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AN ANALYSIS ON THE LEGAL FRAMEWORK FOR DISCLOSURE IN PROSPECTUS AND THE STANDARD OF DISCLOSURE IN DETERMINING TAKEOVERS AND MERGERS ACTIVITIES POST IPO

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ABSTRACT

Initial public offering (IPO) is the maiden issue of shares by a public company. The decision to go public is motivated by several motives and justifications including a motive to pursue a takeover or merger. It is crucial for the investors to predict the possibility of takeovers and mergers after IPO, so that they could make an informed decision in placing their investment. The material and relevant information contained in a prospectus relating to the IPO company could assist the investors to predict the likelihood of takeovers and mergers post IPO. Hence, this paper investigates the relevant and material information that are needed by the investors to predict the likelihood of a takeover or merger post IPO. This paper also analyse the standard of disclosure required in prospectus for initial public offering in order to determine whether the information compelled for disclosure can be used by investors to predict the likelihood of takeovers and mergers post IPO. For this purpose, the laws and regulations on capital market and securities industries as contained in the Capital Markets and Services Act 2007 and Prospectus Guidelines is analysed. The guidelines for the offering of electronic prospectus are also discussed in order to shed light on the duties of the host of e-prospectus and the safeguards for investors. The result of the study shows that the standard of disclosure in prospectus allow the investors to predict and anticipate the likelihood of takeovers and mergers post initial public offering.

***Keywords*:** Initial public offering; Disclosure; Prospectus; Electronic prospectus; Takeovers

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1. INTRODUCTION

Firms and corporations have their own perspectives with regard to the form of entity when seeking for expansion of their business empire. Some choose private entity, to block the voice of the public shareholders from interfering the implementation of the mission and vision of the brain of the company (Edwards, 2018). Some opt to go public, as a way to make path for creating liquidity for the firm's shares, provides an infusion of capital to fund growth, allows insiders to cash out,

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provides cheaper and ongoing access to capital, facilitates the sale of the company, gives founders the ability to diversify their risk, allows venture capitalists and other early stage investors to exit their investment, and increases the transparency of the firm by subjecting it to capital market discipline (Celikyurt, Sevilir, & Shivdasani, 2010). Despite of these unlimited benefits, one of the remarkable factors that motivate the firms to expose themselves publicly is to engage in future takeovers and mergers (Anderson, Huang, & Torna, 2017).

2. THE LEGAL FRAMEWORK ON THE DISCLOSURE REQUIREMENTS IN MALAYSIA

Disclosure of information plays a great role for investors. The fundamental rules on disclosure as provided in Part IV of Capital Markets and Services Act seeks to regulate the process of capital raising by requiring that offers of securities are accompanied by adequate disclosure to enable the investors to make an informed investment decision; and enabling whose suffer loss as a result of misleading statements and conduct of the issuer to have a mode for legal redress. In addition to that, Capital Markets and Services aims to regulate the process of capital raising by requiring that offers of securities are accompanied by a process of due diligence for which the company raising capital and its advisers are liable (Geoffrey, 2010).

The regulatory framework involves a two-tiered system of approval. The first tier entails an assessment as to whether the offer of securities proposed by issuer requires the approval of Securities Commission, gazetted under Section 212 of Capital Markets and Services Act. The second tier involves an assessment of whether a prospectus must be registered under Section 232 of Capital Markets and Services Act and if so, what are the contents that are allowed. The focus here is, however, confined to the second tier, since this chapter deals with the disclosure of information needed by the investors in order to predict the likelihood of acquisition engagement in the post initial public offering era.

2.1. The Role of the Securities Commission in regulating disclosure

The principle and philosophy that drove Securities Commission to be the regulator pertaining to the issuance of share in public market was based on merit regulation. However, the Securities Commission currently has moved to a new approach, namely the disclosure based regulatory regime. Despite the innovation to move towards disclosure based, current regulatory framework on securities industry still maintains the traditional principle where investor protection is of paramount importance. With this regard, a hybrid approach is adopted, in which merit based regulation is embodied in Section 212 of Capital Markets and Services Act, whereas disclosure based system of regulation internalised Division 3, Part VI of Capital Markets and Services Act. This hybrid principle and philosophy regulatory framework works in a two-pronged manner – it allows the Securities Commission to assess the aspects of the merits of the securities issuers, upon the application made to the Securities Commission and setting out the disclosure standards so that the investors ultimately make their own decisions as to the merits of investment (Geoffrey, 2010).

