

Listing Requirements Enforcement In Focus

Provision of Financial Assistance

Paragraph 8.23(1) / Rule 8.25(1) of the LR states that except as otherwise prohibited under the law or in relation to a foreign corporation, the relevant laws of the place of incorporation, a listed company or its unlisted subsidiaries may only:-

- (a) lend or advance any money; or*
- (b) guarantee, indemnify or provide collateral for a debt,*

("provision of financial assistance") to or in favour of the following:-

- (i) directors or employees of the listed company or its subsidiaries;*
- (ii) persons to whom the provision of financial assistance –*

(aa) is necessary to facilitate the ordinary course of business of the listed company or its subsidiaries; or

(bb) pursuant to the ordinary course of business of the listed company or its subsidiaries;

such as the provision of advances to its sub-contractors or advances made to clients in the ordinary course of its moneylending business; or

- (iii) the subsidiaries, associated companies or joint arrangement of the listed company, the listed company (in the case of the subsidiaries providing the financial assistance) or its immediate holding company which is listed.*

Paragraph 8.23(2)(a)(i) / Rule 8.25(2)(a)(i) of the LR states that where a listed company or its subsidiaries provide financial assistance, the board of directors of the listed company must ensure that the provision of the financial assistance is fair and reasonable to the listed company and is not to the detriment of the listed company and its shareholders.

Listing Requirements Enforcement In Focus

CASE 1 – ADVANCES TO 3RD PARTY NOT IN THE ORDINARY COURSE OF BUSINESS

Relevant Facts

Company CCO through its wholly owned subsidiary entered into an agreement with OT Sdn. Bhd. on 2 July 2004 under which CCO's subsidiary was to, amongst others, provide OT Sdn. Bhd. a loan or advance from time to time at the sole and absolute discretion of CCO's subsidiary. A sum of RM13 million was paid out to OT Sdn. Bhd. from 8 to 13 July 2004 ("1st Advance") and it could not be established that the 1st Advance was necessary to facilitate or pursuant to the ordinary course of business of CCO or its subsidiary. In addition, CCO through the subsidiary had on 5 August 2004 paid RM3 million to an individual, Mr. X ("2nd Advance").

The 1st Advance and 2nd Advance were in contravention of paragraph 8.23(1) as both OT Sdn. Bhd. and Mr. X were not permitted persons to whom financial assistance can be given by CCO/subsidiary under paragraph 8.23(1) of the LR. The 1st Advance and 2nd Advance represented 8.82% and 2.04% of CCO Group's net tangible assets at the material time and were not returned to the company.

Enforcement Decision

- (i) Company – **public reprimand**
- (ii) Directors – Premised on the roles and responsibilities of the directors and their involvement / knowledge / approval of the advances, the following enforcement actions were imposed on the directors:-
 - (a) **Public reprimand and fine of RM1,000,000 against the executive chairman and an executive director** who had executed the agreement with and the payments of the advances to OT Sdn. Bhd. and Mr. X. In addition, the **directors were directed to compensate CCO** the total sum of RM16 million that had been paid to OT Sdn. Bhd. and Mr. X.
 - (b) **Public reprimand and fine of RM500,000 against 2 independent non-executive directors** who had approved the 2nd Advance.

CASE 2 – ADVANCES TO 3RD PARTY NOT IN THE ORDINARY COURSE OF BUSINESS

Relevant Facts

Company ATB and its subsidiary had on numerous occasions from 5 October 2007 to 13 May 2008 made advances/provided financial assistance to or on behalf of an individual. The total advances amounted to RM6.8 million which represented 6.3% of ATB's net assets. The individual did not fall

Listing Requirements Enforcement In Focus

within the category of permitted persons to whom financial assistance can be given in accordance with paragraph 8.23(1) of the LR. Therefore, this advance was in contravention of the LR. ATB also received advances from the individual. However, the monies paid by ATB to the individual were in excess of payments received from the individual.

Enforcement Decision

Notwithstanding that/taking into consideration that the advances to or on behalf of the individual were fully reimbursed, the following sanctions were imposed:-

- (i) Company – **public reprimand**;
- (ii) Directors – The 2 executive directors of ATB i.e. the chief executive officer and the director in charge of/responsible for the financial affairs of ATB who were aware of and/or allowed the financial assistance were **publicly reprimanded and fined RM50,000 each**. The other directors were not found to be in breach as they had no knowledge and based on the facts and circumstances, were not in a reasonable position to be aware of the advances made in contravention of the LR.



