

Mr Raphael Lim wrote an interesting article in the Hock Lock Siew column of Business Times on 17th March 2022.

His key message was Class Action Suits could be an added avenue in the protection of Investor Interests.

HOCK LOCK SIEW

# Enabling class action lawsuits could create alternative recourse for Singapore investors



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**G**RAB'S share price slide since it went public on the Nasdaq has put it at risk of class action lawsuits in the United States, with a number of law firms inviting shareholders to join up and initiate investigations.

Such actions are relatively common in the US, but are not seen in Singapore for various reasons. Local investors have typically had to rely on regulators or market intermediaries – such as the Securities Investors Association (Singapore) – when in disputes with the board or management of listed companies.

Critics argue that class action lawsuits create an overly litigious environment. But retail investors in Singapore would probably appreciate having such lawsuits as an additional channel of recourse.

### Grab's challenges

Grab went public via a merger with special purpose acquisition company Altimeter Growth Corp last December, and its share price has fallen steadily since.

The counter traded at US\$11.01 a day before Grab made its debut. It

closed Tuesday (Mar 15) at US\$3.03, down over 72 per cent. It is also far below the US\$10 IPO price of Altimeter.

The sell-off was particularly violent on Mar 3 – with the shares crashing 37 per cent in a single day – after Grab announced its first set of earnings since going public.

The ride hailing and deliveries company reported a 44 per cent on-year decline in fourth-quarter revenue, while its net loss increased over 80 per cent to US\$1.1 billion.

Grab's large share price decline is no indication of wrongdoing, but it is enough of a trigger to motivate law firms to do something.

Litigations in the US can be done on contingency fee arrangements – meaning law firms get a percentage of the amount recovered on behalf of clients – making it potentially worthwhile for lawyers to proactively seek out such cases.

Indeed, a number of the law firms seeking to initiate litigations against Grab also have cases against other listed companies in relation to similar matters.

Some observers argue that class action suits are an unnecessary distraction for boards and management, and also hurt shareholders by increasing insurance costs.

Suits benefit the law firms disproportionately, these critics say, and deter boards from taking risks or being more aggressive in their disclosures.

It isn't clear, however, that shareholders are much better off without such legal avenues.

In Singapore, there are many stories of investors who have

suffered hefty losses or who are stuck with shares in companies that are suspended for years and eventually delisted.

Again, investor losses are not necessarily an indication of wrongdoing. Stock prices decline for many reasons, and not every company is fortunate enough to recover.

At the same time, individual investors would probably welcome having class action lawsuits similar to the US being proactively undertaken by seasoned professionals against listed companies where there are meritorious grounds.

### Less litigious

Singapore shareholders currently appear to be far less litigious than those in the US. One reason could be due to contingency fees being prohibited here. High legal costs remain a barrier to most retail investors, and contingency fees remove that barrier.

One objection to contingency fees is that it compromises on the basic premise of litigation, which is to achieve justice.

A contingency structure resembles a business venture, leading to potential for unethical conduct and conflicts of interest.

There have, however, been some developments in recent months relating to the fee arrangements that lawyers can have with clients.

In November, the Ministry of Law announced a framework for conditional fee agreements (CFAs) between lawyers and clients in selected proceedings. A lawyer would receive payment of all or part of the legal fees only in spe-

cified circumstances, such as when a claim is successful.

Such fee arrangements could help to enhance access to justice by providing businesses or individuals with additional funding options to pursue meritorious claims that they may otherwise not pursue, the ministry said.

As fees are contingent on the outcome, CFAs should also discourage lawyers from pursuing weak or frivolous cases.

But legal fees payable under CFAs cannot be calculated as a percentage of the damages awarded. They differ from contingency fees, which are charged on an agreed upon percentage of the sum recovered, with no direct correlation to the work done.

The fees charged under a CFA will continue to be subject to professional conduct rules against overcharging.

The bill allowing CFAs was passed in January, but it remains to be seen if such developments would eventually help in securities-related litigation by retail investors in future.

Having an overly litigious market is not something to aspire towards. And regulators do still need to take action against errant managers and directors, with warnings, fines and prohibitions from taking on future positions in other listed companies.

But this is cold comfort for those who have already lost their money.

Legal recourse that enables local retail investors to recover some funds could keep listed companies on their toes and boost confidence and vibrancy in the market.