

Listing Requirements Enforcement In Focus

Delay in Issuance of Financial Statements

Paragraph / Rule 9.22 and 9.23 of the LR requires a listed company to announce its quarterly report within 2 months after the end of each quarter of a financial year.

Paragraph / Rule 9.23 of the LR requires a listed company to announce its annual audited accounts (for financial year end prior to 31 December 2014) within 4 months from the close of the financial year and issue its annual report within 6 months from the close of the financial year.

CASE 1 – DELAY DUE TO SHORTAGE OF STAFF

Relevant Facts

Company A failed to issue a total of 5 financial statements comprising of its annual audited accounts and annual report for the financial year ended 30 June 2008 and 3 quarterly results for the financial period ended 30 September 2008, 31 December 2008 and 31 March 2009 within the time frame prescribed under the LR. The delay ranged from 18 market days to 6 months and was essentially due to shortage of staff. The shortage of staff did not absolve the obligations of the company and its



directors to ensure timely submission of the financial statements as the company and its directors were required to ensure adequate resources to discharge the obligations under the LR. Further, in this case, it was noted that the company had a Group Financial Controller and had ample time to recruit the necessary staff or take such other steps to address the problem in order to complete the preparation of the financial statements. The delayed financial statements when subsequently issued had a disclaimer opinion resulting in the company being classified as a PN17 company (financial condition).

Enforcement Decision

- (i) Company – **Public reprimand**;
- (ii) Directors – **Public reprimand** in addition to **fines** as follows:-

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- (a) **RM113,250 against the Executive Chairman** who was the person primarily in charge of the business and operations of the company including financial management and had failed to take reasonable and expeditious steps/measures to address the manpower issue to enable timely submission of the financial statements; and
- (b) **RM22,650 against each of the non-executive directors** as they merely relied on the Executive Chairman and the management to ensure the compliance of the financial reporting obligations under the LR. It was noted that although there was no board meeting from October 2008 until April 2009 (a period of 6 months), no enquiries and no actions was made/taken as to the status of the outstanding financial statements by these directors.

CASE 2 – DELAY DUE TO LACK OF PROPER MAINTENANCE OF INFORMATION

Relevant Facts

Company B only submitted its annual audited accounts for the financial year ended 31 March 2008 after a delay of 21 market days. The delay was essentially due to internal weaknesses in the maintenance of financial information in the company resulting in failure to provide all the necessary documents and information to the external auditors expeditiously to enable finalisation of the financial statement.

Enforcement Decision

- (i) Company - **Public reprimand**;
- (ii) Directors – **Public reprimand against 3 of the executive directors** who were responsible and/or involved in the preparation of the accounts taking into consideration that the subsidiaries' auditors had also contributed to the delay. However, no finding of breach was made against the other directors as they were able to demonstrate that upon being aware of the issues, they had continuously monitored the progress of the audit, instructed and thereafter reasonably relied on management to provide the relevant information (i.e. management plan and profit forecast) requested by the auditors to address the auditor's issues/concerns.



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CASE 3 – DELAY DUE TO DISPUTE WITH EXTERNAL AUDITORS’ DISCLAIMER OPINION



Relevant Facts

Company C submitted its annual report for the financial year ended 31 December 2007 and quarterly results for the financial period ended 31 March 2008 after a delay of 5 months and 31 market days respectively. The delay was essentially due to the external auditors’ disclaimer opinion in the company’s audited accounts which was disputed by the company. Notwithstanding the non-resolution of the dispute, the audited accounts were issued in any event by the company on the submission deadline. The unresolved issue which gave rise to the disclaimer opinion subsequently led to the re-audit of the company’s audited accounts. As a result, both the annual report and quarterly results were delayed as these could only be submitted by the company upon completion of the re-udit.

In another case, Company M submitted its annual audited accounts for the financial year ended 30 June 2014 on 1 December 2014 after a delay of 1 month. The delay was essentially due to the failure of Company M to resolve certain outstanding audit matters which formed the basis for the external auditors’ disclaimer audit opinion in the audited accounts. The circumstances which formed the basis for the external auditors’ disclaimer opinion was essentially premised on the external auditors’ inability to obtain sufficient appropriate audit evidence to ascertain the outstanding audit matters.



