

## Listing Requirements Enforcement In Focus

### Transactions Requirements

Failure to  
Announce/Appoint  
Adviser/Procure  
Shareholders' Approval

**Pursuant to Paragraphs/Rules 10.06, 10.07 and 10.08 of the LR:-**

- **a listed issuer/corporation must announce a transaction and related party transaction where the percentage ratio of the transaction is  $\geq 5\%$  and  $0.25\%$  respectively unless the value of the consideration of the transaction is less than RM500,000 (for Main Market) and RM250,000 (for ACE Market) or it is a recurrent related party transaction;**
- **a listed issuer/corporation must obtain its shareholders' prior approval of the transaction where the percentage ratio of the transaction is  $\geq 25\%$ ; and**
- **a listed issuer/corporation must also appoint an independent adviser, send a circular and obtain its shareholders' prior approval of the related party transaction where the percentage ratio of the transaction is  $\geq 5\%$  (and appoint a main adviser where the percentage ratio of the transaction is  $\geq 25\%$ ).**

### CASE 1 – ACQUISITION AND DISPOSAL OF MAJOR SHAREHOLDER'S SHARES

#### Relevant Facts

Company X had:-

- acquired a total of 499,700 ordinary shares in PLC A representing 6% of the issued and paid-up share capital of PLC A on 18 January 2005 ("Acquisition 1"). Acquisition 1 represented 99% of Company X's net tangible assets at the material period;
- acquired additional 25,006,900 of PLC A's shares through various transactions from 28 November 2006 to 12 December 2007 for a total consideration of RM15,587,399 ("Acquisition 2"). The total consideration represented 40% of Company X's total net assets at the material period; and
- disposed a total of 8,046,000 of PLC A's shares from 22 May 2007 to 12 December 2007 for total sale proceeds of RM5,275,995 ("the Disposal"). The Disposal represented 13% of Company X's total net assets at the material period.

Acquisition 1, Acquisition 2 and the Disposal were RPTs by virtue of PLC A being a major shareholder of Company X at the material time. Acquisition 1 was announced on 19 January 2005 but Acquisition 2 and the Disposal were only announced on 17 December 2007. Further, a circular for the proposed

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ratification of Acquisition 1, Acquisition 2 and the Disposal (“the Proposed Ratification”) was issued to shareholders on 28 February 2008 and Company X obtained shareholders’ approval of the Proposed Ratification on 27 March 2008.

### Enforcement Decision

Company X was found to be in breach of the LR for failure in making immediate announcements of Acquisition 2 and the Disposal and to appoint an adviser/advisers, issuance of circular and procuring prior shareholders’ approval with regard to Acquisition 1, Acquisition 2 and the Disposal. **A public reprimand was imposed against Company X.** In addition, the company was required to implement training for the directors and relevant personnel with regard to compliance of the LR.

The directors were also found to be in breach for permitting the company to commit the aforesaid breaches at the material time. It was noted that, amongst others, no procedures and processes were put in place in the company to identify and address RPTs. In addition, the transactions which were material acquisitions and disposals of its major shareholder’s shares were approved by the directors. Notwithstanding this, the directors failed to require/ensure compliance of the RPT obligations. **In addition to public reprimand, fines ranging from RM9,000 to RM30,000 were imposed against the directors** for the breaches, taking into consideration, amongst others, the involvement, role and responsibility of each director with regard to these transactions.

More information on this case can be found in the Media Release dated [28 January 2008](#).

## **CASE 2 – SETTLEMENT OF DEBT TO COMPANY BY A RELATED PARTY**

### Relevant Facts

The non-interested shareholders of Company Y had on 28 September 2001 approved the proposed settlement of debt amounting to RM713 million owing to the company by its executive chairman who was also a major shareholder of the company (“Related Party”). The settlement was by way of cash and payment-in-kind which included certain acquisitions of hotel companies (“Approved Settlement”). The shareholders’ approval of the Approved Settlement was procured in accordance with the provisions applicable to RPT under the LR. The Related Party however failed to perform the terms of the Approved Settlement and there were numerous proposed variations to the Approved Settlement from 31

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December 2001. Subsequently, Company Y had on 27 March 2008 entered into a supplemental agreement with the Related Party whereby, it was agreed that the balance debt of about RM400 million would be settled based on revised new terms. These revised terms included deferment of the full settlement (which was to be made by 30 September 2004 under the Approved Settlement) was extended to 31 December 2010 i.e. extension of the repayment timeline by 6 years (“Supplemental Agreement”). The balance debt represented about 65% of the group's net assets at the material time. In its entry of the Supplemental Agreement, Company Y did not comply with the RPT obligations under the LR including ensuring prior disinterested shareholders' approval was procured for the Supplemental Agreement.



