

Serially late – 1MDB's tale of missed deadlines

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If you are late for school but if you have a good reason, you may be excused.

But if you are habitually late, say, more than three times in a short space time, then your excuses may wear a little thin. You could end up in detention class or whatever they call it these days. In earlier days, it could even have meant the rotan!

According to the Companies Commission of Malaysia, a “company’s financial statement need (sic) to be tabled (at the AGM) within six months after financial year ended.”

And then, Section 165 of the Companies Act 1965 requires all companies to lodge the annual return (which includes the financial statements and the auditor’s report) within one month of the AGM.

Of course, the company can apply for an extension under Section 143(2) and/or section 169(2) of the Act if it has a special reason for not holding the AGM in time. The registrar will then have to assess if the reason is valid.

One experienced company secretary told me, “The registrar is now very strict about these deadlines.”

So, what happens if a firm is habitually late? What happens if it misses the usual deadline for tabling or submission of accounts, not once but five times?

Let’s take a look at a company which has been very much in the news.

Serially late

1MDB’s financial year ends on 31 March each year. The chronology shows it has missed the initial six-month deadline (30 September) for tabling of accounts five times. The latest

financial statements for the year 31 March 2015 are still not out even after six months have lapsed. The firm has reportedly been granted an extension.

The financial statements show that 1MDB's auditors have more often than not signed the auditor's report beyond the usual six-month time limit.

Deadline: Six months from financial year-end 31 March i.e. 30 September (183 days)

Year ended

31 Mar 2010 – Signed: 4 Oct 2010 after 187 days – **LATE**

31 Mar 2011 – Signed: 5 Aug 2011 after 127 days – **ON TIME**

31 Mar 2012 – Signed: 12 Dec 2012 after 256 days – **LATE**

31 Mar 2013 – Signed: 28 Mar 2014 after 362 days – **LATE**

31 Mar 2014 – Signed: 5 Nov 2014 after 219 days – **LATE**

31 Mar 2015 – Not yet signed after more than 183 days – **LATE**

A more detailed chronology (below) shows how the PetroSaudi deal and the Cayman Islands “investment” appear to have drawn the attention of the auditors. In fact, as early as 2010, the auditors had already emphasised the Petrosaudi connection in their audit report.

2009

Feb 27 – 1MDB (formerly Terengganu Investment Authority)'s first financial year begins. Its first auditors are Ernst and Young.

1MDB raises RM5bn from the issue of Islamic bonds.

Sept 28 – 1MDB pays RM3.4bn in cash for a 40 per cent interest in a joint venture with PetroSaudi.

Flashback: *The Edge* reported:

SOMETIME in September 2009, currency traders at Bank Negara Malaysia were jolted by huge purchases of US dollars in the domestic currency market and quickly decided to halt the selling pressure on the local currency. They were promptly told to stand down by their superiors. The buildup of US dollar positions on that day paved the way for state-owned 1 Malaysia Development Bhd (1MDB) to move US\$1 billion out of the country for an investment in a British Virgin Islands entity.

2010

Mar 31 – On the last day of the financial year ended 31 March 2010, 1MDB's shares in the PetroSaudi joint venture are controversially “sold back” to 1MDB for RM4.1bn. The amount is converted into a loan repayable by 2021.

Sept – **CHANGE OF AUDITORS:** Auditors Ernst and Young quit or were terminated. KPMG takes over.

Sept 30 – **DELAYED:** 1MDB misses the deadline for submitting the accounts for the year 31 March 2010.

Oct 4 – **FINALLY READY:** KPMG signs off the financial statements for the year ended 31 March 2010. The surplus on the sale of the shares of RM652m allows 1MDB to show a first-year profit before tax of RM425m.

But in an “Emphasis of Matter” note to its audit report, KPMG red-flags RM4.2bn worth of notes (valued by “an independent financial advisory firm”) which it says are guaranteed by PetroSaudi.

The audit fee is RM55,000.

(On 27 March 2015, Tony Pua reportedly lodges a report with the Malaysian Institute of Accountants about key discrepancies in 1MDB's financial statement for the year ending 31 March 2010:

The alleged discrepancies include details of 1MDB's joint venture (JV) with PetroSaudi International Limited (PSI), including the US\$700 million (RM2.58 billion) that was allegedly channelled into Good Star Limited, a firm allegedly owned by businessman Low Taek Jho, or popularly known as Jho Low.

Another alleged discrepancy raised by Pua was the 1.5 billion PSI shares that "disappeared" within months after the JV was signed, when it was converted into an Islamic loan.

2011

Mar 31 – KPMG are the auditors for the year ended 31 March 2011.

Anwar calls for a special audit to probe transactions involving 1MDB, PetroSaudi and UBG to ascertain whether or not government money has been used for a slush political fund.

Aug 5 – **ON TIME!** KPMG signs off the audited financial statements. Profit before tax is RM544m – but this is after including a property revaluation gain of RM827m.

The audit fee is RM137,000 and the non-audit fee RM527,000.

2012

Mar 31 – KPMG are the auditors for 1MDB for the year ended 31 March 2012.

Sept 12 – 1MDB allegedly places US\$2.3bn (RM7.4bn) in a segregated portfolio fund based in the Cayman Islands.

Sept 30 – **DELAYED:** Audited financial statements not yet ready.

