

Should Bursa emulate SGX's 'fair and reasonable' rule for exit offers?

BY LIEW JIA TENG

Last month, the regulatory unit of the Singapore Exchange (SGX) announced changes to its voluntary delisting rules that could make it harder for major shareholders to take their companies private.

With immediate effect, exit offers in conjunction with the voluntary delisting of listed companies on SGX must not only be reasonable but also fair.

Previously, the major shareholders of some companies managed to get away with offering minority shareholders unattractive exit prices because an offer only had to be reasonable and not necessarily fair.

Generally, a voluntary takeover is deemed "not fair" if the offer price is lower than the revalued net asset value per share or fair value estimated by the appointed independent financial adviser.

However, the offer price is often deemed "reasonable" if it provides an exit opportunity for shareholders to realise their investments, after taking into consideration the historical market prices and historical trading liquidity of the shares.

In most cases, the financial adviser and non-interested directors of the company would recommend that the shareholders accept the offer because the "reasonable" view outweighed its unfairness.

HARIS HASSAN/THE EDGE



Devanesan:
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SHAHRIYAH YAHA/THE EDGE



Ho: It is selfish of majority shareholders to seek voluntary delisting and keep the company all to themselves

Bursa Malaysia Bhd is not short of examples of minority shareholders having had to accept offers that were "not fair but reasonable". For instance, Petaling Tin Bhd was taken private by gaming tycoon Tan Sri Dr Chen Lip Keong in August last year and Kian Joo Can Factory Bhd by Can-One Bhd in May this year. Meanwhile, Yee Lee Corp Bhd is a privatisation target of Datuk Lim Kok Cheong and a Singapore private equity firm.

The changes to SGX's delisting rules are commendable. From the minority shareholders' perspective, the new rules will make the delisting process more difficult as the offerors would have to offer higher prices than in the past.

To put it bluntly, the minorities will not be easily oppressed and squeezed out by the major shareholders or offerors.

From another perspective, the new voluntary delisting framework is less favourable to the major shareholders or offerors and will likely lead to fewer privatisations in the future in Singapore.

This would also mean fewer exit oppor-

tunities for minority shareholders. Worse still, it may distort market forces at play, possibly forcing offerors to pay much more than the prevailing valuation.

Considering these factors, should Malaysia follow suit?

When contacted by *The Edge*, Bursa Malaysia says as a matter of policy, it is unable to comment on the framework of other exchanges, which have been developed to cater for their specific needs.

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MINORITY SHAREHOLDERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Company No. 524989-M)

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Bursa: Three-tier shareholder approval requirement safeguards minorities

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“The Exchange believes that the current framework to safeguard shareholder interest in a privatisation is balanced and appropriate. Nevertheless, the Exchange will continue to keep abreast of developments and review this area from time to time,” it says in an email reply.

Bursa Malaysia opines that its listing requirements contain a balanced and proportionate framework for voluntary withdrawal of listing that safeguards shareholders’ interests and empowers them to make an informed decision on the proposal.

The framework consists of a stringent three-tier shareholder approval requirement whereby the withdrawal of listing must be approved by the majority in number of shareholders present and voting. This also represents at least 75% of the total number of issued securities held by such shareholders.

Moreover, objections must not be more than 10% of the total number of issued securities held by the shareholders present and voting.

“Under the three-tier shareholder approval requirement, we believe the minority shareholders’ interests are adequately

safeguarded. Via the dissenting vote of 10%, minority shareholders can collectively reject the privatisation proposal if they do not deem the withdrawal of listing or exit offer favourable to them,” says Bursa Malaysia.

Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson opines that SGX’s proposals are worthy of consideration as they will offer minority shareholders a higher exit price.

He, however, acknowledges that there will always be minority shareholders who would be satisfied to exit at a lower “not fair” price and that they may feel that SGX’s proposals would deprive them of the opportunity to exit at a lower price.

“It would be difficult to please all minority shareholders as each will have his own acceptable exit price. The proposition in relation to exit prices should be that minority shareholders should be offered the highest exit price possible, and the SGX’s proposals do exactly that,” Devanesan tells *The Edge*.

Another argument offered against SGX’s proposals is that it would be more difficult for offerors to get a listed company delisted

and that such a scenario means fewer privatisation offers in the future. This essentially means fewer exit opportunities for minority shareholders.

But Devanesan points out that minority shareholders will always have an exit opportunity — the prevailing market price.

Malaysian Investors’ Association (MIA) president Datin Ho Choy Meng agrees that whatever is applicable to SGX is workable for Bursa Malaysia. “The changes are positive and commendable as with immediate effect, exit offers must be equal to or more than the intrinsic value of the securities as determined by the independent advisers,” she says.

Since getting out has become harder and more expensive, Ho expects major shareholders to bear greater responsibility to ensure their companies are viable, well run and profitable. “This results in a win-win situation as all the shareholders will benefit from better dividend yields and increased share prices on the stock market. No longer can they offer a reasonable but unfair price to squeeze out minority shareholders.”

Ho stresses that MIA does not take kindly to directors who wilfully take star perform-

ers away from public investors. “It is selfish of majority shareholders to seek voluntary delisting and keep the company all to themselves. It is like snatching away from others the proverbial goose that lays the golden eggs.”

Market observer and shareholder activist Chong Chee Fern shares the view that Malaysia should follow in Singapore’s footsteps in order to better safeguard the interests of minority shareholders and pursue good governance.

“It is only fair that a fair price be offered to minority shareholders. There should be minimal market distortion, if any, as it involves exit cases only. After all, major shareholders are allowed to privatise the company at the intrinsic value of the shares, which is still deemed fair,” he says.

While Chong admits that this may lead to fewer privatisations in the future, he says it should not be a counter-argument against the introduction of a new voluntary delisting framework. “If major shareholders see value in the company and feel that they can do more and create more value by privatising it, nothing will deter them from doing so.” ■