

Equity Beat

Banking sector

Maintain Overweight

Proposed changes to ruling for asset disposal of listed companies. Securities Commission and Bursa Malaysia Securities have jointly released a public consultation paper (No. 3/2010) recently on privatisation of listed companies via asset disposal. The proposals addressed the disparity of methods for asset disposal between section 132C of Companies Act, which required only a simple majority (more than 50% of shareholder present and voting at general meeting) with that of Takeover Code which required 90% or more voting shares for a buyer to take over a listed company and delist it.

The proposed changes were aimed at providing protection to minority shareholders. The changes are summarised below:

Highlights of key changes proposed for disposal of assets

EXISTING REQUIREMENT	PROPOSED CHANGES
Under section 132C of Companies Act, an asset may be disposed off if approved by a simple majority (i.e. more than 50%) of the shareholders present and voting at the general meeting.	<ul style="list-style-type: none"> i. Disposal exercise must be approved by more than 50% in number and more than 75% in value of shareholders at the general meeting and ii. Not more than 10% of the value of shareholders objects to the disposal. Additional requirements to the above : iii. The listed company has to appoint independent advisor (IA) to comment if the asset disposal is fair and reasonable and advise if shareholders should vote in favour of the asset disposal. iv. The company must at the same time undertake a proposal to acquire a new asset which complies with the admission requirements under SC and Bursa Securities Guidelines as it were a new listing application. The plan must be approved by SC (for companies listed on Main Market) and Bursa (for companies listed on ACE Market) and approved by shareholders at the general meeting for asset disposal. v. If there is no plan to acquire new asset, the acquirer of the asset disposal must make an exit offer to acquire 90% or more shares of the listed company to delist the company disposing the asset. Otherwise, if the 90% threshold level is not achieved, the company will remain listed as Cash Company (company with 70% or more of cash or short term investments) and would need to comply with the requirements relating to Cash Company.

Chart 1: Existing requirement for asset disposal

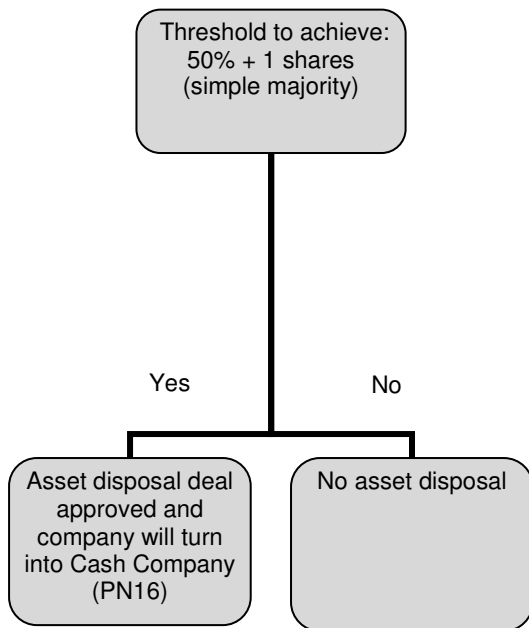
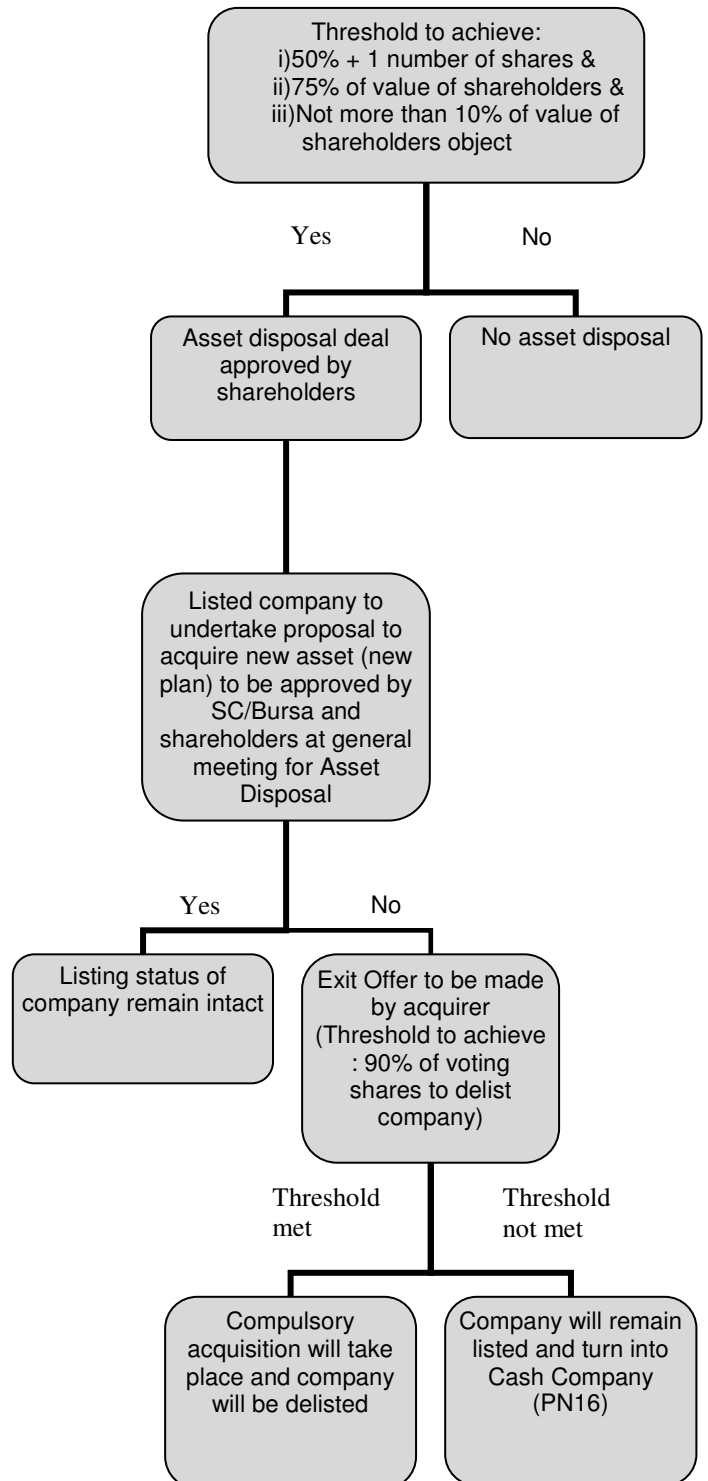


