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SC not consistent in actions against companies: Lawyers

Norzuhaira Ruhanie

THE Securities Commission (SC) has been inconsistent in its actions against companies that have breached the takeover code, lawyers for minority shareholders of Palmco Holdings Bhd told the Kuala Lumpur High Court yesterday.

Citing the case of AU Metalvest Sdn Bhd (AUM), lawyer Syed Tahir Syed Azman said rather than asking AUM to acquire the remaining shares it did not own, the SC instructed the company to dispose of the 3 per cent equity that it had exceeded.

A company or an individual that breaches a 33 per cent shareholding in a company is required to make an offer to buy the other remaining shares not yet owned, unless a waiver from the SC is obtained.

The group of Palmco minorities, led by Zulkifli Hussain, has taken the SC to court to direct the regulator to have IOI Corp and its executive chairman Tan Sri Lee Shin Cheng make a general offer for their Palmco shares.

Zulkifli is also seeking an order for the SC to direct IOI Corp and Lee to compensate Palmco shareholders for the loss suffered by the delay in making the offer.

The court has been told that Zulkifli had written to Prime Minister Datuk Seri Dr Mahathir Mohamad since 1999 about the matter, following which the SC had also given its response.

Syed Tahir said the SC's letter to Dr Mahathir contained misrepresentations in relation to the events that had occurred.

In the letter, he said, the SC quoted the relevant law and that its power is "limited to public reprimand and restrictions from enjoying the facilities of the stock exchange for a temporary period or forever".

However, the precise wording of the code on takeovers is that the SC can "use whatever sanctions". These include private or public reprimands or restricting the parties from stock exchange facilities temporarily or forever, as deemed appropriate.

"The SC's motive in misrepresenting the actual wordings of the Code to the PM is hereby questioned," Syed Tahir said.

Another lawyer for the minority shareholders, Robert Lazar, told Judge Datuk Abdul Aziz Mohamad that the market regulator has the power to make IOI Corp and Lee comply with the Malaysian Code on Take-overs and Mergers when they purchased over 33 per cent shareholding in Palmco.

Lazar said under the law, a takeover exercise can only be deemed to have ended when either it has been undertaken or a waiver was given by the SC.

The hearing for the case was adjourned yesterday and will resume on July

25, 28 and 29.

IOI Corp had purchased a controlling stake of 52.5 million or just under 33 per cent in the oleochemical company in March 1997 for RM4.35 each from Mega First Corp Bhd.

A day later, IOI and Lee, who was then in Australia, acquired additional 38,000 and 77,000 Palmco shares respectively, taking their combined stake to over the 33 per cent level and thus, triggering a mandatory general offer.

Lee, in a response to a showcause letter by the SC, said the additional purchase was a mistake and he had placed out the 77,000 Palmco shares at RM4.35 each when he realised that he had triggered the general offer.

On February 5 1999, the SC ruled that both IOI Corp and Lee had to undertake a general offer but, the SC reversed the decision in May 1999 and publicly reprimanded the two parties instead after appeals were made.

IOI Corp and Lee were granted leave to intervene in the case and are now the second and third respondents, respectively.

Rutheran Sivagnanam is representing IOI Corp while Datuk V. Sivaparanjothi is acting for Lee. Lawyers Logan Sababathy and Maizura Mohamad are representing the SC.