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Corporate M&A

Second Edition

Malaysia
Shearn Delamore & Co

chambers.com

2019

Law and Practice

Contributed by Shearn Delamore & Co

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Shearn Delamore & Co has more than 100 lawyers and 290 support staff located in the heart of Kuala Lumpur. Its Corporate/M&A practice group is one of the pioneer practice groups of its kind in Malaysia, having crafted and worked on many transactions that have shaped the corporate and commercial landscape of the country and championed many practice-area firsts. The firm's corporate practice is known in the market for its deep experience and proven ability to handle challenging and critical cutting-edge transactions and structuring work. Its multi-disciplinary teams are skilled in areas including M&A and divestments, foreign investment and joint ventures, private equity, LBOs, due diligence, stock exchange listings and securities offerings, licensing and regulatory approvals/advice, environmental law, exchange control regulations, insurance and financial institutions regulations, consumer law, stamp duty, insolvency and liquidation, among many other areas.

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1. Trends

1.1 M&A Market
There was a slowdown in M&A activity in Malaysia in 2018. Based on the Transaction Trail Annual Reports 2017 and 2018 issued by Duff & Phelps, the total M&A deals in 2017 was 408, representing a value of USD17.6 billion, whereas the total number of M&A deals in 2018 was 338, representing a value of USD11.4 billion.

The largest M&A transaction in 2018 accounted for USD2 billion, which is approximately USD5 billion shy of the record level M&A transaction in 2017 at USD7 billion. Overall, total inbound M&A activity and domestic M&A activity decreased, while the deal value for total outbound M&A activity remained the same in 2018 compared to 2017.

Notwithstanding the above, there continues to be a steady stream of inbound investment from north Asia in automotive, education, logistics, e-commerce, fast-moving consumer goods (FMCG), oil and gas services as well as domestic M&A activity in various industry sectors in the manufacturing sector.

1.2 Key Trends
In 2017, there was a positive trend in overall M&A transaction activity, particularly in the energy sector. According to the Transaction Trail Annual Report 2017, the top five largest M&A transactions are in the energy, materials, property and utilities sectors.

Following the 14th general election in Malaysia, where there was a change in the ruling Government for the first time since independence (ie, 1957), there was initially a shroud of uncertainty among investors in M&A activities in and into Malaysia, primarily in the infrastructure and construction sectors. However, an improvement in the momentum is expected in 2019.

The M&A focus in 2018 was in the healthcare, energy and utility sectors.

1.3 Key Industries
According to the Transaction Trail Annual Reports 2017 and 2018, healthcare and real estate sectors in Malaysia experienced high value M&A activity in 2018, whereas the energy, telecommunications and real estate sectors experienced high value M&A activity in 2017.

2. Overview of Regulatory Field

2.1 Acquiring a Company
In general, a share acquisition purchase would be used to accumulate interest in a company. An acquirer would have to be mindful of shareholding reporting/disclosure requirements and takeover thresholds under applicable law.

2.2 Primary Regulators
The primary regulators for M&A activity in Malaysia are:

- the Securities Commission that regulates the Malaysian capital market and is responsible for enforcing Malaysian securities laws and regulations including takeovers and mergers;
- the Companies Commission of Malaysia which administers and enforces Malaysian company laws such as the Companies Act 2016;
- Bursa Malaysia Securities Berhad, which is the principal Malaysian stock exchange; and
- the relevant sectoral regulators that are responsible for issuing operating licences or approvals across different industry sectors where certain requirements, eg, prior notification or approval, may be required in connection with a M&A transaction.

2.3 Restrictions on Foreign Investments
In general, there are no restrictions on the foreign ownership of shares in Malaysian companies, following the abolition of the Guidelines on the Acquisition of Interests, Mergers and Take-overs by Local and Foreign Interests in 2009. However, certain sectorial regulations remain where foreign equity conditions may be imposed and these include regulated sectors, eg, aviation, banking, insurance, energy, telecommunications and oil and gas.

