

## Listing Requirements Enforcement in Focus

### Failure to comply with Bursa Securities' Directives/Undertaking to Bursa Securities

- *Paragraph/Rule 2.23 of the LR requires a listed issuer/corporation and its directors to comply with any instruction or directive as may be issued by Bursa Securities.*
- *Paragraph/Rule 16.17A of the LR provides that any breach of an undertaking given to the Exchange pursuant to the LR will be treated as a breach of the LR.*

### CASE 1 – FAILURE TO COMPLY WITH DIRECTIVE TO APPOINT A SPECIAL AUDITOR ETC.



#### Relevant Facts

Arising from, amongst others, numerous breaches of the LR by Company G and uncertainty and concern with regard to the management of the business and financial affairs of the company by a provisional liquidator, Bursa Securities directed Company G to appoint a special auditor on 26 August 2008. Company G failed to comply with the said directive and numerous directives issued thereafter including after the cessation/removal of the provisional liquidator on 10 May 2010. Notwithstanding the directives issued by Bursa Securities, Company G refused to comply with and blatantly disregarded the directives to appoint the identified firm as the special auditor until Bursa Securities procured court orders to give effect to its directives including the court order which specifically provided that failure to comply with the directives may result in the directors of Company G to be in contempt of the order and liable to committal proceedings.

In addition, Company G had failed to comply with a directive for the company to retract/withdraw the tabling of a matter to its shareholders at the annual general meeting with regard to the resolution seeking shareholders' approval to comply with Bursa Securities' directive for Company G to appoint the special auditor.

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### Enforcement Decision

Both Company G and its directors were found to be in breach of paragraph 2.23 of the Main LR in respect of their failure to comply with the directives issued by Bursa Securities. **Public reprimand was imposed against both the company and its directors.** In addition, **a fine of RM200,000 was imposed against each of the directors** for permitting Company G to commit the said breaches.

More information on this case can be found in the Media Release dated [22 June 2011](#).

### **CASE 2 – FAILURE TO COMPLY WITH DIRECTIVE TO ANNOUNCE MATERIAL LITIGATION**



### Relevant Facts

Company N failed to comply with Bursa Securities' directives on 9 October 2008 and 5 November 2008 to make an immediate announcement of several material litigations. Company N had applied to Bursa Securities for a waiver from disclosing the litigations and when the application was rejected on 4 December 2008, Company N proceeded to file an application for judicial review on 19 December 2008 and procured an ex-parte stay in respect of Bursa Securities' decision on 20 January 2009. The High Court subsequently dismissed Company N's inter partes stay application on 6 August 2009 and Company N then announced the litigations to Bursa Securities on 13 August 2009.

The litigations were in connection with the company's performance of a construction contract and were material as they affected Company N's business/prospects vis-à-vis the materiality of the construction contract which contributed approximately 12-53% of the Group revenue from year 2004 to 2007.

The representations that the non-disclosure of the material litigations was in the best interest of the company and the reliance on the advice of the solicitors with regard to withholding the disclosure under the LR were unacceptable in light of the clear directives by Bursa Securities.

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Company N and its seven directors were publicly reprimanded for failure to comply with Bursa Securities' directives. In addition, the following fines were imposed against the directors who were all aware of the litigations, Bursa Securities' directives, Bursa Securities' rejection of Company N's application for a waiver from disclosing the litigations and Company N's non-compliance with the directives:-

- (i) **RM50,000 each against the Chief Executive Officer and two Executive Directors** who did not disclose the litigations to the Independent Non-Executive Directors until Bursa Securities' query on 11 July 2008 and had proceeded to file the judicial review application, thereby delaying compliance with Bursa Securities' directives; and
- (ii) **RM25,000 each against the Executive Chairman and the Independent Non-Executive Directors** as they had permitted Company N's non-compliance of Bursa Securities' directives by virtue of their inaction or ineffective steps/actions to require compliance of the directives upon being informed/aware of the same.

More information on this case can be found in the Media Release dated [27 February 2012](#).