Enforcement Decision

- (i) Company C and Company M – **public reprimand**
- (ii) Directors of Company C –
 - (a) **Public reprimand and a fine of RM22,750 were imposed against the managing director** who was in charge of the financial affairs of the company including engaging with the external auditors and the preparation and finalisation of financial statements; and
 - (b) However, no finding of breach was made against the other directors in light that:-
 - They were neither involved in or had knowledge of the relevant documents and records in relation to the contract which gave rise to the disclaimer opinion;
 - They had reasonably monitored the progress upon becoming aware of the audit issue including instructing the management to procure and provide the documents to the external auditors expeditiously and had reasonably relied on the management to provide the documents to the external auditors and update them;

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- They were also not informed by the management that the issue remained unresolved and that the audited accounts were issued with the disclaimer opinion until after the issuance of the audited accounts; and
- Thereafter, they had taken the necessary actions to expedite the re-audit and the issuance of the annual report and quarterly results.

(iii) Directors of Company M –

- (a) **Public reprimand and a fine of RM10,500 was imposed against the Chief Executive Officer** who was responsible for the preparation, review and approval of the audited accounts including liaising with the external auditors to provide them with the requisite information towards the finalisation of the audited accounts; and
- (b) **Public reprimand and a fine of RM4,200 each was imposed against the other directors** as they had failed to take reasonable steps/efforts to provide the information required and to address and resolve with the external auditors the outstanding audit matters expeditiously and continued to merely rely on the management even when it was clear that the management had not been effective and expedient in resolving the outstanding audit matters with the external auditors. Company M and its directors had in fact been informed and reminded by the external auditors of the outstanding audit matters including the possibility of a qualified / disclaimer opinion in the audited accounts as early as 25 August 2014 but Company M and the directors had failed to address and resolve with the external auditors the outstanding audit matters expeditiously to enable the finalisation and issuance of the audited accounts.

More information on the case of Company M can be found in the Media Release dated [29 June 2016](#).

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CASE 4 – DELAY DUE TO ALLEGED MISAPPROPRIATION OF FUNDS

 **Relevant Facts**

Company D furnished its quarterly results for the financial period ended 31 December 2008 after a delay of 15 market days. The delay was due to the delay on the part of the board in ascertaining the financial implication arising from alleged misappropriation of funds by the chief executive officer of the company. In this regard, the board of directors was informed by a third party vendor on a possible misappropriation of funds in May 2008. However, the investigative

audit to ascertain the financial impact on the misappropriation of fund was only initiated on 22 January 2009 (more than 6 months from being notified of possible defalcation which may have material impact to the financials of the company). As a result, the company only received the complete report from the investigative auditors on 3 March 2009 and issued the quarterly results which incorporated the investigative auditors' report on 23 March 2009 even though the deadline for submission of the quarterly results was on or before 28 February 2009.

 **Enforcement Decision**

- (i) Company – **public reprimand**; and
- (ii) Directors – Even though the directors were informed of the alleged misappropriation, they failed to take expeditious steps to ascertain the veracity and implication of the alleged misappropriation until 1 month prior to the deadline for submission of the quarterly results. In addition to **public reprimand**, a fine of **RM7,500** was imposed on the executive director who was primarily responsible for the financial management of the company upon suspension of the chief executive officer and a fine of **RM3,000** each was imposed on 2 other directors.

CASE 5 – DELAY DUE TO APPOINTMENT OF PROVISIONAL LIQUIDATOR

 **Relevant Facts**

Company E failed to issue its annual audited accounts and annual report for the financial year ended 31 December 2007 and quarterly report for the financial period ended 31 March 2008. The delay

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ranged from 2 months to 4 months. The delay was essentially due to the appointment of the provisional liquidator (“PL”) on 27 March 2008 and delay in the completion of the audit of its foreign subsidiaries.