### Enforcement Decision

Company Y was found to be in breach of the LR for its failure to make an immediate announcement, appoint an adviser/advisers, issue a circular and procure prior shareholders' approval with regard to the Supplemental Agreement. A public reprimand was imposed on Company Y. In addition, the company was required to implement training for the board and relevant personnel and to convene an extraordinary general meeting to seek ratification from its disinterested shareholders for the Supplemental Agreement.

The directors were also found to be in breach of the LR for permitting the company to contravene the LR particularly as they were aware that the Supplemental Agreement was a RPT. In addition to **public reprimand, a fine of RM500,000 was imposed on the Related Party** taking into consideration his personal interest in the transactions. **Fines ranging from RM15,000 to RM25,000 were imposed on the other directors** taking into consideration their involvement in the Supplemental Agreement.

More information on this case can be found in the Media Release dated [24 November 2009](#).

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### **CASE 3 – SETTLEMENT OF DEBT TO COMPANY BY A RELATED PARTY- FULL REPAYMENT**

#### **Relevant Facts**

Company F had failed to comply with RPT obligations to make an immediate announcement, appoint an independent adviser and a main adviser and procure shareholders' prior approval of the following RPTs:-

- (a) approval/acceptance on 27 April 2007 and/or 25 August 2007 of its holding company's request vide letter dated 27 March 2007 for repayment of the amount owed (of RM61,472,113 as at 27 March 2007) on or before 31 December 2009; and
- (b) approval/acceptance on 21 February 2009 and/or 21 April 2009 of its holding company's request vide letter dated 15 December 2008 for revised repayment of the amount owed (of RM57,659,841 as at 15 December 2008) on or before 31 December 2011;

(both the aforesaid transactions are collectively referred to as "the Transactions").

The amount owed by its holding company (which were advances to the holding company since 1997) of RM61,472,113 as at 27 March 2007 and RM57,659,841 as at 15 December 2008 represented approximately 80% and 70% of Company F's net assets of RM76,420,069 and RM82,370,833 as at 31 December 2006 and 31 December 2007 respectively. This had far exceeded the percentage ratio of 5% and 25% prescribed under the RPT requirements where Company F must appoint an independent adviser, a main adviser and procure shareholders' approval before the above repayment proposals were agreed upon.

#### **Enforcement Decision**

Company F was found to be in breach of the LR and was **publicly reprimanded**. Notwithstanding the representation that Company F did not suffer any loss arising from the amount owed by its holding company in view that interest was charged and paid, it was for the disinterested shareholders to ultimately decide on the merits and/or acceptance of the repayment and settlement of the long outstanding and material amount owed to Company F which was only tabled to shareholders for approval on 28 December 2011.

The directors were also found to be in breach of the LR for permitting the company to contravene the LR. The directors were or should be aware of the Transactions and that these were RPTs as:-

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- (i) the interested directors had declared their interests and abstained from the deliberation and voting of the Transactions at the Board of Directors' meetings on 25 August 2007, 21 February 2009 and 21 April 2009; and
- (ii) in addition to the declaration by the interested directors, the directors were alerted on various occasions as to the Transactions in their review and approval of the financial statements which contained the disclosures of the Transactions and updates of the same in the financial statements.

Notwithstanding these, they had failed to ensure compliance of the RPT requirements. **All the directors were publicly reprimanded.** In addition, taking into consideration the degree of culpability of each director, a fine of:-

- (i) **RM50,000 each was imposed on the interested directors;** and
- (ii) **RM25,000 each was imposed on the Audit Committee members** as they had the function/responsibility to review and report to the board any RPTs within the company except for **one Audit Committee member who was imposed a fine of RM15,000** as he had retired on 25 June 2007 and was only involved in one of the Transactions.

More information on this case can be found in the Media Release dated [30 July 2013](#).

### **CASE 4 – LAND DISPOSALS INVOLVING THE INTERESTS OF CERTAIN DIRECTORS/MAJOR SHAREHOLDERS AND PERSONS CONNECTED TO THESE DIRECTORS/MAJOR SHAREHOLDERS**



#### **Relevant Facts**

Company B had failed to comply with the RPT obligations to make an immediate announcement, appoint an independent adviser and procure shareholders' prior approval of certain land disposals. The land disposals involved:-

- (i) the interests of certain directors/major shareholders and persons connected to these directors and major shareholders; and
- (ii) consideration of approximately RM14 million for the respective transactions (and a total of RM28 million) representing the highest percentage ratio of 4.05% each (and a total of 8.1%) of the net assets of the Company.

