

Investors **cry foul** over 'independent' advice

> MSWG sees increasing complaints from minority shareholders, calls for relook into methodology

BY **PRESENNA NAMBIAR**
sunbiz@thesundaily.com

PETALING JAYA: The Minority Shareholders Watchdog Group (MSWG) has come out to say that there may be a need to re-look at the methodology in which independent advisers base their advice to minority shareholders, as more and more investors cry foul over the increasing number of "not fair but reasonable" recommendations.

CEO Rita Benoy Bushon told *SunBiz* in an interview that the watchdog has been receiving an increasing number of complaints on independent advisers' call to accept takeover offers that are "not fair but reasonable".

Listing requirements stipulate that listed companies that are targets of a disposal of all or substantially all of its assets that may affect its listing status, appoint an independent adviser to objectively assess the merits of the deal for

the benefit of minority shareholders.

The "not fair" statement is normally attached to the pricing of the offer when compared to quantitative considerations such as the company's net asset value, whereas the reasonableness of it is based on non-quantitative considerations such as market conditions and liquidity of the market.

Bushon sees merit in investors' frustrations, saying that as an investor who is ultimately faced with the compulsion to exit a listed entity, a major consideration would be getting a fair exit value of their investment.

"The fair pricing is very important and it depends on various factors including the sector the company is in and potential of the business in terms of numbers," Bushon said.

"From MSWG's observation, on the aspect of reasonableness... too much of emphasis is placed on this subjective element with final recommendations to accept the offer in all cases where there is a clear intention to delist the company even though the offer price is grossly unfair with a huge discount to the intrinsic value. This is what the minority shareholders are complaining about," she added.

Bushon also noted that past experiences have seen examples of companies that have not revalued their land for 14 years.

"So (in instances like this) how can you (an independent adviser) ever come up with an advice based on a valuation done 14 years ago. That is difficult to comprehend," she added.

Bushon suggested that perhaps there is a need to re-look the yardsticks and criteria that independent advice letters (IAL) work on, considering investors are reluctant to heed the advice given, as observed by MSWG.

The recent failed attempt by Hong Leong Financial Group Bhd (HLFG) to take Hong Leong Capital Bhd private is an example of one advice which did not convince minority

investors, even as independent adviser Affin Investment Bank Bhd had opined that the offer was "fair and reasonable".

HLFG only managed to acquire a 2.24% stake during its offer period.

Petroleum Nasional Bhd's (Petronas) offer for MISC Bhd also saw resistance from minority shareholders despite the independent adviser on the deal, AmlInvestment Bank, asking minority shareholders to accept it, after calling it "unfair but reasonable".

This resistance eventually made Petronas, which had been adamant that RM5.30 a share was the "right price", to revise its offer to RM5.50 per share at the eleventh hour on Friday.

The rules governing IALs have undergone a few changes over the years, kicked off by a consultation paper published in March 2010, seeking feedback on proposed updates to guidelines on offer documentation of the Malaysian Code on Take-overs and Mergers.

What started out as a call for comment and advice by independent advisers on the reasonableness of an offer, evolved to one which set standards that needed to be adhered to when analysing the fairness and reasonableness of a takeover offer.

Then in September last year, it was decided that the two considerations: fairness and reasonableness, be independent of each other. This allowed for independent advisers to recommend that investors accept an offer even if one of the considerations was not up to mark.

Three months later in December last year, the Securities Commission (SC) released another document called the "Best Practice Guide on Independent Advice Letters" for another round of public comment.

The SC said the guide is to clarify the SC's and Bursa Malaysia's views on the role of an independent adviser, and to provide guidance on the standards of disclosures in IALs; and augment both regulators' continuous efforts in raising standards of corporate governance through the promotion of high quality disclosures.

"Perhaps another suggestion is to have an over-the-counter platform for those minorities who wish to still remain in the delisted entity until and unless a compulsory acquisition is triggered," said Bushon.

"This would motivate majority shareholders to offer a better price at the outset and the minority would be more fairly dealt with. (But) this suggestion needs to be studied more in detail with the implications."



Bushon accentuates a point during the interview.