

DENNIS LIM, Templeton, Singapore
OECD Asian Corporate Governance Roundtable
26 March 2003, Kuala Lumpur

Malaysia has a good code on corporate governance, one of the best in the region. However, there appears to be some reluctance on the part of the regulators to apply the code fully and transparently. (This appears to be par for course in other countries as well) Often, waivers and exemptions are given with no proper explanation to the industry. The regulators have not demonstrated consistency in many of its own rules and regulations. While the government continues to tighten up on corporate governance legislation, there is still limited evidence that these new rules are evenly applied. This has created a great sense of uncertainty for minority shareholders. Following are some examples of recent transgressions.

1. **TRI**: After Telekom Malaysia took control of the company, it was revealed that three former directors paid themselves RM 38.7 million as a golden handshake. In our opinion, this is outright theft. It appears that the regulators are not going to do anything about this.

2. **YTL Corp**: The company apparently paid the CEO of Wessex Water GBP 920,000 or about RM 5.5 million upfront as compensation for his services as a consultant for the next five years. Other bidders for Wessex contended that the payment was illegal but the authorities in Malaysia chose not to comment on this.

3. **Malaysia Airlines**: The government acquired Tajudin Ramli's 30% stake in the company for RM 8 per share when the prevailing market price was RM 3.75. The same deal was not offered to other shareholders. The acquisition took the government's stake to 50%, crossing the mandatory 33% threshold. The Securities Commission subsequently granted the government a waiver from making a general offer without giving any reasons.

4. **Bank Utama**'s acquisition of RHB resulted in Utama paying different prices to different sellers for the same class of shares. MRCB received RM 3.80 while Tan Sri Rashid Husein received RM 6.00. MRCB is a listed company and its minority shareholders suffered as a result.

5. **Time dotCom**: The IPO prospectus was grossly misleading, with subscribers stated at gross instead of net. Interest and depreciation expenses were also capitalized without rationale. It was not clear why the Securities Commission and KLSE allowed the company to get away with this.

6. **Berjaya Sports Toto** advanced RM 1 billion in cash to parent company Berjaya Land without disclosing this to other shareholders. No one has been censured to date.

7. **Digi** does not comply with the KLSE's minimum 25% free float requirement but nothing has been done to force Telenor and/or Berjaya to divest or make an offer to take the company private. This situation has persisted for 19 months.

8. **Renong/UEM**: This is the mother of all examples. In 1997, in a stealth-like operation, UEM acquired a 32.7% stake in parent company Renong. No rationale for the acquisition was ever given to minority shareholders. The company failed to disclose to the stock exchange when the 5% substantial shareholding level was breached. It was also not clear whom UEM was buying the shares from. It is difficult to believe that UEM was able to acquire such a large stake from the market in such a short amount of time without moving the price. The Securities Commission never investigated the circumstances of this transaction, or if they did, never disclosed their findings to investors. Subsequent, Halim Saad was granted a waiver by the Securities Commission from making a general offer. To appease other shareholders, he granted UEM a put option to sell those Renong shares back to him at cost plus interest. The share price of Renong later collapsed and the put option was subsequently exercised. Halim Saad however, was miraculously saved by a strange decision by UEM to cancel the put option and restructure the group. Halim Saad was never taken to task for his blatant disregard for the Securities Commission and KLSE regulations.

9. **Malaysia Mining Corp**: No one really knows for sure who owns and controls this company. According to the shareholder register, PNB owns 44.27% and a company called Impian Teladan controls another 14%. However, when you talk to anyone in corporate Malaysia, they will tell you that the company belongs to Syed Mokhtar. Even MMC employers will tell you that he owns and controls the company. However, there is nothing anywhere to tie Syed Mokhtar to PNB or Impian Teladan. Malaysian Mining is not an isolated example. The name Syed Mokhtar keeps popping up everywhere. His supposed empire now encompasses power, publishing, ports, property, consumer staples, etc. This clearly is not ideal. How can investors invest when they don't know who the other shareholders are? Disclosure rules must be properly enforced.

10. **ValueCap**: For those of you who are not familiar with this, it is a state-controlled investment fund with a RM 10 billion war chest to invest in the Malaysian stock market. ValueCap was only formed very recently. Its stated purpose is to buy undervalued stocks on the KLSE. The owners of ValueCap, apparently, are Khazanah, the Civil Service Pension Fund, and EPF. The question that foreign investors are asking is why is there a need to create this vehicle? All of the three owners of ValueCap were set up to do the exact same thing. Investors are concerned that there is a hidden agenda somewhere.