Chart 2: Proposed change in ruling for asset disposal



The departure points of the new policy. The main differences under the new policy are:

- Conditions are tighter now for potential acquirers to buy over assets of listed companies via the Companies Act. Apart from requiring >50% of number of shareholders and >75% in value of shareholders to approve the asset disposal, minority interest shareholders can now block the exercise for asset disposal and privatisation from going through with at least 10% of the value of shareholders opposing the deal.
- Seller of asset must justify listing status: The asset disposal has to go through several additional stages compared to the existing requirement (See Chart 1 and 2 above). Under the new proposal, in a situation where the listed company disposing asset is not undertaking a proposal to acquire a new core business/asset, the buyer of assets needs to also make an exit offer to delist the company selling the assets (seller). An exit offer would require the buyer to acquire at least 90% (threshold level) of the voting shares of the seller to trigger a compulsory acquisition and delist it. Otherwise, the selling company will remain listed as Cash Company. Cash Company will then have to comply with Practice Note 16 (PN16) or Guidance Note 3 of Bursa Malaysia's listing requirements. Under the proposals, exit offers will not be subjected to a minimum level of acceptance. However, if the threshold level cannot be met i.e. buyer acquiring less than 90% of voting shares, the buyer could be stuck with eventually holding shares of Cash Company after paying monies to acquire the said voting shares.
- Better protection for minorities: Based on the Cash Company framework, the company in this scenario has to submit a proposal to SC (for Main Market listing companies) and Bursa Securities (for ACE Market companies) to acquire a new core business within 12 months from being notified as a Cash Company. Pursuant to paragraph 8.03 of the listing requirements, only if the Cash Company fails to submit or implement a proposal to remove it from a Cash Company status, then the monies in the Cash Company can be distributed to its shareholders on a pro-rata basis and that the Cash Company will be delisted. In contrast, the current practice is relatively straight forward and requires only a simple majority (50% + 1 share) of the shareholders of the seller to be present and voting at the general meeting to approve the asset disposal. When the simple majority condition is met, asset can be taken out of the listed company. In this situation, no exit offer is required to be made. All existing shareholders of the company disposing the assets will remain as shareholders in the company which will then be turn into Cash Company. As comparison, the buyer will not be caught in a position as mentioned above.

Acquirers of assets may opt for takeover code. Under the new ruling, the future acquisition of assets of listed companies will likely go through the Malaysian Code on Take-Overs and Merger 1998 (Code) route. This is to avoid going through the lengthy process above. The company will likely undertake a voluntary general offer if existing shareholdings is less than 33% or a mandatory general offer (if > 33%) to acquire shares of the listed company disposing assets.

This is particularly so if the buyer is confident of acquiring more than 75% of the voting shares of the listed company. We believe that once the buyer acquires more than 75% of voting shares, the listed company will not be in compliance with the requirement of at least 25% of total shares in the hands of public shareholders (shareholding spread requirement). Hence, it is likely that the company will be delisted and when this happens, the company will not be required to follow the above proposed changes for assets disposal which were for listed companies. The company could then revert to Section 132C of Companies Act for the disposal of remaining assets.

Likely impact to banking sector if proposed changes implemented. The proposed changes is likely to derail the plan by Hong Leong to acquire the asset and liabilities of EON Cap. Primus Partners (HK) Ltd holds a 20.2% stake in EON Cap at an average cost of RM9.55 per share, much higher compared to other shareholders. The asset sale can be blocked by Primus with the new proposal that 10% or more of the value of shareholding can object to the sale. In the event that this new ruling comes into effect, we believe that the perceived advantage of Rin Kin Mei with the resignation of four directors and the appointment of 7 new directors which are friendly parties to him (still pending Bank Negara's approval) to pave way and revive the offer by Hong Leong Bank to acquire Eon Cap shares would be nullified.

Overall, we believe that the proposed changes could result in mergers and acquisitions more difficult to be materialised unless the pricing of offer is very attractive, resulting in not more than 10% objecting to the sale of assets. If this happens, offers could be pricey and will set higher benchmark for pricing of offers for other mergers and acquisitions to take place (if any).

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STOCK RECOMMENDATIONS

BUY	Total return is expected to be >15% over the next 12 months.
TRADING BUY	Stock price is expected to <i>rise</i> by >15% within 3-months after a Trading Buy rating has been assigned due to positive newsflow.
NEUTRAL	Total return is expected to be between -15% and +15% over the next 12 months.
SELL	Total return is expected to be <15% over the next 12 months.
TRADING SELL	Stock price is expected to <i>fall</i> by >15% within 3-months after a Trading Sell rating has been assigned due to negative newsflow.

SECTOR RECOMMENDATIONS

OVERWEIGHT	The sector is expected to outperform the overall market over the next 12 months.
NEUTRAL	The sector is to perform in line with the overall market over the next 12 months.
UNDERWEIGHT	The sector is expected to underperform the overall market over the next 12 months.