

SC argue judge should reveal old job before taking E&O case
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KUALA LUMPUR, March 14 — High Court judge Abang Iskandar Abang Hashim should have disclosed he previously worked at the Securities Commission (SC) before hearing a suit against it by an E&O Bhd shareholder, the regulator's lawyers argued today.

The lawyers contend he would know of "secret dealings" when hearing a suit filed by Michael Chow Keat Thye against the SC for failing to compel conglomerate Sime Darby Bhd to buy remaining shares after it bought a 30 per cent stake in the property developer for RM776 million.

Abang Iskandar heard today the SC's submissions to recuse him, among which was his previous job as the regulator's enforcement director from May 2004 to October 2009 meant he had a relationship with the senior management and commissioners.

"The Securities Commission's main point is that the judge should disclose... that he was a former employee during *ex parte* and *inter parte*," said Datuk Shafee Abdullah who is representing Chow.

The case today was a closed-door hearing which was only open to the respondents.

Shafee, who spoke to The Malaysian Insider outside the courtroom said that SC had argued that Abang Iskandar's former position as the regulator's enforcement director "four-and-a-half years' ago" would affect the trial proceedings.

"They say that since he was an SC employee... he would know secret dealings of the SC. But they did not give any other arguments beyond that," he said.

Shafee said the judge will hear Chow's submissions on March 19 before deciding on the SC's recusal application.

Chow has filed two affidavits in reply to the SC's objections to his suit, with one arguing that the regulator's objections is on technical issues and that their decision that Sime Darby was not required to make a mandatory general offer was a "tentative decision".

"Firstly, it is to be noted that nowhere in the Recusal Application is the 1st Respondent contending that the Learned Judge had *vide* his role in the 1st Respondent come into possession of knowledge or facts and/or material that is relevant to the case before the Learned Judge," Chow said in his affidavit-in-rely dated February 18, 2012 that was sighted by The Malaysian Insider.

The SC is the first respondent while the second respondent is Sime Darby Nominee Sdn Bhd, which bought the E&O shares.

He also said that any application to change the presiding judge "must be rooted on firm and legal grounds", saying there was no such grounds contained in the recusal application.

Sime Darby's subsidiary, Sime Darby Nominees Sdn Bhd (SD Nominees), had applied to intervene in the judicial review on January 7, according to a filing in the Bursa Malaysia.

Singapore's The Straits Times reported last December 23 that Chow was seeking to overturn the waiver granted to Sime Darby by the industry regulator, which he maintains was "irrational and one which no reasonable body would have reached".

Sime Darby purchased its controlling 30 per cent interest from three major shareholders, including Singapore's GK Goh Holdings, at the end of August last year in a deal that valued E&O shares at RM2.30 apiece.

The purchase price represented a 60 per cent premium over the value of the shares in the company on the open market when the deal was announced.

In the other affidavit, Chow argued that the SC's affidavit to dismiss his complaint was "clearly disrespectful to the Court."

Chow said his lawyers advised him that the SC's "two jurisdictional objections are devoid of merit" as the regulator did not acknowledge his complaint nor notify him that Sime Darby Nominees was not required to make a mandatory general offer.

The E&O deal had triggered unease over the widely perceived coddling by the SC of large state-controlled companies at the expense of minority shareholders when exercising its authority on corporate takeovers.

It also put outgoing SC chairman Tan Sri Zarinah Anwar in a tight spot as her husband, who is also the E&O chairman, raised his personal stock holdings in the company just weeks before Sime Darby announced its proposed acquisition of the 30 per cent interest in the company.

Malaysia's takeover rules stipulate that any party that acquires more than a 33 per cent interest in a publicly listed entity must carry out a general offer for the remaining shares. A general offer can also be triggered if a new party buys less than 33 per cent but secures management control of the target company.

Sime Darby's block is below 33 per cent, while the collective shareholding of the three main shareholders of 41.7 per cent was cut to 11.5 per cent under the deal.

Six weeks after Sime Darby's purchase, the SC ruled that the plantation-based conglomerate did not have to make a general offer.

But a SC task force had found Sime Darby was obliged to make a general offer for E&O shares but was superseded by the regulator's top ruling authority.

Singapore's The Straits Times reported on January 30 that the task force was of the view that a general offer obligation had been triggered as a new "concert party" was created between Sime Darby and E&O managing director Tham, who jointly controlled more than 33 per cent in the property concern after the deal.

But the SC's final ruling three-member committee ruled "in a majority decision" there was no general offer obligation as Sime Darby and Tham were not acting in concert, according to an affidavit by the agency's second-most senior commissioner Datuk Francis Tan, which was sighted by the Singapore daily.

The committee also accepted the task force's recommendation that the three groups which

sold the blocks of E&O shares to Sime Darby did not collectively control the company and that the disposal did not trigger a general offer.

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