Dec 12 – **FINALLY READY:** KPMG signs off the financial statements for the year ended 31 March 2012. The accounts show a profit before tax of RM44m after including a property revaluation gain of RM570m. The audit fee is RM184,000 and the non-audit fee is RM1.8m.

2013

Mar 31 – KPMG are the auditors for the year ended 31 March 2013.

KEY QUESTION: Is KPMG able to obtain the necessary assurances for the US\$2.3bn ‘investment’ in the Cayman Islands?

Sept 30 – **DELAYED:** 1MDB asks for a six-month extension on the annual financial statements for the year 31 March 2013 which are supposed to be filed with the Companies Commission.

Dec – **TERMINATED:** 1MDB terminates KPMG’s services and appoints Deloitte.

Malaysian Insider reports:

The removal of KPMG took place after it allegedly refused to finalise its audit on 1MDB’s financial accounts without more information on a US\$2.32bn sum which 1MDB said it had invested in a Cayman Islands account, the WSJ reported.

2014

Mar 28 – **FINALLY READY:** After nearly a year, Deloitte signs the 1MDB accounts for 31 March 2013 with lengthy notes to the accounts – six pages dedicated to “Critical Accounting Judgements and Key Sources of Estimation Uncertainty” – presumably to cover the audit firm.

Among the accounting policies raised relate to:

- the Cayman Islands “investment”

- the purchase of power assets

- the policy on land revaluation. This year a RM2.7bn land revaluation surplus helped to cushion an ‘impairment loss on goodwill’ (from the premium on acquisitions) of RM1.2bn, allowing 1MDB to turn a loss into a profit before tax of RM877m. Both the revaluation surplus and the impairment loss raise eyebrows among analysts.

The audit fee shoots up to RM3.1m and non-audit fees (payable to other auditors) amount to RM2.2m.

Mar 31 – Deloitte are the auditors for the year ended 31 March 2014

Sept 30 – **DELAYED:** Audited financial statements for year ended 30 March 2014 not yet ready.

Nov 5 – **FINALLY READY:** Deloitte signs off the financial statements for the year ended 31 March 2014.

According to the *Malay Mail*:

(Deloitte) only signed off on 1Malaysia Development Berhad accounts after Middle Eastern firm Aabar Investments helped guarantee the US\$2.32 billion (RM9.99 billion) held by the state-owned firm in the Cayman Islands, *The Wall Street Journal* (WSJ) reported.

1MDB posts a loss before tax of RM670m, which could have been much worse if not for a property revaluation gain of RM897m.

The audit fee is RM4.7m, up from RM3.1m.

2015

March – Najib orders the auditor general to “independently verify” 1MDB’s accounts and submit its report to Parliament.

March 26 – **WASHING HANDS:** KPMG International denies any relationship or connection to 1MDB, saying that that the KPMG network represented nothing more than a “Swiss Cooperative’ of happy Helvetic brand sharers”. No one at KPMG headquarters was responsible for what their fellow franchise holders were up to, and they were just there to help and advise when required.

Mar 31 – Deloitte are the auditors for the year ended 31 March 2015.

May 19 – PAC begins investigations.

June 10 – Deloitte tells PAC that it has not yet received instructions to start the audit for the year ended 31 March 2015.

June 12 – Nazir Razak questions the delay in auditing the accounts for the year ended 31 March 2015. PAC supposed to meet KPMG.

June 16 – PAC urges Putrajaya to authorise Deloitte to immediately go through the firm’s books. What is holding back the audit?

July 8 – Police raid 1MDB office and seize documents. Special task force set up to investigate 1MDB.

July 9 – The auditor general’s interim audit doesn’t find any suspicious activity. But 1MDB has not yet handed over several documents mainly connected to investment agreements and bank transfers. The auditor general’s audit will continue until the year end.

Sept 30 – **DELAYED:** Once again, 1MDB misses its deadline to table its audited financial statements for the year ended 31 March 2015. The Companies Commission of Malaysia grants 1MDB a six-month extension to 31 March 2016.

Apparently, according to the 1MDB chief, the auditor Deloitte needed the original sets of documents to audit the accounts but 1MDB did not have them after the raid. But why can’t

the auditors gain access to those documents at the offices of the relevant authorities – who should welcome an independent scrutiny of the accounts by recognised auditors, right?

So are the accounts for the year ready for audit? When did the audit begin? And when will the audited financial statements finally be out?

What sort of precedent is this?

From the above chronology, we can sense that the PetroSaudi/Cayman Island ‘investment’ appears to have been a major issue that has caught the auditors’ attention.

Let’s see what Deloitte makes of the Cayman Island’s ‘investment’ (or units or whatever) that was redeemed, along with 1MDB’s other investments, when the latest financial statements for 2015 are finally released. Many will be watching closely – and scrutinising the auditor’s findings.

The chronology above might also give us an inkling as to why 1MDB’s accounts have been repeatedly delayed and its auditors changed.

What are we going to do about the repeated missed deadlines in the tabling/submission of audited financial statements? No doubt, 1MDB may have its reasons for applying for extensions – but late almost every year?

If this has become a habit, what do we do? What sort of example or precedent does this set for other firms in Malaysia? How is the Companies Commission of Malaysia to be strict with other firms who fail to make their submissions in time? After all, every firm that is late will have its own ‘special’ reasons.

In the meantime, we wait ... and wait ... for Deloitte to come up with its auditor’s report on the assets and liabilities as contained in the financial statements of 1MDB. The spotlight is on Deloitte almost as much as it is on 1MDB.

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