MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
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'Avoiding' a general offer by triggering a technical GO

BY **THE EDGE MALAYSIA**

On May 4, metal can producer Can-One Bhd received an unconditional mandatory general offer (MGO) at RM2.50 per share from its major shareholder Yeoh Jin Hoe and persons acting in concert (PACs).

Suffice it to say, the takeover bid — which represents a whopping discount of 73% to Can-One's net tangible assets (NTA) per share of RM9.26 as at Dec 31, 2020 — is likely to meet with poor response from the minority shareholders.

But it should not matter to Yeoh, a schoolteacher turned entrepreneur who is the ultimate offeror of this MGO.

Regardless of the MGO acceptance level, Yeoh, who intends to maintain the listing status of Can-One on Bursa Malaysia, has tightened his grip on the company by acquiring a 20.94% stake from Genkho Candoz Sdn Bhd for RM100.6 million or RM2.50 per share in cash.

Following the share acquisition, the collective equity interest held by Yeoh and PACs has increased from 39.63% to 60.57%, prompting an MGO.

According to Paragraph 4.01 (a) of the Rules on Takeovers, Mergers and Compulsory Acquisitions issued by the Securities Commission Malaysia (SC), a mandatory offer shall apply when the acquirer has obtained control of a company, unless otherwise exempted by the SC.

But it is likely that Yeoh, a 74-year-old seasoned hand in corporate deals, is unperturbed by the mandatory offer obligation. That's because the MGO price of RM2.50 per share represents a 15.82% discount to Can-One's last transacted price of RM2.97 on May 3, prior to the trading suspension of its shares.

For perspective, Yeoh only needs to spend RM189.4 million to acquire the remaining 39.43% equity interest at RM2.50 apiece, if there is any minority shareholder accepting his offer at all. In comparison, he may have to fork out RM225 million to undertake the MGO at RM2.97 apiece or RM701.53 million at RM9.26 apiece.

Theoretically, Yeoh would save RM35.6 million or RM512.13 million from the mandatory takeover bid if the price of his transaction with Genkho Candoz were to be pegged at the market price or NTA.

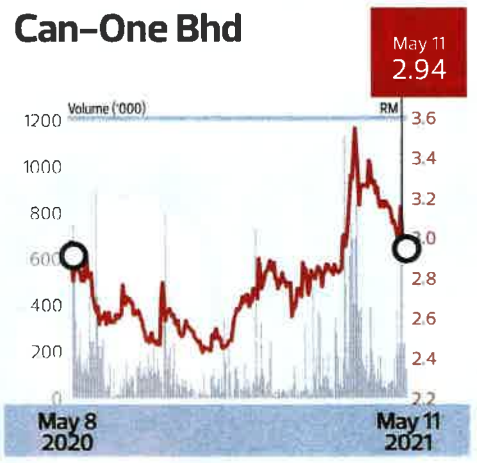
But now, thanks to the generosity of Genkho Candoz, Yeoh is obliged to extend only a mandatory takeover offer at RM2.50 a share, instead of a more attractive price.

Simply put, this was merely a technical GO as any other shareholder would not accept the offer at RM2.50.

Who is Genkho Candoz, which appears to be a generous seller?

A check on the Companies Commission of Malaysia (SSM) website reveals that Genkho Candoz is controlled by 82-year-old Teh Khoy Gen, founder of dairy products manufacturer F&B Nutrition Sdn Bhd.

Teh, via Genkho Candoz, became the second largest shareholder of Can-One in 2015 after selling his remaining 20% stake in F&B Nutrition to the latter in an all-share buyout deal worth RM112.9 million. He received new Can-One shares at RM2.84 each in return.



Can-One eventually sold its entire stake in F&B Nutrition to Singapore-based private equity firm Southern Capital Group Pte Ltd for RM1 billion in 2020.

While it is not publicly known how close their relationship is, investors cannot help but wonder why Teh's Genkho Candoz was willing to sell its stake in Can-One to Yeoh at such a low price.

Corporate observers may get a sense of déjà vu, or draw a similarity to the unconditional MGO triggered by chemical businessman Datuk Eddie Ong Choo Meng on Ipoh-based glove maker Rubberex Corp (M) Bhd last year.

To recap, Ong acquired an additional 20.63% stake from Seng Sheng Enterprise Sdn Bhd, Datuk Seri Chiau Beng Teik and Peh Lian Hwa via direct business transactions at RM1.80 per share, representing a significant 38.4% discount to Rubberex's closing price of RM2.92 on June 22 last year.

As a result of the vendor's generosity, Ong was obliged to extend only an MGO to acquire the remaining shares at RM1.80 each instead of a more appealing price.

Not unlike Rubberex's MGO, given the significantly higher market price, it is safe to assume that most minority shareholders of Can-One are not likely to accept the takeover offer.

But this is likely the outcome intended by the offerors: taking control of the company without really spending big bucks to extend a genuine, sincere GO. Simply put, the major shareholders are essentially "avoiding a GO by triggering a technical GO".

Short-changing of minority shareholders?

Without specifying any company, Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson stresses that it is a big concern if minority shareholders are indeed being short-changed by major shareholders using loopholes in the rules.

He also warns that there may be elements of wrong-doing if the actual purchase price of the block of shares is higher than the off-market, direct business transaction (DBT) price of the shares, with the excess (actual price less DBT price) being paid to the vendors by some other considerations.

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Devanesan observes that it is generally accepted that buyers pay much higher than market prices for controlling blocks, not the opposite. This is based on the premise that if the buyer were to try to obtain the same block from the market, he, more often than not, would have to pay a higher price as he would have to make higher and higher bids to accumulate the desired block of shares.

"For example, a buyer may have an existing shareholding of 30% and may transact a DBT, an off-market deal, for a 21% block of shares at RM1.80 each. This would give the buyer a controlling block of 51%. Let's say the prevailing market price is RM3. This scenario would be puzzling as, to obtain a controlling block of shares, one would normally have to pay more than the prevailing market price. That is because accumulation of the 21% block on the market would normally drive the share price upwards of RM3," Devanesan tells *The Edge*.

"Let's say the actual price paid to the seller was RM3.50, then the excess over the DBT price may have been settled in some other form to the seller. This is short-changing the minority shareholders. By right, the GO should have been made at RM3.50," he explains further.

Nevertheless, Devanesan acknowledges that as long as the offerors and vendors are playing by the rule of law, there is almost nothing the authorities can do about these situations, where major shareholders are controlling the company without really extending a GO.

"Both the buyer and seller are playing by the rule book in form but not in substance; there is an element of defrauding minority shareholders involved. If there is evidence that the actual price paid for a block of shares is higher than the DBT price, the buyer may be forced to offer the higher actual price to the minority shareholders through a revised GO. Unfortunately, nothing much can be done unless there is evidence of wrong-doing. Otherwise, it is a case of 'willing buyer, willing seller' — no matter how irrational [the deal is]," he admits. E