International law firm Clifford Chance combines the highest global standards with local expertise. Leading lawyers from different backgrounds and nationalities come together as one firm, offering unrivalled depth of legal resources across the key markets of Africa, the Americas, Asia, Europe and Middle East. The firm focuses on the core areas of commercial activity: Corporate and M&A, Capital Markets, Finance and Banking, Real Estate, Tax, Pensions and Employment, Litigation and Dispute Resolution. Through strong understanding of clients’ cultures and objectives, Clifford Chance draws on the full breadth of its legal skills to provide results-driven, commercial advice.

Visit our website www.cliffordchance.com to discover more about us.

Chooi & Company is a mid-sized full service law firm operating out of offices in Kuala Lumpur, Malaysia. Established on 1 December 1962, we have extensive experience in a wide range of practice areas with a particular focus on transactional and dispute related commercial practice.

To us, it’s more than meeting your legal services needs and expectations – it’s anticipating them. Our clients can be assured of our high quality legal services, and we are fully committed in finding and providing sound and practical legal solutions.

Visit our website www.chooi.com.my to discover more about us.
1. Forms of business entity 7
2. Management 9
3. Common structures for M&A transactions 13
4. Percentage shareholding to achieve effective control 17
5. Regulation, consents and foreign investment restrictions 19
6. Public takeovers 27
7. Overview of a private company acquisition 41
8. Tax issues 43
Introduction

Malaysia is located in South East Asia and consists of thirteen states and three federal territories contained in two similarly sized regions, Peninsular Malaysia and East Malaysia, which are separated by the South China Sea. It has a multi-ethnic and multi-cultural population of over 30 million comprising a majority population of Malays with significant minorities of Chinese, Indians and indigenous ethnicities. English is the de facto business language of Malaysia and its official language is *Bahasa Malaysia*, being a standardised form of the Malay language.

Malaysia is a newly industrialised economy that is widely regarded as one of the most competitive in Asia. Its economy is heavily reliant on its manufacturing and industrial sectors and it is currently one of the world’s largest producers of palm oil, as well as having a vibrant oil and gas industry. Other key contributors to the Malaysian economy include tourism and Islamic Banking and Financial Services.

Malaysia is a federal constitutive elective monarchy with a system of government closely modelled after the Westminster parliamentary system. Its head of state is the Yang di-Pertuan Agong or the King, and the legislative power is divided between a bicameral federal parliament consisting of a lower house (ie the House of Representatives) and an upper house (ie the Senate). Executive power vests in the Cabinet, which is led by the Prime Minister.

Malaysia has a common law legal system based on the English legal system. Its judicial system comprises the Federal Court as the highest court, followed by the Court of Appeal and one high court for each of Peninsular Malaysia and East Malaysia.

Mergers and acquisitions are primarily governed by contract and company law from both case law and statute. The main legislation applicable to companies is the Malaysian Companies Act, 1965. There are foreign ownership and investment restrictions in Malaysia which vary in degree depending on the industry or sector. In 2009, the Malaysian government announced the liberalisation of various sectors by repealing the *Guidelines on the Acquisition of Interests, Mergers and Takeovers by Local and Foreign Interests* which
previously limited foreign investment. However, certain industry sectors continue to remain subject to foreign shareholding limits imposed by the relevant sector regulators.

Bursa Malaysia Securities Berhad (Bursa Malaysia) is the stock exchange of Malaysia. Companies listed on Bursa Malaysia must comply with the Listing Requirements promulgated by Bursa Malaysia. Takeovers of public companies are governed by the Malaysian Code on Take-Overs and Mergers, which is administered by the Malaysian Securities Commission.

The materials contained in this publication are up to date as of 31 December 2014 and are provided for general information purposes only. Nothing in this publication constitutes, or shall be taken to constitute, legal or other professional advice.
1. Forms of business entity

<table>
<thead>
<tr>
<th>Common forms of entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private company limited by shares</td>
</tr>
<tr>
<td>Public company limited by shares (listed/unlisted)</td>
</tr>
<tr>
<td>Partnership</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Less common forms of entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company limited by guarantee</td>
</tr>
<tr>
<td>Unlimited company</td>
</tr>
<tr>
<td>Limited liability partnership</td>
</tr>
<tr>
<td>Unincorporated association</td>
</tr>
</tbody>
</table>
The basic management structure

What form does the management structure take?
Under the Malaysian Companies Act, 1965 (the Companies Act), the business and affairs of a company must be managed by, or be under the direction of, the board of directors. The non-executive directors have voting rights on board decisions and are, as with executive directors, responsible for all decisions taken, and powers exercised, by the board.

The articles of association of the company set the threshold for decisions of the board (eg whether unanimous vote or majority vote is required).

How are directors appointed to and removed from office?
In general, the appointment and removal of directors is governed by the articles of association. However, for a public company or its subsidiary, the appointment of a director over the age of 70 years and the removal of its directors is governed by the Companies Act. Under the Companies Act, a public company may by ordinary resolution at a general meeting remove a director before the expiration of his period of office notwithstanding anything in its memorandum or articles of association. The same position applies for private companies which adopt the model Table A articles of association under the Companies Act but private companies may choose to adopt alternative arrangements.

What powers does the board have?
The board has all the powers for managing, directing and supervising the management of the business and affairs of the company subject to the limitations set out in the Companies Act (including powers that are specifically reserved to shareholders), the memorandum and articles of association.

A degree of flexibility can be given to the board under the articles of association, including the ability to change management, alter procedures and delegate responsibility to committees. Alternatively, the shareholders can, via the articles of association, restrict the powers of the board, thereby retaining control over the day-to-day running of the company.

Are there any residency requirements for directors?
A company is required to have at least two directors who must have their principal or only place of residence in Malaysia. These two directors may be Malaysian citizens or otherwise. A company must also have at least one company secretary who must have his principal or only place of residence in Malaysia.

Is there any requirement for directors to hold shares?
There is no legal requirement for directors to hold shares but the articles of association can provide for such a requirement if the shareholders so decide.

What duties do directors owe?
Overview
The duties and responsibilities of a director arise under common law and the Companies Act.

As a fiduciary, a director must always exercise his powers for a proper purpose and act in good faith in the best interests of the company as a whole. Accordingly, certain duties are placed upon a director.

Duty to the company
Directors owe their primary duty to the company (as distinct from the shareholders) and, generally, only the company has a cause of action against the directors for breach of their duties.
Directors are required to act and exercise their powers for a proper purpose and in good faith in the best interests of the company as a whole, and not in accordance with their personal interests. A director who is appointed by a shareholder or debenture holder must act in the best interests of the company and, in the event of any conflict between his duty to the company and his duty to his nominator, he must not subordinate his duty to act in the best interests of the company to his duty to his nominator. A director must not put himself in a position where his personal interests conflict with those of the company. Where a director is directly or indirectly interested in a contract, he may be counted towards the quorum but is required to abstain from voting or participating in the discussion in a board meeting. Private companies may adopt additional requirements in their articles of association in respect of quorum and participation in deliberation.

A director is required to exercise reasonable care, skill and diligence with the knowledge, skill and experience that may reasonably be expected of a director having the same responsibilities while taking into account any additional knowledge, skill and experience that the director has.

A director or an officer of a company must not make improper use of any information acquired by virtue of his position (as a director or an agent) to gain (directly or indirectly) an advantage for himself or for any other person, or to cause detriment to the company.

**Duty to the shareholders**

The minority shareholders in a company may be entitled to bring an action in their own name (on behalf of the company) against the directors for breach of their duties. To bring such a claim, the shareholders must show that the company’s affairs have been conducted in a manner which either constitutes a “fraud on the minority” or is unfairly prejudicial to their interests or the act complained of is “ultra vires” (ie not within its powers/capacity).

The shareholders of an unlisted company may also apply to the court under section 181A of the Companies Act for leave to bring an action in the company’s name. Such leave will be granted if the court is satisfied that the complainant is acting in good faith and it appears *prima facie* that the action should be brought.

**Duty to creditors**

If a company is close to insolvency, the interests of the creditors must be taken into account. If the directors act with the intent to defraud the creditors of the company or for any fraudulent purposes when the company is insolvent, they may be held guilty of misfeasance.

**What types of liability can directors incur?**

Directors may incur:

- civil liability for negligent performance of their duties; and/or
- criminal sanctions for violations of specific requirements concerning the organisation and operations of the company.

A person may be disqualified from acting as a director or being involved in the management of a company in certain circumstances, for example, where:

- he is an undischarged bankrupt;
- (for a period of five years after his conviction or release from prison) he has been convicted within or outside Malaysia:
  - of any offence in connection with the promotion, formation or management of a corporation;
• of any offence involving fraud or punishable on conviction with imprisonment for more than three months; or
• of an offence for breach of the statutory duty of directors under the Companies Act or for breach of the duty to keep proper accounts of the company; or

(for a period of five years from the order) he has been disqualified by an order of the Court for being unfit to be concerned in the management of a company as a result of being a director of one or more insolvent companies.

In certain circumstances, a director may also be personally liable to creditors of a company that has gone into insolvent liquidation, for example, where:

■ he knowingly contracted a debt when he had no reasonable or probable expectation that the company would be able to repay that debt; or
■ he is guilty of fraudulent trading.

Section 140 of the Companies Act nullifies any provisions (whether contained in the company’s articles of association or otherwise) which exempt a company’s directors and officers from, or which indemnify them against, any liability which by law would attach to them in respect of any negligence, default, breach of duty or trust of which they may be guilty in relation to the company. However, if a judgment is granted in favour of such a director or officer or if he is acquitted, and the Court grants him relief under the Companies Act, then the company may indemnify him against any liability incurred by him in defending the proceedings (whether civil or criminal).