2.2. Registration of Prospectus

The term of prospectus is statutorily defined in Section 226 of CMAS as notice, circular, advertisement or document inviting applications or offers to subscribe or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus (Geoffrey, 2010).

In other words, a prospectus does not necessarily mean the 'official prospectus' or must be specifically called a 'prospectus'. As long as the document is utilised to solicit offers of securities, it is still treated and regarded as a prospectus, which would come under the purview of Division 3 of Part VI of Capital Markets and Services Act 2007.

2.3. Contents of Prospectus

As mentioned earlier, the governance of prospectus is derived from disclosure based regulation framework. The basis and fundamental of the disclosure of information in prospectus is to promote full and frank disclosure, so as to ensure that the investors are able to make an informed investment decision.

The items to be disclosed are provided in Section 235 and Section 236 of Capital Markets and Services Act, in which the initial public offering must disclose. The parameters for regulation of contents of prospectus provides two duties. Firstly, the specific duty that has been listed down in Section 235(2) of CMSA, together with the guidelines issued by Securities Commission, specifically Prospectus Guidelines. The Prospectus Guidelines generally deal with equity and debt issues, structured warrants as well as the requirements pertaining to abridged prospectus and supplementary and replacement prospectus. The information that need to be disclosed is gazetted in Part II of the Prospectus Guidelines.

The second duty is set out in Section 236 of Capital Markets and Services Act, which is referred to as the general duty of disclosure. The duty essentially puts the onus on the initial public offering to disclose the material and relevant information that the investors would reasonably require and reasonably expect to find in the prospectus for the purpose of making informed investment evaluation and assessment of that initial public offering company. In other words, the general duty laid under Section 236 applies a subjective test, would lead to the drawing of inference that if a person is placed in the investors' shoes, what are the information that he expects to be get in the prospectus.

The existence of the general duty of disclosure under Section 236 of Capital Markets and Services Act could suggest that the regulator may not always be the best supplier to meet the demand of the investors. Hence, Section 236 (1) makes it clear that in assessing whether a prospectus has any false or misleading information or whether there is a material neglect in the prospectus, the regard shall be had to subjective test, i.e. the general duty of disclosure for the purpose of civil or criminal liability under Section 246(1) or 248(1) respectively.

3. AN ANALYSIS ON THE DISCLOSURE REQUIREMENTS IN MALAYSIA

The initial public offering (IPO) company need to make proper disclosure for the investors and the takeovers and mergers players. It is vital that the regulation of capital market is made relevant with the current market situation, so that the development of law will not be stagnant. In this regard, capital market shall uphold the principle and philosophy of ensuring investors able to make informed decisions by requiring the company that commences initial public offering making the full and frank disclosure. For takeovers and merger purpose, disclosure shall include material information relating to various aspects in order to facilitate the takeovers and mergers participants in reviewing and evaluating the companies in market. The material information include information relating to the proceeds, ownership structure, underwriting, promotional activities, market conditions and growth structure of the company.

In assessing whether the investors are given sufficient information to allow them to make an informed decision, we need to evaluate the Malaysian capital market laws and regulations, particularly the provisions relating to disclosure requirements. We seek thus to determine whether the information compelled to be disclosed by the initial public offering company enables the investors to make an informed decision.

The kind of information required by the law to be disclosed covers the following:

3.1. Proceeds

Companies who plan to pursue takeovers and mergers activities sometimes utilise the proceeds obtained from the selling of the shares, in particular IPO. The companies that intensify the effort to accumulate a great bulk of proceeds during initial public offering are likely to evolve themselves to post-IPO bidders, whereas the companies that have ambition to become the target for the 'prey' do not pay great attention to benefit from initial public offering.

Under the Prospectus Guidelines issued by the Securities Commission, the prospectus exhibited by company to the public investor shall reveal the estimated gross proceeds accumulated from the initial public offering and its future intended use, together with the time frame for such utilisation. In other words, the company must insert the objectives for the raising of capital through issuance of share to the public. Though the Prospectus Guideline does not require the disclosure of the exact amount of the proceeds obtained, rather the estimated gross, the projection itself could give the idea to the investors on the possibility of the takeovers and mergers engagement post initial public offering. The requirement to disclose the purpose of the proceeds would lessen the effort of investors making the prediction of the likelihood of acquisition, since it can compel the prospect bidders to reveal their future acquisition intention in prospectus. It is worth to note that the companies that wishes to finance acquisitions by using the IPO proceeds is specifically required to disclose a brief description of such business and information on the status of the acquisitions (Securities Commission, 2019).

