

Recent development in privatisation of listed companies in Malaysia



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There are several routes by which a listed entity can be privatised in Malaysia. Of these, the easiest way – disposal of assets – has just been made a little harder in terms of securing shareholders' approval. However this does not seem to have dampened market sentiments which is good news for corporate Malaysia.

Asset disposal

Privatisation by asset disposal has been the preferred route, given the lower threshold of approval needed to succeed. A simple majority approval by shareholders as mandated under section 132C of the CA was all that was needed for the entity to dispose all its assets and undertakings. But Securities Commission Malaysia (SC) and Bursa Malaysia Securities Berhad (Bursa Securities) recently announced and implemented changes to regulations applicable to privatisation via the asset disposal route. Among other things the shareholders' approval threshold was raised to at least 75 percent from a simple majority. This immediately plugged an anomaly given that the other routes already required 75 percent majority approval. In the case of a take-over offer – another route to privatisation – at least 90 percent approval is needed to succeed using the 'squeeze out' provision. The move also aligned Malaysia's asset disposal route with those in several other jurisdictions like Hong Kong, Thailand and New Zealand.

Effects on market sentiment

Before this revision to the asset disposal route, SC and Bursa Securities had issued a joint consultation paper inviting comments on proposed changes. Corporate Malaysia was concerned with the increased threshold to 75 percent but reserved its most strident objections for a concurrent condition. This condition required the listed entity to concurrently undertake a proposal to acquire new assets to ensure its continued listing or have the acquirer of

the asset disposal make an exit offer to shareholders of the listed entity in compliance with de-listing exit offers under Bursa Securities regulations.

Two other proposals which did not materialise were the 50 percent shareholders present and voting rule and a veto right by 10 percent dissenting shareholders, which many felt would unduly shift the balance of corporate control to minority shareholders.

Happily, the outcome after the joint consultation process is a compromise which rejected the more critical proposals while retaining enough to appease both sides of the divide between corporate Malaysia and minority interests.

Since the new regulations came into effect, several new asset disposal proposals have been announced, which indicates that sentiments have not been unduly dampened and a good balance might have been struck.

The new regulations

The revised regulations in brief:

- Increased shareholders' approval threshold from simple majority to 75 percent
- Appointment of an independent advisor to advise shareholders as to the fairness and reasonableness of the asset disposal
- Information on utilization of proceeds from the asset disposal and future plans of the listed entity are to be provided to the shareholders together with a statement of whether it intends to maintain its listing status

These changes have been embodied in the relevant chapters of the Listing Requirements of Bursa Securities with effect from 28 January 2011.

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