There are a number of ways in which directors can minimise the risk of liability:

■ certain actions taken or omissions made by directors can be ratified retrospectively (where permitted under Malaysian law) or approved in advance by the shareholders;
■ the directors can maintain directors’ and officers’ liability insurance policies; and
■ the company can maintain a company reimbursement policy to indemnify the company where the company has itself indemnified the directors and officers in the event that the directors and officers are found not guilty or a judgment or relief is granted in their favour by the court.

**What are the auditing requirements for companies?**

Every company in Malaysia is required to appoint an auditor to report to the members whether the company’s accounts are properly drawn up in accordance with the Companies Act, give a true and fair view of the company’s affairs and are in accordance with the applicable approved accounting standards.
Private companies

Share acquisitions
A company can issue various types of shares with different rights attached. The most common types are ordinary shares (with full voting rights) and preference shares (which do not generally entitle the holder to the right to vote at a general meeting or to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption in a winding up or otherwise). For preference shares, the memorandum or articles of association must set out the rights of the holders as to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, priority of payment of capital and dividend in relation to other shares and any voting rights which may be attached to them.

A buyer can purchase ordinary shares in a Malaysian private company. By acquiring the ordinary shares in a company, the buyer acquires all voting rights attached to such shares.

An alternative way of acquiring control of a private company in Malaysia is to subscribe for newly issued voting shares which, after taking into account already existing shares, make up over 50% of the entire issued voting share capital of a company (with the existing shareholders being diluted).

Business/asset acquisitions
A buyer can also purchase the business and assets of a company. Each asset has to be transferred subject to the particular formalities required. For some classes of assets, this will simply mean handing over the asset (ie physical delivery) while others will require transfer documents (eg real property, contracts and intellectual property).

Schemes of reconstruction or amalgamations
Two or more local companies may, in a scheme of reconstruction or amalgamation with a court order in accordance with the Companies Act, amalgamate and continue as one company, which may be one of the amalgamating companies or a new company. The amalgamated company will succeed to all the property, rights and privileges as well as assume the liabilities and obligations of each of the amalgamating companies.

A majority in number representing at least 75% in value of the members or class of members of the amalgamating companies and/or a majority in number representing at least 75% in value of the creditors or class of creditors of the amalgamating companies (in each case present and voting either in person or by proxy at the meeting) must approve the amalgamation, and the court order is binding on all shareholders and/or creditors. The court order can provide for the transfer to the buyer of the whole or any part of the assets and business or liabilities of the target, the continuation by or against the buyer of any legal proceedings pending by or against the target or the dissolution of the target and any incidental matters.

Schemes of arrangement
Mergers and acquisitions may be effected by way of a scheme of arrangement with a court order in accordance with the Companies Act.

Such schemes are typically effected:
- **by way of a share for share exchange**: all shares in the target held by its existing shareholders (other than the buyer) are cancelled and, in exchange, new shares in the buyer are issued to those shareholders. The reserve created in the target by the cancellation of the shares is capitalised and
applied in paying up further shares in the target which are issued to the buyer in lieu of those cancelled. This is usually used to effect the acquisition of minority held shares in a subsidiary or for a share for share offer; or

- by way of an acquisition of all or part of the assets and business of the target: the assets and business of the target are acquired by the buyer in consideration for the issue of shares in the buyer to the target. The target then distributes the shares in specie to its shareholders. If the target has no remaining assets or liabilities, it is wound up.

A majority in number representing at least 75% in value of the members or class of members of the amalgamating companies and/or a majority in number representing at least 75% in value of the creditors or class of creditors of the amalgamating companies (in each case, present and voting either in person or by proxy at the meeting) must approve the scheme, and the court order is binding on all shareholders and/or creditors.

The scheme can be carried out as part of the scheme of reconstruction or amalgamation.

**Joint ventures**

Two or more parties may form a joint venture to pursue a common commercial goal. Joint ventures are governed by the general principles of contract and company law, and can take many different forms.

**Takeovers**

The Malaysian Code on Takeovers and Mergers 2010 (the Code) does not regulate the takeovers of private companies.

---

**Public companies**

**Takeovers (see section 6 for a more detailed summary of public takeovers)**

A takeover offer can be made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, of a public company in accordance with the Code, which is administered by the Malaysian Securities Commission (SC). However, no partial offer for less than 100% of any class of voting shares or voting rights can be made without prior approval from the SC.

The conduct of all persons involved in a takeover offer, including the bidder, the target and their officers and associates, is governed by the Code. The Code applies to, among others, listed or unlisted public companies incorporated in Malaysia, companies incorporated outside Malaysia but listed on any stock exchange in Malaysia and real estate investment trusts listed on any stock exchange in Malaysia.

An offer for the shares of a public company may either be recommended by the target’s board of directors or hostile. Mandatory and voluntary offers shall include in the offer document a condition that the takeover shall be subject to the bidder having received acceptances which will result in the bidder (together with persons acting in concert with it) holding more than 50% of the voting rights in the target. In the case of partial offers for more than 33%, the partial offer must be approved by the independent target shareholders holding more than 50% of the voting shares of the target not held by the bidder and persons acting in concert with the bidder.
A potential bidder may be required to make a mandatory offer for all the target’s shares if:

- taken together with shares held or acquired by persons acting in concert with it, the potential bidder acquires more than 33% of the voting shares of the target; or

- together with persons acting in concert with it, it already holds more than 33% but less than 50% of the voting shares of the target, and it (or persons acting in concert with it) acquires or intends to acquire voting rights in the target by more than 2% in any six-month period.

The board of the target (and, in some cases, the bidder as well) must obtain independent advice in respect of any takeover offer.

**Schemes of arrangement**

The scheme of arrangement as described on page 13 applies to public companies with the important additional factor that the Code also applies where the scheme involves a takeover of the public company.

**Schemes of reconstruction and amalgamations**

The amalgamation regime described on page 13 applies to public companies with the important additional factor that the Code also applies to an amalgamation involving two or more public companies.

**Joint ventures**

Public companies are free to enter into joint venture arrangements as described on page 14.

**Public-to-private acquisitions (P2Ps)**

P2Ps are regulated by the Code, various statutes and the listing requirements of Bursa Malaysia Securities Berhad (the Listing Requirements).

In Malaysia, P2Ps involve the buyers acquiring publicly held shares in a company by way of a takeover offer under the Code, by way of a scheme of arrangement or by way of a selective capital reduction, in each case under the Companies Act and subsequently delisting such company.

The transaction will often involve the parent company of the listed company (and sometimes a newly incorporated company) as the bidding vehicle to make an offer to acquire the target’s shares not held by the parent company.

The board of the target must appoint an independent adviser to advise the board of the target and its shareholders as soon as possible after it becomes aware of the possibility that a takeover offer may be made.

**Do the parties have an obligation to negotiate in good faith with one another in M&A transactions?**

The laws of Malaysia do not impose any obligation on parties to a proposed transaction to negotiate in good faith. As such, it is possible for a party to pull out of negotiations completely or to negotiate with another prospective buyer without any good reason and at any time prior to signing of the sale and purchase agreement. To mitigate the risks associated with this, the parties will often enter into an exclusivity agreement which incorporates lock-out clauses and/or break fees. The break fees operate as the upper limit that may be claimed as damages and, generally, the non-defaulting party is still required to prove its damages and loss.
4. Percentage shareholding to achieve effective control

A shareholder who holds 75% or more of the voting shares in a company can pass all shareholders’ resolutions at a general meeting except, among others, when:

- the shareholder itself is not able to constitute a quorum for the meeting. Under the laws of Malaysia, a meeting requires at least two persons present and a single shareholder who holds 75% of the voting shares present at the meeting may not be able to form a quorum if he is the only member at the meeting; and

- in the case of an approval for a scheme of arrangement or scheme of reconstruction or amalgamation under the Companies Act, where approvals of classes of shareholders are required, the requirement to pass a shareholders’ resolution of any class of shareholders in respect of the scheme is a majority in number of shareholders who collectively hold 75% or more of the voting shares in a company (in each case, present and voting in person or by proxy at the convened meeting).

Shareholders’ resolutions include both an ordinary resolution (a resolution that has been passed, if on a show of hands, by more than 50% of the members or their proxies present and voting at a meeting or, if on a poll, by the members or their proxies present and voting at a meeting holding more than 50% of the voting shares) and a special resolution (a resolution that has been passed, if on a show of hands, by a majority of not less than 75% of the members or their proxies present and voting at a meeting or, if on a poll, by the members or their proxies present and voting at a meeting holding 75% or more of the voting shares).

Under the Companies Act, a shareholders’ resolution is required to amend the articles of association, issue and allot shares, approve the acquisition or disposal of an undertaking or property with a substantial value, appoint and remove an auditor and, subject to the court’s approval, reduce the capital of the company.
5. Regulation, consents and foreign investment restrictions

**Are there any regulated industries?**
Investments and acquisitions relating to targets that operate in certain industry sectors require approval or a licence from the relevant ministry.

The most common sectors which are subject to these approval requirements or restrictions are financial services, telecommunications, aviation, direct selling, capital market services activities (i.e. dealing in securities, trading in futures contracts, fund management, advising on corporate finance, investment advice, and financial planning), insurance and oil and gas. These regulated industries are also subject to foreign shareholding limits.

