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MINORITY SHAREHOLDER WATCHDOG GROUP

Badan Pengawas Pemegang Saham Minoriti Berhad

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MESSAGE FROM THE CEO



Over the past few weeks, while many Malaysians were preoccupied with plans and preparations for the mass migration “balik kampung” to join family and friends for Hari Raya, corporate Malaysia was busy announcing a slew of mergers and acquisitions involving several high-profile PLCs. If we’ve been a few days late in getting this first newsletter of the month out to you it’s because we have been diligently scouring the deals to determine their potential impacts on minority shareholders. We have presented some quick takes below to highlight points of interest and concern. More detailed analyses of some of the individual deals and their impacts will be made available on MSWG’s website over the coming days.

Apart from these recent interesting M&A announcements, our local market is currently experiencing a period of uncertainty, resulting largely from problems of the stalled US economy, the growing concern over the inability of European governments to service their debts, and sell offs in the US and European banking sectors emanating from the prospect of legal suits being filed by the US Federal Housing Agency against banks over the misrepresentation of the quality of the mortgage securities they sold during the housing bubble. Naturally, some of the fall-out will hurt us and our companies. But we have always stated that well-governed companies with fundamentally sound prospects and which keep an open and honest dialogue with the people who invest in them will always perform better over the long term.

Our sentiments as regards the need for prudence in these volatile times is reflected in the comments made by ICGN Executive Director Carl Rosen, in a recent interview with the Financial Times. As many of you know, ICGN is highly influential, comprising more than 500 members representing some of the world’s biggest institutional investors with some USD \$18 trillion in funds under management. In one of the comments he made he stressed the need for companies to avoid “paying for failure”, in terms of rewarding senior management with increasing salary levels that are out of line with performance.

Clearly, this is a malaise that is not exclusive to Malaysia. As global economies head nearer to complete interdependence, it is critical that we keep a watchful eye on shareholder responsibility, financial reporting and remuneration in these uncertain times.

Cheers!

Rita Benoy Bushon

MSWG's Quick Take on Ongoing Corporate Transactions

Eastern Pacific Industrial Corp (EPIC): EPIC received an unconditional take-over offer from its major shareholder, the Terengganu state government, to acquire the remaining 32.76 percent interest in the company for RM3.10 per share cash. The offerors, Lembaga Tabung Amanah Warisan Negeri Terengganu (LTAW) and its unit Pembinaan PTB Sdn Bhd (PTTB), are also offering to compensate EPIC's shareholders who had sold their shares since 20 December 2010. They will be compensated the difference between the price at which they sold their shares and the RM3.10 offer price.

MSWG's COMMENT: *This development speaks volumes about the local regulator in their efforts to protect the minority shareholders of EPIC in cases where the takeover rules were not vigorously observed by the Terengganu State Agency. Now the Offeror has to fork out more in order to privatise EPIC. We are heartened by this move since it also sends a strong message to the market and underlines the necessity of adhering to the Takeover Code, which clearly spells out the correct procedures for any possible takeover move. In EPIC's case, this is an example of a case where patience was eventually rewarded with an improved offer.*

EON Capital: In wrapping up the sale of EON Capital Berhad to Hong Leong Bank Berhad, the company has convened an EGM for 22 September 2011 at which shareholders will be asked to consider resolutions regarding the payment of Proposed Directors' Fees totalling RM687,500 for the period from 01 January 2011 up to 30 September 2011, the payment of Proposed Ex-Gratia Payments totalling RM1,125,000 to seven of the Board's eight directors, and a Proposed Reduction of Directors from a minimum of 5 to 2.

MSWG's COMMENT: *While we have no issue with Directors being paid for work performed on behalf of the company, the resolution approving Ex-Gratia Payments to Directors provides some cause for concern. The company is proposing the payment in recognition of the contributions of the Directors to the company, and for "...the exceptional challenges which they have endured over the past 17 months...". One Director, Y. Bhg. Dato' Sri Dr. Tiong Ik King, has declined to receive a payment leaving the remaining seven directors to split RM1,125,000. Given that the Directors were appointed by the substantial shareholders in consideration of their ability to steer the company through the takeover by Hong Leong, the Directors did no more than what one would have expected from them during the period in question. Consequently, we see no justifiable reason for the Board's recommendation of the ex-gratia payments.*

ESSO MALAYSIA/SAN MIGUEL: San Miguel agreed to buy Exxon Mobil Corp's three Malaysian subsidiaries for a total of USD \$610 million. Exxon's entire 65 per cent stake in Esso Malaysia Bhd would be sold for about USD \$206.02 million (RM614.25 million), or RM3.50 per share.

