

Introduction

The Malaysian corporate landscape is becoming increasingly dynamic, with companies constantly striving to remain competitive and attract global investment. Publicly listed companies (PLCs) engage in mergers and acquisitions to pursue different strategic objectives, such as expanding market share, accessing new growth opportunities, and building sustainable competitive advantages.

Understanding the regulatory framework governing public mergers and acquisitions in Malaysia is essential, as it plays a critical role in shaping how transactions are structured, approved and executed. This article outlines the key regulatory requirements, market practices, and considerations that parties involved in public mergers and acquisitions transactions should be aware of in the Malaysian context.

1. Structures and applicable law

1.1. *Types of transaction*

1.1.1. How may publicly listed businesses combine?

In Malaysia, a combination of publicly listed businesses is undertaken through:

- acquisition of shares (takeover offer; either mandatory, voluntary or partial offer);
- acquisition of business or assets; or
- scheme of arrangement.

The most common method used is the acquisition of shares. This facilitates quicker and smoother control of the assets, business and employees of the target without the need to attend to other formalities and procedures when acquiring assets and business.

While the acquisition of assets and business may achieve the same commercial objectives, the transfer of assets must be individually undertaken by asset type, regulatory approvals may be required, payment of stamp duties and registration fees will be incurred, settlement and payment arrangements with creditors of the target must be structured and employee transfer and integration must be planned.

Schemes of arrangements are usually employed in restructuring of insolvent businesses to place the business in a stronger financial position, giving it a fresh start. Formulation and implementation of schemes of arrangements require a considerable investment in time and planning to ensure a high probability of success. The scheme must fairly take account of the interest of shareholders and different classes of creditors to avoid any litigation. Court sanction is essential for implementation.

1.2. *Statutes and regulations*

1.2.1. What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

The main laws and regulations governing business combinations and acquisition of shares in PLCs are:

- [Companies Act 2016](#) (CA 2016) – principal legislation governing Malaysian incorporated entities. CA 2016 governs the constitution of a company, the offering of securities, directors' duties, administration of shareholder meetings, shareholder rights, preparation and disclosure of accounts and financial information, related party transactions, corporate restructuring and liquidation, and other key legal, statutory and regulatory aspects of the operation, management and maintenance of companies.
- [Capital Markets and Services Act 2007](#) (CMSA 2007) – regulated by the Securities Commission of Malaysia (SC), the CMSA 2007 prescribes rules on capital markets and corporate finance,

fund raising, market regulation, licensing and conduct of stakeholders and participants in the securities industries, market misconduct and take-overs and mergers.

- [Malaysian Code on Take-overs and Mergers 2016](#) (TOM Code) – administered by the SC, the TOM Code stipulates the rules and exceptions for the conduct of take-over and mergers of PLCs.
- [Rules on Take-overs, Merges and Compulsory Acquisitions](#) (TOM Rules) – sets the general principles governing take-overs and mergers, by which the conduct of parties involved is measured to determine fair play and a level playing field.
- [Listing Requirements of Bursa Malaysia](#) (Listing Requirements) – explains rules that PLCs must comply with to obtain and maintain the privilege of having its shares and securities quoted and listed on any of the three stock exchanges in Malaysia to gain access to the capital markets.

1.3. Cross-border transactions

1.3.1. How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Currently, Malaysia does not have specific legislation that governs or regulates cross-border transactions. Nor is there a central agency overseeing or regulating these transactions. Foreign ownership is governed by sector- or industry-specific policies, regulations and guidelines. The one exception that cuts across economic sectors is the acquisition of a company having real property assets of more than 20 million ringgit, in which local Bumiputera (which includes Malays, the main ethnic group in Malaysia, aborigines and natives of the States of Sabah and Sarawak) have a majority equity stake. Sector-specific policies, regulations and guidelines will usually impose a maximum cap on foreign equity interest, the imposition of minimum number of Bumiputera directors and local vendor or supplier participation and development programmes. Some specific regulation include:

