantum of the revenue that was falsified far exceeded other financial crimes that had taken place in Malaysia in recent years.

Many fund managers and individual investors were burnt when Bursa Malaysia suspended the trading of Serba Dinamik's securities, following the group's refusal to release a factual finding update (FFU) of the special independent review (SIR) conducted by Ernst & Young Consulting Sdn Bhd (EY Consulting).

"I know some fund managers are saying the company should give up some of its earlier profits as a more appropriate fine," says Ambrose.

Commenting on condition of anonymity, a fund manager with a local asset management company says many cases investigated by the SC are settled with compounds because the process of trying to prove guilt is too onerous and time-consuming.

He agrees, however, that the RM3 million compound is not commensurate with the extent of the fraudulent action committed by the group and its officials.

Another corporate market player ran a comparison between two cases — that of Transmile Group Bhd and the current case involving Serba Dinamik. She says there is a huge imbalance between the sentences meted out to the management of Transmile and to Serba Dinamik.

"It's quite ridiculous, really. In Transmile's case, the misleading statement on revenue amounted to over RM333 million. Its CEO Gan Boon Aun was fined RM2.5 million and his jail sentence increased from one day to 24 months.

"In Serba Dinamik's case, the company and its four top executives were compounded RM3 million each for the false statement amounting to RM6.01 billion! What message are we sending out?" she asks, adding that the decision is bad for corporate governance and capital market development in Malaysia.

For context, in August 2020, the Kuala Lumpur Sessions Court found Transmile founder and former CEO Gan guilty of furnishing misleading statements to Bursa Malaysia. The misleading statement was on its revenue amounting to more than RM333 million in fictitious sales.

Gan was sentenced to one day's jail and fined RM2.5 million, resulting in him filing his appeal, while the SC filed the cross-appeal against the sentence imposed by the Sessions Court. In January this year, the Kuala Lumpur High Court allowed an appeal by the SC and increased Gan's jail sentence from one day to 24 months.

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Meanwhile, Lya Rahman, adviser to the Institutional Investors Council of Malaysia, says the compounds send the wrong message to corporate and capital market players, both domestic and foreign, that there is a loophole or compromise in treating criminal charges of this nature.

“It gives rise to the perception of double-standard practices being accorded to certain individuals and that a criminal charge can now be settled through compounds. Will similar treatment be accorded for other ongoing similar offences?” asks Lya in a response to questions from The Edge last Friday.

She adds that even a maximum compound would not serve as a strong deterrent for future offences. “Since a precedent has been set, perhaps regulators would need to relook into strengthening the rules and regulations to ensure that no one will take advantage and submit false statements for whatever reason(s) since there is already a precedent that this offence can be compounded.”

She says the authorities should explain the decision to compound instead of going for the jail term, as the capital markets fraternity would want to understand the basis of the decision. Even if the case is complicated and might drag on for a long time, that does not justify meting out only a compound, and the capital market players need to understand why such a decision was taken.

Meanwhile, Kumpulan Wang Persaraan (Diperbadankan) (KWAP) says the recent developments with regard to Serba Dinamik clearly demonstrate the urgent need for robust and effective corporate governance practices by public-listed companies.

“A compound of this nature serves as a timely reminder to the market in terms of the fundamental importance of corporate governance, transparency and integrity. As a leading investor in the Malaysian capital market, KWAP will continue to uphold stringent best practices for the companies it invests in, specifically in relation to corporate governance, which is very much a pillar of ESG (environmental, social and governance),” says its spokesperson.

The public services pension fund says decisive action will be taken if governance is compromised at the companies that it invests in. Retaining investments that do not adhere to the highest standards of corporate governance is not aligned with its investment philosophy, it adds.

At least one regulator is still not throwing in the towel. Bursa Malaysia last Wednesday filed contempt proceedings against Serba Dinamik and its directors in relation to its failure to disclose the FFU of the SIR conducted by EY Consulting.

Bursa Malaysia filed an ex-parte application to seek permission from the court to proceed with committal proceedings, owing to Serba Dinamik’s failure to comply with a Feb 7 High Court

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order made by Judicial Commissioner Wan Muhammad Amin Wan Yahya that required the O&G company to disclose the FFU within two market days from the date of the order.

“In the end, justice must prevail and the integrity of the capital market should be upheld and the interest of the company and shareholders should be protected at all times,” says Lya.

Senior lawyer Philip T N Koh says the consent by the public prosecutor or Attorney-General in giving the maximum monetary penalty that can be levied by the SC suggests that the individuals involved are freed from further enforcement actions by the regulator on the alleged offences that were committed.

The law, Koh says, relies on the enforcement authorities’ discretion as to whether it is in the public interest to pursue the enforcement process on the matter or to be content with the imposition of compound fines.

“From the legal regulatory perspective, there are residual concerns as to whether such a resolution would quell questions regarding the integrity of financial reporting and consequences of infraction of the rules, given the impact it has on the governance of the capital market,” he explains.

“A separate point of the alleged contravention may also involve potential contraventions of other laws — for example, the Companies Act 2016 on true and fair accounting records with the Companies Commission of Malaysia (CCM).”

Koh questions whether CCM is also investigating whether financial records filed by Serba Dinamik complied with the Companies Act 2016, as there is a statutory requirement that accounts should be “true and fair”.

Subdivision 2 of the Companies Act stipulates that general offences include false and misleading statements and false reports.