Listing Requirements Enforcement In Focus

CASE 3 – ADVANCES BASED ON UNREASONABLE/UNUSUAL TERMS & APPROVAL OF MATERIAL CORPORATE GUARANTEES

Relevant Facts

Company LB through its subsidiary had between the period of March 2007 to September 2007 provided the following financial assistance:-

- (i) Payments/advances totaling RM16 million (which represented approximately 30% of the company's net assets) to W Sdn. Bhd. pursuant to a Distribution Agreement dated 23 February 2007 for the sale and distribution of certain products ("DA Payments"); and
- (ii) Issuance of corporate guarantees to two financial institutions to secure banking facilities totaling RM17 million out of which RM13 million was disbursed to W Sdn. Bhd. pursuant to the Distribution Agreement ("Corporate Guarantees").



Enforcement Decision

The company's managing director and executive director in charge of finance were found to be in breach of paragraph 8.23(2)(a) of the LR for failing to ensure that the DA Payments were fair and reasonable and not to the detriment of the company and its shareholders based on the following factors:-

- (i) The company/its subsidiary never had any business transaction/track record with W Sdn. Bhd. prior to the Distribution Agreement and the Distribution Agreement consisted of unusual terms where the subsidiary agreed to, amongst others, 100% upfront payment while time of delivery was specifically excluded as a condition to the performance of the Distribution Agreement by W Sdn. Bhd.;
- (ii) Despite the Distribution Agreement involved new products, was the first transaction with W Sdn. Bhd and was material (i.e. the consideration represented approximately 30% of the net assets of the company at the material time):-
 - (a) No professional or legal advisers were appointed to vet through the Distribution Agreement;
 - (b) There was no feasibility study on the marketability and financial implications of the products even though a brief report was prepared;

Listing Requirements Enforcement In Focus

- (c) No resolution was passed and prior approval was obtained from the board in respect of the Distribution Agreement

The board was only informed of the Distribution Agreement and the DA Payments during the board meeting on 10 December 2007; and

- (iii) The orders and payments were made prior to the application for and procurement of the authorities' approvals for the sale of these products by the company.

The managing director and the executive director who were involved in or had knowledge/approved of the Distribution Agreement/DA Payments were imposed with a **public reprimand and fine of RM1 million and RM500,000 respectively**. In addition, they were **required to compensate the company** the DA Payments which were outstanding / uncollected from W Sdn. Bhd.

The directors who had approved/authorised the Corporate Guarantees were also found to be in breach of paragraph 8.23(2)(a) of the LR for failure to ensure that the Corporate Guarantees provided were fair and reasonable and not to the detriment of the company and its shareholders. The directors had approved the issuance of the Corporate Guarantees via circular resolutions and hence, failed to ensure that proper prior board discussion and deliberation on the issuance of the Corporate Guarantees to 2 financial institutions particularly in view of the materiality of the Corporate Guarantees. Their mere reliance on the clearance/representations given by the executive director in charge of finance and the fact that the credit facilities were offered by highly reputable financial institutions which presumably would have undertaken the necessary checks was inadequate and unreasonable particularly in the light of the materiality of the Corporate Guarantees. They also failed to ensure a system of internal controls so as to provide reasonable assurance of compliance with the LR and safeguards against unauthorized use and disposal with regards to the utilization of the monies from the banking facilities. **A public reprimand and fines of RM100,000 and RM10,000** were imposed on the Deputy Executive Chairman and the non-executive directors respectively taking into consideration their respective roles and responsibilities in the company and their degree of involvement with regards to the relevant financial assistance/Corporate Guarantees.

Listing Requirements Enforcement In Focus

CASE 4 – ADVANCES / MONIES TO NON-PERMITTED CATEGORIES OF PERSONS VIS-À- VIS ISSUANCE OF NUMEROUS PRE-SIGNED BLANK CHEQUES



Relevant Facts

Company PP through its subsidiary had from the period in January 2001 to December 2006 provided financial assistance to party(ies) who did not fall within the permitted categories of persons to whom financial assistance can be made under paragraph 8.23(1) of the LR. The monies were paid via a series of cheques during this period which included numerous blank cheques executed by its Executive Chairman/Chief Executive Officer (CEO).



Enforcement Decision

Both PP and its Executive Chairman/CEO (the director) were found to have breached the LR whereby PP had provided financial assistance in contravention of paragraph 8.23(1) of the LR and the director for breaching paragraph 16.11(b) of the LR where he had permitted, knowingly or where he had reasonable means of obtaining such knowledge, PP to commit the breach under paragraph 8.23(1) of the LR. Public reprimand was imposed on PP and the director respectively. In addition, a fine of RM50,000 was imposed on the director having taking into account the following facts:-

- (i) The director's knowledge, involvement, roles, responsibilities and conduct vis-à-vis the financial assistance as follows:-
 - (a) He was the Executive Chairman/CEO of PP and a director/CEO of the subsidiary where the advances were made/issued;
 - (b) He was the director primarily responsible for the financial management of the subsidiary at the material time;
 - (c) He was the sole cheque signatory for any limit in most of PP's bank accounts including the bank account where the advances /monies were mainly issued; and
 - (d) His conduct of allowing/facilitating the provision of advances/monies via the numerous pre-signed blank cheques executed by him and his failure to properly assess the appropriateness of the advances and put in place the necessary controls/checks, monitoring and follow-ups on, amongst others, the status and proper utilization of these blank cheques;
- (ii) The materiality of the breach including the period and number of occurrences and the amount of advances involved; and
- (iii) The repayments of these advances subsequently to PP.