MSWG's COMMENT: *Although the price is 25 percent higher than Esso Malaysia's net assets of RM2.80 per share, it was priced at a significant discount to the volume-weighted average prices (VWAP) of the key periods of 1 month, 6 months and 12 months. The offer price was also a 29 percent discount to Esso's closing price of RM4.95. The offer only prices Esso Malaysia's shares at just 1.06 times book value, versus up to 5 times book value for the two private entities also being bought over: ExxonMobil Malaysia Sdn Bhd and Exxon Mobil Borneo Sdn Bhd. Another anomaly might be the unusual trading activity of Esso Malaysia's shares, following unattributed newswire reports of a deal being done and prior to the formal announcement of the transaction (all in the same afternoon) and which deflated the euphoria. At this point, the sale by ExxonMobil*

of its 65 percent stake in Esso Malaysia is not a done deal. The acquisition is conditional upon approvals from the Ministry of International Trade and Industry, the Ministry of Domestic Trade, Cooperative and Consumerism as well as the Securities Commission. Since the SC is among the approving authorities, perhaps a closer examination of the trading activity might be warranted.

MAS/AirAsia: AirAsia is proposing to enter into a warrants exchange exercise with MAS. This involves AirAsia issuing free warrants (111,060,240 warrants) to MAS's ordinary shareholders and in exchange, MAS will be issuing free warrants (274,056,812 warrants) to AirAsia ordinary shareholders. To strengthen the collaboration and to further align their respective interests in AirAsia and MAS, Tune Air Sdn Bhd ("Tune Air") and Khazanah Nasional Berhad ("Khazanah"), the major shareholders of AirAsia and MAS respectively, have agreed to acquire from each other existing shares of both companies. As a result, Tune Air will hold 685,142,000 ordinary shares of RM1.00 each in MAS representing a 20.50% equity interest in MAS. Khazanah will hold 277,650,600 ordinary shares of RM0.10 each in AirAsia representing a 10.00% equity interest in AirAsia. The major shareholders of AirAsia and MAS, Tune Air Sdn Bhd and Khazanah respectively, have agreed not to sell their shares for a period of 30 months under the share swap executed by both parties. The share swap was necessary to ensure that the interests of both airlines are looked after as without the equity participation, the collaboration agreement between MAS and AirAsia has less incentive to ensure that the success and interests of both parties are looked after.

MSWG's COMMENT: *The tie-up between AirAsia and MAS could result in substantial synergies if integration, including cost rationalization, could be created and wastage can be minimized. But will this tie-up affect AirAsia's strong branding caused by the market's poorer perception/image of MAS? And who will benefit more, or is it a win-win situation? Would the tie-up lead to more competitive pricing for the benefit of travellers, or otherwise? These are pressing questions on the minds of many. Notwithstanding the substantial potential synergies and benefits that could be realized, one of the concerns that has to be addressed is the difference in cultures between the two airlines. Working together and well is of paramount importance to ensure the success of the tie-up. As this deal is between shareholders and does not trigger the threshold levels, there is no MGO. As for shareholders, it appears that MAS could benefit more from the management expertise of Tony and Kamarudin whereas AirAsia could suffer some dilution in their attention. However, this is compensated by the share price swap. The issuing of free warrants to MAS shareholders by AirAsia and in exchange for MAS issuing free warrants to AirAsia shareholders also means that the interests of all including minority shareholders would be taken care of.*

MAS/TM/ATLAN: Malaysia Airlines, TM, Naluri Corp Bhd, Celcom (M) Bhd, Pengurusan Danaharta Bhd and Atlan Holdings Bhd are among a number of GLCs negotiating for global settlement of all civil suits and at all level of court against former executive chairman of MAS, Tan Sri Tajudin Ramli. The case is being managed by Tan Sri Md Raus Sharif, Managing Judge of the Kuala Lumpur High Court Commercial Division and also a Federal Court Judge. The judge has set 29 September 2011 for case management after meeting lawyers for the parties involved in chambers to update the court on the settlement negotiations. There are more than 10 cases pending at the High Court and Court of Appeal; most of the cases were filed in 2004 and relate to breach of contract. The negotiations are in process.

MSWG's COMMENT: *The respective Boards of the relevant litigant companies need to assess the merits and demerits of the proposed global settlement once formally proposed, and need to be transparent to their shareholders in this matter. Transparency includes, among other things, disclosing the timelines, settlement terms, the pros and cons, rationale, the ringgit amount involved, and other financial and non-financial impacts. Interested directors of the respective PLCs should declare their interests and abstain from participating in any discussion or voting on*

the proposed settlement. A timely and equitable dissemination of information is crucial. The Boards are responsible and accountable to all the shareholders, hence full and proper disclosures will go a long way to help clarify the doubts of the shareholders.

Ranhill Berhad: On 9 August 2011, Maybank Investment Bank Berhad acting on behalf of joint offerors Cheval Infrastructure Fund L.P. , Tan Sri Hamdan Mohamad, Ranhill Corporation Sdn Bhd, Lambang Optima Sdn Bhd, and Pacific Energy Overseas Ltd., announced an offer to acquire all the remaining ordinary shares in Ranhill Berhad (aka Ranhill) not already owned by the joint offerors for a cash offer price of RM0.90 per share. The offer is not conditional upon any minimum level of acceptance of the offer shares, but the joint offerors have said that they intend to take Ranhill private should they end up with at least 75% of the shares. In addition, they will make a mandatory offer for all remaining shares within 4 months of their takeover offer, if they receive acceptances that leave them with 90% or more of the company's shares. The joint offerors collectively hold 51.86% of Ranhill's issued and paid-up share capital.

