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

The Edge Malaysia – July 22, 2019

The SGX proposal — offers must be both reasonable and fair

MY Say

BY DEVANESAN EVANSON

Singapore Exchange Regulation (SGX RegCo) on July 11 announced changes to the voluntary delisting rules with immediate effect. One of the changes relates to the exit offer.

It said that in arriving at the new voluntary delisting framework, it was cognisant of the need to ensure that exit offers are fair and reasonable to better align the interests of the offeror and independent shareholders.

Moving forward, the exit offers must now be equal or more than the intrinsic value of the securities.

Singapore's move to ensure that the offer is both fair and reasonable means that bidders will need to pay higher premiums to privatise public listed companies.

The new rules will make the delisting process more difficult as the offerors would have to offer higher prices than in the past as they should be at least the intrinsic value as determined by the independent advisers.

Typically, persistent low valuations on a stock exchange would motivate major shareholders to buy the rest of the company as they may feel that the market is not valuing their companies at the right (higher) price, that it is a bargain at the current prices and that they might as well buy out the company. Typically, it is the better companies that are subject to such buyouts.

Such buyouts result in a loss of good companies from the board of the stock exchange. Thus, a collateral benefit to the exchange is that the new rules would make it more difficult for good companies to be bought out and possibly delisted.

The Singapore bourse will separately announce the bases for determining "fairness and reasonableness" of offers and will work with the relevant industry bodies to develop standards for independent advisers.

Malaysian offers — can be 'not fair' but 'reasonable'?

Independent advisers evaluate privatisation offers based on reasonableness and fairness.

In considering whether an offer is reasonable, the independent advisers would consider matters other than the value of the securities that are the subject of the offer. Such consideration would include, but are not limited to, the existing shareholding of the offeror and the parties acting in concert in the offeree and their ability to pass special resolutions or control the assets of the offeree, the market liquidity of the securities, the existence of available competing offers and the dividend payment history.

If the offeror does not intend to maintain the listing status of the company, then this would be an additional ground for the adviser to recommend acceptance of the offer.

The term "fair" relates to an opinion on the value of the securities (sometimes referred to as the intrinsic value) compared with the price offered for the securities. An offer is deemed fair if the price offered is equal to or greater than the market price and the value of the securities.

The most common recommendations are either that the offer is not fair and not reasonable and therefore should be rejected or that the offer is not fair but reasonable and thus should be accepted.

The recent Yee Lee offer

Yee Lee Corp Bhd's recent proposed privatisation was deemed not fair but reasonable, according to independent adviser Affin Hwang Investment Bank Bhd.

Accordingly, Affin went on to recommend that the shareholders accept the offer.

Such a recommendation can sometimes be puzzling to a minority shareholder — the man in the street. A not fair offer is a not fair offer, so why would anyone be recommended to accept it? Surely that defies logic. It also seems to send a confusing and conflicting message. Shouldn't words have their simple meaning — that not fair simply means not fair? Should we not resort to plain speaking where words are given the literal intended meaning?

To understand the independent adviser's recommendation, one must understand the context and definition given to the words "not fair" and "reasonable".

As stated earlier, the term "fair" relates to an opinion on the value of the offer price compared with the value of the securities. An offer is fair if the price offered is equal to or greater than the market price and the value of the securities.

Affin went on to explain that the offer was deemed not fair as — notwithstanding that the offer price of RM2.33 per share represented a premium to the historical market prices of Yee Lee shares over the past 12 months — the offer price represented a discount of 31.87% to 40.71% to the estimated fair value (intrinsic value) of Yee Lee shares of between RM3.42 and RM3.93. (Some independent advisers do not give a range of fair value prices but provide just one.)

The independent adviser, however, said the offer was reasonable, given that Yee Lee shares had been thinly traded over the past 12 months up to March this year, with an average monthly trading volume of 0.89% of total shares.

What we can learn from the independent adviser's definition of fairness is that it is premised substantially on the estimated fair value of the shares, which in Yee Lee's case was between RM3.42 and RM3.93 compared with the offer price of RM2.33.

Should Malaysia follow SGX RegCo?

SGX RegCo's proposals are worthy of consideration as they will offer a higher exit price to minority shareholders. There will always be minority shareholders who would be satisfied to exit at a lower "not fair" price and they may feel that SGX RegCo's proposals will deprive them of the opportunity to exit. It is difficult to please all minority shareholders as each has 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 SGX RegCo's proposals do exactly that.

An argument against SGX RegCo's proposals is that it would be more difficult for offerors to privatise a listed company and thus, there may be less privatisation offers or exercises in the future. This essentially means that there will be fewer exit opportunities for minority shareholders.

However, the whole premise of a listing is to stay listed and not to one day be privatised. Shareholders should not list a company with the ultimate objective of privatising it — privatisation is an incidental move made attractive due to the offerors' objectives and the prevailing circumstances. The idea behind going for listing should be to stay listed in order to enhance long-term shareholder value.

Furthermore, minority shareholders will always have an exit opportunity — that is, at the prevailing market price.

Meanwhile, a disadvantage of an increase in privatisations is that the exchange would lose quality listed companies — as these are the most likely to be privatised — and this, in turn, would result in fewer quality companies remaining listed on the bourse. In Singapore, 14 companies are undergoing privatisation or are in the process of being bought out this year, the highest number since 2016, according to a July 2 report by DBS Group Holdings. We are seeing an increase in privatisations in Malaysia too.

Minority shareholders' perspective

To draw a comparison, if Yee Lee's case were considered in the proposed scenario of SGX RegCo, the offer price would have to be at least between RM3.42 and RM3.93 instead of RM2.33 (incidentally, the Yee Lee offer was not successful). Thus, SGX RegCo's proposed rules on privatisation that require the offer to be fair will ensure that shareholders get a higher price.

With SGX RegCo's new voluntary delisting framework, privatisation offers would be more difficult as the offeror would be forced to offer a higher price to satisfy the fair threshold of at least being equal to the fair (intrinsic) value, and there would be greater alignment of minority shareholders' interest with that of the offeror.

One thing is for sure, the proviso for an offer to be both reasonable and fair before independent advisers can recommend to the shareholders to accept the offer would put a big smile on the faces of minority shareholders as they would be getting a "bigger bang for their buck". E

Devanesan Evanson is CEO of the Minority Shareholders Watch Group