- State Government and Ministry of Economy – approval is required from the relevant state governments under the National Land Code 1965, for foreigners acquiring or dealing in land. The approval of the Ministry of Economy is required under the [Guidelines on the Acquisition of Properties](#) if there is direct or indirect acquisition of property valued more than 20 million ringgit that results in dilution of the Bumiputera interest or for the acquisition of shares, which results in a change of control of the landowner company owned by Bumiputera interest having property more than 50 per cent of its total assets and the property is valued at more than 20 million ringgit;
- acquisitions of controlling interests in banks and insurance companies must be approved by the Minister of Finance;
- in the communications sector, the Malaysian Communication and Multimedia Commission regulates foreign equity interest in service providers, who are owners and operators of significant communications infrastructure or providers of significant network services. Licenses are issued with conditions that impose a foreign equity cap, and Malaysian/Bumiputera equity ownership;
- Petroliam Nasional Berhad is a government-owned company statutorily granted monopoly rights to exploration, production, refining and marketing of petroleum and gas in Malaysia. Petronas is vested with statutory power, under the Petroleum Development Act 1974, to licence upstream and downstream economic activity in the petroleum and gas industry. Licences issued may specify minimum Bumiputera requirements for project participation, equity, board of directors, management and employees;
- the Ministry of Domestic Trade and Cost of Living regulates foreign participation in distributive trade services; and
- Malaysia has exchange control and currency regulations administered by the Central Bank of Malaysia and governed by the [Financial Services Act 2013](#), [Islamic Financial Services Act 2014](#), [Currency Act 2020](#) and [Foreign Exchange Policy Notices issued on 1 June 2022](#). Foreigners can remit funds into Malaysia for investments without restrictions on repatriating proceeds, profits, dividends or any income arising from investments in Malaysia, provided such repatriation is made in foreign currency.

1.4. Sector-specific rules

1.4.1. Are companies in specific industries subject to additional regulations and statutes?

Depending on the industry, sector-specific regulations and laws may apply when undertaking a business combination or acquisition. Some notable sector-specific regulations and laws include: financial institutions that are governed by the Financial Services Act 2013 and Islamic Financial Services Act 2013; the civil aviation industry under the [Malaysian Aviation Commission Act 2015](#) and the [Civil Aviation Authority of Malaysia Act 2017](#); the communications and multimedia industry under the [Communication and Multimedia Act 1998](#); and the energy sector under the [Energy Commission Act 2001](#) and [Sustainable Energy Development Authority Act 2011](#).

On 26 June 2024, the Malaysian Parliament passed two new legislations: the [Malaysian Aviation Commission \(Dissolution\) Act 2024](#), and the [Civil Aviation Authority of Malaysia \(Amendment\) Act 2024](#), to repeal the Malaysian Aviation Commission Act 2015, dissolve the Malaysian Aviation Commission, and merge its functions into the Civil Aviation Authority of Malaysia. Following the commencement of these legislations on 1 August 2025, the Civil Aviation Authority of Malaysia now serves as the sole regulatory body to oversee business combination or acquisition involving aviation services.

Antitrust considerations must also be borne in mind if the business combination involves the aviation, postal and communications sectors.

1.5. Transaction agreements

1.5.1. Are transaction agreements typically concluded when publicly listed companies are acquired? What law typically governs the agreements?

Transaction agreements are commonly entered into for the acquisition of shares and assets and business. Acquisitions of a controlling stake in PLCs may be made through the open market or as a direct business transaction. The latter usually involves seller and buyer negotiating and executing a share sale and purchase agreement. Typical of transactions by PLCs, warranties are limited to those affecting title to the shares since all material information is the subject of mandatory disclosure obligations under the Listing Requirements. Due diligence may be undertaken if the board of directors of target agrees and the exercise will usually be conditional on obligations of confidentiality.

