#MalaysianCorporateLawyer

M&A Break Fees:

Practical Constraints in Malaysia

Authored by Wong Mei Ying
www.linkedin.com/in/wongmeiying/
www.malaysiancorporatelawyer.com

Break fees refer to a pre-agreed sum payable if a party withdraws from a proposed transaction without any breach by the counterparty.

Purpose:

Break fees are intended to deter frivolous exits and to compensate the other party for transaction-related costs, including due diligence and advisory expenses.

Under Malaysian law, there is no express prohibition on break fees.

However, there are some practical constraints.

Section 123 of the Companies Act 2016:

A target company cannot provide financial assistance, directly or indirectly, in connection with the acquisition of its own shares.

👉 **A target company is prohibited from paying break fees in an acquisition of its own shares.**

Break fees have to be able to withstand scrutiny by the Malaysian courts as to whether they amount to **reasonable compensation** under section 75 of the Contracts Act 1950, if challenged.

The issue relating to break fees in Malaysia is not so much whether break fees are allowed, but rather **who pays, in what capacity, and whether the amount can survive challenge** if tested.

These points are best addressed early, before parties incur further costs in negotiating the transaction.

#MalaysianCorporateLawyer

I share insights like this to help clients and counsels navigate Malaysian M&A with clarity.

If you're preparing for a sale or acquisition, always happy to connect.

Wong Mei Ying
www.malaysiancorporatelawyer.com
www.linkedin.com/in/wongmeiying/