MSWG: Better for EPF not to vote in mega merger

BY ADELINE PAUL RAJ

Let Bursa Malaysia be the judge of whether the Employees Provident Fund (EPF) has a right to vote in any eventual merger transaction between three lenders to create Malaysia's largest banking group, says the Minority Shareholder Watchdog Group (MSWG).

"Let Bursa establish whether, by law, the EPF can vote or not," MSWG CEO Rita Benoy Bushon tells *The Edge* in an interview.

"In our view, we think the EPF should refrain from voting in all three companies, whether at the board level or at the shareholder level, to be above any kind of unnecessary perception that they may be an interested party.

"It's best to let the rest of the shareholders vote. And if the deal is good, it will go through," she says.

The EPF owns a 14.46% stake in CIMB Group Holdings Bhd, 41.34% in RHB Capital Bhd and 65.02% in Malaysia Building Society Bhd (MBSB), making it a common major shareholder in all three lenders.

As such, some industry observers and analysts say it shouldn't vote. Under Bursa's listing requirements Chapter 10, which discusses transactions, there are provisions that related parties should abstain from voting in a related party transaction (RPT), so as to protect the rights of minority shareholders.

Although the merger talks are still ongoing and there is yet to be a deal on the table, the question of whether EPF should be allowed to vote on a deal is a critical one as, given its sizeable holdings, it may be the party that determines the success in any deal, say analysts.

Sources familiar with the merger discussions say the pension fund has indicated that it would like to vote, *The Edge* reported in its last issue, in an article discussing whether or not the EPF should be allowed to vote.

In a response to that article (see Page 77), the EPF says: "The size of holdings in any company by itself cannot be used to deny the EPF of its fundamental right to vote in the business fundamentals or strategic matters of its investee companies. Ensuring this right is preserved is crucial in maintaining the people's trust as well as protecting the working Malaysian's interests."

CIMB is taking the lead in the merger and the EPF is expected to emerge as the biggest shareholder in an enlarged banking group.

Rita says it's important to establish whether the EPF is a passive shareholder or one that was in on the merger idea from the start, and thus, an interested party. Ultimately, it would depend on how the merger is structured, she acknowledges.

"If they vote, they have to establish why they can vote. My opinion on the matter is from the point of shareholder conduct and governance," Rita says. She notes the EPF can always argue that it is a passive shareholder, with the bid being launched from the boards of the companies, in which it has no real representation.

But a grey area, she points out, lies in the fact that the group CEO of CIMB, Datuk Seri Nazir Razak, also sits on the EPF's investment panel. "However, Nazir can always extricate himself from voting. That's a conduct we'd expect."

Tan Sri Azlan Zainol, who retired as the chief of EPF in April last year, is a director in RHB but in a non-executive capacity. The EPF's current chief, Datuk Shahril Ridza Ridzuan, sits on the board of MBSB as a non-executive director. There are no other EPF representatives in the three lenders.

"The EPF doesn't lose out by not voting. Minority shareholders always tend to ask for more and so any offer that's good for them will always be beneficial for the major shareholder too. But if the EPF is allowed to vote, there's a chance the minorities could be outvoted," says a banking observer.

Rita voiced hope that any deal that comes out of the current talks between the three lenders would be fair to all shareholders, including the minority ones. "You'd want to see there being a good exit offer and that valuations are proper, you'd want to see proper processes and conduct, transparency, and you'd want to see all major shareholders dealing for the benefit of everyone," she says, explaining what the MSWG will be looking out for in this proposed merger.

Any good offer must include a cash element for minority shareholders who may want the option of an immediate exit, she opines. As it stands, however, sources say the merger will be effected entirely by a share swap.

Rita says the offer also has to be the same for all shareholders in a company. There shouldn't be any separate deals carved out for certain shareholders who may have incurred a much higher cost of investment than others, she adds.

She was referring to RHB's second largest shareholder, Aabar Investments PJSC, with its 21.4% stake, which is expected to be the toughest for CIMB to convince given that it had bought the stake from a sister company in 2011 at a hefty RM10.80 a share. Its investment cost is understood to be even higher, at close to RM12 a share — which means that pricing will be a key hurdle in the merger. RHB's share price has not crossed the RM10 level in over five years.

"It should be equal opportunity for everyone. It just so happened that Aabar came in at RM10.80 ... that's an investment risk they took," she remarks.

Sources say the merger involves, as a first step, a merger between CIMB and RHB via a share swap. The next stage will involve merging the enlarged group's Islamic banking operations with MBSB to create the mega Islamic bank, again through a share swap exercise that will result in MBSB eventually being delisted. The Islamic bank would end up becoming a subsidiary of the enlarged banking group.

CIMB has 90 days from July 10 — the day it got approval from the central bank to start the merger talks with the other two — to come up with a palatable offer, failing which rival banks may move in on RHB and MBSB. Malayan Banking Bhd, whose long-held position as the country's largest bank now is threatened by the merger, is believed to be waiting on the sidelines.

Rita says she had no objections to the lenders' 90-day exclusivity agreement to talk only with each other, pointing out that in this particular instance, it involved as many as three financial institutions, hence, it was important for the parties involved to have complete focus.

"However, after 90 days, I think they shouldn't extend the exclusivity ... any other competing bids that potentially come in must be looked at."

She says she's all for banking mergers in the country if they are done fairly and if it doesn't lead to monopolistic practices.

"Malaysia's banks should get stronger, and if necessary bigger, to meet the challenges of the global environment and it must do all it can to ensure fairness in its business practices in order to allay monopolistic concerns," she says. E