2.4 Antitrust Regulations
The competition regulation in Malaysia is primarily found in the Competition Act 2010. There are generally no merger notification or approval requirements in the Act, although there are specific sectorial/industry regulations, eg, in the aviation services sector and the communications and multimedia sector, which impose the notification or approval requirements.

Yet, the Malaysia Competition Commission, the primary regulator under the Competition Act 2010, has indicated that a merger control regime may be introduced, but no indication has been given as to when that will come into force.

2.5 Labour Law Regulations
Acquirers should think about employees within the scope of the Employment Act 1955, as they are accorded statutory protection. The Act encompasses employees earning a monthly salary not exceeding MYR2,000. Employees engaged in manual labour or the supervision of employees performing manual labour would fall within the Employment Act 1955, irrespective of their monthly salaries.

In respect of employees, where the termination of services of the employee is attributed to the change in business own-

ership of the business, the employee is entitled to a notice of termination of service as well as the payment of statutory termination benefits if offers of continued employment on terms no less favourable are not extended. The statutory termination benefits range between 10 and 20 days' wages for every year of service, and notice of termination ranges between four and eight weeks, depending on the tenure of employment. In the event more favourable terms are extended, those terms will prevail.

For employees outside the scope of the Employment Act 1955, the obligation to pay termination benefits is governed by their respective employment contracts and the general principles of Malaysian contract law.

There is no automatic transfer of employees in the case of a change of business ownership. The movement of employees to the acquirer can only be effected with the consent of the employees. However, if the transaction is confined to a share sale, this will not result in a change of employer or the terms and conditions of employment for the employees.

The above is subject to any collective bargaining agreement a company may have entered into with a union, which may contain a change of shareholding provisions.

2.6 National Security Review

At present, there is no national security review of acquisitions in Malaysia. However, Government agencies implement policies in certain industries by imposing equity conditions/restrictions. This is discussed in **2.3 Restrictions on Foreign Investments**, above.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

The Companies Act 2016 repealed the Companies Act 1965, with general effect from the end of January 2017. The key changes include:

- the abolition of par or nominal value of shares;
- a private company limited by shares can be formed by a single shareholder and with only one resident director;
- a private company limited by shares may or may not have a constitution;
- the introduction of mandatory solvency statements by directors where directors are required to give solvency statement for various corporate exercises;
- the holding of an annual general meeting is no longer mandatory for private companies. Only public companies are required to hold an annual general meeting in every calendar year.

The Malaysian Code on Take-overs 2010 was revoked and replaced by the Malaysian Code on Take-overs and Mergers 2016 (the Code). The Rules on Take-overs, Mergers and Compulsory Acquisition (the Rules) were also issued to supplement the Code. The key changes to the Code and the Rules include the following:

- unlisted public companies with net assets of MYR15 million or more and with more than 50 shareholders are subject to the Code;
- the requirement of a minimum 50% shareholding for parties intending to initiate a takeover scheme has been removed;
- the period of acceptance in respect of a voluntary take-over offer has been extended from 74 days to 95 days from the dispatch of the offer document; and
- there are now minimum offer prices for mandatory and voluntary take-over prescribed under the Rules.

3.2 Significant Changes to Takeover Law

See **3.1 Significant Court Decisions or Legal Developments**, above. Some provisions in the Rules were subsequently revised in 2017.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

It is possible for a bidder to build a stake in the target entity prior to launching an offer, provided the bidder complies with shareholding reporting/disclosure requirements. However, in building a stake prior to launching an offer, bidders should take note of the thresholds that may trigger a mandatory offer under the Code.

4.2 Material Shareholding Disclosure Threshold

In general, if a bidder has an interest of 5% or more in the voting shares of a listed company, the bidder would be regarded as a substantial shareholder and must comply with the disclosure requirements, which include providing notice to the company and the Companies Commission of Malaysia when he or she becomes a substantial shareholder and any change in its substantial shareholding.