### CASE 3 – FAILURE TO COMPLY WITH DIRECTIVE TO CONDUCT LIMITED REVIEW

#### Relevant Facts

#### **Company P**

Company P had failed to comply with Bursa Securities' directive on 14 March 2012 to ensure that a limited review was carried out by the external auditors for the quarterly reports for the FPE 31 March 2012 ("**QR March 2012**") and 30 June 2012 ("**QR June 2012**"). Company P and its directors blatantly disregarded the directive on the basis that a full scope comprehensive audit was being carried out for the FYE 30 June 2012 which would cover the scope of audit for QR March 2012 and QR June 2012. Premised on this and notwithstanding that Bursa Securities had rejected Company P's request to

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commence the limited review from the quarterly report for the FPE 30 September 2012 ("**QR Sept 2012**"), Company P/its directors had decided unilaterally to perform the limited review only from QR Sept 2012 onwards.

The QR March 2012 which did not comply with the directive was subsequently amended on 2 July 2012 and there was a material deviation of RM3.755 million (306%) between the QR March 2012 and the amended QR March 2012 i.e. from a loss after tax and minority interest of RM1.227 million in the QR March 2012 announced on 31 May 2012 to a profit after tax and minority interest of RM2.528 million in the amended QR March 2012 announced on 2 July 2012.

### **Company A**

Company A had failed to comply with Bursa Securities' directive to carry out a limited review on the company's quarterly reports for the FPE 30 September 2016 ("**QR3/2016**"), 31 December 2016 ("**QR4/2016**"), 31 March 2017 ("**QR1/2017**") and 30 June 2017 ("**QR2/2017**"). Company A had failed to provide the relevant documents and address/resolve all issues with the external auditors expeditiously to enable completion of the limited review prior to the announcement of the QR3/2016. Further, Company A did not appoint its external auditors to carry out limited review for the QR4/2016, QR1/2017 and QR2/2017.

Subsequent to Company A's announcement of the QR4/2016 on 28 February 2017 without completion of the limited review, Company A had made certain adjustments in the annual audited financial statements for the FYE 31 December 2016 ("**AFS 2016**") announced on 1 June 2017 leading to a deviation of 43% or RM4.719 million between the unaudited loss after taxation and minority interest of RM10.861 million reported in the QR4/2016 and the audited loss after taxation and minority interest of RM15.580 million reported in the AFS 2016.

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### Company AS

Company AS had failed to comply with Bursa Securities' directive to:-

- carry out a limited review on the quarterly reports for the FPE 31 March 2018 ("QR 4/2018") and 30 June 2018 ("QR 1/2019");
- ensure its Board of Directors reviewed and assessed the adequacy and competency of its finance and accounting resources and the adequacy, comprehensiveness, implementation and effectiveness of the company's policies and procedures in respect of financial reporting; and
- ensure all its directors and the relevant personnel attended a training programme in relation to compliance with the LR particularly pertaining to financial statements.

In addition, Company AS and its directors had further approved/announced the QR 4/2018 which stated that the auditors had performed a limited review on the QR 4/2018 that was clearly inaccurate and misleading as the limited review was not conducted ("**Misstatement Breach**").

Subsequent to the announcement of the QR 4/2018, there was a deviation of approximately 107.5% or RM2,523,622 between the unaudited loss after tax and minority interest of RM2,346,515 in the QR 4/2018 as compared to an audited loss after tax and minority interest of RM4,870,137 in the audited financial statements for FYE 31 March 2018.



### Enforcement Decision

### Company P and its directors

Company P and its four directors were found to be in breach of paragraph 2.23 of the Main LR in respect of their failure to comply with Bursa Securities' directive. Despite their knowledge and awareness of the directive and Bursa Securities' rejection of the request to defer the commencement of the limited review to QR September 2012, all the directors had approved and agreed to release the QR March 2012 and QR June 2012 without the required limited review in accordance with the directive. A **public reprimand was imposed against Company P.**

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In respect of the directors, **public reprimand was imposed against the two Executive Directors. The two Non-Executive Directors were imposed private reprimands** taking into account their representations (which were corroborated by the Executive Directors) that they had followed-up on the compliance with the directive and were assured by the Executive Directors that the directive would be complied with but had nevertheless failed to ensure that the limited review was conducted in respect of the QR March 2012 and QR June 2012 in accordance with the directive.

More information on the case of Company P can be found in the Media Release dated [14 May 2013](#).

