

# MINORITY SHAREHOLDER WATCHDOG GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD

(Incorporated in Malaysia – Company No. 524989-M)

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**BUSINESSMAN** Tan Sri Syed Mokhtar Albukhary's efforts to take Padiberas Nasional Bhd (Bernas) private is proving more difficult than anticipated as a pending suit could potentially derail the controversial tycoon's plans to take over and delist the company.

A minority shareholder, Ilustrasi Hikmat Holdings Sdn Bhd, is not giving up on its suit to contest the tycoon's entitlement to the complete ownership of Bernas.

In the suit, Ilustrasi Hikmat claims that the privatisation agreement that was signed during Bernas' incorporation, read together with a later shareholders' agreement between the government and Bernas' original shareholders, does not permit control and ownership of Bernas to be vested in a single individual.

According to Ilustrasi Hikmat's lawyer Mohd Firuz Jaffril, the company obtained a stay of proceedings in late December, pending its appeal to the Court of Appeal against a High Court decision to strike out its suit against Syed Mokhtar, Bernas and Tradewinds (M) Bhd.

He adds that the company may also apply to the Court of Appeal to include new evidence. "The Court of Appeal has set the date for case management on April 30," he says when contacted.

A court decision that favours Ilustrasi Hikmat may throw a spanner in Syed Mokhtar's ambitions to add the rice monopoly to his stable of businesses, but a trial will take time, Mohd Firuz says.

In the meantime, Syed Mokhtar is facing resistance on many levels: minority shareholders, opposition members of Parliament, and stakeholders who have reservations on leaving a national strategic asset in private hands.

This resistance has intensified after Bernas denied knowledge of any written pledge to relist the company after it is taken private, as it is the latest and clearest hint that the company, once delisted, may stay a private entity controlled by an individual.

As the announcement directly contradicts an earlier statement by Agriculture and Agro-based Industry Minister Datuk Seri Ismail Sabri Yaakob, who reassured concerned farmers and millers that the company's delisting is temporary, several parties have questioned the ability of Bernas to continue with its duty to protect farmers' interest after its delisting.

Last week, Alor Setar MP and Kedah Parti Keadilan Rakyat (PKR) vice-chairman Gooi Hsiao Leung pressed the Agriculture and Agro-based Industry minister to clarify Bernas' statement.

"Any move by the government to mislead the stakeholders and farmers to get the delisting of Bernas approved would be a betrayal of the government's duty to look after their best interests," he wrote.

When contacted, Gooi says the farmers he had spoken to are concerned as they do not know what is going to happen after the delisting, especially after Bernas denied the reassurances made by the minister.

Although Bernas signed an agreement with the government in September 2012, in which it is obliged to maintain and manage the government's rice stockpile of 292,000 tonnes at its cost in return for the extension



by Lim Wey Wen

## Syed Mokhtar faces more hurdles in Bernas takeover

Legal suit over ownership of Bernas and resistance from minority shareholders and stakeholders continue to thwart tycoon's plan to add rice monopoly to his stable



Malaysia has been able to meet only 70% of its rice consumption since 2000 compared with the highest level of 98% in the 1970s

of its concession on the rice trade for 10 more years to 2021, Gooi is not convinced.

"It goes back to the issue of the company being controlled by an individual," he says.

"When the company is delisted, where is the accountability and transparency that will ensure that Bernas will carry out its duties under the agreement?" he asks.

### Resistance on the ground

Gooi was not the first to voice opposition to the deal. Last December, PAS central committee member Dr Dzulkefly Ahmad called the exercise "a continuing marvel" as "one individual is now allowed to gain monopolistic control over the national strategic rice business".

Even when independent adviser Kenanga Investment Bank Bhd has called the latest effort to voluntarily delist the company "fair and reasonable", 155 shareholders managed to put a stop to the delisting at the company's EGM on Jan 27.

In response, Perspective Lane (M) Sdn Bhd, Kelana Ventures Sdn Bhd, Seaport Terminal (Johore) Sdn Bhd and Acara Kreatif Sdn Bhd – all companies controlled by Syed Mokhtar – launched a second takeover offer at RM3.70 per share on Feb 4, a price that was deemed too low even when they first offered it less than a year ago.