There may be additional, ongoing notification requirements in respect of the operation of the business and approval requirements for any changes to the shareholding.

**Are there any restrictions on the foreign ownership of shares in a Malaysian company?**
Prior to 30 June 2009, most acquisitions of an interest in Malaysian companies by foreigners in the non-industrial sector required the prior approval of the Foreign Investment Committee (FIC) pursuant to the Guidelines on the Acquisition of Interests, Mergers and Takeovers by Local and Foreign Interests (the FIC Guidelines). It was the general policy of the FIC to impose equity conditions on the Malaysian company concerned, the standard condition being a requirement that foreign investment be limited to 70% of voting equity, with the remaining 30% being held by Malay and other Malaysian natives (collectively, Bumiputera).

With effect from 30 June 2009, the FIC Guidelines have been repealed. Since 30 June 2009, transactions involving a purchase of shares in a company incorporated in Malaysia no longer fall within the purview of the FIC and will only be regulated by the respective sector regulators (for example, the Central Bank and the Minister of Finance for the banking and insurance industry, the Ministry of Domestic Trade, Cooperatives and Consumerism for direct selling and hypermarkets, the Securities Commission for the capital market services industry and the Ministry of International Trade and Industry for the manufacturing industry). Strategic industries such as telecommunications, aviation, ports, water and energy will continue to be subject to the 30% Bumiputera requirement.

The acquisition of shares in a company owned by Bumiputera interests and/or government agencies which: (i) holds total real properties valued at more than RM20 million (approximately USD6.4 million); and (ii) has real properties constituting more than 50% of its total assets, will require the approval of the Economic Planning Unit of the Prime Minister's Department of Malaysia and be subject to an equity condition of 30% Bumiputera, if such acquisition results in a change in control of the company. This is pursuant to new Guidelines on the Acquisition of Properties by Local and Foreign Interests.

Bumiputera has the following meanings:

- **a Bumiputera individual means:**
  - for Peninsular Malaysia, a Malay individual or aborigine as defined in Article 160(2) of the Federal Constitution of Malaysia;
  - for Sarawak, an individual as defined in Article 161A(6)(a) of the Federal Constitution of Malaysia; and
  - for Sabah, an individual as defined in Article 161A(6)(b) of the Federal Constitution of Malaysia;

- **a Malaysia-incorporated company or institution whereby Bumiputera hold more than 50% of the voting rights in such company or institution.**
As stated above, the equity conditions in the various regulated sectors in Malaysia are generally determined by the respective ministries in Malaysia and are subject to changes and review by the respective ministries.

Schedule 1 on page 45 sets out a general guide as to the foreign ownership restrictions in different industries in Malaysia.

Are there any foreign exchange controls?
There are foreign exchange controls in Malaysia which apply to borrowings, provisions of financial guarantees, investments abroad and payments, in ringgit and foreign currency, between residents and between residents and non-residents.

In respect of foreign exchange administration rules applicable to dealings in foreign currency between resident companies and non-residents:

Investment in foreign currency
- Residents are free to undertake investment abroad using foreign currency funds sourced from abroad or using proceeds from foreign currency borrowings obtained from licensed onshore banks.
- Residents without domestic ringgit borrowing are free to invest abroad.
- Resident entities with domestic ringgit borrowing who are converting ringgit into foreign currency are free to invest abroad up to RM50 million equivalent in aggregate on a group basis per calendar year.

Borrowing in foreign currency
- Resident entities are free to obtain any amount of foreign currency borrowing from licensed onshore banks, entities within its group, direct shareholders, and another resident through the issuance of foreign currency debt securities.
- Resident entities may borrow up to RM100 million equivalent of foreign currency in aggregate on a group basis from non-resident financial institutions and other non-residents which are not part of their group.

Guarantees
- Approval is required for financial guarantees exceeding RM50 million equivalent in aggregate on a group basis issued by a resident to secure borrowing obtained by a non-resident.

Payments
A resident is allowed to make or receive payment to or from a non-resident in foreign currency for any purpose other than for:

- (i) a derivative denominated in foreign currency offered by the resident unless it has been approved by the Central Bank;
- (ii) a derivative denominated in foreign currency offered by the non-resident; or
- (iii) a derivative denominated in or referenced to ringgit unless it has been approved by the Central Bank.

Is there any merger control?
The Competition Act 2010 (the Competition Act), which sets out the national competition policy and prohibits anti-competitive conduct, came into force on 1 January 2012. Unlike the competition laws around the world which usually focus on all three pillars of prohibition of anti-competitive agreements, abuse of dominant positions and mergers controls, the Competition Act only focuses on anti-competitive agreements and abuse of dominant positions. Presently, the Ministry of Domestic Trade, Cooperatives and Consumerism has no intention to introduce mergers controls under the Competition Act in Malaysia. However, the Competition Act does not prevent the Malaysian Competition Commission from
investigating activities arising after mergers have taken place, where such activities are considered to have anti-competitive effects.

**What are the employee issues?**

**Are works councils/consultation common?**

Malaysian companies do not have employee works councils, although participation in trade unions is common in the lower categories of employment in certain sectors. Unions may be national or in-house.

**Are any actions in relation to employees required prior to or upon an acquisition?**

Employees in Malaysia enjoy certain protection in business or asset purchases (as opposed to share acquisitions) under the Employment Act, 1955 (the Employment Act). Such protections include:

- the services of employees must be terminated in writing and the minimum termination notice period must not be less than that provided for in the Employment Act (unless longer notice periods are contractually agreed to); and

- payment of the minimum statutory termination benefits (payable within seven days of termination) in accordance with the rates prescribed in the regulations of the Employment Act (unless higher rates have been contractually agreed to). Such statutory termination benefits need not be paid if the buyer offers the said employees continued employment on terms and conditions no less favourable and recognises the said employee’s years of service with the seller (and the employee accepts such continued employment or unreasonably refuses the same). It should be noted that “employee” under the Employment Act is narrowly defined. For employees not falling within the definition of “employee” in the Employment Act, the protection afforded to them will be governed by the terms of their employment contracts.

Automatic transfer of employment contracts in business or asset purchases (as opposed to share acquisitions) is not recognised in Malaysia.

Consultation with employees or their trade unions is encouraged even though it is not expressly required by any laws. However, if consultation is required under the terms and conditions of employment or in the applicable collective agreement, then it must be adhered to.

**Are there any notification obligations for employees prior to or upon an acquisition?**

Save for termination notice referred to above and below, there is no mandatory obligation for any further notification to employees, unless contractually agreed. Nevertheless, early notification and consultation with employees and unions is encouraged.

The seller is, however, required by the Employment Act to notify the closest Labour Office of any termination of employment 30 days before termination takes effect followed by two follow-up notifications (within 14 days after termination takes effect and within 30 days after termination takes effect). Notification to the Labour Office is effected by submitting a duly completed standard form known as the PK Form.

**Timing**

Written termination notices by the seller must be issued to comply with the minimum notice periods prescribed in the Employment Act. The seller may indemnify the employee in lieu of giving the requisite notice. If longer notice periods are prescribed by contract, the longer notice periods will have to be complied with.
For employees not falling within the definition of “employee” in the Employment Act, the notice periods afforded to them will be governed by the terms of their employment contracts.

Under the Employment Act, termination benefits must be paid by the seller within seven days of termination unless such payment is not applicable (see below). Details of the payment must be provided in writing when the termination notices are given.

Under the Employment Act, if offers of continued employment are made by the buyer, on terms and conditions no less favourable and previous service is recognised (thus avoiding the need for the seller to pay termination benefits), such offers must be made within seven days of termination by the seller.

In practice, the termination by the seller and continued employment by the buyer is timed to take place simultaneously and, accordingly, notices and arrangements are prepared and made earlier.

**With which stock exchange requirements must listed companies comply?**

**What rules generally govern listed companies?**

Companies whose shares are listed on Bursa Malaysia Securities Berhad (Bursa Malaysia) must comply with the Listing Requirements.

The objectives of the Listing Requirements include ensuring that:

- all listed issuers are of a certain minimum size, quality and adequate operation;
- investors and the public are kept fully informed by the listed companies of all facts and information that might affect their interests and, in particular, full, accurate and timely disclosure is made of any information which may reasonably be expected to have a material effect on the price, value or market activity in the securities of the listed issuers;
- directors, officers and advisers of listed issuers maintain the highest standards of integrity, accountability, corporate governance and responsibility; and
- directors of listed issuers act in the interests of the company as a whole, particularly where the public represents only a minority of the shareholders or where the directors or major shareholders have material interests in transactions entered into by listed issuers.

The Listing Requirements require listed companies to disclose material information known to the issuer concerning it or any of its subsidiaries which is necessary for informed investing and to ensure that everyone investing in its securities has equal access to such information. Information is considered material if it is reasonably expected to have a material effect on:

- the price, value or market activity of any of the listed issuer’s securities; or
- the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.

Some examples of events which should be announced include:

- joint ventures or mergers or memorandum of understanding (MoU);
- acquisition or loss of a contract, franchise or distributorship rights;
- involvement in litigation or arbitration;
- acquisition or disposal where the percentage ratio (as set out in the Listing Requirements) is equal to or exceeds 5% or, in the case of a related party transaction, where the percentage ratio is equal to or exceeds 0.25% except where the value is less than RM250,000 or the related party transaction is a recurrent one of a revenue or trading nature which is necessary for day-to-day operations (there are various rules and exceptions on what constitutes related party transactions);

- change in control or a change in management or change in business direction;

- events of default under financing or sale agreements;

- unusual market activity in the listed issuer’s securities which signifies that a leak of information may have occurred; or

- where the listed issuer learns that there are signs that insider trading may be taking place.