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### Enforcement Decision

Company B - **publicly reprimanded.**

Directors of Company B -

- (a) **The 2 interested Executive Directors were publicly reprimanded and fined RM100,000** each as they had:-
- (i) permitted Company B to contravene the LR in respect of the land disposals;
  - (ii) failed to inform the board of directors of Company B the details of the nature and extent of their interest in relation to the land disposals. In fact, they had concealed their interests in the land disposals from Company B and its board including persistent denial (including under oath) of their interests despite being asked by the board upon receipt of a complaint; and/or
  - (iii) failed to abstain from board deliberation and/or voting on the relevant resolution in respect of the land disposals.
- (b) **The Managing Director was publicly reprimanded and fined RM50,000** as he had permitted Company B to **contravene** the LR in respect of the land disposals. He was primarily in charge of the day to day management of the business and operations of the company including land disposals by the Group and had approved the land disposals. Whilst there was no evidence of his direct involvement in the land disposals, he was or should have been aware of the transactions in the light of his role and responsibilities in the Company, the anomalies/unusual circumstances of the land disposals and the magnitude/materiality of the land disposals. Notwithstanding these, he had failed to undertake due enquiry and address these anomalies resulting in the breaches of the LR by Company B.

No action was taken against the other directors who were all Non-Executive Directors as:-

- (i) there was no evidence to show that they were or should be aware of the interest of the 2 Executive Directors in the land disposals or that the reliance placed by the Non-Executive Directors on the management was unreasonable;
- (ii) there was no clear evidence of inadequate/ineffective internal controls in the company pertaining to compliance of related party transactions particularly in the light of the “concealment” of the interests by the 2 Executive Directors;
- (iii) upon becoming aware of the possibility of RPTs involving the relevant directors from a complaint, the Non-Executive Directors took expeditious steps to verify the same including taking steps to remove the 2 Executive Directors from being involved in the day to day management of the

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company and requisition for the removal of the said directors at a general meeting as well as initiate legal proceedings to terminate the land disposals; and

- (iv) the Non-Executive Directors also took steps to enhance the existing processes to prevent recurrence of similar non-compliance including the internal controls.

More information on this case can be found in the Media Release dated [11 August 2015](#).

### **CASE 5 – JOINT VENTURE AGREEMENT TO DISPOSE DEVELOPMENTAL RIGHTS**

#### Relevant Facts

Company A's wholly-owned subsidiary had on 30 July 2012 entered into a joint venture agreement (“JVA”) with a 51% owned subsidiary to undertake a mixed development project. The JVA was a ‘transaction’ under paragraph 10.02(l)(i) of the Main LR as pursuant to the JVA, Company W or its wholly-owned subsidiary had disposed of the developmental rights and/or substantially all the right, benefits or control over the land. The percentage ratio of the transaction was 38.48% but Company W failed to issue a circular to its shareholders and seek its shareholders’ approval before entering into the JVA. Company W only obtained its shareholders’ ratification of the JVA on 30 March 2017.

#### Enforcement Decision

Company A was found to be in breach of the LR and **publicly reprimanded**.

The directors were also found to be in breach of the LR for permitting Company A to contravene the LR. The directors were and/or should be aware of the JVA, its terms and conditions and the materiality of the JVA. However, the directors had failed to demonstrate/take reasonable efforts to discharge their duties particularly to undertake proper deliberation, reasonable enquiries and assessment on the JVA including the necessity of shareholders’ approval to ensure compliance with the LR. There was no evidence of any documents pertaining to the proposed JVA including the draft JVA being circulated during the board meetings and further, despite the materiality of the JVA, all the directors had proceeded to approve the JVA vide a directors’ circular resolution dated 30 July 2012.

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All 7 directors of the Company at the material time (including 3 Non-Executive Directors) were publicly reprimanded. In addition, a fine of:-

- (i) **RM50,000 each was imposed on the Chief Executive Officer and 2 Executive Directors** taking into consideration their roles, responsibilities, involvement in the JVA and the subsidiaries and the aggravating factor of their failure, neglect and/or lackadaisical conduct to procure the shareholders' ratification of the JVA expeditiously despite Bursa's engagement with/reminders to the company since 14 April 2016 that the percentage ratio of the JVA was more than 25% (which would trigger the requirement for shareholders' approval/ratification) ("Bursa's Engagements"); and
- (ii) **RM25,000 was imposed on 1 Executive Director** taking into consideration his roles, responsibilities, involvement in the JVA and the subsidiaries and the fact that he had resigned on 24 January 2014, prior to Bursa's Engagements.

More information on this case can be found in the Media Release dated [31 January 2019](#).