3.2. Ownership Structure

There are two types of ownership that are common in the corporate world: - concentrated ownership and diffuse ownership. In a diffuse ownership company, the investors can predict that the company will go for acquisition after the initial public offering. In a concentrated ownership

company, the investors can expect that the company would be acquired after the initial public offering.

There is no specific obligation requiring the company to disclose directly the type of its ownership structure. However, the investors can identify the ownership structure of the company from the disclosure of the numbers of substantial shareholders it has. The Prospectus Guideline requires an initial public offering company to make full and frank disclosure of the identity of the substantial shareholders. Substantial shareholder is statutorily defined in Section 135 of Companies Act 2016 as a person who has an interest in voting shares in the company and the number of such shares is not less than five per centum of the total number of all the voting shares included in the that class of shares. In other words, the substantial shareholders have the proprietorship over large number of shares that could have influence in the company's decision making. This information is considered material for the purpose of disclosure as it could assist the investor in identifying the managers' independency in making decision; whether the directors are influenced by the substantial shareholders or otherwise. It is worth noting that a survey conducted by PricewaterhouseCoopers in 1998 shows that almost 97% of Public Listed Companies are substantial shareholders with 33% of them involved in management (Afza, Ayoib, & Ahmad, 2013). Hence, the company that have large number of substantial shareholders are likely to have concentrated ownership, in which the investors could make a prediction that the company will become a target company post-initial public offering.

3.3. Lock-up Agreement

Some firms enter into deal protection arrangement, such as lock up agreement with the potential bidder, to secure the takeovers and mergers deal. As a result, the target shareholders are bound by the agreement, unable to sell their shares other than the agreed bidder and consequently leading to share overhang. The existence of the deal protection measure agreement is an unambiguous indicator to the commitment of company for takeovers and mergers.

Do Malaysian laws and regulations compel the initial public offering company to disclose the formation of deal protection measure arrangement? Apparently, there is no clear rule requiring the company to reveal the existence of deal protection measure in the prospectus. However, for a special purpose acquisition company, the prospectus should contain the existence of a prospective target, if any, including details of any agreement entered into, whether written or unwritten or oral, binding or non-binding. In other words, the deal protection measure, including lock-up agreement shall be disclosed by a special purpose acquisition company in order to convince the investors on the certainty of future acquisition.

Despite of the given rules, there is still loophole leaving the investors with some uncertainty. Firstly, the rule only highlights the special purpose acquisition company, which its sole objective is to fully commit acquisition upon initial public offering, which could be made acknowledged by the investors on the surface. It shall be noted that most of the bidder companies are not generally established for acquisition as the ultimate purpose, and acquisition is used as bridging tool to achieve their constituted purposes. Those bidders do not generally disclose their intention to initiate takeovers after initial public offering. Secondly, deal protection measure is closely related with the target company and there is no requirement for public listed target company to disclose

the existence of the deal protection measure. Hence, the investors may be in ignorance as to the existence of any deal protection measure.

However, it can be inferred that the Prospectus Guideline compel the initial public offering to reveal the formation on deal protection measure, which includes lock-up agreement. This generality can be seen in Paragraph 5.04, in which the initial public offering requires the company to disclose all the material contracts available, not being contracts in the ordinary course of business. Deal protection measure is an agreement that is not in the ordinary course of business. The agreement is made specifically for the purpose of securing the takeover deal between the bidder and the target, so that the target company will not jump the deal. Furthermore, deal protection measure shall not be concealed by virtue of Section 236 of CMSA. Investors who are inform of the existence of deal protection may decide to invest in the target company, projecting that there will be profit after the commencement of takeovers and mergers.

3.4. Pricing

An earlier study has identified the pricing of stocks during initial public offering as material information in formulating the anticipation of post-IPO takeovers and mergers. It has been shown that the prospect bidders would employ underpricing as one of its modus operandi, enabling them to issue extra shares via allotment option, create dispersed initial ownership and therefore having the privilege to make shares as the acquisition consideration.

In measuring whether the stock is set underpriced or not, the preliminary mandatory information required by the investors is the price of the stock offered by the initial public offering company. Withholding this fundamental information would put investors in ignorance, thus defeating the purpose of informed investment decision. The Prospectus Guidelines requires the initial public offering company to divulge the details about the pricing of shares, including the price offered to each class of investors and the basis for the determining the offer price.