Disclosure of material information may be required to be made after the market closes, and must be made to Bursa Malaysia, the press and newswire services.

In exceptional circumstances, a listed issuer may temporarily refrain from publicly disclosing material information provided that complete confidentiality is maintained. Some examples include:

- when immediate disclosure would prejudice the ability of the listed issuer to pursue its corporate objectives (eg if the unfavourable result to the listed issuer outweighs the undesirable consequences of the non-disclosure); or

- when the facts are in a state of flux or subject to rapid change and a more appropriate moment for disclosure is imminent.

The Listing Requirements also require listed companies to obtain shareholders’ approval in respect of certain transactions entered into by the listed issuer or its subsidiaries, such as acquisitions and disposals where the percentage ratio is equal to or exceeds 25% or, in the case of related party transactions, where the percentage ratio is equal to or exceeds 5%.

How does a company delist its share capital?

An application must be made to Bursa Malaysia to delist and the applicant must fulfil the following criteria:

- shareholders’ approval of delisting must be obtained at a general meeting;

- the resolution must be approved by a majority in number representing at least 75% in nominal value of the shares held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting;

- the resolution must not have been voted against by 10% or more in nominal value of the shares held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting;

- a reasonable exit alternative, normally in cash, should be offered to: (i) the shareholders; and (ii) the holders of any other classes of listed securities to be delisted; and

- an independent adviser must have been appointed to advise on the exit offer.

With which Securities Commission (SC) requirements must listed companies comply?

In addition to obtaining shareholders’ approvals for transactions where the percentage ratio is equal to or exceeds a certain threshold limit, the listed issuer is also required to obtain the prior
approval of the SC where it proposes to acquire or dispose of assets (whether or not by way of issue of securities) which result in a significant change in business direction or policy, ie:

- if the acquisition or disposal results in any one of the percentage ratios set out below being equal to or exceeding 100%, except where the assets to be acquired do not change the nature of the business of the company;

- if the acquisition of assets results in a change in the controlling shareholder of the listed company;

- if the acquisition of assets results in a change in the board of directors of the listed company;

- if the acquisition of assets is by a company classified as a cash company by Bursa Malaysia; or

- if the acquisition of assets is pursuant to a restructuring exercise involving the transfer of the listed company’s listing status and the introduction of new assets to another corporation.

The calculation of percentage ratio used by the SC is different from the one applied by Bursa Malaysia and, among other things, involves a calculation of any of the following:

- net asset value attributable to the assets which are the subject of the transaction compared with the net asset value of the listed issuer;

- revenue attributable to the assets which are the subject of the acquisition compared with the revenue of the listed issuer;

- after tax profits attributable to the assets which are the subject of the transaction compared with the after tax profits of the listed issuer;

- aggregate value of the consideration for the transaction (including amounts to be assumed by the buyer, such as the seller’s liabilities) compared with the aggregate market value of all the ordinary shares of the listed issuer; or

- the number of new shares issued by the listed issuer as consideration for the acquisition compared with the number of shares in the listed issuer in issue prior to the acquisition.

Is financial assistance prohibited?

What is the nature of the prohibition?

A Malaysia-incorporated company (whether public or private) is prohibited from giving financial assistance (either directly or indirectly) by means of a loan, guarantee or the provision of security or otherwise, for the purpose of or in connection with a purchase of or subscription made or to be made by any person for any shares in itself or its holding company.

The purpose of the financial assistance rules is to maintain capital to protect the company’s creditors and minority shareholders against the deployment of the company’s financial resources, prevent the misuse of assets and provide for the equal treatment of all shareholders.

Such financial assistance may include gifts, loans, guarantees, provision of security, waiving debt, entering into a joint venture agreement with a third party without any benefit to itself so as to induce the third party to finance a buyer of the company’s shares or giving financial assistance to a vendor of shares.

The following are, arguably, not caught by the financial assistance prohibition:

- any security or guarantee given for any part of the debt that is not used to acquire or refinance the acquisition of the shares in a company or its holding company (e.g. a working capital facility);
any security or guarantee given by Co. A (the target company) for a loan to Co. B (the acquiring company) to purchase shares in Co. A where Co. A has, pursuant to a scheme of amalgamation or reconstruction of a group of companies under section 176 or section 178 of the Companies Act now become a sister company of Co. B, provided that the scheme of amalgamation or reconstruction was carried out for the commercial benefit or interest of the group;

- payment of dividends by the target company to its shareholder (ie the acquiring company) which funds are then used by the acquiring company to repay the loan used to finance the purchase of shares in the target company, or distribution of assets as dividends; or

- repayment of capital whether by way of cash or in specie pursuant to section 64 of the Companies Act.

Any financial assistance given in relation to borrowings that are used to refinance loans originally used for the acquisition of shares in a company or its holding company may also be prohibited notwithstanding that it may not be contemporaneous with the purchase or subscription of shares in the company.

**What are the sanctions?**

The sanctions for breach of the financial assistance rules are serious. The officers of the company may be fined up to RM100,000 or imprisoned for up to five years. Directors may also face civil claims for breach of their duties to the company.

The assistance itself (eg a loan or guarantee) will be voidable at the option of the company.

---

**Are there any exceptions to the prohibition and is there any procedure which can be followed to make financial assistance possible (ie a “whitewash procedure”)?**

Depending on the circumstances of the transaction, there are limited statutory exceptions from the prohibition, for public and private companies, such as:

- where the lending of money is part of the ordinary business of a company;

- the provision of a loan by the company pursuant to an employee share option scheme for the purchase or subscription of shares in the company or its holding company; or

- in respect of a public listed company only, it may purchase its own shares provided:
  - it is solvent as at the date of purchase and will not become insolvent by incurring debts involved in the obligation to pay for the shares;
  - the purchase is made through Bursa Malaysia on which the shares are quoted;
  - the purchase is made in good faith and in the interests of the company; and
  - the shares so purchased are cancelled and/or retained as treasury shares. Treasury shares may be distributed as dividends to the shareholders or resold on the market of Bursa Malaysia on which the shares are quoted.
6. Public takeovers

What are the forms of a public offer?
A takeover of a public company in Malaysia can be structured as:

- a public offer to acquire all the issued (and to be issued) share capital (or units, as the case may be) of the target from existing shareholders (or unit holders, as the case may be);
- a scheme of arrangement between the target, the shareholders of the target (or unit holders, as the case may be) and the bidder; or
- a scheme of amalgamation or reconstruction.

Other than an offer for all of the issued share capital of the target, partial offers may be permitted with the prior consent of the SC. In general, the SC is strict in approving partial offers (regardless of the percentage involved) and will assess the grounds of an application for partial offer on a case-by-case basis. Consent may be given if a partial offer is made due to foreign equity restrictions. Where the partial offers would result in the bidder and persons acting in concert with it holding more than 33% but less than 100% of the voting rights of the target, the takeover offer is not successful unless:

- the bidder has received acceptances for not less than that number of voting shares of the target as stated in the offer document; and
- the bidder has received a vote of approval of the takeover offer by target shareholders holding in aggregate more than 50% of the voting shares in the target. This may be exempted if the takeover offer has been accepted by one target shareholder holding more than 50% of the voting shares.

Save with the consent of the SC, a bidder and any persons acting in concert with it cannot acquire any voting shares:

- during the offer period other than by acceptances of the partial offer; and
- that have been the subject of the partial offer during the period of 12 months from the expiry of the offer period.

Consent may be given by the SC: (i) where the partial offer has resulted in a holding of less than 33% of the voting shares of the company; (ii) in a rescue operation where such purchase is necessary to gain control of a company; or (iii) where the purchase of the voting shares or voting rights is conducted via an on-market transaction and the purchase price is lower than the offer price.

Takeovers can be either recommended by the target’s board or hostile.

What is the regulatory framework for a public offer?
Malaysian Code on Take-Overs and Mergers (the Code)
The principal source of regulation is the Code, which is a set of rules designed to ensure an efficient, competitive and informed market and to ensure that all shareholders of the target have equal opportunities to participate in the benefits accruing from the takeover offer.

The SC may be consulted by the parties via their advisers, who should communicate with the SC during or before an offer. The Code has the force of law, and any breach of the Code may result in sanctions such as private or public censure or reprimand, a penalty of up to RM1 million or imprisonment for a term of up to 10 years, or both, depending on the severity, the withdrawal of the facilities of the stock exchange, suspension of trading in the securities or the listing of the person in breach. A person in breach may also be required to take such steps as the SC may direct to remedy the breach or mitigate the effect of any breach, including making restitution to any person aggrieved by such breach.
6. Public takeovers continued

There are a number of other laws regulating certain aspects of takeovers, including the general requirements of company law and laws governing the conduct of securities trading (eg insider trading prohibitions).

In addition, the Listing Requirements may be relevant if the shares of the bidder (or the target) are listed on Bursa Malaysia.

**Application of the Code**

The Code is drafted with listed and non-listed public companies in mind. The Code applies to all bidders, whether they are natural persons (resident in Malaysia or not, and citizens of Malaysia or not), corporations or unincorporated bodies (whether incorporated or carrying on business in Malaysia or not) and extends to acts done or omitted to be done in and outside Malaysia.