Enforcement Decision

- (i) Company – **public reprimand**; and
- (ii) Directors – The directors were found to have contravened the LR by permitting the company to breach the LR. Based on the facts and circumstances, notwithstanding the appointment of the PL, the directors were in fact still responsible for the preparation and finalization of the financial statements. There was nothing to indicate that the directors were prohibited or prevented by the PL from taking the necessary actions to enable submission of the financial statements. Further, the financial statements were in respect of the financial period prior to the PL’s appointment. **Public reprimands** were imposed on all the directors. In addition, **a fine of RM43,000 was imposed on the executive director primarily responsible for the financial management of the company; a fine of RM17,200 each was imposed on the other executive director and 3 non-executive directors who were also members of the audit committee** taking into consideration their roles and responsibilities with regards to preparation and finalisation of the financial statements and **a fine of RM8,600 was imposed on a non-executive director.**

CASE 6 – DELAY DUE TO FAILURE TO OBTAIN SUBSIDIARY’S ACCOUNTS

Relevant Facts

Company N failed to issue its annual audited accounts for the financial year ended 31 December 2013 and 3 quarterly reports for the financial period ended 30 June 2013 (2nd QR June 2013), 30 September 2013 and 31 December 2013. The delay was essentially due to the Company’s failure to obtain the management accounts of its 51% owned subsidiary, Company T, (the major subsidiary and the only operating subsidiary) as at 30 June 2013 for consolidation in view of the board/legal tussle with its Chief Executive Officer. The Chief Executive Officer who was also a director of Company T, was removed as a director of Company N on 29 July 2013.

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In another case, Company G had failed to announce/issue numerous financial statements (annual audited accounts, annual reports and quarterly reports) from the financial year ended 31 December 2010 until 2014. The delay was allegedly due to the non-finalisation of the company's subsidiary accounts, where the subsidiary had disputed that its accounts were improperly prepared by Company G prior to the consolidation into Company G's audited accounts for the financial year 2008 and 2009 issued on 30 July 2010.

Enforcement Decision

- (i) Company N and Company G – **public reprimand**
- (ii) Directors of Company N – The Chief Executive Officer was found to have breached paragraph 16.13(a) of the LR for causing Company N's failure to announce the financial statements resulting in the breach of the LR by Company N. Prior to his removal as a director of Company N, he had blatantly disregarded his duty to ensure compliance by Company N of its financial reporting obligations under the LR where not only had he failed to demonstrate any efforts to procure the relevant accounts of Company T but he had also refused Company N's request as well as frustrated Company N's efforts to procure the accounts to enable the preparation/finalisation of the 2nd QR June 2013. **A public reprimand and a fine of RM2,000 per market day delay for each delay of the financial statements until the relevant accounts of Company T was furnished to Company N to enable preparation/finalisation of the 2nd QR June 2013 were imposed on the Chief Executive Officer.** A punitive penalty was imposed on him taking into consideration his wilful and unreasonable/aggravating conduct which was the primary cause/reason for Company N's failure to finalise the 2nd QR June 2013. However, no finding of breach was made against the other directors in light of evidence of various attempts/steps/measures taken by them to obtain the management accounts of Company T including lodging complaint/report with the relevant authorities and initiating legal actions to compel Company T to furnish its management accounts immediately.
- (iii) Directors of Company G – All the directors at the material time were **publicly reprimanded and imposed with fines ranging from a total amount of RM132,400 to RM784,000** taking into consideration their respective roles, responsibilities, knowledge and conduct. There was no basis to the contention that the events leading to the delay in finalisation of subsidiary accounts and Company G's financial statements were purportedly outside the directors' control. The directors

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had failed to ensure the proper preparation, review and approval of Company G's audited accounts for the financial year 2008 and 2009 despite concerns being highlighted by the external auditors. This had led to the subsequent issues and thereafter the necessity for rectification / re-do of the subsidiary's accounts as well as the prolonged delay in the rectification and finalisation of Company G's outstanding financial statements. Further, the directors' involvement/lack of involvement including failure to take expeditious steps to resolve the issues had led to the delay in finalisation of subsidiary's accounts. The directors' actions in merely reminding and thereafter, total / mere reliance on the relevant parties i.e. the management of Company G and its subsidiaries as well as the auditors to finalise the outstanding financial statements for a period ranging from 1 year to more than 2 years during the directors' tenure without more which were not acceptable in the proper discharge of their obligations.

More information on the case of Company G can be found in the Media Release dated [14 April 2016](#).