Following closing of the acquisition of shares, giving the acquirer a controlling stake of not less than 33 per cent of the total issued share capital of the PLC, the acquirer is obliged to issue an offer document that spells out the terms and conditions for the purchase of shares not already owned by the acquirer as at the date of purchase of the controlling stake.

In computing, whether a controlling stake is acquired, the equity holdings of persons acting in concert must be considered and aggregated. The TOM Rules include, among others, the stakes of: (1) related and associated corporations of the acquirer; and (2) the acquirer's directors, close relatives or spouses as part of the acquirer's controlling stake on a presumed basis and requiring them to observe the TOM Rules. An offer document must be drawn up in accordance with the TOM Code and TOM Rules, contain mandatory information and approved by the SC. A form of acceptance and transfer for securities, and the procedures for acceptance of the takeover offer and payment of the offer price, is included in the offer document.

2. Filings and disclosure

2.1. Filings and fees

2.1.1. Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

Takeovers or mergers involving a PLC, or an unlisted public company with more than 50 shareholders with net assets exceeding 15 million ringgit, require the issuance of an offer document approved by the SC. The offer document is accompanied by an independent advice circular and the offeree board circular. Exemption from having to undertake a mandatory takeover offer may be sought from the SC. Some of the circumstances in which the acquirer of control may seek an exemption include:

- the issue of new securities for an acquisition or cash subscription;
- a rescue operation;
- when an offeror gives a written undertaking to reduce its holding to 33 per cent or less as part of a restructuring;
- if remaining shareholders affirm in writing that they will not accept a takeover offer; or
- when a sector regulator approves the acquisition based on national policy.

The [Capital Markets and Service \(Fees\) Regulations 2012](#) sets out the fees payable in connection with a business combination or acquisition of a PLC.

Stamp Duty

Transfer of shares or stock listed on Bursa Malaysia is subject to the payment of stamp duty of 0.1 per cent of the value of the shares, with the duty capped at 1,000 ringgit per contract note. For shares or stock of unlisted public companies, the stamp duty is at a rate of 0.3 per cent of the value of the shares. Stamp duty for transfer of assets and business is payable only if an instrument of transfer is used to convey title (eg, a deed of assignment or statutory form for transfer of land). Stamp duty is *ad valorem* based on the Inland Revenue Board's assessment of value.

Other transaction fees

Apart from stamp duty, other transaction-related fees relating to the purchase of shares of a PLC include broker's commission and clearing fees. Registration fees are payable for instruments for transfer of land title and bills of sale used for transfer of assets.

2.2. Information to be disclosed

2.2.1. What information needs to be made public in a business combination or an acquisition of a public company? Does this depend on what type of structure is used?

In business combinations or acquisitions of a public company, the TOM Code and TOM Rules impose a requirement on the acquirer to disclose material information to ensure transparency and protection of the interests of remaining shareholders of the offeree company. Information disclosed and presented must be accurate and fair. The disclosure standards used for prospectuses are similarly applied to statements, information and opinions in an offer document.

Under the TOM Rules, the offeror in a takeover bid is required to make an announcement detailing the offer and in it must state the identity of the ultimate offeror, intentions on continued listing, intention on compulsory acquisition of dissenting shareholders and information on persons acting in concert with the offeror. Disclosure must include the basis of the offer price and the specific terms and conditions of the takeover offer including its acceptance.

With respect to PLCs, the continuing disclosure obligations in the Listing Requirements operates during the period of a takeover offer and compulsorily mandates the immediate disclosure of any information that could have a significant effect on the price, value or market activity of the company's securities.

These disclosure requirements and obligations are not contingent on the type of transaction structure used in the business combination or acquisition.

2.3. Disclosure of substantial shareholdings

- 2.3.1. What are the disclosure requirements for owners of large shareholdings (*eg, more than 5 per cent*) in a public company? Are the requirements affected if the company is a party to a business combination?