MSWG's COMMENT: *The offer price of 90 sen per share is a 28 percent discount to Ranhill's net assets per share as at 31 March 2011. The price does, however, represent a 21.6 percent premium over the stock's 5-day volume weighted average market price up to 8 August 2011, and a 20 percent premium over the stock's volume weighted average market price for the past 6 months up to 8 August 2011. For the quarter ended 31 March 2011, profit attributable to the equity holders had dropped by 27 percent to RM10 million, compared to the corresponding quarter a year earlier. In the latest quarterly results as at 30 June 2011, profit attributable to the equity holders had further deteriorated by 65 percent to a profit of RM5 million, compared to the corresponding period a year earlier. One of the major shareholders now wants to take over the company. MSWG is of the view that the Board ought to either allow the best price to be offered to minority shareholders by seeking an alternative party to make a take-over offer, or otherwise explain the merits of the current offer price as the price is not satisfactory from a net asset perspective. Shareholders should, however, evaluate the risk vs reward before making a decision on the offer currently before them.*

Sime Darby/E&O Bhd: On 28 August 2011, Sime Darby Nominee Sdn Bhd (SD), a wholly-owned subsidiary of Sime Darby Berhad had proposed to acquire 273 million E&O shares and 60 million irredeemable convertible secured loan stocks, or on a fully diluted basis 30.2% equity interest in Eastern and Oriental Bhd (E&O), from three major shareholders namely Datuk Terry Tham, Tan Sri Wan Azmi Wan Hamzah, and GK Goh Holdings Ltd and entered into collaboration agreement between SD and E&O with rationale of providing numerous synergistic benefits and create value for stakeholders of the companies. Should a mandatory general offer (MGO) apply to the acquirer since SD's holding does not exceed the quantitative thirty-three per centum of the voting shares or voting rights of the company?

MSWG's COMMENT: *Mandatory General Offer (MGO) rules are spelt out in Paragraphs 6.1 and 6.2 of the Malaysian Code on Take-overs and Mergers 2010 and state that:*

"An acquirer acquiring between 20% and up to 33% from a controlling vendor may have obtained control of a company...", and, "In deciding whether an acquirer has obtained control of a company when the vendor sells part of his voting shares or voting rights to the acquirer, the SC may consider all surrounding circumstances of the acquisition including -

- (a) Any arrangement, understanding or transaction between the acquirer and the vendor or between the acquirer and persons acting in concert with the vendor in relation to the voting shares or voting rights;*
- (b) the ability of the acquirer to exercise or control the exercise of the retained voting shares or voting rights;*

(c) the consideration for the acquisition of the voting shares or voting rights..."

Our contentions are:

- 1) Due to fragmented shareholding, SD emerges as the single largest shareholder in E&O, having a 30% stake in the company, with the second largest shareholder being Datuk Terry Tham and the third largest shareholder being ECM Libra. In most companies, a 30% stake would be sufficient for control if there is fragmented shareholding.**
- 2) After selling a 30% stake in E&O, the three vendors, namely Datuk Terry Tham, Tan Sri Wan Azmi Wan Hamzah, and GK Goh Holdings Ltd., will still hold 5.1%, 2.9% and 3.5% respectively.**
- 3) A 60% premium is being paid for the shares.**
- 4) A Collaboration Agreement was made between SD and E&O. In addition to one of the vendors being the Managing Director of E&O, the Managing Director still holds 5.1% stake in E&O and will continue to helm E&O after the deal.**

We believe in these circumstances, the SC has to investigate whether the conditions for an MGO have been fulfilled. Equality and fair treatment of all shareholders is one of the most important underlying principles of the Code, so much so that once the control of a public company has effectively changed, the remaining shareholders should be given an opportunity to exit at the same price.

Global News and Developments

[Investors grill pub group Mitchells & Butlers chairman over boardroom vacancies](http://www.guardian.co.uk/business/2011/aug/22/mitchells-butlers-independent-directors-abi)

<http://www.guardian.co.uk/business/2011/aug/22/mitchells-butlers-independent-directors-abi>

[Milken's Gift Stirs Dispute at U.C.L.A. Law School](http://dealbook.nytimes.com/2011/08/22/milkens-gift-provokes-dispute-at-u-c-l-a-law-school/)

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[Down Economy and Increased Regulation Impact Corporate Fraud](http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202512007891&Down_Economy_and_Increased_Regulation_Impact_Corporate_Fraud)

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[Carl Rosen: governance chief calls for more transparency](http://www.ft.com/cms/s/0/709dfbae-c8bf-11e0-a2c8-00144feabdc0.html#ixzz1W2KOLfzW)

<http://www.ft.com/cms/s/0/709dfbae-c8bf-11e0-a2c8-00144feabdc0.html#ixzz1W2KOLfzW>

[Murky world of super funds needs transparency](http://www.smh.com.au/business/murky-world-of-super-funds-needs-transparency-20110819-1j2em.html)

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