### **Company A and its directors**

Company A and its seven directors were found to be in breach of paragraph 2.23 of the Main LR for failing to comply with Bursa Securities' directive. Despite their knowledge and awareness of the directive, the directors had, in contravention of the directive, approved, authorized, allowed and/or acquiesced to the announcement of the QR3/2016, QR4/2016, QR1/2017 and QR2/2017 (collectively "**4 QRs**") without prior completion of the limited review. The directors had merely relied on the management and failed to demonstrate reasonable steps taken to monitor, follow-up and enquire on the status of the completion of the limited reviews. The mere reliance by the directors on the management was unacceptable particularly in view of the repeated failures by the management to ensure completion of the limited review of the 4 QRs. In fact, Bursa Securities had initiated enquiries into the delay in completion of the limited review for QR3/2016 and QR4/2016.

**Company A and its directors were publicly reprimanded.** In addition:-

- (i) **a fine of RM75,000 was imposed on the Group Chief Executive Officer** who was the only executive director and in charge of overseeing compliance with the directive; and
- (ii) **a fine of RM25,000 was imposed on six Non-Executive Directors** for their blatant disregard and repeated failures to ensure compliance with the directive.

More information on the case of Company A can be found in the Media Release dated [6 May 2019](#).

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### Company AS and its directors

**Company AS and its directors were public reprimanded** for the failure to comply with Bursa Securities' directive and the Misstatement Breach. In addition:-

- (i) **a fine of RM50,000 was imposed on the only Executive Director** who was primarily responsible for the overall management including the financial management of the company; and
- (ii) **a fine of RM25,000 was imposed on the Independent Non-Executive Chairman and two Independent Non-Executive Directors while a fine of RM20,000 was imposed on another Independent Non-Executive Director** (who had resigned on 31 May 2018 and hence not culpable for the company's failure to carry out the limited review on the QR 1/2019) as they had merely instructed/reminded/placed total reliance on the management and there was no evidence of any supervision, discussion, enquiry and/or steps taken by these directors to ensure compliance with Bursa Securities' directive.

More information on the case of Company AS can be found in the Media Release dated [22 September 2020](#).

### **CASE 4 – FAILURE TO COMPLY WITH DIRECTIVE TO MAKE GN3 FIRST ANNOUNCEMENT**



#### Relevant Facts

Company S triggered the prescribed criteria in GN3 upon announcement of its fourth quarterly report for the FYE 31 December 2014 ("**QR Dec 2014**") on 27 February 2015. However, Company S failed to make an immediate announcement that it was a GN3 company. Further, despite the clear instruction/directive as well as engagements by Bursa Securities with Company S to make the First Announcement/disclosure that it was a GN3 company on 8 May 2015, Company S did not do so. Instead, Company S informed Bursa Securities that it did not trigger any of the prescribed criteria of GN3 as it had changed its FYE from 31 December to 30 June and challenged Bursa Securities' decision/directive by filing a legal suit in the High Court for an injunction to prevent Bursa Securities from carrying out the directive and trading suspension.

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### Enforcement Decision

**Company S and its five directors were publicly reprimanded** for failing to make an immediate announcement of Company S' GN3 status and the failure to announce and comply with Bursa Securities' directive. The subsequent change of FYE on 27 April 2015 by Company S could not "unwind" the earlier triggering of GN3 by Company S based on the QR Dec 2014.

In addition, the following fines were imposed against the directors:-

- (i) **RM150,000 each against two Executive Directors** for permitting the two breaches by Company S as they were involved in the day to day/financial management of the Company and primarily responsible for the approval and release of announcements. They had refused to comply with/ensure compliance of Bursa Securities' directive and failed to advise the board to comply with Bursa Securities' directive despite the various communications and engagements from Bursa Securities; and
- (ii) **RM20,000 each against two Non-Executive Directors** for permitting the two breaches by Company S where they had knowledge of Bursa Securities' directive and had failed to ensure compliance of the same while **a fine of RM10,000 was imposed against one Non-Executive Director** who had resigned on 13 March 2015 (prior to issuance of Bursa Securities' directive) for permitting Company S' failure to make an immediate announcement of the GN3 status.