A substantial shareholder (ie, a person with an interest in 5 per cent or more of the voting shares of a public company, whether listed or not) is required to notify both the public company and the Registrar of the Companies Commission of Malaysia. Notification is also required for changes in their interest and date of ceasing to be a substantial shareholder.

PLCs have an obligation to disclose and seek approval for related party transactions. A list of exempted transactions is stipulated in Rule 10.08(11) of Chapter 10 of the Listing Requirements, which Bursa Malaysia deems to be of no threat to the business and operations of the company nor to the interests of the minority shareholders. Transactions that do not fall within the exemption must be announced or approved by the shareholders. The type of corporate action that will need to be taken, will depend on the value of the transaction calculated based on the application of specific rules in Chapter 10 of the Listing Requirements.

3. Directors' and shareholders' duties and rights

3.1. Duties of directors and controlling shareholders

- 3.1.1. What duties do the directors or managers of a publicly traded company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination or sale? Do controlling shareholders have similar duties?

Directors of companies, regardless of whether the company is private or publicly traded, have a range of duties to shareholders, creditors and other stakeholders prescribed under CA 2016 and judge-made law. Primarily, the law codifies the common law business judgment rule requiring directors to exercise business judgment for a proper purpose and in good faith, consistently acting in the best interests of the company and, in the decision-making process, exercise reasonable care, skill and diligence with the knowledge, skill and experience of a director having similar responsibilities in the sector. Staying well-informed about the company's business operations and securing expert and professional advice, opinions and assessments is expressed as a part of the 'ask' in the statutory framework for the discharge of directors' duties.

Directors are required to manage conflicts of interests between the directors, the company and its subsidiaries, meticulously, ensuring transparency and integrity in their actions. They must declare any personal interest in a business combination or sale and must abstain from discussions or voting on matters where a conflict exists to ensure objectivity and the advancement of the company's best interest.

In a takeover, directors of the offeree company are required to appoint an independent adviser to provide detailed comments, opinions, information and recommendations on the takeover offer to enable the remaining shareholders of the company to whom the offer is directed to make an informed decision. Directors of the board of the offeree can issue a separate view of the offer if they dissent from the majority.

Similarly, directors of the offeror are collectively responsible for the information presented in the announcements and offer documents. To reinforce this responsibility, the directors are required to issue a directors' responsibility statement, in which they jointly and severally accept full accountability for the accuracy of the information relating to the offer or potential offer.

Controlling Shareholders

There are no explicit provisions that impose duties upon controlling shareholders similar to those of directors. The law allows controlling shareholders to act in their own interest. This said, the TOM Code must be complied with by all persons engaged in any takeover or merger transaction, including the

controlling shareholder. Hence, the controlling shareholder must avoid conduct that is oppressive or unfairly prejudicial to minority shareholders.

3.2. Approval and appraisal rights

- 3.2.1. What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

Shareholders of a public company hold significant approval rights over transactions that involve the purchase of assets and business, share swaps, issue of new shares and purchase of shares, if in the case of PLCs, exceed threshold values calculated according to the Listing Requirements or, where unlisted public companies are involved, the CA 2016.

4. Completing the transaction

4.1. Hostile transactions

- 4.1.1. What are the special considerations for unsolicited transactions for public companies?

The TOM Code and TOM Rules do not prohibit hostile bids. Bidders of hostile bids must be aware that their access to information is limited to that disclosed by the target company to Bursa Malaysia. The board of the target is not obliged to give access to undisclosed information including on the financial condition of the company and can refuse disclosure of information where they are not at the time of the hostile bid and its prosecution, obliged under the Listing Requirements to make the requisite disclosure.

The TOM Rules have prescriptive provisions relating to competing takeover offers and sets out auction procedures for the resolution of a competitive situation where the competing offerors are not able to reach agreement on an alternative procedure.

