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Avenue's rejection good sign of corporate governance?

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IN Malaysia, disagreements rarely surface after negotiations are over and a corporate proposal put forward, so Avenue Assets Bhd's decision to reject Maybank Bhd's offer for Phileo Allied Bhd has created a novel situation.

It is novel because investors are used to the sad idea that deals are made in smoke-filled rooms, where controlling shareholders' interests are paramount. The potential for rejection is usually small once boardroom support is firm and a proposal presented, especially when the two parties are on opposite ends of the scale in terms of size, as are Maybank and Phileo Allied.

For once, though, the situation is different.

Avenue Assets is Phileo Allied's single largest shareholder, and has the most to make or lose from the merger. But the impact of the deal will also touch investors in healthcare group Pantai Holdings Bhd and construction materials group Tongkah Holdings Bhd - the main shareholders of Avenue Assets.

Ultimately, this pits Pantai and Tongkah's controlling shareholder, businessman Encik Mokhzani Mahathir, against Maybank's main shareholder and one of the largest institutional investors in the country, Permodalan Nasional Bhd.

Interestingly, minority shareholders in Lion Corp Bhd are hoping his brother, Encik Mirzan Mahathir, will similarly square off with the Lion group's Tan Sri William Cheng over a deal that will dilute their interests greatly.

In other jurisdictions, Avenue Assets would normally say its piece only after an offer is made, an indication Phileo Allied's board very properly negotiated with Maybank without any influence from an interested party.

If this is indeed the case, it is a good sign for corporate governance in Malaysia.

However, most quarters prefer the theory that Avenue Assets changed its mind, and now wishes to keep Phileo Allied Securities, bringing to four the number of stockbroking firms it will own. Others think it is a tactic to get a better price, a move which would benefit all those who hold shares in Phileo Allied.

Avenue Assets argues that Maybank's offer to swap shares at 1.2 times Phileo Allied's shareholders funds "grossly undervalues" the company, and that its board has a fiduciary duty to shareholders to obtain the best possible price for the banking group.

Analysts may not agree with its first point. Many think the offer is fair, taking into account Phileo Allied Bank's net tangible asset (NTA) adjusted for provisions for non-performing loans and suchlike, and not the company's unadjusted NTA. Moreover, they say, the bank makes provisions only after six months of non-performance, making it less conservative than banks that do so after three months.

But Avenue Assets' second point - the fiduciary duty it owes to its shareholders - is an unusual one for a Malaysian company to make.

Many company directors' concept of fiduciary duty rarely goes beyond learning to spell it, leaving minority shareholders and - more importantly - companies themselves at the mercy of the interests they represent.

It is heartening in an odd sort of way that this central principle of corporate governance has helped a company turn down a deal in the hope of

getting better returns for its shareholders.
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