

MINORITY SHAREHOLDERS WATCH GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD

(Incorporated in Malaysia – Registration No.: 200001022382 (524989-M))

The Edge Malaysia – Monday, April 4, 2022 (C)

Related-party transactions and private placements under scrutiny

BY LEE WENG KHUEN

Studies by the Securities Commission Malaysia (SC) on related-party transactions (RPTs) and general mandate private placement (GMP) in its Annual Report 2021 have shed light on corporate exercises that could have favoured major shareholders at the expense of the minorities' interests.

The regulator cautioned that RPTs among listed firms — especially those involving family groups and long-serving independent directors — may require closer monitoring to ensure that the deals are not detrimental to minority shareholders.

An RPT refers to a transaction entered into by a listed firm that involves the interests of a director, major shareholder or person connected with such director or major shareholder.

Based on an analysis of 5,500 transaction announcements between 2016 and 2020, 494 listed companies — or about half of total listed companies — made at least one RPT announcement, suggesting that RPTs are prevalent among listed firms.

According to Bursa Malaysia Bhd's listing requirements, a company must obtain shareholders' approval in a general meeting if one of the percentage ratios of a RPT is at least 5%. The percentage ratios used to determine the materiality of the RPT include net assets, net profits, the number of shares issued and market value.

"At such an EGM (extraordinary general meeting), related parties cannot vote and this gives an opportunity for other shareholders

Judicial review applications against AOB's enforcement decisions (as at Dec 31, 2021)

JUDICIAL REVIEW	DESCRIPTION	OUTCOME
Between Afrizan Tarmilil Khairul Azhar (AFTAAS) and three of its partners and SC	Challenges against AOB's powers and the manner in which it conducts its enforcement proceedings	<ul style="list-style-type: none">The Court of Appeal (COA) had on Dec 10, 2021, ruled in favour of SC and set aside the High Court's decision on Aug 10, 2020, to quash the sanctions imposed against AFTAAS and its partners.On Dec 31, 2021, AFTAAS and its partners applied to the COA for a stay of execution of the sanctions imposed until the disposal of their leave application to appeal against the COA's decision dated Dec 10, 2021, to the Federal Court.
Between RSL PLT and two of its partners and SC	Challenges against AOB's powers and the manner in which it conducts its enforcement proceedings	<ul style="list-style-type: none">The High Court had on Oct 26, 2021, dismissed RSL's judicial review application against SC
Between Andrew Heng and SC	Challenges against AOB's powers and the manner in which it conducts its enforcement proceedings	<ul style="list-style-type: none">On Oct 28, 2021, the COA had ruled in favour of SC and dismissed Heng's appeal against the High Court's decision on Aug 25, 2020, dismissing his judicial review application to inter alia set aside / quash AOB's decision and SC's appeal decision.

to defeat the resolution, if they find the RPT unfavourable. Thus, this is an opportunity for minority shareholders to band together and defeat the RPT if it is unfavourable to them," Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson tells *The Edge*.

"If an RPT resolution is not defeated, there are probably only two reasons — either the RPT is deemed not unfavourable to minority shareholders or there is sheer apathy on the



SHARBIN YAHYA/THE EDGE

Devanesan: The right to divest the existing investment or not to invest is also a part of informed investment decision making

part of the shareholders."

He points out, however, that if a company has large financial figures in the financial statements, it can get away with a large RPT without triggering the financial thresholds, and therefore without having to call for an EGM.

"In such instances, minority shareholders can show their displeasure at the AGM (annual general meeting) by holding the board accountable for the RPT. If a company has a history of carrying out RPTs that are detrimental to minority shareholders, then the shareholder can choose not to remain invested in that company.

"When we talk about informed decision making, the right to divest the existing investment or not to invest is also a part of informed investment decision making. There is no point staying invested and grumbling incessantly when you do not like what is happening," he explains.

SC advised investors to pay attention to transactions between related parties who are only connected by common directorships and memoranda of understanding or heads of agreement between related parties, owing to the potential risk of erosion of minority shareholders' protection.

It is interesting to note that a significant effect on the share price movement was observed the day after the RPT announcements were made. Similarly, above-average price movements were also observed on the day leading up to the RPT announcements, indicating that there could be some leakage of price-sensitive information.

On SC's findings that the level of shareholder dissent in 2020 was "very low" against the increase in the general mandate for the issue of new securities — from 10% to not more than 20% of the total number of issued shares by listed firms, Devanesan says many compa-

nies could do with additional funding arising from the 20% placement mandate, as part of the relief measures granted by the authorities.

"During the pandemic, many companies utilised the increased 20% mandate. It was granted to be used and, as such, minority shareholders generally gave the benefit of the doubt to the companies that were utilising the increased mandate."

That said, he urges shareholders to monitor whether the raised proceeds were indeed used for the stated purpose.

"If they were not, shareholders should query the board — maybe there was a good reason to use the proceeds in some other way. If there are no good reasons, then it is a sign for shareholders to decide whether they wish to stay invested in such a company. Saying one thing and doing something else without a proper reason is not endearing," he says.

Low levels of investor activism

SC stated that the proportion of dissenting votes was only 0.4% on average and 17 out of 48 resolutions received no dissent at all in 2020.

"The shareholder bases of these listed firms were also relatively small, with only an average of 33 shareholders needed to pass the resolution. While this could indicate overwhelming support for the 20% GMP resolutions, it could also imply low levels of investor activism among minority and institutional shareholders.

"A further review in this area may be carried out to understand the underlying shareholder dynamics and heighten investor activism," the regulator highlighted.

Last year, 175 companies, or one-fifth of Main Market- and ACE Market-listed companies, raised a total of RM8.1 billion from private placement exercises, the largest secondary fundraising in the country's history.

Inari Amertton Bhd raised the most, with RM1.03 billion, followed by AMMB Holdings Bhd (RM825 million), Serba Dinamik Holdings Bhd (RM508.61 million), Unisem (M) Bhd (RM446.28 million) and AirAsia Group Bhd (RM336.47 million).

On another note, the Audit Oversight Board (AOB) report stated that there were various options or arrangements undertaken with audit firms to perform "off-site" monitoring reviews and/or virtual inspections last year.

Devanesan stresses that whether audit firms carry out physical, virtual or hybrid external audits, they must maintain audit documentation, working papers, audit trails and audit evidence, along with evidence of work done to substantiate their audit opinion.

Meanwhile, enforcement actions by regulators are not without hurdles. In 2021, SC was involved in three ongoing judicial reviews against the enforcement actions imposed by AOB, in relation to the latter's powers in enforcing its rules and regulations and the manner in which it conducted its enforcement proceedings.

In all the judicial review applications, SC said it had obtained favourable results, which further reinforced the robustness of AOB's enforcement framework and its processes.

Devanesan believes it is important that regulators do their work without fear or favour and not be cowed just because the judicial review applications are increasing.

"Regulators will always face challenges when it comes to enforcement. The judicial review application is a right available to aggrieved parties. It is difficult to crystal-ball gaze and conclude whether there will be more or less judicial review applications," he says. ■