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The sword of Damocles

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THIS the season for merry-making and reflection and there is no better way to kick off this article than with a traditional year ender.

On record, the Minority Shareholder Watchdog Group (MSWG) is proud to have come this far since our maiden article appeared on May 27 2002 - thanks to this esteemed business daily.

As we go along, we intend to change - for the greater good of the society - for it is the only constant factor and aspiration in today's social fabric.

This article will be the second last article before we wrap up the year 2002. You can bet that we intend to kick off the new year with much reverberation on corporate governance issues.

On reflection, we have received brickbats and bouquets and we take them in our stride. We are not a hostile group. Neither are we a demolition squad out to break a company.

A local business magazine recently dubbed us as Shareholder sentinel. We hope to keep up to its expectation. The Time Magazine, unsolicited, also made a reference to the MSWG in its article "Minority Uprising" in the middle of the year. If possible, we choose the moderate path.

To all our readers, who have followed religiously our articles and prospective ones, we welcome your comments and constructive criticism, without which, we will not be able to know how we fare in the eyes of the Court of Public Opinion.

Keep sending in your views (or complaints), via e-mail or letter, and you can be assured that each and every letter will be treated with equal importance.

Sometimes, due to unforeseen circumstances we are not able to respond as fast as we desire but please be assured that it is our stand that the silent minority should no longer suffer in silence.

The MSWG is not re-inventing the wheel. Shareholder activism is not a new phenomenon but has shot to dizzying heights because of some world financial shenanigans such as the Enron and WorldCom scandals.

This does not mean that without these two fiascos, shareholder activism will be kept at abeyance. Far from it, and Malaysia begs to differ on this.

With the greatest respect and humility, we have never mentioned this publicly but we had the good fortune of having no less than Prime Minister Datuk Seri Dr Mahathir Mohamad giving us an honourable mention in a forward to a book on Corporate Governance written by a Malaysian Professor, now lecturing in Hong Kong.

The passage, and we quote in part "...Badan Pengawas will promote better and more effective corporate governance practices which could set a benchmark for others in the region".

This certainly touches the aorta of Badan Pengawas' heart. Firstly, we are glad that the Prime Minister's thought is unsolicited.

The message will be eternalised in our war chest when selling corporate governance worldwide to those who have yet to embrace this buzzword.

We realise that the administration wants the MSWG to rise to the occasion and along the way, shape the DNA of the Malaysian corporate culture towards an ethics-driven Corporate Malaysia that will be the envy of many.

Of late, the MSWG has become a source for the local and foreign media for comments on corporate governance. Just as we enjoy your confidence, we

hope the media relish our contribution in their reports, be it the electronic or printed form.

On this note, we would like to point out a recent commentary written by columnist P.Y. Chin in The Sunday Times headlined "Minority shareholders begin to flex their muscles". Without attempting to teach a duck to swim, the last six paragraphs are erroneous and can cause serious implications and ramifications - if left unclarified.

The MSWG does not only serve the big minority shareholders but also any minority shareholder, even an investor with a single lot in a public-listed company (PLC). But, it must be stressed categorically that the aggrieved party's complaint must be bona fide and corporate governance issues have been transgressed.

More importantly, MSWG does not charge the individual shareholder a fee for taking up a case against a company, at least for the time being.

As with any fledgling outfit, we are consciously aware that we have to build our credibility through our work, such as proxy votings at AGMs/EGMs, consultations with the regulators and presentations with professional quasi bodies. We pride ourselves on the fact that we are the voice for the minority.

To put things in perspective on corporate governance, the MSWG also touches base with foreign fund managers such as Fidelity Investment, Genesis Investment Management Ltd and Hermes Focus Asset Management.

Before the public jumps to the conclusion that we only talk to the big boys, perhaps it would like to know that our two feet are firmly on solid ground. The watchdog group also talks to union leaders who have graciously invited us to talk on "Corporate Governance and Best Practices".

Over the past few months, the MSWG has touched base with the country's top chief executive officers (CEOs) and chairmen of PLCs to cultivate their trust and respect.

This worthy attempt is to facilitate the MSWG's work. The close rapport with the CEOs has provided the MSWG with authoritative opinions and insights into certain matters - a better closer understanding towards a closer liaison between the MSWG and the PLCs - in the interest of all shareholders.

Evidently, this professional tie has upheld the good name and credibility of the MSWG towards approaching corporate governance issues.

Just as in the case of talking to the unionists, the close rapport has resulted in invitations to give talks on corporate governance by top corporations.

If you are wondering why we giving this report card only after nine months, we have good reason for this: The MSWG went full steam into operation when all its professional staff joined the outfit in March and we believe in results rather than semantics.

While most of us look forward to a good year ahead, there are investors who wish for the seconds to tick slower for their funds are invested in companies under the Practice Note 4 List, a category for companies that have yet to regularise their financial status.

These 97 financially-distressed companies as at November 15 2002, will be the biggest losers on the Kuala Lumpur Stock Exchange comes December 31 2002. Some will face the guillotine with delisting and this is going to be a nightmare for the investors, particularly the minority investors.

Who says making a mistake in investment is cheap? We have received complaints about some sob-sob stories and have advised the aggrieved parties accordingly. We are not re-inventing the wheel but one does not want to lose sleep when making certain investments.

Arguably, the delisting, if done en masse, can be considered a drastic move in the history of local securities regulation. There is no doubt that

the concern about investors' potential loss has sparked much controversy and discussion.

With hindsight, a prudent investor today should consider the investment criteria, among others, the company's declaration in respect of its track record, corporate governance, dividends, contingent liability (if any), and transparency on related party transactions.

Besides these, the four tenets of good corporate governance also come into play, that is, fairness, accountability, responsibility and transparency. At the end of the day, the ultimate choice is up to the investors.

The MSWG opines that full and frank disclosure notwithstanding, the information divulged must also be up to date, if possible. This practice will be the hallmark of a well functioning, professionally-managed company.

Perhaps, the authorities may like to mull over some measure of relief to the investor in the form of compensation to the bona fide investors. But don't get hyped up for the proposal may not seem simple. Certainly, we must not open the floodgate of compensation and any move must not be against public policy.

The proposal has to be looked at from a detached viewpoint.

Any lifeline has to come from the authorities as the ball is in their court. The issues of assurance, reliance and detriment are of prime consideration in any such attempt.

Good habits have to be cultivated from young. The MSWG would also like to suggest that Corporate Governance be incorporated as part of the study curriculum for tertiary-level students. We have been invited by universities and colleges which desire our input on corporate governance.

The above are just food for thought - in the interest of the minority shareholders.

In the meantime, the MSWG is loudly and patently conscious of its role - to protect the minority interest and let it be known that like the sword of Damocles that hangs over certain companies, the MSWG will not hesitate to blow the whistle at the first instance.

On this note, the MSWG wishes everyone Selamat Hari Raya and may next year be declared a year of Corporate Governance for the business fraternity.

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