**What are the main offer terms?**

**Minimum price requirements**

Where the bidder (or any of its persons acting in concert) is subject to an obligation to make a mandatory offer under the Code, the consideration offered by the bidder must not be less than the highest price paid or agreed to be paid by the bidder or any persons acting in concert with it in respect of the voting shares of the target during the period starting six months prior to the commencement of the offer period and the terms of the offer must not be on less favourable terms with respect to value. If voting shares have been acquired by the exercise of conversion rights or warrants, the price will normally be established by reference to the average high and low market prices of the voting shares in question at the close of business on the day on which the relevant notice was submitted to the target.

If, during the offer period, the bidder (or any persons acting in concert with it) purchases shares above the offer price, the bidder must increase its offer to no less than the highest price paid for the shares acquired during the offer period.

**Cash/non-cash terms**

In a voluntary offer, consideration for an offer may be in cash, securities (eg loan notes, shares or other securities of the bidder), or a mixture of both. However, where the consideration is:

- securities (including shares, debentures, notes, bonds) of a public company in Malaysia;
- debentures of a private company in Malaysia; or
- securities (including shares, debentures, notes, bonds) of any company incorporated outside Malaysia,

the prior approval of the SC will be required for the bidder to offer such securities in the takeover offer in addition to any other approvals required by the bidder from the SC pursuant to the takeover offer.

**Cash consideration**

Cash consideration is compulsory in mandatory offers (see pages 14 and 15 for more information on mandatory offers). This means that if a bidder wishes to offer securities as consideration pursuant to a mandatory offer, it must give the shareholders of the target an option to receive cash in lieu of securities (the cash alternative).

In the case of a voluntary offer, where 10% or more of the target’s shares have been purchased for cash by the bidder (or any person acting in concert with it) during the offer period or within six months prior to its commencement, the offer must be in cash at a price no lower than the highest price paid for such shares during the offer period. A cash offer on the terms described in the foregoing sentence may also be required even though less than 10% of the
voting shares have been acquired by the bidder and persons acting in concert with it in the previous six months, if the circumstances are such that, in the view of the SC, a cash offer is necessary to ensure similar treatment of shareholders of the same class.

Non-cash consideration
Generally, non-cash consideration will consist of the bidder’s ordinary shares, though other equity-related securities may be offered.

Where unlisted securities are offered as consideration for the acceptance of a takeover offer, the bidder is required to disclose the value of the unlisted securities based on a reasonable estimate by an independent valuer and relevant particulars of the valuation report made by the independent valuer in the offer document and any circular or document issued by the bidder in relation to the takeover offer.

Where listed securities are offered as consideration for the acceptance of a takeover offer:

- in the case of unissued securities, the value must be the price as approved, or the mandate given, by the shareholders of the bidder;

- in the case of issued securities, the value must be the weighted average market price of the securities for the past five market days preceding the date of the written notice of the takeover offer to the board of directors of the target or an adviser designated by the board of directors of the target, Bursa Malaysia and the SC; or

- where there is no trading of the securities for a continuous period of five market days immediately preceding the date of the written notice of the takeover offer to the Board of the target, Bursa Malaysia and the SC, the value must be the weighted average market price of the securities for the past five market days preceding the close of trading of the market day when the securities were last traded.

Conditions

Required condition: Every takeover offer must be conditional upon a minimum level of acceptance. For both a mandatory offer and a voluntary offer, the minimum level of acceptance is that which would result in the bidder (and persons acting in concert with it) holding more than 50% of the voting rights.

Prohibited conditions: A mandatory offer must not be subject to any condition other than the condition as to the minimum level of acceptance. A bidder in a voluntary offer will normally subject the voluntary offer to a number of conditions which cannot not be a “defeating condition”. A defeating condition is a condition the fulfillment of which depends on an opinion, belief or state of mind of the bidder or an event that is within the sole control of, or is a direct result of an action by, the bidder (or any person acting in concert with it).

Usual conditions: The common conditions attached to a voluntary offer include:

- valid acceptances in respect of 90% of the shares being received by the first closing date or in respect of more than 50% of shares being received by the first closing date. Any reduction of the minimum level of acceptance from 90% to more than 50% during the takeover requires the prior approval of the SC and is generally not allowed (see squeeze-out on page 39 as to the importance of the 90% threshold);

- the passing of such resolutions as are necessary to implement the offer at an extraordinary general meeting of the bidder;
6. Public takeovers continued

- in the context of a securities exchange offer, admission of new shares in the bidder to listing by Bursa Malaysia;
- necessary approvals from the regulatory authorities having been obtained;
- no material adverse change having occurred, since the latest announced results to Bursa Malaysia, in respect of the business, financial or trading position or profits or prospects of the target and/or its subsidiaries;
- no contingent liability having arisen which is likely to materially and adversely affect the target and/or its subsidiaries. Any adverse change of 5% or more in the consolidated net tangible assets of the target since the last announced results may be considered material by the bidder for this purpose;
- no governmental or regulatory body or any other person having proposed, threatened or effected any action, proceedings, suit, investigation or enquiry or enacted, made or proposed any statute, regulation or order prior to the date when the minimum level of acceptance is met, that would make the voluntary offer void, unenforceable or illegal;
- no material adverse change in national or international, social, monetary, financial, political or economic conditions or exchange control that affect the business, financial or trading position of the target group; and
- no dividends having been declared by the target from the date of the notice of takeover offer to completion of the offer.

All conditions in a voluntary offer must be fulfilled within 21 days after the first closing date or after the minimum level of acceptance is fulfilled, whichever is later, but in any event no later than seven days after the date falling 60 days after the date the offer document is dispatched, failing which the voluntary offer lapses.

Funding the acquisition

In a cash offer or where the offer involves an element of cash, the bidder must include in its offer announcement a statement by the financial adviser that the financial adviser is reasonably satisfied that there are sufficient financial resources available to the bidder such that the bidder would be able to carry out the offer in full by way of cash.
What is the timing of a public offer and what is the procedure to be followed?

Simplified offer timetable

<table>
<thead>
<tr>
<th>Date/Time period</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-21</td>
<td>Earliest possible date for the press announcement and notification to the board of target, Bursa Malaysia and the SC</td>
</tr>
<tr>
<td>D-20</td>
<td>Board of target to inform Bursa Malaysia and make the press announcement</td>
</tr>
<tr>
<td>D-17</td>
<td>Bidder to submit offer document to the SC (Takeover Department) and Bursa Malaysia for clearance. Application to be made to any other authorities whose approval is required under the target’s licence (eg Minister of Finance for financial institutions or insurance companies or Minister of International Trade and Industry for licensed manufacturing companies)</td>
</tr>
<tr>
<td>D-14</td>
<td>Last date for the board of the target to post the written notice to all target shareholders</td>
</tr>
<tr>
<td>Day 0 (D)</td>
<td>Offer document dispatched (no later than 21 days after the press announcement)</td>
</tr>
<tr>
<td>D+10</td>
<td>Last date for the dispatch of comments by the target’s board and an independent advice circular recommending acceptance or rejection of the takeover offer and risks involved</td>
</tr>
<tr>
<td>D+21</td>
<td>Earliest date for first closing date</td>
</tr>
<tr>
<td></td>
<td>Announcement to press, Bursa Malaysia and the SC of closing of offer, acceptance levels, revision (if appropriate) and extension (if appropriate) of the offer</td>
</tr>
</tbody>
</table>
6. Public takeovers continued

<table>
<thead>
<tr>
<th>Date/Time period</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>D+46 (assuming first closing date is D+21)</td>
<td>Last date for the dispatch of a notice on revision of offer. An offer, if revised, must be kept open for at least 14 days. Since the offer period must end on D+60 (save for special circumstances), the last date for the dispatch of a notice on a revision of offer is on D+46</td>
</tr>
<tr>
<td>D+60</td>
<td>Last date for the fulfilment of the minimum level of acceptance conditions</td>
</tr>
<tr>
<td>D+74</td>
<td>Last closing date. If an offer becomes unconditional as to acceptances on any day after D+60, the closing date will fall 14 days thereafter</td>
</tr>
</tbody>
</table>

**Announcements**

An announcement of a firm intention to make an offer is made by the bidder after approaching the target board. In a hostile offer, the announcement is usually made immediately after approaching the target board to restrict the time for the target board to marshal its defences. An immediate announcement is required where an obligation to extend a mandatory offer is triggered. Where there is unusual market activity which signifies a leak regarding a possible offer or rumours or reports concerning the information have appeared, Bursa Malaysia will require an immediate announcement to avoid the risk of a false market developing. Such announcements are essential even if the matter has yet to be presented to the listed issuer’s board for consideration.

The announcement of a firm intention to make an offer crystallises the obligation to make an offer (subject to any offer conditions). A bidder will only be permitted by the SC to withdraw its offer after such announcement in highly exceptional circumstances.

**Acceptance period**

The offer must be initially open for at least 21 days from posting of the offer document.

The bidder may on any closing date extend the offer by announcing a revised closing date until the offer becomes unconditional as to acceptances, which must happen on or before D+60. The takeover offer is generally extended by not less than 14 days from the date in which the takeover offer becomes and is declared unconditional as to acceptances, but in any event the final closing date shall not be later than D+74.

On the first business day after the first closing date, any subsequent closing dates and any date on which the offer is revised, extended or declared unconditional as to acceptances,
the SC must be notified and an announcement via the press (for non-listed companies) or Bursa Malaysia (for listed companies) will need to be made concerning acceptance levels and specifying the percentages of the relevant classes of share capital represented by these figures.