CASE 7 – DELAY DUE TO FAILURE TO ADDRESS/RESOLVE AUDIT ISSUES



Relevant Facts

Company ET

Company ET had failed to announce its audited financial statements for the financial period from 1 September 2011 to 28 February 2013 ("AFS 2013") after a delay of 24 market days. The delay was due Company ET's delay/failure in addressing/resolving the following audit issues:-

- Reclassification of assets in a proposed disposal of an indirectly owned subsidiary of the Company;
- Furnishing the external auditor three years profit and cash flow forecast and projection; and
- Conducting physical stock count in relation to the Company's inventories.

Company GC

Company GC had failed to announce/issue its Audited Financial Statement for Financial Year Ending 31 December 2012 ("AAA 2012"), its Quarterly Report for Financial Period ended 31 March 2013 ("QR 1/2013") and Annual Report for Financial Year Ending 31 December 2012 ("AR 2012") within the stipulated timeframe. The delay was due to the Company's failure to resolve the various outstanding

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audit matters comprising of mainly audit confirmations from bankers/borrowings and solicitors, the status of defaulted borrowings and the status of the Company's regularisation plan pursuant to Practice Note 17 prior to the due date to announce the AAA 2012.

Enforcement Decision

Company ET

- (i) Company – **Public reprimand**;
- (ii) Directors – **Public reprimand in addition to fines** as follows:-
 - (a) **RM12,000 and RM4,800 against the Executive Directors** who were the persons who had financial management of the Company and had the primary responsibility to ensure all the audit issues were resolved expeditiously. It is also noted that the Executive Directors should be aware of the audit issues raised and were in a position to ascertain, address and ensure all audit issues were resolved, but had failed to take reasonable steps to discharge their duties; and
 - (b) **RM1,200 and RM4,800 against the Independent Non-Executive Chairman and the Independent Non-Executive Director** who were members of the Audit Committee who had a specific function to review financial statements. They were or should be aware of the audit issues/requests of the external auditors which were raised. They had failed to demonstrate reasonable efforts to discharge their duties including to monitor and ensure expeditious resolution of the information requested by the external auditors which were material to enable the directors to assess and make informed decisions on the financial position/prospect of the Company.

Company GC

- (i) Company – **Public reprimand**;
- (ii) Director – **Public reprimand in addition to a fine of RM19,500** on the Executive Director of the Company. This was because as the only executive director at the material time, was responsible for overseeing the Company's operations/departments including the Finance Department which regularly reported and/or discussed the preparation of the outstanding financial statements. Despite being in a position to ascertain, address and ensure that all the outstanding audit matters were resolved expeditiously, the Executive Director had failed to take reasonable steps to ensure

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that the outstanding audit matters were settled to ensure timely announcement of the Company's financial statements.

More information on these cases can be found in the Media Releases dated [6 February 2015](#) and [26 February 2015](#).

CASE 9 – DELAY DUE TO FAILURE TO PROCURE DOCUMENTS AS A RESULT OF A FIRE INCIDENT



Relevant Facts

Bursa had granted Company CS' request for an extension of two months (i.e. by 30 June 2014) to announce its audited accounts for the financial year ended 31 December 2013 due to loss of records as a result of a fire incident. However, Company CS failed to announce the audited accounts on or before the extended due date of 30 June 2014. Instead, Company CS only announced the audited accounts on 8 July 2014, after a delay of 6 market days. The delay was essentially due to the company's failure to provide the information / documents requested by the external auditors since 16 April 2014 and there was no certainty as to when and whether the said information / documents could be provided towards resolving the audit issues and the disclaimer opinion by the external auditors in respect of the audited financial statements. Company CS had also delayed in the issuance of its annual report by 31 market days which Company CS represented was due to the necessity to make revisions / enhancements to the annual report and the time taken for the company secretary to liaise with the printers.



Enforcement Decision

- (i) Company – **Public reprimand**;
- (ii) Directors – **Public Reprimand and fines ranging from RM400 to RM18,500** on the directors taking into consideration their knowledge, roles and responsibilities. The directors had merely reminded the management to finalise the audited accounts and thereafter, despite failure by the management to do so, continued to rely on the management without more. The directors had failed to take reasonable / pro-active steps including to monitor and supervise the preparation and finalisation of the audited accounts to ensure timely issuance of the financial statements.

More information on the case can be found in the Media Release dated [24 May 2016](#).