More information on this case can be found in the Media Release dated [6 November 2012](#).

Listing Requirements Enforcement In Focus

CASE 5 – DEPOSIT PAID FOR SHARE SUBSCRIPTION WITHOUT ASSESSMENT

Relevant Facts

Company IT had paid an advance/deposit of SGD2.5 million to Company VG on 9 & 16 July 2014 (“the Deposit”) pursuant to the conditional deposit agreement dated 9 July 2014 in connection with the proposed subscription of shares in Company VG (“the Deposit Agreement”). In addition, the Deposit Agreement which was initially valid until 30 September 2014 was subsequently extended every 3 months until 30 June 2016 via numerous supplemental agreements from 30 September 2014 to 31 March 2016 (“Supplemental Deposit Agreements”). Company VG had subsequently made partial repayments of the Deposit on 5 February 2016 and 25 February 2016 and on 26 August 2016, the balance of the refundable Deposit of approximately SGD1 million was converted into a loan with interest at 3% per month. The loan together with interest was fully repaid by Company VG on 22 December 2016 i.e. approximately 2.5 years after the Deposit Agreement on 9 July 2014.

Enforcement Decision

5 directors had breached paragraph 8.23(2)(a)(i) of the Main LR for failing to ensure that the Deposit paid and/or the continuing advances by virtue of the extensions of the Deposit Agreement were fair and reasonable to ITRONIC and not to the detriment of the Company and its shareholders where:-

- (i) Despite the materiality of the Deposit (which represented approximately 11.7% of the group’s net assets and 26.3% of the cash and bank balances), there was no evidence of any proper enquiry/assessment/analysis and/or justification undertaken by the directors before entering into the Deposit Agreement and payment of the Deposit. In this regard, there was no evidence of any supporting documents and/or board paper prepared on the proposed subscription/Deposit Agreement and the directors had proceeded to approve the Deposit Agreement merely via a directors’ circular resolution (“DCR”) dated 2 July 2014. In addition, the directors had disregarded/did not take into account the enquiries and did not provide the information requested by some independent non-executive directors to support the investment proposal including the business and financials of Company VG before proceeding to approve the Deposit Agreement and payment of the Deposit.
- (ii) The directors had also via numerous DCRs approved and/or ratified the Supplemental Deposit Agreements which essentially allowed the continuing advances to Company VG/deferred the refund of the Deposit for a period of 1 year and 9 months until 30 June 2016 without any evidence of discussion with Company VG on the proposed subscription and details of the assessment done vis-à-vis the numerous decisions to extend the validity period of the Deposit Agreement.

Notwithstanding that the Deposit has been fully repaid by Company VG to Company IT:-

Listing Requirements Enforcement In Focus

- (i) the Executive Director overseeing the day to day management of the Company and who had executed the Deposit Agreement and the Supplemental Deposit Agreements was **publicly reprimanded and fined RM200,000**;
- (ii) the Independent Non-Executive Chairman who was involved in the negotiations, discussions and primarily responsible for all matters in relation to the Deposit Agreement and had authorised the payment of the Deposit to Company VG was also **publicly reprimanded and fined RM200,000**;
- (iii) 2 independent non-executive directors were **publicly reprimanded and fined RM50,000** each where:-
 - (a) they had failed in the discharge of their duties particularly to address the enquiries/issues raised by the other independent non-executive directors before proceeding to approve the Deposit Agreement and payment of the Deposit; and
 - (b) thereafter, they had repeatedly failed in the discharge of their duties on the continuing advances to Company VG vis-à-vis the numerous decisions to extend the validity period of the Deposit Agreement via the Supplemental Deposit Agreements; and
- (iv) 1 independent non-executive director (who was appointed on 10 December 2014 i.e. after the Deposit Agreement) was **publicly reprimanded** where he had merely relied on the management without undertaking any proper and reasonable care and diligence to make an informed decision vis-à-vis the continuing advances to Company VG until 30 June 2016 via numerous supplemental agreements.

No action was taken against 3 other independent non-executive directors who did not approve the Deposit Agreement and/or payment of the Deposit and had raised enquiries/required further information from management to support the investment proposal.

More information on this case can be found in the Media Release dated [15 October 2019](#).