Market-rule flexibility for PLCs a double-edged sword

BY **LIEW JIA TENG**

Questions and concerns have been raised over whether all companies should benefit from the relief measures announced by Bursa Malaysia recently.

One of the flexibilities is the extension of the timeframe for the submission of the regularisation plan for Practice Note 17 (PN17) and Guidance Note 3 (GN3) companies, from the existing 12 months to 24 months.

All listed companies have also been granted an automatic one-month extension for the issuance of quarterly and annual reports for the Main and ACE Markets, as well as semi-annual and annual audited financial statements for the LEAP Market, that are due on March 31 and April 30.

These measures are designed to help lessen the financial burden of listed companies, and provide them with greater flexibility in navigating the challenging period posed by the Covid-19 pandemic.

Notably, the Securities Commission Malaysia (SC) had in mid-April issued a guideline to ensure companies can continue to meet their obligations under the law and to shareholders by convening fully virtual general meetings during the Movement Control Order (MCO) period.

It had also announced that Bursa would temporarily suspend PN17 or GN3 classification for companies whose financial positions slip into the status.

Devanesan: Desperate times need tolerant measures

Lim says the measure allows companies and investors to ride out the volatility

Heng says the extension is an opportunity to sniff out genuine white knights

BURSA MALAYSIA

Relief measures to alleviate the impact of Covid-19 on capital market players

1	Rebate of 50% of annual listing fees for year 2020 for selected listed issuers
2	Extension of time to submit regularisation plan for PN17 and GN3 companies
3	Automatic one-month extension to submit financial statements
4	Greater flexibility for brokers to manage margin accounts
5	Expanding the list of collaterals for purposes of margin financing
6	Extension of time for submission of CDS transaction forms to Bursa Malaysia

Breathing space for distressed companies

Over the years, many in the investing fraternity have been debating whether PN17 and GN3 companies should be delisted sooner rather than later.

The idea is to prevent market manipulators, front runners and insiders from making quick gains at the expense of minority shareholders, who may still be hoping for a white knight to emerge.

On the other hand, regulators should not deny these beleaguered companies a chance of revival by forcing them to delist.

The recent extension of time for companies to submit their regularisation plan has made this a topic of debate again.

Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson believes the measure is a step in the right direction as affected public listed companies (PLCs) are facing an extraordinary situation amid the Covid-19 pandemic, coupled with the MCO.

"Some existing PLCs may slip into the PN17 or GN3 classification, not due to ordinary circumstances, but due to the extraordinary circumstances. Desperate times need tolerant measures. The extension of time is recognition of the extraordinary situation and the extension is the provision of a meaningful, responsible and relevant response by the regulators," he tells *The Edge*.

Devanesan acknowledges that the PN17 or GN3 classifications in themselves attract a certain level of disdain from investors.

However, the risk that some PN17 PLCs may use the extended timeframe for regularisation to lure "new victims" is not a material risk as the risk is there regardless of the timeframe for regularisation.

"The responsibility of not falling victim should be placed on the shareholders; they know it is a PN17 company and as such, is a financially distressed PLC, and if they still want to invest, then they are acting according to their risk appetite; caveat emptor should apply," he adds.

Baker Tilly Malaysia chief operating officer Joe Heng is of the view that the time extension presents an opportunity for the directors of PN17 and GN3 companies to sniff out genuine white knights for potential joint ventures or potential acquisition of a profitable business that yields the best return to its shareholders.

"Without this extension, most of them will likely be faced with evaluating a limited number of opportunities, which may or may not be the best option for the company. The number of options available has also decreased with the impact of Covid-19 on many potential white knights," he tells *The Edge*.

Heng, who is also a partner of audit and assurance at Baker Tilly Malaysia, adds that companies that may have been good potential white knights before the crisis would need to be reassessed in order to evaluate the impact that Covid-19 has on them and whether it is still feasible to include them in the PN17 or GN3 companies' regularisation plans.

"Also, due to time constraints in the preparation of its regularisation plan, the directors may be rushed into proceeding with the transaction without performing extensive and complete due diligence, which will increase the risk of the 'regularised' company not providing the returns expected of its investors," he says.

Extension to submit financial statements

With the automatic one-month extension to submit financial statements, some quarters are wondering how companies will ensure that shareholders and investors will continue to receive information in a timely manner.

Should companies in the essential services, which are allowed to operate during the MCO period, be given the one-month extension too?

While Institute of Corporate Directors Malaysia (ICDM) president and CEO Michele Kythe Lim expects the postponement of the financial reporting to draw mixed reactions from the investor and business communities, she says the relief measure should be viewed positively as it allows companies and investors to ride out the volatility.

"This measure will provide the time needed for the current high-volatility environment to settle and adjust whilst the negative impact can be balanced out."

Lim acknowledges that the postponement might initially result in a negative reaction from investors, especially for sectors that were highly impacted by the Covid-19 pandemic, such as tourism and hospitality, aviation and oil and gas.

Hence, companies should take a proactive approach to engage and communicate with investors and stakeholders to offset any negative repercussions.

"More time will allow a better business continuity and communication plan to be developed, which would help mitigate market overreaction. Companies, now more so than ever, need to communicate their business continuity plan or crisis management plan to mitigate risks and ride out the current crisis," she says.

Lim notes that the pandemic is unprecedented and affects businesses across all sectors. While essential services businesses remain operational during this period, their operations and resources are limited.

"These businesses were forced to spend more time and resources to pivot their business models and mitigate against any possible risks amidst this difficult period. As such, it is reasonable that the one-month extension of financial reporting also applies to these companies," she says.

MSWG's Devanesan says the disadvantage of the extended timeline is that the financial statements are less timely and investors have to make informed investment decisions based on dated or delayed financial statements.

However, the granting of the extension makes sense as the MCO discourages non-essential activities and restricts people movement.

"The audited financial statements may need finance staff to travel to the office to produce the draft financial statements and external auditors to audit them, often at the client's premises. Given the pandemic and the MCO, the one-month extension is not unreasonable and is a fair trade-off to receiving financial statements a month earlier," he says.

Devanesan adds that during the MCO staff of a company in the essential services should be engaged in providing the service and not churning out financial statements and getting them audited.

Virtual AGMs a new normal

While the recent virtual annual general meetings (AGMs) convened by Ranhill Holdings Bhd and Bursa Malaysia Bhd have garnered mostly positive response, there were complaints about the short notice, proxies not being able to join the meeting, as well as the older shareholders not being familiar with technology.

Given this unprecedented situation, should companies wait and convene their AGMs only when the MCO is lifted? Or should investors be savvier and accept this new normal of virtual AGMs?

Baker Tilly's Heng predicts that even after the MCO is lifted, Malaysians will still be under very strict social distancing rules for at least the next six months, which will probably prevent large gatherings such as AGMs from being held.

"I do not think we realise the power of the technology we have in our hands, that is, our smartphones. If you know how to operate a smartphone, you should not have any problems attending a virtual AGM, even for the older folks. We need to change and embrace these changes as this is the new normal," he says.

ICDM's Lim says the new normal will see a transition period, especially for those who are less tech-savvy. But in order to ensure the success of AGMs, both shareholders and companies must work together.

"The company should provide guidance and support as well as give sufficient notice to help investors navigate the digital and technological systems or platforms by making available helplines for attendees. Meanwhile, investors should also proactively seek knowledge or training in operating these technology platforms." E