MINORITY SHAREHOLDERS WATCH GROUP
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CORPORATE

Is takeover code ripe for a change?

Rules must strike a balance between rights of all stakeholders

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RECENT privatisation attempts which have failed to be completed have raised the issue of whether Malaysia's takeover code is in need of a revamp.

It is understood that some company owners and advisers have been grumbling about the strictness of the current rules. Their argument is that the rules ought to be relooked at considering that the current climate needs more merger and acquisition (M&A) activities to build stronger companies to emerge from the Covid-19 doldrums.

The most recent privatisation bid which did not materialise was the RM1.30 share offer tabled by the Federal Land Development Authority (Felda) for FGV Holdings Bhd.

In a nutshell, privatisation under the takeover code requires an acceptance level of 90% of the voting shares of the company (excluding shares already owned by the offeror or persons connected with the offeror) before the buyer can enforce compulsory acquisitions from the remaining minority shareholders.

Takeovers and M&As in Malaysia are primarily governed by the Securities Commission (SC) under the Capital Markets and Services Act, namely via the Malaysian Code on Take-overs and Mergers 2016 and the Rules on Take-overs, Mergers and Compulsory Acquisitions.

The SC is said to be undertaking a review of the takeover regulations "to enhance clarity and ensure continued relevancy."

Its chairman Datuk Syed Zaid Albar had told *StarBizWeek* last month that it has been five years since the rules were issued, and should be in time for a post-implementation review.

He said that it was part of the SC's process to conduct a post-implementation review on any regulation that has been put in place and any framework review would "take into account the objective of facilitating market activities in a fast changing environment while ensuring appropriate shareholder protection."

However, it should be noted that the takeover code was devised with the intention of also protecting minority shareholder rights. Loosening the rules could impede those rights.

Former investment banker Ian Yoong says while the market can certainly do with more M&A activities on Bursa Malaysia, the way to do it is not by widening the goal.

"The current takeover code is generally fair to stakeholders. The 90% threshold for compulsory acquisition ensures that the takeover price has to be attractive for the vast majority of shareholders to accept the takeover price.

"The acquiring party can indeed make a higher and more attractive bid after the cooling off period, or perhaps a lower bid like in the case of Yee Lee Corp Bhd," he says.

Easy access: The depressed share prices of public-listed companies due to Covid-19 have technically helped make it easier to carry out M&As.

Yee Lee's first privatisation attempt in 2019 fell through when the offerors were not able to garner enough acceptance for their voluntary general offer (VGO) of RM2.29 per share. A year later, another VGO was launched but at a lower offer price of RM2.06 per share.

In the case of FGV, its major shareholder Felda managed to get 80.99% of FGV shares at the close of the offer period, falling short of the target to invoke the compulsory acquisition for the remaining shares from dissenting shareholders and de-list FGV.

One of the factors contributing to this unsuccessful attempt was said to be the unattractive offer price of RM1.30. With the crude palm oil price on the uptrend, minority shareholders might have sought a higher valuation for the stock. Notably, the RM1.30 offer was a huge 71.4% discount to its 2012 initial public offer price of RM4.55 per share. However, it was still higher than the market price of FGV shares then, which was trading around RM1.18 a piece.

If Felda intends to make a second offer to acquire the remaining FGV shares at more favourable terms than the recently concluded offer, it would have to wait it out for a period of six months from March 15, 2021.

For now, FGV has been given a six-month extension to rectify its public shareholding spread, which stood at 13.99% now.

Bursa Malaysia requires a public shareholding spread of 25%.

Minority Shareholders Watch Group CEO Devanesan Evanson says the depressed share prices of public-listed companies due to Covid-19 have technically helped make it easier to carry out M&As. That said, he does not think that the answer to a healthy and robust M&A lies in relaxing the rules, which seeks to strike a balance between the rights of the various stakeholders.

From the minority shareholders' perspective, what is sought is a reasonable and fair offer price for an exit opportunity, he adds.

Contrary to some views, he sees the current pandemic-stricken environment not conducive for M&As. This is because a large number of companies have been impacted and are seeking to preserve cash and may not want to take on the execution risk that comes with an M&A exercise.

"Moreover, for M&As to create value, there must be a rationalisation of jobs. Lay-offs during the current circumstances often attract negative publicity," he adds.

Yoong, for one, believes that the market needs more "innovative" M&A strategies.

He cites the example of plastic packaging manufacturer Scientex Bhd acquiring the controlling stake in smaller peer Daibochi Bhd two years ago as a win-win situation for both parties.

Post-integration with Scientex, Daibochi saw an increase in margins from improved efficiency, leading the latter to deliver a record net profit of RM47.7mil in financial year 2020. For Scientex, the exercise further expanded its reach in the global flexible plastic packaging market.

Similarly, Batu Kawan Bhd's takeover of Chemical Co of Malaysia Bhd (CCM) was seen was a win-win situation for the shareholders of CCM.

Recall that late last year, Batu Kawan entered into a deal to buy Permodalan Nasional Bhd's entire 56.32% stake in CCM for RM292.97mil cash, or RM3.10 per share. Subsequently, Batu Kawan made a mandatory general offer (MGO) at the same price to buy the remaining shares in CCM.

For Batu Kawan, the acquisition strengthened its position as the largest chlor alkali manufacturer in Malaysia and give it pricing power.

As for CCM shareholders, the offer price was a handsome 69% premium to the stock's three-month volume-weighted average share price.

The corporate exercise ended up with Batu Kawan garnering enough acceptance to take CCM private.

Moving forward, Ernst & Young this week said that it sees M&A activities gaining momentum locally as companies start to position themselves and invest in the upturn of economic activity.

However, as one corporate advisory executive points out, it is not the regulator's role to generate greater M&A activities.

"A regulator's role is to streamline the M&A process, thereby ensuring the process is fair and equitable for all stakeholders.

"For an M&A to be successful, it has to create value and be a win-win partnership for all, including not short-changing minorities," he says.