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PROTECTING SHAREHOLDERS' INTEREST

# RISKS OF PLACEMENT SHARES

**I**N Malaysia, the general mandate for directors to issue and allot new shares falls under Sections 75 and 76 of the Companies Act 2016 (CA2016), which give directors the authority to issue not more than 10 per cent of the total number of issued shares.

The mandate expires at the conclusion of the next annual general meeting (AGM), whereupon a fresh mandate may be sought until the end of the following AGM. Thus, such mandates can be sought continuously at each AGM till perpetuity — or till the law changes.

Incorporated in the same mandate-resolution tabled before shareholders at the AGM is a statement that the existing shareholders have waived their rights under Section 85 of CA2016.

Section 85 offers powerful protection to existing shareholders. It states that when a company wishes to issue any shares, these shares shall first be offered to existing shareholders. This is to ensure that the relative voting and distribution rights of the existing shareholders will be maintained if the offer is accepted.

Thus, it is necessary for the private limited company (PLC) to seek such a renunciation of Section 85 when seeking shareholders' approval for the general mandate to issue and allot new shares, without which the general mandate is subject to legal disputes.

And because the requirements of Sections 75, 76 and 85 are all bundled together in one resolution, minority shareholders may

not appreciate that they are renouncing their rights under Section 85.

Perhaps what is required is a more explicit highlight of the resolution, especially on the implications of the renunciation by shareholders and its implications, particularly the dilutive effect. Sure, ignorance of the law is no excuse but there is no harm in highlighting the implications of Section 85 explicitly to shareholders.

### Institutional investors voting stance

Recently, it was highlighted in the media that Permodalan Nasional Bhd (PNB) decided to vote against the routinely proposed resolution for directors to issue and allot new shares.

PNB had voted "against" the resolution to seek a general mandate for new shares issuance at Bermaz Auto Bhd's annual general meeting (AGM). It also plans to vote the same at the upcoming AGM of Hong Leong Bank Bhd today. These are not new instances as PNB had voted "against" such resolutions proposed by a few of its investee companies in the past.

PNB's decisions were by its voting guidelines. The guideline states that effective May 1 this year, PNB may vote "against" resolutions under Sections 75 and 76 of CA2016 if it finds insufficient disclosure on the manner of issuance and planned utilisation of the proceeds of the share issuance or the proposed issuance is deemed detrimental to the

company and is not in the best interests of shareholders.

PNB is not alone in adopting such a stance. The Retirement Fund Inc, or KWAP, has stated that it shall vote "against" such a resolution if the company fails to state the purpose expressly and planned utilisation of the proceeds to be raised (Source: KWAP's Voting Guidelines for Domestic Listed Equity Investments, 2022 edition).

Having said that, exceptions are made if the investee company can explicitly disclose the purpose of seeking such mandate, e.g., regulatory capital requirements, funding of investment projects, working capital, acquisition, and strategic opportunities. In short, the reasons should be convincing.

### The Pros

The board's standard argument is that they could not expressively state the purpose and planned utilisation of the proceeds for the general mandate as they deem such information price sensitive.

They also say revealing the purpose will erode their competitive advantage by revealing their strategy. Or they do not know when a sudden "bargain" will arise. Time would be of the essence to seize the opportunity and, hence, the upfront need for shareholders' approval for the 10 per cent placement mandate.

Or that it would provide directors with the flexibility to take swift action for corporate exercises, especially when market conditions are favourable and the

window of such favourable conditions is slim.

Placements through mandates would enable the company to speed up the process of issuing and allotting new shares (by way of private placement) without having to convene a time-consuming and cost-incurring extraordinary general meeting for shareholders' approval.

### The Cons

However, the downside is that such placement exercises may not be carried out with noble intentions. The placement may be a veiled exercise to dilute the controlling (or substantial) equity interest of major shareholders so that they no longer are the majority shareholder; thus, the dilutive effect.

Minority shareholders have no objections to share placement exercises if they are for a legitimate purpose — to bring in cash for a worthwhile business proposition or if the party receiving the placement has some special knowledge or experience to add value to the PLC. Shareholders need to be convinced.

As such, shareholders should review the rationale behind the proposed share placement and vote wisely.

On the board and management's part, they should ensure clear and adequate disclosures when seeking approval for the general mandate.

The writer is chief executive officer of Minority Shareholders Watch Group.

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