4.3 Hurdles to Stakebuilding

A company may introduce different rules in its constitution but such rules cannot be inconsistent with the minimum requirements set by the applicable law.

4.4 Dealings in Derivatives

Dealings in derivatives are allowed. Persons who acquire or write any option or derivative that causes them to have a long economic exposure (whether absolute or conditional) to changes in the price of securities will be treated as having acquired those securities.

If the threshold that triggers a mandatory offer is likely to be breached as a result of the acquirer having procured such an option or derivative, or securities underlying options or derivatives, the Securities Commission must be consulted in advance to decide if a mandatory offer is required and, if so, the terms of the offer to be made.

4.5 Filing/Reporting Obligations

The Capital Markets and Services Act 2007 prescribes statutory requirements for the reporting of over-the-counter derivatives to a trade repository in Malaysia. Persons dealing in derivatives, other than the Central Bank of Malaysia and the Government of Malaysia, are required to report to a trade repository information as may be specified by the Securities Commission, including any amendment, modification, variation or changes to the information. However, as far as is known, the Securities Commission has yet to establish the trade repository or publish the rules and procedures applicable to the reporting obligations.

There are no filing/reporting obligations to the Malaysian Competition Commission for dealings in derivatives.

4.6 Transparency

Where the target entity is a listed company and the acquirer has triggered a general offer, the acquirer has to disclose their intentions with regard to the following in the offer document:

- the continuation of the business of the company;
- any major changes to be introduced in the business of the company, eg, plans to liquidate the target, sell the assets or re-deploy the fixed assets of the company, and make any other major change in the business of the company; and
- the continued employment of the employees of the company.

Where the acquirer is acquiring shares of a private company or shares of a listed company (but without triggering any obligation to undertake a general offer), in general, no public disclosure is required as to the purpose of their acquisition or their intention regarding control of the company.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

The target entity must make an announcement when:

- the board of the target entity receives notification of a firm intention to make an offer from the bidder;
- the target entity is the subject of rumour or speculation about a possible offer, whether or not there is a firm intention to make an offer;
- there is undue movement in target entity's share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;
- negotiations or discussions between the bidder or potential bidder and the target entity are about to be extended to include more than a very restricted number of people; or
- the board of the target entity is aware that there are discussions between a potential bidder and the shareholder(s) holding more than 33% of the voting shares of target or when the board of the target is seeking potential bidders, and:
  (a) the target entity is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or
  (b) more than a very restricted number of potential purchasers or bidders are about to be approached.

5.2 Market Practice on Timing

In general, the market practice on the timing of disclosure does not usually deviate from the relevant legal requirements.

5.3 Scope of Due Diligence

In the context of a legal due diligence on a listed company and the information that can be disclosed, all parties should be mindful at all times of the prohibitions on insider trading and the obligation of the listed company to disclose material information under the applicable listing requirements, eg, price-sensitive information that is not available in the public domain.

In general, the scope of due diligence is, and should be, generally limited to publicly available information. However, the target entity may at its discretion provide additional information and documents for bidders as long as any price-sensitive information is not included. In the course of due diligence where price-sensitive information is disclosed, the target entity would have to make an immediate announcement in accordance with the applicable listing requirements.

5.4 Standstills or Exclusivity

Standstill agreements are uncommon, whereas exclusivity agreements (which are legally binding) are often entered into in Malaysia prior to the parties undertaking any formal negotiations or entering into definitive agreements.

5.5 Definitive Agreements

Generally, a tender offer may take the form of either a voluntary offer or a mandatory general offer, which often involves a definitive agreement. For a mandatory general offer, the purchaser may have entered into a definitive share sale agreement with the selling shareholder(s) and upon the agreement becoming unconditional, the purchaser is obliged

to extend a mandatory general offer to acquire the remaining shares in the target company.