4.2. Break-up fees – frustration of additional bidders

- 4.2.1. Which types of break-up and reverse break-up fees are allowed? What are the limitations on a public company's ability to protect deals from third-party bidders? (*Describe any 'financial assistance' restrictions and how they can affect business combinations.*)

Break-up and reverse break-up fees are not addressed in the TOM Code and TOM Rules. Such fee stipulations and agreement are not prohibited. These fee stipulations are more common to deals involving the acquisition of the shares and stock of private companies.

Section 123 of CA 2016 prohibits a PLC from using its resources in giving financial assistance, whether directly or indirectly, for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the target. Bidders and offerors cannot leverage on the business, assets and goodwill of the target and must have access to independent funds to support a takeover offer. Exception is made with respect to transactions involving the shares of unlisted public companies, subject to: (1) approval of shareholders and board; (2) the directors making a solvency declaration; and (3) the company receiving fair value in connection with the giving of financial assistance.

4.3. Government influence

- 4.3.1. Other than through relevant competition (*antitrust*) regulations, or in specific industries in which business combinations or acquisitions are regulated, may government agencies influence or restrict the completion of such transactions, including for reasons of national security?

Malaysia does not have a government agency that reviews all business combinations or acquisitions undertaken by foreign entities, for consideration of national security interests. This role is left to sector-specific regulators who administratively choose to implement government policies through imposition of equity or participation conditions when granting licences, approvals or permits required

for operating in certain business or industry sectors. This regulatory function is usually exercised in sectors that the government considers are of strategic or national interest to the country or involve national security or those in which the government promotes affirmative action to increase Bumiputera equity participation. Foreign equity limits, where prescribed will require either a minimum percentage of local Malaysian equity or Bumiputera equity. The conditions could include foreign interests having down its equity to a simple majority or minority holding after a certain period. Any contravention of any legislation or of any licence will result in a void acquisition transaction, fines or administrative sanctions, in addition to revocation of the licence or approvals.

4.4. Conditional offers

- 4.4.1. What conditions to a tender offer, exchange offer, mergers, plans or schemes of arrangements or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

The TOM Code and TOM Rules regulate tender offers, exchange offers, mergers, schemes of arrangement or other forms of business combinations involving PLCs.

Tender offers and exchange offers

Under the TOM Rules, tender offers and exchange offers must comply with certain rules and principles. The offer must be unconditional or, if subject to conditions, these conditions must be clear and permissible under the Rules.

The conditions to a tender offer or exchange offer may include receiving a minimum percentage of acceptances from shareholders, obtaining necessary approvals from relevant regulatory authorities or no material adverse change occurring in the target company's business or financial condition.

Mergers and schemes of arrangement

Mergers and schemes of arrangement must be approved by the relevant authorities, including the SC or Bursa Malaysia, as well as by the shareholders of the PLCs involved. These transactions often include conditions precedent such as obtaining approval from the shareholders of the acquiring and disposing target companies, obtaining approvals from regulatory bodies, successful completion of all due diligence or some other specific contractual conditions agreed by the parties.

Conditional financing

Under the TOM Rules, in a cash transaction, the financing itself cannot be conditional. The offeror must ensure that it has sufficient financial resources to satisfy the full acceptance of the offer. The financing arrangements must be secured before the offer is made and the offeror must provide confirmation from financial advisers regarding the adequacy of resources. The offer cannot be contingent upon the offeror securing financing after the offer is made.

Commencement conditions

The commencement of a tender offer or exchange offer for a PLC may be subject to conditions, but these conditions must be clearly disclosed and permissible under the TOM Rules. Typical conditions might include obtaining necessary approvals from the SC or other relevant authorities, achieving a minimum level of acceptance from the shareholders or completion of due diligence to ensure no adverse findings.

4.5. Financing

- 4.5.1. If a buyer needs to obtain financing for a transaction involving a public company, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

There is no specific requirement that the offeror in a takeover must, as a pre-condition of taking control of a PLC, submit proof of financial capability in completing mandatory takeover obligations. TOM Rules prohibit making business combinations contingent on the offeror securing financing. A prospective offeror must ensure that it has sufficient financial capabilities to implement the takeover before undertaking the takeover adventure or risk penal and monetary sanctions from the SC.

