

MINORITY SHAREHOLDER WATCHDOG GROUP

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

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Quicker disclosure of major shareholding

Real-time disclosure is theoretically possible although not legally viable



By Gheah Ghor Sool

A PROPER streamlining of payment and settlement – and all the paperwork associated with them – is essentially what it takes to make share ownership change instantaneous, usually known.

By the same virtue, a real-time substantial shareholding disclosure is very possible given technology has made such process electronically viable today, according to financial solution specialist Lon Wong.

“The current method of share trade, payment and settlement needs an overhaul to re-look at how they could be made super-efficient to achieve, in T+ minutes for settlement,” he tells *FocusM*.

“Once streamlined, change of ownership can be made real time – whether substantial or otherwise – while share transfer gets recorded in the book entry instantly and the system can immediately capture a change of share ownership,” adds Wong, who is the founder and CEO of Dragonfly Fintech Pte Ltd, a blockchain financial solution technology company.

He proposes three “quick steps” as the way forward:

- ▶ Customers make fiat money deposits before trading instead of trading and paying later. This also effectively reduces the risk in a transaction.
- ▶ Making electronic certificates that cannot be duplicated nor stolen (so that they cannot be fraudulently traded).
- ▶ Allowing the electronic certificates to be individually-owned and have the capability to be transferred from one owner to the other – with the use of an automated recording system (book entry) to register all owners of a particular stock in real time – automatically.

“If we dissect the entire systems of administration in any industry, one would easily find that legacies of yesterday have very much played a major role in shaping up the requirements to deal with the current state we are in,” Wong points out. “The problem we have is that it is all too often that we built solutions and systems to suit the requirements of yesteryears.”

Penalties for non-compliance

Under Section 137 of the Companies Act 2016 which came into force on Jan 31, a person who emerges as a substantial shareholder of a listed company, by virtue of having owned 5% or more stake in the company, is required to give notice in writing to the company (Via Form 29A) within three days of becoming a substantial shareholder.

Likewise, Sections 138 and 139 of the Act stipulate that a substantial shareholder has to notify the company of any change in his interest (either acquisition or disposal of shares) (Form 29B) or upon his ceasing to be a substantial shareholder of the company within a three-day period (Form 29C).

Fines not exceeding RM1 mil will be imposed for violation of the above requirements while in the case of a continuing offence, a further fine of RM1,000 may be imposed for each day of non-compliance after conviction.

On Feb 1, the Companies Commission Malaysia published an updated Form 29A (Notice of Interest of a Substantial Shareholder) which is required to be submitted by substantial shareholders under the terms of Section 141 of the Companies Act 2016.

Previously, Sections 69E, 69F and 69G of the Companies Act 1965 (Revised 1973) accorded a seven-day time-frame to furnish the company with a notice in writing.

Compulsory disclosure requirement

While it is theoretically possible to have a real time disclosure on substantial shareholding, the fact that the law requires substantial shareholders themselves to make the disclosure eventually results in a longer compliance time-frame.

“This takes into consideration the geographical difference (ie different time zones) and the availability of technology to avail the shareholders for confirmation of his status as substantial shareholders or otherwise,” Companies Commission of Malaysia CEO Dairik Zahrah Abd Wahab Penner tells *FocusM*.

Nevertheless, Zahrah opines that the whole idea of real-time disclosure regime is feasible. “The challenge is to ensure that all the parameters of reporting are factored in, which can be quite extensive as it covers direct and indirect shareholding as well,” she points out.

Commenting on the likelihood of further extending the disclosure period to one day if real-time disclosure is not feasible, Zahrah says there is a need to see whether this is practical for all types of shareholders.

“I believe there are already programmes which cater to this need, especially among the investment companies which have complex investment portfolios,” she opines. “It may not be possible for individual shareholders who may not have access to such system/programme for continuous monitoring.”

Not possible with current system

From the Minority Shareholder Watchdog Group (MSWG) perspective, real-time disclosure for substantial shareholding is ideal but is not possible with the current system.



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“For real time notification to work, we need a real-time tracking of the transactions for all shares of the listed companies, including the employee share option scheme and the latest record of share capital of the companies in the system kept by the regulator,” according to MSWG general manager Iya Rahman.

Currently, the shareholding movement of an investor would be updated in the central depository system (CDS) account only upon transfer of securities to the investor’s account which would take place on T+3 basis.

Notification to the company of a shareholding change is the responsibility of the substantial shareholders while the company is responsible to make such announcement on Bursa Malaysia’s website upon receipt of the notification from the shareholder concerned.

“Even with advanced technologies that allow the regulator to have an effective system to track all transactions and shareholding changes, real-time disclosure remains challenging for investors with multiple accounts in Malaysia as well as in foreign countries; local and foreign nominees accounts, or those dealing with different fund managers or dealers where multiple transfer of funds or securities take place in a day,” adds Iya. [FocusM](#)