

## Listing Requirements Enforcement In Focus

### Failure to Establish Internal Audit Function

- Paragraph/Rule 15.12(1)(e) and (f) of the LR states that a listed issuer/corporation must ensure the audit committee reviews and reports the following to the Board of Directors of a listed issuer/corporation:-
  - the adequacy of the scope, functions, competency and resources of the internal audit functions and that it has the necessary authority to carry out its work; and
  - the internal audit programme, processes, the results of the internal audit programme, processes or investigation undertaken and whether or not appropriate action is taken on the recommendations of the internal audit function
- Paragraph/Rule 15.27(1) of the LR requires a listed issuer/corporation to establish an internal audit function which is independent of the activities it audits.

### CASE 1 – FAILURE TO ESTABLISH INTERNAL AUDIT FUNCTION DUE TO FINANCIAL ISSUES

#### Relevant Facts

Company T had failed to establish an internal audit function from 1 September 2011 until 8 July 2014 and its audit committee had failed to review the adequacy of the company's internal audit function as well as its internal audit plan and/or report during this period ("**Internal Audit Function Breach**"). Despite the absence of an internal audit function and activities during the said period, Company T had



represented in its Statement on Risk Management & Internal Control and the Audit Committee Statement contained in Company T's annual report as to, amongst others, the existence of its internal audit function and activities carried out during the 18-month financial period from 1 September 2011 to 28 February 2013, which were inaccurate and misleading ("**Misstatement Breach**"). Company T's allegation that its failure to establish an internal audit function due to the company's financial difficulties/shortage of funds/resources cannot absolve its obligation. In this respect, strict adherence to ensure the establishment

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and maintenance of an internal audit function is required as it provides an independent and objective assurance service to the board of directors, audit committee and management as to the effectiveness of the company's governance, risk management and control processes which would enable/facilitate proper supervision and management of the company's business and operations including compliance of rules and regulations.

### Enforcement Decision

- (i) Company T – **Public reprimand** for the Internal Audit Function Breach and Misstatement Breach respectively;
- (ii) Directors – **Public reprimand** on ten directors at the material time for permitting Company T to commit the Internal Audit Function Breach and Misstatement Breach. **In addition, the Managing Director and Audit Committee Chairman were fined RM20,000 each while four Audit Committee members were fined RM10,000 each.** All the directors were or should have been aware of the state of affairs of the internal audit function and activities of Company T. However, the directors had failed to demonstrate reasonable steps/efforts taken including to undertake due enquiry on/questioned the status of the internal audit function as well as other proactive steps towards addressing the non-compliance of the requirement for an internal audit function during the relevant period. The directors had also failed to supervise/monitor/follow-up on the progress and actions taken such as addressing and rectifying the issues including the replacement/appointment of an internal auditor expeditiously. Even though the directors were aware/should have been aware of the absence of internal audit function and activities, they had proceeded to approve the inaccurate representations (i.e. the Statement on Risk Management & Internal Control and the Audit Committee Statement) in the company's annual report.

For more information on the case, please refer to the Media Release dated [29 October 2015](#).

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### **CASE 2 – ABSENCE OF INTERNAL AUDIT FUNCTION DESPITE EXISTENCE OF INTERNAL AUDITOR AND OTHER AUDIT ACTIVITIES**



#### Relevant Facts

Company AS had failed to establish an internal audit function during the FYE 31 December 2011 and 31 December 2012 (“**FYE 2011 and FYE 2012**”) until the appointment of a new internal auditor on 15 March 2013 (i.e. a period of 26.5 months). In addition, its audit committee had failed to review the adequacy of the internal audit function and internal audit plan and/or report during the FYE 2011 and FYE 2012. Regardless of the alleged existence of an internal auditor by Company AS, there were clearly no audit activities including report from the internal auditors tabled to the audit committee and the Board during the FYE 2011 and FYE 2012. Further, the various audit activities/monitoring carried out by the company during the FYE 2011 and FYE 2012 including by Sirim QAS International Sdn. Bhd. and internally by its subsidiary’s Chief Operating Officer were inadequate and did not fulfil the obligations under paragraphs 15.12(1)(e) & (f) and 15.27(1) of the Main LR. Despite the directors’ awareness of the state of affairs of the internal audit function (i.e. absence of any internal audit function and activities), the directors had proceeded to approve the representations/statements as to the existence of an internal audit function and the various activities/actions undertaken during the FYE 2011 and FYE 2012 in the company’s annual reports for FYE 2011 and FYE 2012 which were inaccurate and misleading.