Insofar as the mandatory general offer is concerned, the selling shareholder(s) and the target entity do not generally have any role in the terms and conditions of the offer document, which must include all the prescribed information and statements as required under Schedule 1 of the Rules on Take-Overs, Mergers and Compulsory Acquisition.

6. Structuring

6.1 Length of Process for Acquisition/Sale

Generally, there is no set timetable in law within which a M&A transaction must be completed, being a function only of negotiation and potential third-party clearances. In cases where third-party approvals (eg, those from the regulators) are required, the time frame required to secure such approvals depends primarily on the policies and practices adopted by the relevant governmental department/organisation.

Generally, under the Code, the period in which an offeree is subject to a take-over or merger should not be longer than what is reasonable.

While the timeline for the completion of a M&A transaction is not specified under the Rules, there is a prescribed timeline under the Rules for a takeover offer, once a firm intention to make an offer is announced until the offer is closed or lapses. Assuming there is no competing bid, a takeover process in respect of public companies under the Rules usually takes approximately six months from the date of the public announcement of the offer by the bidder to the completion of the compulsory acquisition of the target's shares.

6.2 Mandatory Offer Threshold

A mandatory offer is triggered when an acquirer (including his persons acting in concert) has acquired control in a company (ie, an acquisition of more than 33% of the voting rights or voting shares of the company).

A mandatory offer will also be required if the offeror triggers the creeping provision by acquiring more than 2% of the voting shares or voting rights of a target company in any period of six months where the offeror's holding was more than 33% but less than 50% of the voting shares or voting rights of the company during that six-month period.

Additionally, a mandatory offer may also apply to a person or groups of persons acting in concert acquiring more than 50% of a company (upstream entity that need not be a company to which the Rules apply) thereby acquiring control in a second company (downstream company) where the upstream entity controls the downstream company either directly or indirectly through intermediate entities. This restriction safeguards the interests of shareholders of the downstream entity by preventing any person from sidestepping the requirements of the Code via an indirect acquisition of the downstream entity.

Another point to note is that a mandatory offer may be triggered if an offeror acquires a block of voting shares or voting rights just under 33% of a target company. This mandatory offer obligation may be triggered where an acquisition is from a vendor who still retains part of his voting shares or voting rights in the target company, depending on whether the Securities Commission views the vendor as a person acting in concert with the offeror.

6.3 Consideration

Cash is commonly used as consideration. There are only a few instances where shares have been used as consideration in takeover offers in recent years.

6.4 Common Conditions for a Takeover Offer

The Rules provide that a mandatory offer must not be subject to any condition, save for that relating to a minimum acceptance level. However, an offeror in a voluntary offer may include any condition in an offer document except a defeating condition. This is where fulfilment depends on the subjective interpretation or judgement of the offeror or an event that is within the offeror's control. This means that an offeror would not be allowed to include a condition the satisfaction of which is at the discretion of the offeror. Eg, a voluntary offer that is conditional upon the satisfaction of the offeror in respect of the outcome of a due diligence on the target company would not generally be permitted, as the offeror would be the party ultimately deciding on whether the condition would be satisfied.

6.5 Minimum Acceptance Conditions

The minimum acceptance condition for voluntary and mandatory offers is that as a result, the bidder and persons acting in concert must hold an aggregate of more than 50% of the voting shares or voting rights of the target company. However, in the case of a voluntary offer, the bidder may set the acceptance condition at a higher level subject to the approval of the Securities Commission.

6.6 Requirement to Obtain Financing

A mandatory offer must not be subject to any condition other than the condition regarding the minimum level of acceptance. A voluntary offer may include other conditions, although financing conditions may not be permitted as this could be construed as a defeating condition.

In any event, where there is a takeover offer for cash or including an element of cash, an offeror must ensure, and its or his or her financial adviser must be satisfied, that the takeover offer would not fail due to the offeror's insufficient financial capabilities.

