

MINORITY SHAREHOLDER WATCHDOG GROUP

BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD

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New rule requires IA to put value on target company's assets

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PETALING JAYA: Independent advisers (IA) hired by companies undergoing a takeover will now be required to put a value on the target company's assets, according to the Securities Commission (SC).

The new rules, slated to take effect on Nov 1, were released yesterday as additions to Practice Note 15 (PN 15) of the Code on Takeovers and Mergers 2010.

IAs currently generally do not take on the task of carrying out a full-blown revaluation of a company's assets prior to a privatisation exercise.

Under the new guidelines, the recommendation made by an IA "must contain adequate information and be meaningful and useful to assist shareholders or offeree companies in making an informed decision as to the merits of the takeover offer or proposal".

In addition, the term "fair" and

"reasonable" are to be analysed as two distinct criteria and not as a composite term.

"The decoupling of the terms will further ensure that independent advice circulars are more easily understood, transparent and provide clear bases to justify a recommendation," the SC said in a statement.

The requirement of doing a full valuation of the assets stems from this – for a deal to be deemed as "fair", the offer price should be equal or higher than the market price and

also equal to or higher than the value of the securities.

If the offer price is equal to or higher than the market price but lower than the value of the securities, a takeover is considered "not fair".

What constitutes "value" is for the IA to decide based on its skill and judgement, but it must use more than one valuation method and justify it, according to the SC's guidelines.

Besides this, it has to compare and

comment on the differences between the results of its methodologies, base its valuation on reasonable assumptions and disclose all the assumptions used, as well as provide an opinion of value based on its findings.

To determine whether an offer is "reasonable", an IA has to look into matters other than valuation such as the ability of the offeror to pass special resolutions, liquidity of the

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offeree securities, and other qualitative considerations.

The new guidelines come on the heels of the privatisation of palm oil firm Glenealy Plantations (M) Bhd by Samling Strategic Corp Sdn Bhd, which proposed in January to take control of its 54%-owned subsidiary for RM7.50 per share as well as wood products maker Lingui Developments Bhd for RM1.63 per share.

Samling is controlled by Miri-

based tycoon Tan Sri Yaw Teck Seng and his family.

The offer, however, valued Glenealy's land at RM25,000 per ha, substantially lower than recent transactions clocked in at between RM45,000 and RM65,000, causing a group of minority shareholders to cry foul at the court-convened meeting two Thursdays ago.

They were also unhappy that the land had not been assessed since 1998.

HwangDBS Investment Bank, the IA for Glenealy, had said that

although the valuation was below the average price per ha of RM39,261 among comparable companies, it was still within the acceptable range.

It then advised shareholders to accept the offer based on the fact that the share price had not been trading close to the offer price prior to the announcement date, and also on the basis that the shares were thinly traded.

The Minority Shareholders Watchdog Group had spoken out against the buyout and called for the

regulators to compel that new valuations be conducted within a six-month period prior to a takeover proposal when the said company's assets are land-based.

It had also said the law was silent on the revaluation of land in cases of privatisation, a situation that is now reversed given the additions to PN15.

The additions to PN15 were first mooted by the SC two years ago in a bid to enhance the quality of independent advice as well as to protect shareholder interests.