If revised, the offer must be kept open for acceptance for at least 14 days from the date the written notification of the revised offer is posted. For this reason, the offer may not be revised after D+46.

**Satisfying offer conditions**

The last possible date for announcing that the offer is unconditional as to the minimum level of acceptances is D+60. Where there is a competitive offer situation and an extension is required, the SC’s approval will be required.

Except with the SC’s consent, in a voluntary offer, all conditions (other than minimum level of acceptances) must be fulfilled within 21 days after the first closing date, or within 21 days after the acceptance condition is fulfilled, whichever is later.

**Offer unconditional – payment**

For cash consideration, the bidder must pay for the target’s shares as soon as practicable, but in any event within 10 days from:

- the date the offer becomes or is declared wholly unconditional, in relation to valid acceptances which are received during the period when the takeover offer is still valid; and
- the date of the valid acceptances, in relation to valid acceptances which are received during the period after the takeover offer is or has become or has been declared wholly unconditional.

For cases where the consideration involves only securities or a combination of cash and securities, the bidder must post or credit the consideration as soon as practicable, but in any event within 14 days from:

- the date the offer becomes or is declared wholly unconditional, if the valid acceptances are received during the period when the takeover offer is still valid; and
- the date of the valid acceptances, if the valid acceptances are received during the period after the takeover offer is or has become or has been declared wholly unconditional.

**Competing bids**

An original bidder will be allowed to depart from the offer timetable and revise its offer if a competitive situation arises.

The Code requires that information, including particulars of shareholders, given by the target to one bidder or potential bidder must, on request, be furnished equally and promptly to any other bona fide bidder or potential bidder, which should specify the questions to which it requires answers.

**Failed bids and further offers**

When an offer has been withdrawn (which is permitted only with the prior consent of the SC) or has failed, the bidder and all persons acting in concert with it cannot:

- make a further offer within 12 months;
- acquire any voting rights of the target if the bidder or persons acting in concert with it would thereby become obliged to make a mandatory offer;
- acquire any voting rights of the target if the bidder holds voting rights carrying over 48% but not more than 50% of the voting rights; or
acquire any interest in the voting rights of the target on more favourable terms than those made available under its lapsed offer where the lapsed offer is one of two or more competing offers until each of the competing offers has been declared unconditional in all respects or has lapsed.

The bidder (and all persons acting in concert with it) must furnish the SC with details of any acquisition by them of any shares in the target, including an option to acquire any shares in the target, each month for a period of 12 months from the date that the offer was withdrawn or failed.

**What documentation is involved in the process?**

**Offer announcement**

An announcement of a firm intention to make an offer must contain (among other things):

- the terms and conditions of the offer;
- details of existing holdings in the target held by the bidder and any persons acting in concert with it;
- the total number of shares in respect of which the bidder or any persons acting in concert with it has received an irrevocable undertaking from the target shareholders to accept the takeover offer;
- details of any existing or proposed agreement, arrangement or understanding relating to voting shares between the bidder or any persons acting in concert with it and the target shareholders; and
- confirmation that the bidder has sufficient financial resources to extend the offer.

**Offer document**

The offer document, issued by the bidder through its adviser, must contain the minimum information prescribed under the Code, including, without limitation:

- the terms of the offer and the conditions attached to it;
- the acceptance procedure;
- the rationale for the offer;
- the bidder’s intention regarding the continuation of the target’s business;
- the bidder’s intentions regarding any major changes to be introduced to the business, including any plans to liquidate the target, sell its assets or re-deploy the fixed assets of the target or make any major changes in the structure of the target;
- whether the bidder has any intention to resort to compulsory acquisition powers; and
- whether or not any agreement, arrangement or understanding exists between the bidder, or any person acting in concert with it, and any of the target shareholders or past shareholders (ie persons who were shareholders of target during the period six months prior to the offer) having any connection with, or dependence upon, the offer.

The offer document must contain a responsibility statement that each director of the bidder accepts responsibility for the information and that each of them has taken reasonable care to ensure that both the facts stated and opinions expressed are fair and accurate and that no material facts have been omitted.
Target documentation

After receipt of notification of an offer, the target board must make an announcement to its shareholders informing them of the offer. The target board must advise the shareholders of the target of its views by way of a circular which must contain the board’s recommendation and the evaluation of the offer by an independent adviser appointed by the board within 10 days after the bidder has dispatched the offer document.

Where an offer is recommended, the board of the target will, through its independent adviser (approved by the SC), issue an independent advice circular to the target shareholders giving the independent adviser’s and the board’s recommendation with respect to the offer.

What are the practices relating to break fees and lock-out?

A break fee arrangement, whereby a fee is paid by the target to the bidder if a specified event occurs which prevents the offer from succeeding, is not practised in Malaysia and it is unlikely that the SC will allow it because such an arrangement would be contrary to minority interest protection.

It is not a common practice for the bidder and the target to enter into a lock-out agreement whereby the target agrees not to enter into, or solicit, negotiations with another potential bidder.

Care must be exercised in entering into a lock-out agreement as the target board has a duty not to take any action which could frustrate an imminent bona fide offer without the shareholders’ approval in general meeting. A target also has to provide information on an equal basis to all competing bidders.

What are the rules on information gathering/provision?

The Code requires information to be provided equally to all shareholders and also to competing bidders.

A bidder may sometimes undertake some due diligence on the target before extending an offer. If price-sensitive information is proposed to be provided by the target to the bidder, this may potentially create an insider trading offence for the bidder to acquire the target shares from the target shareholders.

Publicly available information about the target may be obtained from the Companies Commission of Malaysia and Bursa Malaysia announcements made by the target. The target should not make price-sensitive information available to the bidder (ie information which would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of securities).

If non-publicly available information (which is not price sensitive) is proposed to be given, it must be examined whether the target (if listed) is required to disclose the information publicly under the Continuing Disclosure Policy of the Listing Requirements of Bursa Malaysia. The target should also consider that it might be required (unless the SC rules state otherwise) to provide the same information to a competing bona fide bidder or potential bidder which is less welcome upon request.

What is the position regarding insider trading?

Insider trading is a criminal offence that may also carry civil liabilities.

In general, any person who has information concerning a corporation that is not generally available and which a reasonable person would expect to have a material effect on the price or value of the corporation’s securities, would be guilty of insider trading if he:

- deals in the securities;
- procures others to deal in the securities; or
- communicates the information to a third party where the third party is likely to deal in the securities.
6. Public takeovers continued

Insider trading applies to:

- acts and omissions in Malaysia in relation to securities of any body corporate formed or carrying on business or listed in or outside Malaysia; and

- acts and omissions occurring outside Malaysia in relation to securities of any body corporate formed or carrying on business or listed in Malaysia.

The consequences for insider trading are:

- a fine not exceeding RM1 million or imprisonment not exceeding 10 years or both; and/or

- the SC may, if it is in the public interest to do so, by civil action: (i) recover an amount equal to three times the unlawful profit gained or loss avoided; and (ii) claim a civil penalty not exceeding RM1 million; and/or

- a person who suffers loss or damages may recover the amount of loss or damages by instituting civil proceedings against the person carrying out insider trading, whether or not such person has been charged with an offence.

What are the public disclosure requirements in a takeover scenario?

**Bidder**

In general, a person who has acquired an interest in 5% or more of a Malaysia-incorporated company listed in Malaysia is required to disclose his interest to the company and the SC. Any subsequent changes in the percentage level and cessation of his substantial shareholding must also be disclosed.

The following persons, among others, must publicly disclose to the SC and announce (via the press or Bursa Malaysia (as applicable)), by noon the following market day, dealings by them in the shares of the target and the bidder: (i) the bidder (including purchase of its own shares); (ii) persons acting in concert with it; (iii) chief executives, directors or senior officers of the bidder; (iv) connected persons of the persons listed in items (i), (ii) and (iii) above; and (v) persons who are accustomed to act in accordance with the direction or order of the persons referred to in items (i), (ii), (iii) and (iv) above.

Where shares of the bidder are offered as consideration for the target shares, dealings in shares of the target or bidder by the shareholders of the bidder holding 5% or more of the target’s shares must also be disclosed.

**Target**

During the offer period, the following persons, among others, must publicly disclose to the SC and announce (via the press or Bursa Malaysia (as applicable)), by noon the following market day, dealings by them in the shares of the target and the bidder: (i) the target and all persons acting in concert with the target; (ii) shareholders of the target holding 5% or more of the target’s shares; (iii) chief executives, directors or senior officers of the target; (iv) connected persons of the persons listed in items (i), (ii) and (iii) above; and (v) persons who are accustomed to act in accordance with the direction or order of the persons referred to in items (i), (ii), (iii) and (iv) above.

**Does a memorandum of understanding need to be disclosed?**

Whether an MoU should be disclosed will depend on the type of acquisition, the parties involved and the terms of the MoU. Once announced, the listed issuer must inform Bursa Malaysia of the status on a quarterly basis or more regularly upon the occurrence of a material change, whichever is earlier. In general, the Listing Requirements stipulate that a listed company must disclose information that is material (ie where it is reasonably expected to
have a material effect on the price, value or market activity of securities of that company and the decision of an investor in determining his choice of action).

In cases of doubt, the presumption must always be in favour of disclosure. Some exceptional circumstances where disclosure may be temporarily withheld include:
- when immediate disclosure would prejudice the ability of the listed issuer to pursue its corporate objectives (e.g., where it would prevent the listed issuer from carrying out its plan to acquire assets due to the resulting increase in cost); or
- when the facts are in a state of flux and subject to rapid change and a more appropriate moment for disclosure is imminent when the situation has stabilised.