6.7 Types of Deal Security Measures
The bidder may seek undertakings from other shareholders of the target company with regard to their acceptance of the offer and such arrangements must be disclosed in the offer document.

However, although break-up fees may be negotiated between a bidder and a selling shareholder, it is not common in Malaysia and especially not in a takeover subject to the Code.

6.8 Additional Governance Rights
In a takeover offer under the Code and the Rules, the offer must be conditional upon the bidder having received acceptances which would result in the bidder and the persons acting in concert holding more than 50% of the target's voting shares or voting rights. No additional governance rights may be sought outside this condition.

However, where the target company does not fall within the Code, it is possible for the bidder to negotiate additional governance rights and these are generally documented in the form of shareholders' agreements or amendments to the target's constitution.

6.9 Voting by Proxy
A proxy can be appointed by any shareholder to vote on its or his or her behalf.

6.10 Squeeze-out Mechanisms
Under the Capital Markets and Services Act 2007, Section 222, where a takeover offer has been made and that offer has been accepted by holders of not less than 90% in the nominal value of those shares of that class (excluding shares already held at the date of the takeover offer by the offeror and persons acting in concert), the offeror may, within four months of making that offer, compulsorily acquire shares from the dissenting minority shareholders. The offeror must state in the offer document whether it or he or she intends to avail itself or himself or herself of any powers of compulsory acquisition.

Under the Companies Act 2016, Section 371, where a scheme or contract involving the transfer of all shares in any particular class in a transferor company to a transferee company, (whose transfer involves the holders of not less than 90% of the nominal value shares or of the shares of that class), other than shares already held by the transferee company (or its nominee), have been approved, the transferor company on behalf of the transferee company has four months to make an offer to buy out the shares. The transferee company may within two months after the offer has been approved give notice to any dissenting shareholder in the transferor company that it (the transferee company) desires to acquire the dissenting shareholder's shares.

6.11 Irrevocable Commitments
There are instances where a bidder obtains an irrevocable undertaking from shareholders of the target company with regard to their acceptances of the offer, prior to a firm offer being made. Such an irrevocable undertaking must be disclosed in the offer document.

However, the bidder must be mindful that this irrevocable undertaking, coupled with any other agreement, arrangement or understanding may give rise to the shareholders being regarded as a person acting in concert with the bidder.

7. Disclosure

7.1 Making a Bid Public
In general, a bid is made public at the time when the bidders make an immediate announcement of their firm intention or obligation to launch a takeover offer after approaching the target entity's board. The Rules require the bidders to make an announcement in certain situations, eg, when there is undue movement in its share price or a significant increase in the volume of share turnover and there are reasonable grounds to conclude that it is the bidders' actions that have directly contributed to the situation.

Further, the target company is required to make an announcement in certain situations, including where:

- it has received notification of a firm intention to make an offer from the bidders;
- the target is the subject of rumour or speculation about a possible offer;
- there is undue movement in its share price or significant increase in the volume of share turnover;
- negotiation or discussions between the bidders and the target company are about to be extended to include more than a very restricted number of people; or
- the target company's board is aware that there negotiations or discussions between bidders and the holders of shares carrying more than 33% of the target company's voting shares or voting rights or when the target company's board is seeking potential bidders, and:
  - (a) the target company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or
  - (b) more than a very restricted number of potential bidders are about to be approached.

7.2 Type of Disclosure Required
In a M&A transaction involving the issue of new shares of a listed company, that company would need to make the relevant disclosure, eg, the number and issue price for the new shares and the justification for such an issue, and call for a shareholders' meeting to obtain approval. Further, in

the event the transaction involves a takeover offer, the relevant provisions relating to disclosure under the Code and the Rules would apply.