#### Enforcement

- (i) Company AS – **Public reprimand** for the breaches respectively;
- (ii) Directors – **Public reprimand** on eight directors at the material time. **In addition, seven of the directors who were Executive Directors or Audit Committee members were imposed fines ranging from RM10,000 to RM40,000** for permitting Company AS’ failure to establish an internal audit function and further misrepresentation on the existence of the internal audit function/activities in the company’s annual reports for FYE 2011 and FYE 2012. The directors had failed to demonstrate reasonable steps/efforts taken to ensure that Company AS complied with paragraphs 15.12(1)(e) & (f) and 15.27(1) of the Main LR including to undertake reasonable enquiries, supervise/monitor/

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follow-up on the progress and actions taken as well as undertake other proactive steps towards addressing the issue on the internal audit function expeditiously. Instead, the directors' total/mere reliance on the management to ensure compliance of the Main LR (including endorsing the misstatements in the annual reports) tantamount to an abdication of their responsibilities.

For more information on the case, please refer to the Media Release dated [23 December 2016](#).

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### Failure to Comply with Audit Committee Composition

*Paragraph/Rule 15.09(1) of the LR states that a listed issuer/corporation must appoint an audit committee from amongst its directors which fulfils the following requirements:*

- (a) the audit committee must be composed of no fewer than 3 members;*
- (b) all the audit committee members must be non-executive directors, with a majority of them being independent directors; and*
- (c) at least one member of the audit committee –
  - (i) must be a member of the Malaysian Institute of Accountants; or*
  - (ii) if he is not a member of the Malaysian Institute of Accountants, he must have at least 3 years' working experience and –
    - (aa) he must have passed the examinations specified in Part I of the First Schedule of the Accountants Act 1967; or*
    - (bb) he must be a member of one of the associations of accountants specified in Part II of the First Schedule of the Accountants Act 1967; or**
  - (iii) fulfils such other requirements as prescribed or approved by the Exchange.**

### **CASE 1 – FAILURE TO COMPLY WITH AUDIT COMMITTEE COMPOSITION DUE TO MISREPRESENTATION ON DESIGNATION/ROLE AND DISQUALIFICATION OF THE CHAIRMAN**

#### Relevant Facts

Company KS had on 5 January 2017 announced the resignation of its Chief Executive Officer and represented that he was the Non-Executive Chairman of the company. Company KS had further in its annual reports for the FYE 30 June 2017 and 18-month FPE 31 December 2018 (“**AR 2018**”) made representations on the non-executive position/role of the Chairman. However, the Chairman had continued to perform fundamental executive role in the management and had full decision-making authority in essentially the entire operations, particularly in the key finance function of Company KS and its

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major and sole operating subsidiary even after 5 January 2017. Despite his executive role, the Chairman was also appointed as an Audit Committee member from 6 January 2017 to 13 September 2018, in contravention of paragraph 15.09(1)(b) of the Main LR that all the audit committee members must be non-executive directors to ensure the effectiveness and independence of the audit committee. As a result of the Chairman's disqualification as an audit committee member, Company KS had also failed to ensure that its audit committee had no fewer than three members in accordance with paragraph 15.09(1)(a) of the Main LR.

Company KS had continued to operate as a joint entity or be collectively run as a group with its previous holding company even after the cessation of subsidiary and holding company relationship on 5 January 2017 and hence, the core finance and sales functions continued to be centralised in the ex-holding company which was under the control of the Chairman. This was not acceptable and the Board of Directors also has a duty to ensure that there was a sound framework of internal controls and risk management including that no one director was accorded with unchecked powers which may give rise to potential abuse.



### Enforcement Decision

- (i) Company KS – **Public reprimand** for the breaches collectively;
- (ii) Directors – **Public reprimand** on nine directors at the material time who were and/or should be aware of the Chairman's continued fundamental executive role/powers in the company in the discharge of their duties of supervision. In addition:-
  - (a) **a fine of RM30,000 each was imposed on six of the directors (including the Chairman)** who had disregarded their duties by permitting the company to misrepresent and mislead on the Chairman's role in the announcement dated 5 January 2017, AR 2017 and/or AR 2018 which was fundamental to investors to make informed investment decision and further, approved the appointment of the Chairman as an Audit Committee member on 6 January 2017; and
  - (b) **a fine of RM10,000 each was imposed on three Independent Non-Executive Directors and Audit Committee Chairman/members** for the misrepresentation on the Chairman's

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designation/role in the AR 2018 issued on 8 May 2019 as they were only appointed on 13 September 2018.

For more information on the case, please refer to the Media Release dated [29 June 2022](#).

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