What are the limitations to stakebuilding?
Acquisition of shares carrying more than 33% of the voting rights of a company will usually trigger a mandatory offer.

In general, a person who acquires an interest in 5% or more of a Malaysia-incorporated company listed in Malaysia is required to disclose to the company and the SC his interest and any subsequent change in the percentage level of his interest or cessation of his substantial shareholding.

Is there a requirement to make a mandatory offer?
There is a requirement under the Code to make a mandatory offer for the target's shares if the shareholding of a person exceeds certain thresholds. The SC may grant dispensations in limited circumstances.

A mandatory offer must be made when:
- a person acquires (together with shares held or acquired by persons acting in concert with him) shares which carry more than 33% of the voting shares of a company; or
- any person who (together with persons acting in concert with him) holds more than 33% but less than 50% of the voting shares, or any person acting in concert with him, acquires additional shares which increase his percentage of the voting shares by more than 2% in any six-month period.

In general, the acquisition of convertible securities does not give rise to a mandatory obligation but the exercise of any conversion or subscription rights or options is an acquisition of voting shares. There are presumptions relating to whose shareholdings must be aggregated and who will be treated as a person acting in concert with the bidder.

The mandatory offer must offer a cash consideration or a cash alternative at no less than the highest price paid by the bidder, or any person acting in concert with him, for shares of that class in the previous six months. It must be conditional only upon acceptances of more than 50% of the target shares.

The SC may waive the requirement to make a mandatory offer in the following circumstances:
- where a person incurs such an obligation by reason of the issue of new securities to him as consideration for a sale or disposal of assets or interest by that person;
- where the objective of the acquisition is to rescue the financial position of a target company;
where: (a) a person obtains control in the target but makes a prior firm arrangement or gives a written undertaking to reduce his holding in the voting shares or voting rights of the target to 33% or less; or (b) an underwriter obtains control in the target pursuant to him underwriting the voting shares or voting rights in the target (aggregated with the existing voting shares or voting rights already held by the underwriter);

where the person who incurs such obligation is able to satisfy the SC that the remaining holders of voting shares of a target company have given written affirmations that they will not accept a takeover offer;

where a person who incurs such obligation due to an acquisition of additional voting shares or voting rights by members of a group acting in concert;

where a person who incurs such obligation intends to proceed with a compulsory acquisition under section 180 of the Companies Act;

where a person incurs such obligation by reason of an acquisition which was approved based on national policy; or

where a person incurs such obligation by reason of a share buy-back scheme.

**What defences are available to a target company during the stages of an offer?**

A target may attempt to ward off a hostile offer by undertaking defences.

Defences available before a takeover offer is made (eg poison pills) are rarely used by companies incorporated in Malaysia as there are concerns of conflicts with the target board’s fiduciary duty. In general, whether by design or otherwise, some Malaysian companies may have a capital structure which may make it more difficult or time-consuming and expensive to obtain voting control of the target, especially where there are convertible securities, warrants or other subscription rights and employees’ share options. A controlling shareholder may thwart an offer by converting its securities to voting shares, thus expanding the equity and making it difficult for the bidder to know the precise number of shares involved.

During the offer period, the target’s board is not allowed to take any action which might deny shareholders an opportunity to decide on the merits of an offer that has been received or a bona fide offer which is reasonably believed to be imminent without shareholders’ approval in general meeting.

After an offer has been received in a hostile takeover, the defence is usually confined to seeking a “White Knight”, or stating in the target documentation that the target’s board does not believe that acceptance of the offer is in the best interests of the target or its shareholders.

Apart from the duty not to frustrate an offer, the target’s board must generally act in the best interests of the target’s shareholders as a whole.

**What obligations are the directors of the bidder and target under?**

**Bidder**

The Code imposes considerable obligations on the directors of the bidder. In addition, the directors of the bidder must consider the insider trading legislation if they are contemplating dealing in the shares of the target and in the bidder.
The advisers to the bidder should prepare a comprehensive memorandum of the directors’ obligations as soon as the bidder starts to consider the possibility of making an offer.

**Target**
The Code imposes considerable obligations on the directors of the target. In addition, they must comply with their obligations under the Listing Requirements as well as their fiduciary duties to the target.

The directors of the target must not take any action which might constitute oppression of the minority shareholders of the target. The minority shareholders may seek statutory redress against oppression.

The advisers to the target should prepare a comprehensive memorandum of the directors’ obligations immediately following any offer approach.

**What is the procedure for a squeeze-out of the minority?**
Where a takeover offer is made for a company incorporated in Malaysia and acceptances are received in respect of 90% or more of the shares to which the offer relates (other than shares already held at the date of the takeover offer by the bidder, its nominee, including persons acting in concert with it, or a related corporation) within four months of the making of the offer, the bidder may compulsorily acquire the shares of the non-accepting shareholders.

Shares acquired by the bidder, its related corporation or a nominee of the bidder or its related corporation prior to making the offer cannot be taken into account in calculating whether the 90% threshold has been reached. Shares subject to an irrevocable undertaking to accept the offer, however, can usually be taken into account.

Notices must be served on the non-accepting shareholders within two months of reaching the 90% threshold. The non-accepting shareholders have a right to apply to the court for an order that the bidder shall not be entitled to acquire the shares or specifying terms of acquisition different from those of the offer.

If the bidder has, together with shares held by the bidder, its nominee (including any person acting in concert with it) or related corporation, acquired not less than 90% of all of the shares in the company, a minority shareholder also has a right to request to be bought out by the bidder.
7. Overview of a private company acquisition

**Timing**

The timing of a private acquisition depends on the cooperation between the parties, the progress of negotiations and other matters specific to the transaction.

**Steps**

In general, the acquisition can be an auction process or a privately negotiated deal in Malaysia.

An example of the steps involved in an auction process involving an acquisition of a private company incorporated in Malaysia is as follows:

- seller issues an information memorandum (IM), which describes the business and affairs of the target, and must be deposited with the SC within seven days after it is first issued;
- bidders sign a confidentiality agreement prior to receiving the IM;
- bidders carry out due diligence on the target;
- bidders are given a draft sale and purchase agreement, any other ancillary agreements and a disclosure letter;
- bidders submit their bid and their mark-up of the draft sale and purchase agreement;
- seller chooses highest bidder and parties may negotiate further on the draft sale and purchase agreement;
- parties sign sale and purchase agreement;
- satisfaction of conditions precedent;
- completion; and
- post-completion matters.
8. Tax issues

**Capital gains**
There is no capital gains tax in Malaysia.

**Transfer taxes**
Transfer tax (ie stamp duty) is payable on certain written agreements and transfer documents for the sale of shares. Stamp duty is also payable on the conveyance or transfer of immovable property.

The rate of stamp duty for the transfer of shares of a company incorporated in Malaysia is 0.3% on the highest of the following:
- the consideration paid per share;
- the net tangible asset value per share (normally determined by reference to the latest available audited financial statements of the company); or
- the price earnings ratio (which is based on profit after tax per share) at a multiple depending on the industry.

Transfers of shares or undertakings in connection with schemes of arrangement, reconstruction or amalgamation are not subject to stamp duty.

The rate of stamp duty for the transfer of immovable property is 1% on the first RM100,000, 2% on any amount between RM100,001 and RM500,000, and 3% on any amount exceeding RM500,000.

Stamp duty must be paid if title needs to be proven or the agreements or documents are to be produced in evidence before a court, tribunal, board, commission or similar body in, or registered in, Malaysia.

**Thin capitalisation/interest deductions**
A company may in general claim a deduction from interest paid under a loan used for the purposes of producing income when calculating its taxable profits.

If an interest payment is re-characterised as a distribution then the borrower will not be entitled to a deduction in calculating its profits for corporate tax purposes.

If the consideration given by the company for the use of the principal represents more than a reasonable commercial return, the excess may not be available for tax deduction when calculating the profits for corporate tax purposes.

The tax authority is also empowered to disallow any deduction of the portion of the interest charges that relates to the amount of financial assistance which is excessive by reference to the fixed capital. Until a tax ruling is issued, it is unclear what constitutes “financial assistance” and “fixed capital” and how the arm’s length ratio is to be determined. However, the tax authority has indicated that the debt to equity ratio of a company should not be more than 3:1 and that any interest attributable to the debt over and above the 3:1 ratio will not be deductible as an expense.

**Real property gains tax**
Real property gains tax may be chargeable on the disposal of shares in a real property company within the meaning of the Real Property Gains Tax Act 1976. “Real property company” generally covers companies which acquire real property, shares or both whereby the defined value of real property, shares or both owned at that date is not less than 75% of the value of the company’s total tangible assets. There are filing requirements applicable to both the seller and the buyer.
8. What tax issues should be considered? continued

**Withholding tax**
If a person makes a payment of Malaysian source interest to a person not resident in Malaysia, that person may be obliged to deduct income tax at the prevailing rate of 15%.

Withholding tax at the rate of 10% is applicable on payments of royalties and rents for any moveable property which is deemed to be derived in Malaysia to a person not resident in Malaysia. Such income shall be deemed to be derived in Malaysia if the payer is a resident or the payment is charged as an outgoing or expense in the account of the business carried on in Malaysia.

Withholding tax rates may be reduced by applicable tax treaties between Malaysia and the country of residence of the non-resident person.

There are a number of exemptions where there is no requirement to withhold tax, for example interest paid by a Malaysian licensed bank and interest paid out of certain qualifying debt securities.

There is no withholding tax on dividend payments.

