



M&A: Financial assistance

When structuring an M&A transaction, consideration should be given to laws relating to financial assistance which may have impact on the financing of the transaction. The laws of Malaysia relating to financial assistance is summarised below:

1. A seller is not prohibited to provide financing to a buyer.
2. The assets of a target company incorporated under the laws of Malaysia cannot be used as security for the liability incurred in the acquisition of shares in the target company, unless it falls within the exceptions under section 125 of the Companies Act 2016.
3. It is common for a seller to request for the existing guarantee that it has provided to secure a loan granted by a financial institution to the target company to be substituted with a new guarantee given by either (a) the buyer; or (b) the buyer and the seller in proportion to their new shareholding, after completion of the acquisition. In such instance, where the buyer is a corporation listed on Bursa Malaysia (“**listed corporation**”) or a subsidiary not listed on any stock exchange, the requirements relating to financial assistance (if applicable) under the Paragraph 8.23 of the Main Market Listing Requirements or Rule 8.25 of the ACE Market Listing Requirements must be complied with.

Prohibitions under the Companies Act 2016

4. A company shall not give any financial assistance, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, for the purpose of or in connection with a purchase or subscription made or to be made of or for (a) any shares in the company; or (b) in the case where the company is a subsidiary, any shares in its holding company, or in any way purchase, deal in or lend money on its own shares (Section 123(1), Companies Act 2016).
5. A company shall not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, if (a) a person has acquired shares in the company or its holding



company; and (b) the liability has been incurred by any person for the purpose of the acquisition of the shares (Section 123(2) of the Companies Act 2016).

Exceptions

6. The prohibitions above do not apply in the following circumstances provided in section 125 of the Companies Act 2016:

- (a) If the lending of money is part of the ordinary business of a company.
- (b) The financial assistance is for a trust scheme for employees

The provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company. The purchase or subscription shall be by trustees of or for shares to be held by or for the benefit of employees of the company or its subsidiary, including any director holding a salaried employment or office in the company or its subsidiary.

- (c) The giving of financial assistance by a company to persons, other than directors, bona fide in the employment of the company or its subsidiary with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by such persons by way of beneficial ownership.
- (d) The making of a loan or the giving of a guarantee or the provision of security in connection with loan(s) by a company in the ordinary course of its business where the activities of that company are regulated by any written law relating to banking, insurance or takaful or which are subject to the supervision of the Securities Commission and where (i) the lending of money or the giving of guarantees or the provision of security in connection with loans, is done in the course of such activities; and (ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, such loan is made on ordinary commercial terms as to the rate of interest or returns, the terms of repayment of principal and payment of the interest or returns.

Restrictions for listed corporations or its subsidiaries

7. Save as otherwise prohibited under the laws, a listed corporation or its subsidiaries not listed on any stock exchange ***may only*** (a) lend or advance any money; or (b) guarantee, indemnify or provide collateral for a debt, (“**provision of financial assistance**”) to or in favour of the following:

- (i) directors or employees of the listed corporation or its subsidiaries;
- (ii) persons to whom the provision of financial assistance (1) is necessary to facilitate the ordinary course of business of the listed corporation or its subsidiaries; or (2) pursuant to the ordinary course of business of the listed corporation or its subsidiaries;

such as the provision of advances to its sub-contractors or advances made to clients in the ordinary course of its moneylending business; or

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- (iii) the subsidiaries, associated companies or joint arrangements of the listed corporation, the listed corporation (in the case of the subsidiaries providing the financial assistance) or its immediate holding company which is listed.

For the purpose of this subparagraph (iii), a “joint arrangement” has the meaning given to it under the approved accounting standards.

- 8. Where a listed corporation or its subsidiaries provide financial assistance:
 - (a) the board of directors of the listed corporation must ensure that the provision of the financial assistance is fair and reasonable to the listed corporation and is not to the detriment of the listed corporation and its shareholders; and
 - (b) where the provision of financial assistance is to the associated company or the joint arrangement of the listed corporation, and the aggregate amount provided or to be provided at any time to each associated company or joint arrangement compared to the net tangible assets of the group is 5% or more, the listed corporation must issue a circular to its shareholders and seek shareholder approval in a general meeting, of such provision of financial assistance, unless the listed corporation complies with the requirements in subparagraph (7)(ii) above, in which case, the requirement to issue a circular and seek shareholder approval is dispensed with;
 - (c) where shareholder approval is required pursuant to subparagraph (b) above, the listed corporation must state in its circular, the proposed utilisation of the amount of the financial assistance.

Exceptions to restrictions for public listed corporations

- 9. The restrictions and requirements in paragraphs 7 and 8 above do not apply to:
 - (a) any provision of financial assistance provided to or in favour of the listed corporation or wholly owned subsidiaries of the listed corporation;
 - (b) a corporation whose activities are regulated by any written law relating to banking, finance corporations or insurance and are subject to supervision by Bank Negara Malaysia or an equivalent foreign regulatory authority as Bursa Malaysia deems appropriate; or
 - (c) share financing or share margin financing carried out by a listed corporation or its subsidiary not listed on any stock exchange which is a Participating Organisation.

(Bursa Main Market Listing Requirements, para 8.23(1); Bursa ACE Market Listing Requirements, Rule 8.25)