3.5. Underwriting

Selection of underwriting by a company could determine whether the company will play the role as bidder or target company after initial public offering. The companies that hire reputable underwriters are likely to become target, as reputable underwriters have large capacity to provide aftermarket price stability support, close and constant relationship with particular investors to prevent flipping as well as wider network with potential acquirer. In addition to that, taking reputable underwriters could promote the company's name, to entice intended or unintended acquirers. For bidder companies, hiring glorious and reputable is a liability that could be reduced as it is not necessary.

Based on Section 236 (2) (vi) of Capital Markets and Services Act 2007, the IPO company must disclose the identity of the underwriter. It is a general duty of the issuer to make full and frank disclosure in the prospectus in relation to the identity of stockbroker, share broker or underwriter in relation to the initial public offering. The identity of the underwriters shall be disclosed in pursuant of Paragraph 1.06 (d) (v), while the details of the underwriting agreement, must be disclosed, as laid out in Paragraph 3.15. By knowing the identity of the investors, the investors could know the reputation of the underwriter, hence allowing them to make an inference as to

whether the company undertakes to be the bidder or the target. If a reputable underwriter is hired, it is possible that the company will become the target company; otherwise, it is possible that the company will become the bidder, post initial public offering stage.

It is worth noting that the disclosure requirement also extend to disclosure of the cost incurred in hiring the underwriters. Having the information on the expense of hiring underwriters could allow the investors' an idea to determine the reputation of the underwriters. In addition to that, the prospectus attached with the initial public offer shall disclose the details of the underwriting agreement entered into by the company, indicating the importance of the identity of the underwriters.

3.6. Dual Class Share

Dual class shares refers to the shares issued by a company which carries different voting rights and dividend payments. Conventionally, two classes of shares issued: one class is issued to the public, which has limited voting rights and the another class is offered to company founders and executives with more rights. Companies that prefer dual class shares usually do not have appetite to engage in takeovers and mergers activities, as they act as strict control mechanism in preventing dilution of control and keeping the directors at their place.

Under this circumstance, it is fundamental for investors to know the type of shares issued by a company in order to predict potential takeovers and mergers. Section 236 (1) (b) of CMSA requires the initial public offering company to disclose the rights attached to the securities. In other words, if the initial public offering company intends to issue dual class share, it is under an obligation to mention in the prospectus the benefits accruing from the shares, specifically in relation to the voting rights and dividend. In addition to that, in determining whether the information shall be disclosed or not, consideration shall be had the nature of the securities. Hence, the disclosure on the nature of the shares issued and rights in prospectus allow investors to have knowledge on the ownership structure of the company, particularly on the issuance of the dual shares that could lead investors in making prediction on the future of the concerned company.

In order to ensure that the Malaysian laws provides certainty and predictability to the investors, the Securities Commission has included extra provisions that are relevant to the dual shares in Prospectus Guidelines. In the Paragraph 3.01 of Division 1, Chapter II, Prospectus Guideline, the details of the shares issues to the public and the existing shareholders shall be disclosed. Consequently, the investors could have knowledge the details of the shares issued to the public and to the existing shareholders.

3.7. Market Timing

The time for launching initial public offering in issuing shares to the public could be taken as factor in making the prediction on potential takeovers and mergers. As discussed above, both bidder and target companies do not have optimism about equity market in which they do not time the initial public offering based on the sentiment of equity market. However, the bidder prefers to time their initial public offering based on industry acquisition intensity, wave of takeovers and mergers market.

With regard to this, knowledge and information regarding to the timing that initial public offering company choose is relevant for investors. Needless to say, Paragraph 1.04 of Prospectus Guideline issued by Securities Commission requires the company that initiates initial public offering to disclose indicative timetable, stating the opening and closing dates of the offering, fate for balloting of share applications, date for allotment of shares and listing date. Timing factor that is relevant with initial public offering are material information; it is one of the material information that investors and their professional advisers would reasonably expect to find.

3.8. Promotional Activities

Enhancing and escalating promotional activities is done for the purpose of attracting investors. The post-IPO target companies are likely to prefer these kind of activities and are willing to spend a bulk of fortune to promote the company, in order to persuade the bidders. The bidder is more focused on raising proceeds through initial public offering rather than advertisement.