4.6. *Minority squeeze-out*

- 4.6.1. May minority stockholders of a public company be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Sections 222 to 224 of the CMA 2007 provide legislative mechanisms for the compulsory acquisition of shares in a take-over. These provisions are intended to balance the capital markets interest in operating an efficient takeover process with the need to protect the rights of minority shareholders. It also seeks to discourage minority shareholders from greenmailing.

Where the acceptance of a takeover offer reaches 90% of the remaining shares, the offeror may, within 2 months, give notice to any minority stockholders to compulsorily acquire their shares. Minority shareholders can challenge this via court action if there is patent unfairness regarding the terms of the proposed compulsory acquisition.

4.7. *Waiting or notification periods*

- 4.7.1. Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations or acquisitions involving public companies?

For unlisted public companies, the law does not stipulate waiting or notification periods for completing business combinations or acquisitions. However, several factors may affect timelines. Depending on the transaction, various regulatory approvals may be required, including those related to legislation, the terms of the target company's licences, financing agreements or other relevant contracts. Approval from shareholders or directors of the acquiring, disposing or target companies may be necessary, if the decisions cannot be made prior to the signing of the agreement. In transactions with a significant gap between signing and closing, material adverse change may be included to address any material adverse changes in the target company's condition.

The TOM Rules set out the timing requirements for completing various steps involved in the takeover process, such as making of the announcement, posting of the offer document, posting of the independent advice circular and the last date for the acceptance condition to be met.

Initiation of takeover

The process begins when the proposed offeror sends a written notice under Rule 9 of TOM Rules, declaring intention to make a takeover offer. This notice marks the starting point for all subsequent timeframes under the TOM Rules.

Posting of the offer document

The offeror must post the offer document to the board of the offeree and offeree shareholders within 21 days of the date of sending the written notice made under Rule 9.10 of TOM Rules.

Offeree board response

The board of the offeree is then required to circulate its comments, opinions and views on the offer to its shareholders and holders of convertible securities, advising them of its views on the offer within 10 days from the despatch of the offer document. At the same time, the independent advice circular must be issued to the offeree board and offeree shareholders within 10 days of the dispatch of the offer document.

Revise the offer

However, if the offeror chooses to or is required to revise the offer, it must post a written notification of the revised offer to all offeree shareholders and shall keep the offer open for acceptance for at least another 14 days from the date on which the written notification is posted. However, no offer may be revised after the 46th day of its posting.

Withdrawal of acceptances

An accepting shareholder shall be entitled to withdraw their acceptance 21 days after the first closing date of the offer if the offer has not by such date become unconditional as to acceptances. This entitlement to withdraw shall be exercisable until such time as the offer becomes or is declared unconditional as to acceptances.

Closing of takeover offers

If an offer becomes, or has been declared, unconditional as to acceptances by the date of posting of the offer document, the closing date of the offer shall be no later than the 60th day of the posting date.

Where a takeover offer is declared unconditional on any day before the 46th day from the date of posting of the offer document, the closing date must be no earlier than the expiry of 14 days from the date the offer is, or is declared to be, unconditional, provided that this closing date is no later than the 60th day from the posting date.

Where the takeover offer is declared unconditional on any day after the 46th day from the date of posting of the offer document, the closing date must be no earlier than the expiry of 14 days from the date the offer is, or is declared to be, unconditional, provided that this closing date is no later than the 74th day from the posting date.

5. Other considerations**5.1. Tax issues**

- 5.1.1. What are the basic tax issues involved in business combinations or acquisitions involving public companies?

For business combinations or acquisitions in Malaysia, the primary taxes are Capital Gains Tax (CGT), real property gains tax (RPGT) and stamp duty.