**Goods and services tax (GST)**
The Goods and Services Tax Act 2014 (GST Act) will come into force on 1 April 2015. Any transfers or disposals of business assets are treated as supplies of goods and chargeable with goods and services tax (GST).

An exception applies to the transfer of business assets as a going concern (TOGC).

A TOGC is not regarded as a supply of goods or a supply of services if the business assets are to be used by the transferee in carrying on the same kind of business as that carried on by the transferor, and, accordingly, no GST is chargeable on such transfer.
### Schedule 1: General guide to the foreign ownership restrictions in Malaysia

<table>
<thead>
<tr>
<th>Type of business</th>
<th>General maximum permissible foreign shareholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activities which involve national interest, (eg water and energy supply)</td>
<td>30% – 49%</td>
</tr>
<tr>
<td>Airlines</td>
<td>49%</td>
</tr>
<tr>
<td>Capital Markets Services (eg stockbroking, fund management, investment advice)</td>
<td>100%</td>
</tr>
<tr>
<td>Company that is set up to acquire non-performing loans from financial institutions in Malaysia</td>
<td>49%</td>
</tr>
<tr>
<td>Commercial banks</td>
<td>30% (up to 100% will be considered where there is significant value proposition to Malaysia).</td>
</tr>
<tr>
<td>Investment banks</td>
<td>70%</td>
</tr>
<tr>
<td>Insurance</td>
<td>70% (a higher foreign limit will be considered on a case-by-case basis).</td>
</tr>
<tr>
<td>Money broking</td>
<td>49%</td>
</tr>
<tr>
<td>Downstream oil and gas industry</td>
<td>Up to 70% (depending on the category of Petronas licence). Minimum Bumiputera requirements of 30%, 51% or 100% may also apply (depending on the category of Petronas licence).</td>
</tr>
<tr>
<td>Upstream oil and gas industry</td>
<td>All foreign energy investment is conducted through production sharing contracts between foreign operators and Petroliam Nasional Berhad (Petronas).</td>
</tr>
<tr>
<td>Shipping</td>
<td>49%</td>
</tr>
<tr>
<td>Freight forwarding agent</td>
<td>49% with at least 51% Bumiputera equity.</td>
</tr>
<tr>
<td>Shipping agent</td>
<td>70% with at least 30% Bumiputera equity.</td>
</tr>
</tbody>
</table>
8. What tax issues should be considered? continued

<table>
<thead>
<tr>
<th>Type of business</th>
<th>General maximum permissible foreign shareholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications</td>
<td>100% for Application Service Provider licence.</td>
</tr>
<tr>
<td></td>
<td>70% for Network Facilities Provider (NFP) and Network Service Provider (NSP) licences.</td>
</tr>
<tr>
<td>Retail and distributive trade (eg hypermarkets, convenience stores, direct selling)</td>
<td>70%</td>
</tr>
<tr>
<td>Transportation services</td>
<td>49%</td>
</tr>
<tr>
<td>Courier services</td>
<td>100%</td>
</tr>
</tbody>
</table>
The Clifford Chance international network

<table>
<thead>
<tr>
<th>City</th>
<th>Address</th>
<th>Telephone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abu Dhabi</td>
<td>Clifford Chance 9th Floor, Al Sila Tower Abu Dhabi Global Market Square PO Box 26492 Abu Dhabi</td>
<td>+971 2 613 2300 F +971 2 613 2400</td>
<td></td>
</tr>
<tr>
<td>Amsterdam</td>
<td>Clifford Chance Droogbak 1A 1013 GE Amsterdam PO Box 251 1000 AG Amsterdam T +31 20 7119 000 F +31 20 7119 999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bangkok</td>
<td>Clifford Chance Sindhorn Building Tower 3 21st Floor 130-132 Wireless Road Pathumwan Bangkok 10330 T +66 2 401 8800 F +66 2 401 8801</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Barcelona</td>
<td>Clifford Chance Au. Diagonal 682 08034 Barcelona T +34 93 344 22 00 F +34 93 344 22 22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beijing</td>
<td>Clifford Chance 33/F, China World Office Building 1 No. 1 Jianguomenwai Dajie Beijing 100004 T +86 10 6505 9018 F +86 10 6505 9028</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brussels</td>
<td>Clifford Chance Avenue Louise 65 Box 2, 1050 Brussels T +32 2 533 5911 F +32 2 533 5959</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bucharest</td>
<td>Clifford Chance Badea Excelsior Center 28-30 Academiei Street 12th Floor, Sector 1, Bucharest, 010016 T +40 21 66 66 100 F +40 21 66 66 111</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Casablanca</td>
<td>Clifford Chance 169 boulevard Hassan 1er 20000 Casablanca T +212 520 132 080 F +212 520 132 079</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Copenhagen</td>
<td>Clifford Chance Suite B 30th floor Tornado Tower Al Funduq Street West Bay PO Box 32110 Doha T +974 4 491 7040 F +974 4 491 7050</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dubai</td>
<td>Clifford Chance Building 6, Level 2 The Gate Precinct Dubai International Financial Centre PO Box 9380 Dubai T +971 4 362 0444 F +971 4 362 0445</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Düsseldorf</td>
<td>Clifford Chance Königsallee 59 40215 Düsseldorf T +49 211 43 55-0 F +49 211 43 55-5600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frankfurt</td>
<td>Clifford Chance Mainzer Landstraße 46 60325 Frankfurt am Main T +49 69 71 99-01 F +49 69 71 99-4000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Clifford Chance 27th Floor Jardine House One Connaught Place Hong Kong T +852 2825 8888 F +852 2825 8800</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Istanbul</td>
<td>Clifford Chance Kanyon Ofis Binasi Kat. 10 Büyükdere Cad. No. 185 34394 Levent, Istanbul T +90 212 339 0000 F +90 212 339 0099</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jakarta</td>
<td>Clifford Chance DBS Bank Tower Ciputra World One 28th Floor Jl. Prof. Dr. Satrio Kay 3-5 Jakarta 12940 T +62 21 2988 8300 F +62 21 2988 8310</td>
<td></td>
<td></td>
</tr>
<tr>
<td>London</td>
<td>Clifford Chance 10 Upper Bank Street London E14 5JU T +44 20 7006 1000 F +44 20 7006 5555</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Clifford Chance 10 boulevard G.D. Charlotte B.P. 1147 L-1011 Luxembourg T +352 48 50 50 1 F +352 48 13 85</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madrid</td>
<td>Clifford Chance Paseo de la Castellana 110 28046 Madrid T +34 91 590 75 00 F +34 91 590 75 75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milan</td>
<td>Clifford Chance Piazzetta M. Bossi, 3 20121 Milan T +39 02 806 341 F +39 02 806 34200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moscow</td>
<td>Clifford Chance Ul. Gasheka 6 125047 Moscow T +7 495 258 5050 F +7 495 258 5051</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>Clifford Chance 31 West 52nd Street New York NY 10019-6131 T +1 212 878 8000 F +1 212 878 8375</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Riyadh</td>
<td>Clifford Chance Building 15, The Business Gate King Khalid International Airport Road Cordoba District, Riyadh, KSA, P.O.Box: 3515, Riyadh 11481, T +966 11 481 9700 F +966 11 481 9701</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rome</td>
<td>Clifford Chance Via Di Villa Sacchetti, 11 00197 Rome T +39 06 422 911 F +39 06 422 91200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>São Paulo</td>
<td>Clifford Chance Rua Funchal 418 15ºandar 04551-060 São Paulo-SP T +55 11 3019 6000 F +55 11 3019 6001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seoul</td>
<td>Clifford Chance 21st Floor, Ferrum Tower 19, Eulji-ro 5-gil, Jung-gu Seoul 100-210 T +82 2 6353 8100 F +82 2 6353 8101</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shanghai</td>
<td>Clifford Chance 40th Floor, Bund Centre 222 Yan An East Road Shanghai 200002 T +86 21 2320 7288 F +86 21 2320 7256</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>Clifford Chance Marina Bay Financial Centre 25th Floor, Tower 3 12 Marina Boulevard Singapore 018982 T +65 6410 2200 F +65 6410 2288</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sydney</td>
<td>Clifford Chance Level 16 No. 1 O’Connell Street Sydney NSW 2000 T +612 8922 8000 F +612 8922 8088</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tokyo</td>
<td>Clifford Chance Akasaka Tameike Tower 7th Floor 2-17-7, Akasaka Minato-ku Tokyo 107-0052 T +81 3 5561 6600 F +81 3 5561 6699</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warsaw</td>
<td>Clifford Chance Norway House ul.Lwowska 19 00-660 Warsaw T +48 22 627 11 77 F +48 22 627 14 66</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Linda Widyati and Partners in association with Clifford Chance.*
Clifford Chance Global M&A Series

The Clifford Chance Malaysia M&A Handbook is part of our Global M&A Series. The publications in this series currently include M&A Handbooks in relation to Australia, China, Czech Republic, Germany, Italy, Japan, Poland, UAE and Spain as well as detailed overviews of the takeover regimes of public companies in key jurisdictions including the UK, the United States, France, Germany, Italy, Poland and Singapore. We are adding new publications to the series regularly.

Clifford Chance Global M&A Toolkit

The essential interactive resource for anyone involved in M&A transactions.

The Clifford Chance Global M&A Toolkit comprises a growing collection of web-based transaction tools and in-depth analysis of the most important market and regulatory developments in M&A regimes across the globe.

www.cliffordchance.com/GlobalM&AToolkit