7.3 Producing Financial Statements

In an M&A transaction where the bidder is a listed company, the bidder's financial information will need to be disclosed. This includes audited consolidated financial statements and the bidder's latest quarterly results, plus its material commitments and contingent liabilities. In the event the target entity is a listed company, some of the target entity's financial information will also need to be disclosed by the bidder.

7.4 Transaction Documents

A bidder has to issue and despatch an offer document to the target company's board, shareholders and holders of convertible securities within 21 days from the date of the written notice sent to the board by the bidder in relation to his or her firm intention or obligation to make a takeover offer. The offer document must include the following:

- the particulars of the bidder and the target company;
- the offer price;
- consideration;
- acceptance conditions;
- rationale for the offer;
- future plans for the target company;
- bidder's shareholdings in the target company; and
- the commitment and any other arrangement entered into by the bidder and the target's shareholders and holders of convertible securities to accept the offer.

8. Duties of Directors

8.1 Principal Directors' Duties

In a business combination, directors in Malaysia owe fiduciary duties under the common law and statutes such as the Companies Act 2016, the Capital Markets and Services Act 2007, the Code, the Rules and the relevant listing requirements, to the company of which they are directors and not to other group companies or shareholders. Directors are required, under the Companies Act 2016 to, inter alia, exercise their powers for a proper purpose and in good faith in the best interest of the company, exercise reasonable care, skill and diligence, disclose their interest in contracts or in the business combination, and not to participate or vote in contracts which they have interest in.

In the context of a takeover offer, the target company's board of directors must not exercise their powers to frustrate the offer. Further, the target company's board of directors (excluding the interested directors) must be mindful of its fiduciary duties owed to the company when it recommends to its shareholders whether to accept or to reject the offer, setting out its justifications in the independent advice circular to its shareholders.

8.2 Special or Ad Hoc Committees

At present, it is not a common practice in Malaysia for a target company's board to establish special or ad hoc committees in business combinations, unless the circumstances require so, eg, where the majority of the target company's directors are conflicted and no proper deliberation regarding the business combinations may be made to safeguard the interests of the target's shareholders. In cases where one or two of the target company's directors are interested in the business combinations, the target company's board would exclude the directors from any deliberation or voting on the matter.

Where the bidders have announced their intention or obligation to launch an offer, the target company's board must appoint an independent adviser to provide comments, opinions, information and a recommendation on the offer to the target company's shareholders in an independent advice circular, which will be despatched to the target company's board, shareholders and holders of convertible securities within ten days of the despatch of the offer document.

8.3 Business Judgement Rule

In Malaysia, a director who makes a business judgement is deemed to have exercised care, skill, and diligence, provided he or she:

- makes the business judgement in good faith for a proper purpose;
- does not have a material personal interest in the subject matter of the business judgement;
- is informed about the subject matter of the business judgement to the extent he or she reasonably believes to be appropriate under the circumstances; and
- reasonably believes that the business judgment is in the best interest of the company.

Where these conditions are satisfied, the courts are generally slow to interfere with a director's business judgement and this extends to takeover situations (Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd [2018] MLJ 177).

8.4 Independent Outside Advice

Where the bidders have announced their intention or obligation to launch an offer, the target company's board must appoint an independent adviser to provide comments, opinions, information and a recommendation on the offer to the target company's shareholders in an independent advice circular, which will be despatched to the target company's board, shareholders and holders of convertible securities within 10 days from the despatch of the offer document.

8.5 Conflicts of Interest
Conflicts of interest of directors have regularly been the subject matter of scrutiny in court proceedings, typically in the context of oppression claims or derivative actions. The most recent claim in which this issue was deliberated was the Federal Court decision in Perak Integrated Networks Services Sdn Bhd v Urban Domain Sdn Bhd (on behalf of themselves and Pins OSC & Maintenance Services Sdn Bhd through a derivative action) & Another [2018] 4 MLJ 1, a derivative claim that was initiated following a deadlock in management.

