MINORITY SHAREHOLDER WATCHDOG GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Company No. 524989-M)

The Star, StarBiz – Wednesday, 20 April, 2011 (A)

Pos Malaysia divestment

COMMENT
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INVEST Malaysia has come and gone, and still there is no winner in the sale by Khazanah Nasional Bhd of its 32.2% stake in Pos Malaysia Bhd.

Perhaps that is apt, since the interests of minorities are very much in focus here, and the sellers need to carefully assess and address what might ultimately be not in line with the spirit of best practises.

Fact: Pos Malaysia's shareholding is highly fragmented about 23,800 shareholders, and ironically, majority owned by minorities.

We can see this from Pos' shareholding at the end of December, where there were 5,478 shareholders who owned a maximum of 100 shares in the postal company. This body of shareholders amounts to 23% of the total number.

A level higher, there are 8,443 shareholders who own between 100 and 1,000 shares, amounting to 35% of the total number of shareholders. And then there are another 8,531 shareholders who own a maximum of 10,000 shares in the company, also comprising about 35% of the total number of shareholders.

This would mean that 93% or a total of 22,452 retail minority shareholders of Pos Malaysia's may not enjoy the potential premium to the current price of RM3.51 as I write this article.

The rest of the shareholders are institutional funds such as the EPF, Socso and other unit trusts which will not enjoy this premium either.

(In a recent media release, Khazanah said it had shortlisted three and recently two bidders from five with offers ranging from RM3.38 to RM4.62 per share.)

Is this right? Should minorities be excluded from the potential upside on offer if the mandatory general offer (MGO) threshold of 33% is not breached?

This debate would be moot if the new owner is merely strategic. But as *StarBiz* rightly points out, Khazanah is asking bidders for their business plans for Pos Malaysia and rigorously vetting them. This suggests that the new owner could control the company with the 32.2% stake.

On the other hand, we also understand that Khazanah desires a "responsible exit" from Pos Malaysia as its services will impact all Malaysians thus the morally right thing for the seller to do whether control takes place or otherwise.

But the flipside is the possible exclusion of minorities from the premium potentially on offer that goes to only Khazanah because the sales falls short of the threshold level for an MGO by 0.8%.

Pos' book value per share stands at RM1.54 a share and it was reported initially that three shortlisted candidates were bidding between 2.2 times and 3 times, implying an offer range of RM3.38 to RM4.62 per share.

There are convincing arguments for minorities to be unhappy in such a situation where a new owner "slips in" without their consent or participation.

Firstly, there have been occasions in the past where minorities have not benefited from the exercise (such as Tan Sri Tajudin Ramli's 1994 acquisition of a 32% stake in Malaysia Airlines and Primus Pacific Partners' 2008 acquisition of a 20.2% block in EON Capital Bhd at a 55% premium).

Of course, the sellers might cite the possible upside from the stringent due diligence as a mitigating factor. After all, the reported final two shortlisted each bring their own niche expertise to the table, with one possibly looking to inject a bank via DRB, where, Khazanah – the seller – owns a substantial portion of it.

And Pos itself has been hard at work transforming itself. In June it announced a strategic alliance with UPS and jointly launched PosLaju International Premium, an international express delivery service serving over 215 countries.

And before that in January, Pos Malaysia and Maybank jointly launched a partnership to provide shared banking services at over 400 Pos Malaysia outlets around the country.

Is there a possible resolution to this? It depends.

Existing rules in the Takeover Code deem control as passing only when the 33% threshold has been breached and only then will there be a MGO for the remaining shares at the prevailing price by the offeror. It is essentially a numerical test, the same as in Britain, Hong Kong and Singapore, but the threshold levels are lower at 30%. The reasons cited is that determination of control is subjective.

The reality is that control in many cases can take place way below this threshold levels depending on the shareholding structure.

The more dispersed the shareholding, the easier to wrest control over the company as in this typical case of Pos.

Given the circumstances, it is important for the regulators to go beyond what is contained in the Takeover Code in certain cases, in assessing whether control has passed, and in assessing whether the rights and privileges of minorities might be compromised.

Pos Malaysia could be one such example?

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