MINORITY SHAREHOLERS WATCH GROUP
BADAN PENGAWAS PEMEGANG SAHAM MINORITI BERHAD
(Incorporated in Malaysia – Company Registration No. 200001022382 (524989-M)

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Setting the right precedent on takeover withdrawals

BY **LIEW JIA TENG**

The Covid-19 pandemic is an unprecedented global crisis by any yardstick — one that has given rise to many instances that call for strong judgement by policymakers and regulators alike. The question raised by one corner of the investing fraternity is whether the ongoing outbreak is justification to withdraw a takeover offer.

The Securities Commission of Malaysia's (SC) decision on the request by TA Enterprise Bhd (TAE) to withdraw its conditional voluntary offer (VGO) to privatise its listed property arm, TA Global Bhd (TAG), will not only impact the stakeholders of both companies but also set the tone, if not a precedent, on ongoing corporate deals against the backdrop of the crisis.

Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson is of the view that the withdrawal will not be fair to the minority shareholders as they had taken positions based on the announced VGO.

"To now withdraw the offer is not in the best interest of minority shareholders. There must be certainty as to corporate action announcements made, otherwise investors cannot invest with confidence," he tells The Edge.

He says if a withdrawal is permitted, there is a risk that all announced corporate actions by other public-listed companies (PLCs) may also be withdrawn. This may impact the fairness and orderliness of the capital market, as well as the interests of minority shareholders.

Devanesan, however, acknowledges that the regulator will not be able to please every stakeholder, be they offerors or minority shareholders, whose interests are pulling in opposite directions.

Tiah's privatisation bid

Offeror	TA Enterprise (TAE)
Takeover target	TA Global (TAG)
Offer type	Conditional voluntary takeover
Offer price	28 sen per share
Two options	1) cash consideration
	2) share swap of 0.4211 new TAE share at 66.5 sen
TAE's shareholding in TAG	60.17%
Offer shares	39.83%
Date of proposal	Feb 12
Date of request for withdrawal	May 6
Independent adviser	BDO Capital Consultants

"I suppose the ultimate and most important stakeholder is the capital market — its integrity, its fairness, its orderliness — and the decision taken should tip in favour of a fair and orderly capital market," he stresses.

To recap, TAE had, on Feb 12, proposed to buy out the remaining 39.83% stake it does not already own in TAG for a total of RM593.43 million, or 28 sen apiece. The offer was conditional upon the approval of TAE's shareholders at an extraordinary general meeting to be convened later.

Some three months on, TAE announced that it had, on May 6, asked for the SC's written consent to withdraw its offer. The request to withdraw was made "after taking into consideration, amongst others, the adverse impact of the Covid-19 pandemic to the performance of TAG and its subsidiaries in the financial year ending Dec 31, 2020, following the temporary suspension of operations of several hotels of the TAG Group in the months of March 2020 and April 2020 as announced by TAG on April 13".

"The board [of TAE] is of the view that the ripple effects of the Covid-19 pandemic are still unfolding and the full impact of this pandemic can only be determined after the situation stabilises," TAE's statement to the stock exchange read.

TAE, a listed stockbroking firm ultimately owned by its co-founder Datuk Tony Tiah Thee Kian, currently controls 60.17% of TAG.

TA Global CEO Tiah Joo Kim, who is also Tiah's son, had yet to respond to a request for comment at the time of writing.

Point of no return

Interestingly, TAE had, on April 2, announced that the SC had approved its application for

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'Let the shareholders decide'

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the company and persons acting in concert to purchase TAG shares from the open market during the offer period.

A minority shareholder of TAG opines that the announcement would have led market participants to believe that the offer was not only on track, but also that the offeror remained keen to proactively buy TAG shares while waiting for acceptances.

"The SC must take this [point] into consideration, especially if their request to buy shares from the open market was made after the MCO (Movement Control Order) had been put into effect. They should not be given approval to walk away," the minority shareholder tells The Edge.

Another corporate observer concurs with the view and reckons that following the announcement on April 2, some investors might have bought TAG shares thinking that the takeover offer remained valid.

"When TAE announced that the SC had given them approval to mop up shares on the open market, that [should have been] the last chance for them to pull out, which they didn't," he says.

Meanwhile, a minority shareholder of TAE says the argument that the offer to buy out TAG should be allowed to be withdrawn because it is not in the benefit of TAE minority shareholders does not hold water.

"In fact, it should be put to the test by letting us vote at the EGM. If the SC rejects TAE's request for withdrawal, it still doesn't mean that the offer will go ahead because we [non-interested TAE shareholders] still have to vote on it, but, at least, you should let us make the decision," the shareholder adds.

Put another way, if TAE shareholders vote against the VGO, there would effectively be no offer to TAG.

It remains to be seen if the SC will let TAE shareholders decide on the fate of the offer.

Corporate actions at risk

Whatever happens with that particular VGO, every decision with regard to companies seeking tolerance or leeway because of the tough times due to the Covid-19 pandemic needs to carefully weighed.

MSWG's Devanesan reiterates the danger of setting the wrong type of precedent.

"On the converse, if it were exceptionally good times instead of the pandemic, will offerors voluntarily raise their offer prices? A PLC must take the pains of the downside just as it is prepared to enjoy the joys of the upside. That is market risk," he explains.

He warns that if Covid-19 is allowed to be cited as the reason to withdraw an offer, all announced corporate actions could be at risk.

"The offeror is also impacted by the pandemic, there is no doubt about that, but the question is whether it is impacted enough to warrant a withdrawal of the offer. Is it in such a financially distressed position to justify the withdrawal?" he asks.

Corporate Malaysia last saw a withdrawal of a VGO in 2016 when Nexgram Holdings Bhd withdrew its takeover offer for Ire-Tex Corp Bhd, but it was an entirely different story back then.

The deal was blocked by the SC, which invoked its powers under Section 217(4)(b) of the Capital Markets and Services Act 2007 (CMSA). The SC's concerns was related to the value of Nexgram's assets, noting that its move to dispose of some of its subsidiaries "delays and obstructs the ongoing enquiries by the SC and Bursa Malaysia".

In 2014, the Indian Supreme Court ruled that corporates would not be allowed to withdraw open offers on grounds that the offer had become "uneconomical" or lacked commercial reasonableness. The top court also concluded that any delay by the market regulator Securities and Exchange Board of India in responding to open offer applications cannot be cited by corporates to back out of open offers. E