MINORITY SHAREHOLDER WATCHDOG GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
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Need to extend review period of Bills

Comment
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IN the corporate realm, the Companies Act of 1965 has been a very important document for company officers, industry professionals and business advisers since it passed into legislation 48 years ago, acting as a guiding post on all corporate matters.

It is the source document with guidance on matters relating to on companies as a legal entity, directors duties, qualifications and its constitution, administration of company matters and its financials, shareholders rights, corporate governance matters, investigation, sanctions as well as enforcement matters.

That's why we were aghast to realise that the biggest changes to the Act since its formation, in the form of the Companies Bill, will go through under the noses and without proper scrutiny by key stakeholders like us who would be looking at from the point of view of minority interest. Beyond ourselves, we also wonder whether views of other groups such as SMEs, PLCs, industry associations and amongst a myriad other stakeholders affected by these amendments. This is because the document has been recently put on Companies Commission of Malaysia (CCM) website for public consultations for a month up to Aug 1 – less than two weeks to go. This was unlike the other public consultations by other front-line regulators that had focus groups to solicit views.

The CCM, which regulates corporate and business affairs in the country, is overseeing a review of the Act, aimed at simplifying the process of incorporation in Malaysia and reducing business costs the objective of which are indeed commendable. However, many of the changes are significant and wide-reaching where the document spans 642 pages – a stark reminder of the complexity and depth of the document which necessarily requires more scrutiny by industry players.

Some of the proposed reforms that we are highlighting so that industry players can give more scrutiny are centred on material issues such as the integrity of financial reporting frameworks, which is clearly a significant area, given the number of accounting scandals both here and abroad.

Other provisions include that on the ease of doing business, restructuring of company share compositions, including the introduction of alternative procedures for the reduction of capital and a reform of the policies relating to share buybacks and financial assistance through the introduction of solvency tests.

Simplification on voting by shareholders at meetings affecting proxy voting, rules governing shareholder meetings and meeting rules has also been proposed.

There are also moves to strengthen the corporate governance structure in relation to directors' affairs, where issues like shadow directors, minimum and maximum ages, residency requirements, rules of appointment, resignation and removal, remuneration, contracts of service, indemnification and officers'/auditors' liability are all examined.

There are a raft of other material issues, including shareholder rights, the role of auditors, related party transactions, winding-up and insolvency proceedings.

As many industry watchers are probably aware, these are all issues of tremendous import, and their interpretation and treatment will have significant implications for the minority shareholder.

There is also, for the first time, the introduction of an Interest Schemes Bill, designed to capture Interest Bearing Schemes, which have gained in popularity in recent years, such as the Country Heights Growers Scheme, with which as a subscriber myself, I was intimately involved.

In turn, the consultation document on the proposed Interest Schemes Bill spans a further 111 pages.

The framework for this bill is also significant, since it envisages, amongst other things, the development of a modern, dynamic and relevant regulatory framework, the facilitation of the growth of such interest schemes, a simplification of the relevant laws and procedures for capital raising and the enhancement of a governance framework.

And – perhaps most importantly, since these are schemes which are inherently risky, and hence the normal avenues of raising capital are limited – there are also proposed rules that seek to enhance the rights and protection of interest holders.

We ask: Is one calendar month sufficient to publicly discuss these two massive documents (totalling over 750 pages) to engage, consult and obtain the views of relevant stakeholders and members of the public for these two legislative bills, the implications of which will be far-reaching to the conduct of business in this country?

The challenge has been compounded, not just by the depth and breadth of the amendments, but also the technicality of the language, most of it in legal jargon which is quite challenging to comprehend.

There is hence an urgent and pressing need for CCM to extend the review period of these two Bills, so that a much more thorough and close examination of the relevant issues are presided upon by all the relevant stakeholders potentially affected by these changes.

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