According to the Minority Shareholder Watchdog Group (MSWG), a prudent estimate of Bernas' intrinsic value is RM3.2 bil or RM6.13 per share. At a conservative 8.5-11.5% discount with at least a 2% perpetual growth rate, the indicative value of Bernas is estimated at between RM4.18 and RM6.13.

At the time of the second offer, the four companies still needed at least 6.31% of Bernas shares to bump up their collective ownership of the

company to 90%. This would allow the four companies to withdraw Bernas' listing under Bursa Malaysia's listing requirements, without the consent of other remaining shareholders.

This means that at least one of the interest groups with minority but sizeable stakes must be ready to let go of their shares in the company. These include the National Farmers Association (Nafas) and National Fishermen's Association (Nekmat), which own 3.71% and 3.42% of Bernas respectively.

Another minority shareholder with a sizeable stake in Bernas is Batu Bara Resources Corp Bhd, with 4.69%.

A source close to Nafas reveals that it has not sold its shares while Nekmat declined to comment on the takeover.

"The message that minority shareholders had rejected twice previously means that the offeror should have seriously looked at the offer price, and the board should reject any other offer from the same offeror at the same price," says MSWG CEO Rita Benoy Bushon.

"Amongst the concerns we have is that the numerous attempts made to privatise the company are unhealthy, being a listed company," she says.

"Substantial resources such as manpower, time and cost are being used for unproductive purposes instead of focusing on the real business."

When contacted, Malay non-governmental organisation Teras Pengu-payaan Melayu president Mohd Azmi Abdul Hamid says padi farmers in the group are against any actions that will allow Bernas to be monopolised by an individual or company.

Azmi says the 3,000-member group, of which 500 are padi farmers, will launch a campaign to push for Bernas to be returned to government control so that it could meet its original objectives.

"We will come up with a memoran-

dum to detail the reasons why Bernas has to go back to being a public agency to guarantee farmers' rights and protect national food security," he says.

"Incentives for farmers to reach 100% self-sufficiency need to be worked on as dependence on (rice imports) from countries such as Vietnam, Thailand and Pakistan carries a high risk."

### A case for liberalisation?

After the National Padi and Rice Board (LPN) was corporatised and renamed Bernas in 1994, the company has been able to maintain a good and accessible supply of rice for the people through a guaranteed minimum price of padi for farmers, price controls of rice for the poor and cash subsidies to millers to produce low-grade rice.

However, Malaysia's rice self-sufficiency level has hovered around 70% of its rice consumption since 2000 from its highest level of 98% in the 1970s as the increase in rice production falls behind population growth and rice consumption.

As the sole rice importer, Bernas supplies the local market with the additional 30% needed to meet the demand. It is also involved in the production of rice and is said to control almost a quarter of the local padi market.

"Bernas has set up its own supply chain, which is quite impressive, and was able to distribute rice to the locals," says Universiti Putra Malaysia Institute of Agricultural and Food Policy Studies director Prof Dr Fatimah Mohamed Arshad.

While Bernas could still continue to manage the national rice stockpile and meet national food security objectives when it is privatised, the government would have to reconsider the monopoly status that Bernas enjoys when it becomes a fully private entity owned by an individual.

"Bernas also produces Super Tempatan 15% (ST15%) rice and it is also getting subsidies from the government (RM800 per tonne) for it," Fatimah says.

"The issue is, how much longer does the government need to subsidise Bernas when it also makes profit from trading."

The presence of a rice trade monopoly had made it possible to control rice prices in the country. It has also made it impossible for market forces to absorb excess or allocate deficits through price fluctuations.

As rice prices in the country are pegged and controlled by the government and monopoly, consumers may not be able to benefit from global rice price fluctuations.

Cheap imports have also given little incentive to local researchers to improve rice production and quality, Fatimah says.

Given its monopoly status now, the eventual owners of Bernas will be among the rare individuals who get to have the rice cake and eat it. **FocusM**



Syed Mokhtar is facing resistance at many levels in his bid to take over Bernas