

## Listing Requirements Enforcement In Focus

Failure to  
comply  
with  
Bursa's  
Directives

*Paragraph / Rule 2.23 of the LR requires a listed company and its directors to comply with any instruction or directive as may be issued by Bursa.*

### 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 regards to the management of the business and financial affairs of the company by a provisional liquidator, Bursa 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, Company G refused to comply and blatantly disregarded the directives to appoint the identified firm as the special auditor until Bursa procured courts 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 regards to the resolution seeking shareholders' approval to comply with Bursa's directive for Company G to appoint the special auditor.



#### Enforcement Decision

Both Company G and its directors were found to be in breach of paragraph 2.23 of the LR in respect of their failure to comply with the directives issued by Bursa. 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](#).

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



#### **Relevant Facts**

Company N failed to comply with Bursa's directives on 9 October 2008 and 5 November 2008 to make an immediate announcement of several material litigations. Company N had applied to Bursa 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's 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 on 13 August 2009.

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

The representation 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 the light of the clear directives by Bursa.



#### **Enforcement Decision**

Company N and its 7 directors were publicly reprimanded for failure to comply with Bursa's directives. In addition, the following fines were imposed against the directors who were all aware of the litigations, Bursa's directives, Bursa's rejection of Company N's application for a waiver from disclosing the litigations and Company N's noncompliance with the directives:-

- (a) RM50,000 each against the Chief Executive Officer and 2 Executive Directors who did not disclose the litigations to the Independent Non-Executive Directors until Bursa's query on 11 July 2008 and had proceeded to file the judicial review application, thereby delaying compliance with Bursa's directives; and
- (b) RM25,000 each against the Executive Chairman and the Independent Non-Executive Directors as they had permitted Company N's non-compliance of Bursa's 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](#).

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



#### **Relevant Facts**

Company P failed to comply with Bursa's directive on 14 March 2012 to ensure that a limited review was carried out by the external auditors for the quarterly reports for the financial period ended 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 financial year ended 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 had rejected Company P's request to commence the limited review from the quarterly report for the financial period ended 30 September 2012 (QR Sept 2012), Company P/its directors 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.



#### **Enforcement Decision**

Company P and its 4 directors were found to be in breach of paragraph 2.23 of the LR in respect of their failure to comply with Bursa's directive. Despite their knowledge and awareness of the directive and Bursa's 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.

Public reprimand was imposed against Company P.

In respect of the directors, public reprimand was imposed against the 2 Executive Directors. The 2 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 limited review was conducted in respect of the QR March 2012 and QR June 2012 in accordance with the directive.

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### **CASE 4 – FAILURE TO COMPLY WITH DIRECTIVE TO MAKE GUIDANCE NOTE 3 (GN3) FIRST ANNOUNCEMENT**



#### **Relevant Facts**

Company S triggered the prescribed criteria in GN3 upon announcement of its fourth quarterly report for the financial year ended 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 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 that it did not trigger any of the prescribed criteria of GN3 as it had changed its financial year end from 31 December to 30 June and challenged Bursa's decision / directive by filing a legal suit in the High Court for an injunction to prevent Bursa from carrying out its directive and suspension in trading.



#### **Enforcement Decision**

Company S and 5 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's directive. The subsequent change of financial year end 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:-

- (a) RM150,000 each against 2 Executive Directors for the 2 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's directive and also failed to advise the board to comply with Bursa's directive despite the various communications and engagements from Bursa; and
- (b) RM20,000 each against 2 Non-Executive Directors for the 2 breaches by Company S where they had knowledge of Bursa's Directive and failed to ensure compliance of the same while a fine of RM10,000 was imposed against 1 Non-Executive Director who had resigned on 13 March 2015 (prior to issuance of Bursa's directive) for the breach of 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

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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 8 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 financial position / losses over the last 3 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.

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