### **CASE 6 – ACQUISITION/OPTION TO ACQUIRE LANDS VIA JOINT VENTURE AGREEMENTS**

#### **Relevant Facts**

Company E had vide its subsidiaries entered into various joint venture agreements ("JVAs") from 8 January 2015 to 29 February 2016 for a proposed residential and commercial development on 26 adjoining/contiguous vacant agricultural lands in Sabah. The JVAs were essentially an acquisition and/or option to acquire the lands conditional upon/after approval of the application for amalgamation, subdivision and conversion of the land titles from Native Titles into Country Lease or Town Lease. Company E had failed to make immediate announcement and obtain prior shareholders' approval of the transactions where the percentage ratio exceeded 5% and 25% respectively. Company E had only announced the transaction on 22 May 2017 and 20 November 2017 and obtained shareholders' ratification of the transactions on 16 November 2018.

Company E had withheld disclosure of the transactions on the basis that the facts were in a state of flux and the immediate disclosure would prejudice the ability of Company E to pursue its corporate objectives as the company represented that an announcement may cause a tremendous increase in the acquisition price and jeopardise the negotiation to acquire the lands. Pursuant to paragraph 10.06(1) of the LR and

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as illustrated in the Corporate Disclosure Guide, Company E must make an immediate announcement upon execution of the JVAs which were no longer in a state of flux as the salient terms and conditions had been agreed upon. Further, while disclosure of the transactions may have an unfavourable impact to Company E, Company E must not withhold disclosure of the transactions which were material for investors to make informed investment decision and the non-disclosure was prejudicial to the interest of investors.



### Enforcement Decision

Company E was found to be in breach of the LR and **publicly reprimanded**.

**7 directors of Company E at the material time were publicly reprimanded.** In addition, a fine of **RM50,000 and RM25,000 were imposed on the Managing Director and an Executive Director respectively** who were primarily involved in and responsible for/in charge of the negotiation, review and execution of the transactions. They had failed to escalate the transactions for the board's deliberation and prior approval despite the materiality of the transactions. The other directors had agreed with the Managing Director's decision to withhold the announcement during the Board of Directors meeting on 26 May 2016 even though they were aware that the transactions required immediate announcement and shareholders' approval under the LR.

More information on this case can be found in the Media Release dated [28 July 2020](#).

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### Transactions Requirements

#### Diversification in Operations/Business

**Pursuant to Paragraph/Rule 10.13(1) of the LR, a listed corporation/listed issuer must obtain its shareholder approval in a general meeting for any transaction or business arrangement which might reasonably be expected to result in either –**

- (a) the diversion of 25% or more of the net assets of the listed corporation/listed issuer to an operation which differs widely from those operations previously carried on by the listed corporation/listed issuer; or**
- (b) the contribution from such an operation of 25% or more of the net profits of the listed corporation/listed issuer.**



### Relevant Facts

Company S had failed to obtain prior shareholders' approval in respect of the diversification into a new business in the trading of crude palm oil and its derivative products such as palm kernel and palm kernel shell ("CPO & Derivative Products Trading") in February 2017. Company S had only announced the proposed ratification of the diversification on 9 February 2018 and obtained its shareholders' ratification of the diversification on 30 May 2018.

Company S was principally engaged in biotechnology research and development and manufacturing and marketing of animal feed supplement and animal health care products. Company S had triggered Rule 10.13(1)(b) of the ACE LR where the CPO & Derivative Products Trading had contributed more than 25% of Company S' net profit as at the quarterly reports for the financial period ended from 31 March 2017 to 31 December 2017.

Company S and its directors had represented that:-

- the diversification arose unintentionally out of the need to secure a consistent supply for the manufacturing of the animal feed supplement; and
- Company S did not expect the CPO & Derivative Products Trading to be part of its business and did not foresee it would contribute significantly to the Group's profitability/was sustainable as it was new/commenced only in February 2017 and the commodity market was unpredictable/volatile subject to price fluctuation.

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However, the evidence showed that Company S had clearly intended to diversify into CPO and Derivative Products Trading and both Company S and the Executive Directors were aware of the material contribution of the CPO & Derivative Products Trading to be the company's revenue, net profits and/or prospects as disclosed in the quarterly reports.



### **Enforcement Decision**

Company S was found to be in breach of the LR and **publicly reprimanded**.

**2 Executive Directors of Company S at the material time were publicly reprimanded and fined RM50,000 each** as they could and should be aware of the new business that Company S was venturing into and the potential/possible impact to Company S and they had failed to make proper assessment/analysis on the CPO & Derivative Products Trading prior to the diversification in February 2017.

No action was taken against 4 other directors who were all Non-Executive Directors as:-

- (i) they were not involved in the day to day operations of the company and the diversification into the CPO & Derivative Products Trading was never escalated to the board for proper deliberation; and
- (ii) upon becoming aware of the CPO & Derivative Products Trading, they had made the necessary enquiries and had instructed and followed-up with Company S to procure compliance with the LR.

More information on this case can be found in the Media Release dated [6 January 2020](#).

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