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BEHIND THE DEAL: WHAT REALLY HAPPENS BEFORE A TAKE-OVER HITS THE HEADLINES

A take-over makes headlines for a day. The work behind it runs for months, and the public sees almost none of it.

In January 2026, the headlines carried Sunway Berhad's RM11.0 billion offer for IJM Corporation Berhad, right up to the day the offer lapsed in April. By the time a take-over reaches the front page, the decisive work is already done. Behind every offer sit three layered instruments and a countdown measured in days, and most of a take-over plays out before the public hears a word.

KEY HIGHLIGHTS

- Two routes to control, and your shareholding picks which. A voluntary offer is made on the offeror's own initiative (Rule 5.01). A mandatory offer is compelled once an acquirer obtains control, more than 33% of voting shares, or triggers the creeping threshold (Rule 4.01; section 218, CMSA). You do not choose which regime you are in; your holding chooses for you.
- The 60-day clock is the spine of the timetable. A voluntary offer must be conditional on the offeror reaching more than 50% of voting shares (Rule 6.01(2)). If that condition is not met by 5.00 p.m. on the 60th day after the offer document is dispatched, the offer lapses automatically (Rule 6.01(3)).
- The board hears it before the public does. The offer is put to the offeree's board before any public announcement (Rule 9.01); the offeror, and its principal adviser, may only announce a firm intention it can actually implement (Rule 9.10).

A TAKE-OVER IS ABOUT CONTROL, NOT ABOUT THE PRESS RELEASE

At its core, a take-over offer has two sides: an offeror, who extends the offer, and an offeree, whose shares are sought. The offeror offers a consideration, cash, shares, or a combination, in exchange for those shares. Cross the threshold of acceptances, and the offeror takes control. Fall short, and the offer lapses.

VOLUNTARY OR MANDATORY: THE SHAREHOLDING DECIDES, NOT THE STRATEGY

A voluntary offer is a take-over offer made by a person who has not incurred an obligation to make a mandatory offer, an offer made at the offeror's own initiative (Rule 5.01). A mandatory offer is the opposite of a choice: it is an offer made under subsections 218(2) and 218(3) of the CMSA, compelled once an acquirer obtains control, broadly more than 33% of voting shares, or triggers the creeping threshold (Rule 4.01). One regime is elected; the other is triggered.

BEFORE THE PUBLIC HEARS A WORD: NOTICE AND ANNOUNCEMENT

A take-over does not begin with a press release. It begins with an approach. The offer must be put to the offeree's board before it is announced to the public (Rule 9.01).

The offeror then carries the firm-intention obligation. An announcement of a firm intention to make an offer should be made only when the offeror has every reason to believe it can and will implement it, and that responsibility rests on the principal adviser too (Rule 9.10). Until that announcement is made, the offeror and persons acting in concert are prohibited from buying offeree shares (Rule 9.10(2)).

THE 60-DAY CLOCK: THE OFFER DOCUMENT AND THE DEADLINE THAT ENDS IT

A voluntary offer must be conditional on the offeror having received acceptances that would result in it holding more than 50% of the voting shares of the offeree (Rule 6.01(2)). When the formal offer document is dispatched, the acceptance window opens, and the clock starts. The condition must be satisfied by 5.00 p.m. on the 60th day from dispatch. Miss it, and the offer lapses automatically and every acceptance is returned (Rule 6.01(3)).

For the offeree shareholder, the choice is binary: accept by following the steps in the offer document, or do nothing and keep the shares.

CASE STUDY: SUNWAY'S RM11.0 BILLION BID FOR IJM

On 12 January 2026, Sunway, a group spanning property, healthcare, construction and education, announced a conditional voluntary take-over offer for all ordinary shares in IJM (excluding treasury shares) at RM3.15 per share: about RM11.0 billion in total, satisfied 10% in cash (RM1.1 billion) and 90% in new Sunway shares issued at RM5.65 each (RM9.9 billion). Maybank Investment Bank acted as principal adviser. The commercial logic was stated openly: the combined group would be Malaysia's largest property and construction conglomerate by revenue and total assets.

The offer carried the condition the Rules require: more than 50% of IJM's voting shares. It did not get there. At the close of acceptances at 5.00 p.m. on 6 April 2026, Sunway held valid acceptances for 33.43% of IJM's voting shares; the condition failed, the offer lapsed, and all acceptances were returned. IJM's board had recommended rejection, having concluded the offer was not fair and not reasonable.

The bid did not fail on price. It failed on the only number the Rules count: acceptances past the 50% line.

NOTABLE LEGISLATION

- Capital Markets and Services Act 2007: Part VI, Division 2; section 218 (mandatory offer)
- Malaysian Code on Take-Overs and Mergers 2016: general principles
- Rules on Take-Overs, Mergers and Compulsory Acquisitions: Rules 4.01, 5.01, 6.01, 9.01, 9.10

PRACTICAL TAKEAWAY

A take-over offer reads as corporate-sexy: a billion-ringgit headline, two household names, a national champion in the making. The headline is the easy part. The hard part runs behind it, in the weeks before a single word becomes public, and that is where the adrenaline actually lives for the professionals on both sides. The bankers and lawyers acting for the offeror build the offer; the bankers and lawyers acting for the offeree test it; and every one of them carries the same duty, to hold the matter in strict confidence until the offer is announced. Much of that preparatory work never ends in a completed merger. The Sunway offer did not. That is the nature of the practice, and not its disappointment: the craft is in the preparation, the discipline of readying a deal that may never close, and the integrity of saying nothing until it is time. As a legal practitioner, that is the part worth wanting.

All information in this Newsletter is correct as at 16 June 2026 unless otherwise stated.

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