

MINORITY SHAREHOLDERS IN MALAYSIA: IS THEIR RIGHT PROTECTED?

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Abstract

Issues on corporate governance can be deliberate from various dimensions. This study explores the issue of governance related to the minority shareholders' in Malaysia. The objective of this study is to describe the protection pertaining to the right of minority shareholders' group through shareholder activism in Malaysia. This study employs a case study technique on two corporate cases selected from banking industry for the year 2008 and 2010. The observation emphasizes on shareholder activism initiated by the Minority Shareholder Watchdog Group (MSWG). It is summarizes that retail and dispersed shareholders in Malaysia are moving towards an improved level of rights' protection due to shareholder activism. As far as the minority's right is concern, further improvement is needed to strengthen current legislation framework despite the existence of shareholder activism by MSWG.

Keyword: corporate governance, shareholder activism, minority shareholder, acquisition.

Abstrak

Isu pengelolaan perusahaan dapat dipertimbangkan dari berbagai dimensi. Studi ini meneliti masalah pemerintahan yang terkait dengan pemegang saham minoritas di Malaysia. Tujuan dari penelitian ini adalah untuk menjelaskan perlindungan yang berkaitan dengan hak kelompok minoritas pemegang saham melalui aktivisme pemegang saham di Malaysia. Penelitian ini menggunakan teknik studi kasus pada dua kasus perusahaan yang dipilih dari industri perbankan selama tahun 2008 dan 2010. Pengamatan menekankan pada aktivisme pemegang saham yang diprakarsai oleh Pemegang Saham Minoritas Watchdog Group (MSWG). Hal ini merangkum bahwa para pemegang saham retail dan tersebar di Malaysia sedang bergerak menuju tingkat peningkatan perlindungan hak-hak karena aktivisme pemegang saham. Selama hak minoritas diperhatikan, perbaikan lebih lanjut diperlukan untuk memperkuat kerangka undang-undang saat meskipun adanya aktivisme pemegang saham dengan MSWG.

Kata kunci: corporate governance, shareholder activism, minority shareholder, acquisition

JEL Classification: G32

1. Research Background

Corporate governance emerged as important issue since the aftermath of 1997 Asian economic crisis (Backman 2006). The severe economic downturn has contributed towards the increasing effort pertaining to the improvement and upgrading the governance structure in all countries. As far as Malaysia corporate governance reformation is concerned, three sources have significantly contribute to the reformation activity namely the Malaysia Code on Corporate Governance (MCCG) by

Finance Committee on Corporate Governance, Capital Market Master Plan (CMP) by Securities Commission and Financial sector Master Plan (FSMP) by Bank Negara Malaysia. Specific plans and initiatives have been identified and implemented through the respective corporate governance sources and monitor by the relevant authorities. Furthermore, specific entities such as Malaysian Institute of Corporate Governance (MICG) and the Minority Shareholders Watchdog Group (MSWG) had also been established. For example, the MICG was given a mandate to raise awareness and to promote corporate governance (CG) best practices in Malaysia.

Malaysia has been practicing a combined CG mechanisms consist of the internal (control model) and external (market model) mechanisms (Abdul Hadi et. al 2010). According to Abdul Hadi et al (2010), Malaysia CG mechanisms are considered as comprehensive and have covered a wide spectrum of internal and external governance mechanisms. Thus, this article has extends CG lenses to a different scope of discussion in order to understand the protection coverage beyond the niche of general description or undifferentiated interest groups. In terms of equity ownership, companies' shareholders can be classifies into two groups according to the percentage of their equity ownership, which was recognized as the majority and the minority groups. As the result, CG issue can be deliberated from various perspectives which involve either the major or the minority shareholders' groups. This article has explores the corporate governance in relation to the minority shareholders' group in Malaysia. This is in line with one of the CG reformation recommendations as been identified in CMP, which contain the agenda for strengthening the minority shareholders rights. Thus, the objective of this article is to understand the current state of protection for the minority shareholders through qualitative description on shareholder activism as currently practices in Malaysia. This study employs a case study technique by focusing on merger and take-over cases which involve Malaysian banks in 2008 and 2010. From the analysis, a combined insights regarding protection of minority shareholders will be derive. This article has scopes its discussion towards the shareholder activism conducted by the Minority Shareholder Watchdog Group (MSWG).

2. Literature Review

2.1. Corporate Governance

Globalization has allows freedom in capital movement throughout the world. Domestic and foreign investment is particularly important to provide sufficient resources for the development process. Thus, the ability in providing reasonable assurance of the investment accountability and returns has become basis in rational investment decision-making. Investors' confidence towards the prevailing structures of corporate governance and practices would determine their willingness to participate in particular capital market. This relationship can be learnt from the evolution of US corporate regulations way back in 1930s. Before the securities' market crash in 1929, there was relatively little support for government regulation in US securities markets due to business deregulation (Sridharan et al 2002). However, after the 1929 market crash, public confidence in securities market had declined. As the result, US government had introduced the Securities Act in 1933 and Securities Exchange Act in 1934 in order to restore public's faith by providing the capital market with structure and oversight mechanism. In 2002, the Congress passed a new act known as the Sarbanes Oxley Act due to the sudden collapsed of Enron Corporation in 2001. The Sarbanes Oxley Act 2002 had been enacted in order to protect public investors and to restore investors' confidence through improvement in financial reporting transparency. Thus, protection of investors' right and investment is becoming increasingly important in the era of globalization. Furthermore, corporate governance should also extent its scope towards protecting and preserving the minority's interest.