Conflicts of interest of other categories of persons, namely managers, shareholders and advisers, have also come under scrutiny by the courts and the nature and manner in which these categories of persons may be said to owe certain duties to the companies may differ from one category to another, depending on the circumstances of the claims in question.

9. Defensive Measures

9.1 Hostile Tender Offers
In Malaysia, hostile tender offers are not prohibited under the Code and the Rules. However, they are not common due to their difficulty as a result of, among other matters, concentrated shareholdings structure in many listed companies.

9.2 Directors' Use of Defensive Measures
In Malaysia, directors are not expressly prohibited from using defensive measures, but they are required to not frustrate an offer under the Rules. Actions that frustrate an offer include among others, the following:

- the issue of new shares;
- the grant of share options or convertible securities;
- acquisition or disposal of assets of a material amount;
- entry into contracts out of the ordinary course of business;
- purchase or redemption of any target shares by the target, its subsidiary or its associated company; and
- the declaration of dividends other than in the normal course and the usual quantum.

This is unless the target shareholders' approval is obtained.

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9.3 Common Defensive Measures
A target company's board may declare dividends and issue employee share options, but the offeror may adjust the offer consideration pursuant to the Rules. The target company's board (excluding the interested directors) can also recommend its shareholders to reject the offer, setting out its justifications in the independent advice circular to its shareholders.

9.4 Directors' Duties
Directors owe a fiduciary duty to act in the best interests of the target company. Further, the directors are also required under the Rules to not frustrate a takeover offer, and to appoint an independent adviser to provide comments, opinions, information and a recommendation on the takeover offer in an independent advice circular.

9.5 Directors' Ability to 'Just Say No'
During the offer period, the board of directors of the target entity shall not undertake any action or make any decision without obtaining the approval of the shareholders at a general meeting, as it could effectively frustrate any bona fide takeover offer or the shareholders could be denied an opportunity to decide on the merits of a takeover offer.

10. Litigation

10.1 Frequency of Litigation
Litigation in connection with or arising from M&A deals is not common in Malaysia. This could be due to commercial considerations, eg, the parties' preference to resolve disputes amicably or to manage any adverse publicity arising from litigation. Recent litigation in connection with M&As is the claim filed by Top Glove Corp Bhd in relation to its acquisition of Aspion Sdn Bhd (Top Glove Corp Bhd & Anor v Low Chin Guan & Ors and another appeal [2018] MLJU 1608).

10.2 Stage of Deal
Claims may be filed at any stage during or after the M&A transaction. In practice, claims may be more common after a M&A transaction.

11. Activism

11.1 Shareholder Activism
Shareholder activism was uncommon in Malaysia until the establishment of the Minority Shareholders Watch Group in 2000 to protect the interests of minority shareholders through shareholder activism. The Group aims to create awareness among minority shareholders of their three basic rights, namely to seek information, to voice opinions and to seek redress. Eg, the Group advises on voting at general meetings of listed companies, and publishes a weekly news-

letter that contains details of questions or points of interests to be raised at the members' meeting of listed companies.

11.2 Aims of Activists

It is uncommon for activists to seek to encourage companies to enter into M&A transactions, spin-offs or major divestitures. Generally, many listed companies have a concentrated shareholdings structure where a major stake of the companies is family-owned and/or held by institutional investors. Due to their sizable shareholdings, these major shareholders usually have a right to nominate a person to be on the company's board of directors. Therefore, the companies' involvement in M&A activity is to a certain extent influenced by the direction of the major shareholders.

11.3 Interference with Completion

Interference by activists with the completion of announced transactions in Malaysia is virtually unheard of. As stated previously, many listed companies have a concentrated shareholdings structure. The outcome of general meetings for the relevant companies show that their resolutions (ie, ordinary and special resolutions) in the past three years were usually passed and carried out. Therefore, any interference posed by the minority shareholders is minimal in the context of a concentrated shareholdings structure.