CGT is a tax levied on the gains or profits from the disposal of unlisted shares of a company incorporated in Malaysia or the disposal of unlisted shares in real property companies (ie, where real property forms 75 per cent or more of the tangible assets of such company). Currently, CGT is 10 per cent of the gain or profit or 2 per cent on gross disposal price for disposal of unlisted shares acquired before 1 January 2024.

RPGT is a tax levied on the profit from selling real property or shares in real property companies in Malaysia. The tax rate varies based on the disposer's category and holding period of the chargeable assets. With the coming into force of CGT, the disposal of unlisted shares in real property companies by companies will be subject to CGT instead of RPGT.

Stamp Duty is a tax imposed on instruments and the rate depends on the transaction and its value. For acquisition of shares, stamp duty is charged at 0.3 per cent on the higher of the consideration or purchase price and value of shares, as adjudicated by the stamp office. For acquisition of assets, any transfer of title that requires an instrument will attract payment of stamp duty based on value. Stamp duties are generally payable by the purchaser, but parties may agree to bear the cost of stamp duty equally.

5.2. Labour and employee benefits

5.2.1. What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

The [Employment Act 1955](#) (EA 1955) governs all matters relating to employment in Peninsular Malaysia and applies to all employees, except for public servants and those employed by statutory entities. In respect of transactions involving a business combination or acquisition of shares of a public company, the employees remain in the employment of the target company after such transaction. Where a benefit is not stipulated in the EA 1955, it may be contractually agreed between employer and employee. If a benefit is statutorily provided, the actual benefit provided must not be less favourable. The States of Sabah and Sarawak have their own employment legislation.

For transactions involving an acquisition of business or assets, employees are not automatically transferred. In the event of a change of control of the business, Regulation 8 of the Employment (Termination and Lay-off Benefits) Regulations 1980 stipulates that if the buyer does not offer to continue to employ the employees on the same terms and conditions of employment, the contract of service is deemed terminated and the seller has to assume liability for the payment of termination benefits.

5.3. Restructuring, bankruptcy or receivership

5.3.1. What are the special considerations for business combinations or acquisitions involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Conducting thorough due diligence is crucial and critical in business combinations or acquisitions involving distressed companies. The due diligence process must be rigorous to assess the value of the business, assets, need for immediate cash infusion, accurate level of debt including identifying hidden liabilities, legal claims including exposure to claims of corruption and bribery and the need to inject new business or assets to turn around the target. This information will be crucial in formulating and syndicating a restructuring scheme to obtain the critical buy-in from creditors.

5.4. Anti-corruption and sanctions

5.4.1. What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

The [Malaysian Anti-Corruption Commission Act 2009](#) is the primary legislation on corruption.

Specifically, section 17A(1) imposes corporate liability on a commercial organisation, where a person associated with that commercial organisation gives, agrees to give, promises, or offers to any person, any gratification with the intent to obtain or retain business or to obtain or retain an advantage in the conduct of business. A defence to the offence is available if the commercial organisation can demonstrate that it had implemented adequate procedures to prevent such conduct.

6. Update and trends

6.1. Key developments

6.1.1. What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

A significant recent development is the enactment of the Companies (Amendment) Act 2024, which enhanced the framework for the reporting of beneficial ownership of companies, in accordance with Financial Action Task Force requirements, widened the application of corporate rescue mechanism and strengthened the corporate rehabilitation framework.

The [Competition Act 2010](#), the main legislation in Malaysia that prohibits anticompetitive agreements and abuse of dominance, currently does not regulate competition aspects of M&A activity. Recent reports indicate that the Malaysian Competition Commission is seeking amendments to the Act to enable it to scrutinise merger transactions.

This article is co-authored by Michael Raj (michael@deolgill.com), Sathish Ramachandran (sathish@deolgill.com), Sarah Tiong Jie Yun (sarah@deolgill.com), and Ng Kang Thye (kangthye@deolgill.com) from Messrs. Deol & Gill. This article states the law as at 1 October 2025.

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