These Non-Executive Directors, who were also members of the Audit Committee and hence, responsible for the review and recommendation to the board for approval of the QR Dec 2014, had failed to assess and determine the financial condition of the company (i.e. triggering of the prescribed criteria under paragraph 2.1(b) and (c) of GN3 in respect of the reported losses which exceeded the company's shareholders' equity). The directors' mere and sole reliance on the alleged confirmation by the external auditors that the company did not trigger one of the prescribed criteria under GN3 (out of a total of eight prescribed criteria under GN3) was unreasonable and unacceptable in the discharge of their obligations. This was particularly so as they knew or should have known of the Group's negative trend in the operating results and

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financial position/losses over the last three years, the possible triggering of GN3 and the limited assessment of the GN3's prescribed criteria by the external auditors. It was further noted that the directors were lackadaisical where the QR Dec 2014 was approved via directors' circular resolution and there was no proper discussion by the directors prior to the approval and release of the same to Bursa Securities.

More information on this case can be found in the Media Release dated [1 April 2016](#).

### **CASE 5 – FAILURE TO COMPLY WITH NUMEROUS DIRECTIVES ON MATERIAL EVENTS/ DISCLOSURES**



#### Relevant Facts

#### **Company MS**

Company MS had failed to comply with the instructions or directives of Bursa Securities to, amongst others:-

- (i) provide Bursa Securities with:-
  - (a) the status of the audit for the FYE 31 December 2015; and
  - (b) the actions taken/being taken on the appointment of new independent directors, Audit Committee, company secretary and agent following a series of resignations;
- (ii) announce:-
  - (a) the resignations of the chief financial officer and an independent director;
  - (b) the monthly update on the status of the outstanding annual report for the FYE 31 December 2015; and
  - (c) the notice of requisition dated 16 August 2016 to convene a special general meeting to put forward resolutions for amongst others, the appointment of six directors to the company.

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### **Company CP**

Company CP had failed to comply with the instructions or directives of Bursa Securities to, amongst others:-

- (i) make an immediate announcement in respect of its external auditors' letter to the Company on the non-reliance of the auditors' report for the company's financial statements for FYE 31 December 2015;
- (ii) make an immediate announcement and clarification on a judicial auction of the buildings and land use rights owned by a wholly owned subsidiary of the company;
- (iii) announce Bursa Securities' directive to the company to have its outstanding quarterly report for FPE 31 March 2017 reviewed by its external auditors; and
- (iv) make an announcement by 4 July 2017 on the status including the steps taken on the reissuance of the company's audited financial statements for the FYE 31 December 2015.

In addition to the failure to comply with the instructions or directives of Bursa Securities, both Company MS and Company CP had also committed numerous breaches of the LR in respect of its board of directors and Audit Committee composition, foreign listing requirements and other disclosure requirements (these breaches together with failure to comply with the instructions or directives of Bursa Securities are collectively referred to as "**the Breaches**").

### **Enforcement Decision**

**Both Company MS and Company CP were publicly reprimanded** for the Breaches. In addition:-

- (i) **The Executive Chairman and the Executive Director cum Chief Executive Officer of Company MS were publicly reprimanded and imposed a fine of RM1 million each.** They had wholly disregarded/abdicated their responsibilities and had totally ignored/did not respond to the reminders/instructions/directives of Bursa Securities. The Breaches were subsequently rectified by the board/directors newly appointed on 4 October 2016.
- (ii) **The Executive Chairman and the Executive Director of Company CP were publicly reprimanded and imposed a fine of RM500,000 and RM100,000 respectively.** The Executive

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Chairman did liaise with Bursa Securities on certain directives and there were certain efforts taken by the directors, particularly the appointment of a new company secretary on 16 November 2017 towards compliance of the LR.

More information on these cases can be found in the Media Releases dated [1 November 2017](#) and [4 September 2018](#).

### **CASE 6 – FAILURE TO COMPLY WITH DIRECTIVE TO ANNOUNCE SPECIAL AUDIT FINDINGS**



#### Relevant Facts

On 2 July 2021, an independent reviewer was appointed to review, assess and verify the financial affairs of Company SDH arising from audit issues raised by its former external auditors during the annual statutory audit of Company SDH for the FYE 31 December 2020 ("**Special Independent Review**"). These audit issues concerned recognition of the Group's revenue, purchases, receivables, payables and materials on site balances which might adversely affect the financial position of the Group. The material factual findings as at 30 September 2021 pursuant to the Special Independent Review ("**FFU**") were then presented to Company SDH on 21 October 2021. Bursa Securities had advised Company SDH to make an immediate announcement of the FFU on 21 October 2021 which was clearly material to Company SDH's shareholders and investors which required immediate disclosure. Further, Bursa Securities had issued a directive dated 22 October 2021 for Company SDH to make an announcement of the FFU by 26 October 2021 ("**Directive**"). However, Company SDH had refused and failed to make an immediate announcement of the FFU ("**Disclosure Breach**") and to comply with the Directive ("**Directive Breach**") where Company SDH had on 25 October 2021 announced, amongst others, that there was no document on the FFU given to the Independent Non-Executive Directors and any document/report from the independent reviewer did not fall within paragraphs 9.03 and 9.35A of the Main LR. Company SDH had further filed legal action against Bursa Securities on 3 November 2021 which was an attempt to delay compliance with and stifle the Directive.

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The refusal and continued refusal to disclose the FFU and comply with the Directive had resulted in suspension on the trading of Company SDH's securities on 22 October 2021 and a legal action filed by Bursa Securities ("**Bursa's OS**") on 23 November 2021 to enforce and give effect to the Directive. Company SDH had only announced the FFU on 21 April 2022 as required by the High Court order dated 7 February 2022 in allowing Bursa's OS and following the Court of Appeal's decision to dismiss Company SDH's stay application on 11 April 2022. In allowing Bursa's OS, the High Court also held that the information contained in the FFU was certainly material to SERBADK's shareholders and investors and must be announced immediately irrespective of whether the information was true, false or inconclusive.

### Enforcement Decision

Company SDH and ten of its directors were publicly reprimanded for the Disclosure Breach and Directive Breach. In addition:-

- (i) **an aggravating fine of RM500,000 each** was imposed on the Board at the material time (i.e. the Group Managing Director/Chief Executive Officer, an Executive Director, two Non-Independent Non-Executive Directors and four Independent Non-Executive Directors) as they had blatantly disregarded the Main LR in refusing to announce the FFU immediately and as directed by Bursa Securities; and
- (ii) **a fine of RM250,000 each** was imposed on two Independent Non-Executive Directors who were only appointed on 25 November 2021 as they had a duty, but failed to ensure Company SDH make an immediate announcement of the FFU and rectify the blatant contravention of the Directive. In addition, they had failed to undertake any reasonable enquiry or step to ascertain and ensure that Company SDH announce the FFU particularly in view of Bursa's OS which was served on Company SDH on 25 November 2021 and announced on 30 November 2021, after their appointment.

More information on the case can be found in the Media Release dated [21 December 2023](#).

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### **CASE 7 – FAILURE TO COMPLY WITH UNDERTAKING PROVIDED TO BURSA SECURITIES**



#### Relevant Facts

Company PC had failed to comply with the undertaking provided to Bursa Securities in 2019 pursuant to a previous deviation breach in 2017, where Company PC undertook to, amongst others, review the adequacy and competency of the finance function ("**Finance Function Review**") and not to commit a similar deviation breach.

However, there was no evidence that Company PC had deliberated on or carried out the Finance Function Review after providing the undertaking in 2019 and Company PC's engagement with the external auditors in 2019 for the review of the Statement of Risk Management and Internal Control in accordance with paragraphs 15.23 and 15.26(b) of the Main LR did not fulfill the Finance Function Review condition. It was only approximately 1.5 years later in 2021 that Company PC carried out the Finance Function Review (which was pursuant to a similar Finance Function Review condition imposed for a delay breach in 2018), during which time, Company PC had:-

- committed a delay breach where Company PC failed to submit its annual report for the FYE 31 December 2019 ("**AR 2019**") by 31 July 2020 and the delay was essentially due to the lack of governance and supervision on the Group's finance function; and
- committed another deviation breach where there was a deviation of 68.1%/RM11.14 million between the 4<sup>th</sup> quarterly report for FYE 31 December 2019 and the audited financial statements for the FYE 31 December 2019.



#### Enforcement Decision

- (i) Company PC – **public reprimand** for breach of the undertaking to Bursa Securities.
- (ii) Directors – **public reprimand and fine of RM50,000 were imposed on each of the seven directors** who had authorised Company PC to provide the undertaking which served to ensure compliance of the LR and prevent occurrence of similar financial reporting breaches, but had failed to ensure compliance with the undertaking.

More information on this case can be found in the Media Release dated [1 September 2022](#).

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