Generally, companies are free to advertise in order to attract the investors. However, in this regard, the initial public offering companies shall observe the Listing Requirement issued by Bursa Malaysia. Paragraph 9.12 (1) of Main Market Listing Requirement provides that a listed issuer must refrain from promotional disclosure activity in any form whatsoever which may mislead investors or cause unwarranted price movement and activity in a listed issuer's securities. The circumstances that could constitute unwarranted promotional activity disclosure are those are not justified by actual advertisement concerning a listed issuer, exaggerated, flamboyant, overstated or over-zealous (Bursa Malaysia Berhad, 2019). It is interesting to note that the Main Market Listing Requirements highlights and mentions the hallmarks of promotional activity, indicating that promotional activity shall be disclosed to the public, ensuring that a credible and responsible market in which participants conduct themselves with the highest standards of due diligence and investors have access to timely and accurate information to facilitate the evaluation of securities.

In escalating the promotional activities, the initial public offering must also observe the restriction imposed under Capital Markets and Services Act. Initial public offering shall not make advertisement before the registration of prospectus, unless the advertisement is for the matters that are set out in Section 241 (4)(b)(i)-(x). These restrictions are intended to ensure that the prospectus remain the main basis on which investment decisions are made. However, the law envisages that certain disclosure for the purpose of advertisement before the registration and issuance of prospectus can be made with the consent of Securities Commission.

Promotional activities by initial public offering company can be used as an indicator by investors to determine whether the company will choose to be a bidder or the target after the commencement of initial public offering. In this regard, the Malaysian law does not prevent the initial public offering escalate the advertising activities, so long as it complies with the Main Market Listing Requirements. The law prohibits advertisement before prospectus with certain exceptions. Hence, if a company wishes to make advertisement and promotional activities, it can do so with the consent of the regulator; investors can infer from this this move that the company is likely to become the target company after the initial public offering.

3.9. Takeover Offer

Takeover offer is a preliminary stage in the process of the materialising a takeover. Whether the offer is accepted or not, the disclosure of the takeover offer is a clear sign to show that the company will be ready to initiate takeovers and mergers.

The Malaysian capital market regulation compels the company to disclose the existence of the takeover offer. Paragraph 5.02 of the Prospectus Guidelines, requires a company to disclose any takeover offer received from the beginning of the last financial year to the latest practicable date. Hence, this requirement will outshine the target company, if the company received the takeover offer, making the investors to have clear information that the company prefers to become the target company post initial public offering period.

3.10. Acquisition Plan as Business Strategies

Another significant disclosure is in relation to the corporation's business strategies, including the time frame to realise these strategies. The information includes as to whether the corporation has identified any acquisition target (if not, an appropriate negative statement) and the details of the selection criteria. Thus, this disclosure establishes that the company has intention to become a bidder to realise acquisition post initial public offering.

3.11. Listing Requirement Continuing Disclosure

It is interesting to note that the obligation to disclose the business strategies on acquisition of other companies is not limited to the disclosure in prospectus at the early stages only. After being listed in the market, the company still needs to comply with the continuing disclosure obligation which is provided under Main Market Listing Requirement.

The law requires the initial public offering company to continuously disclose the existence of acquisition even after being listed in the exchange, particularly the Main Market. Paragraph 9.19 (2) of Chapter 9, Continuing Disclosure, Main Market Listing Requirement requires the initial public offering to disclose the existence of acquisition (including subscription) of shares in another corporation or any other event which results such company becoming a subsidiary of that company.

In order to provide certainty, Chapter 9 of Continuing Disclosure, particularly Paragraph 47A of Main Market Listing Requirement requires that any information in relation to a takeover offer to be announced to Bursa Malaysia. The rule applies equally to bidder or target. Apart from a takeover offer, the company that has entered into joint venture and mergers shall make immediate disclosure (Bursa Malaysia Berhad, 2019).

4. AN ANALYSIS ON ELECTRONIC PROSPECTUS

The evolution of innovation and digital technology age has sparked a medium to accommodate for commercial and economic activities, the internet. The initial public offering company would not want to miss opportunity to utilise the internet in issuing digital or electronic prospectus in order to attract netizen investors.

As Securities Commission upholds its vision to ensure that the capital market is free from information asymmetrical at the same time to be relevant with development of innovation and digital technology, the Commission has internalised the rules on the electronic prospectus in Prospectus Guidelines. Specifically, the rules on the electronic prospectus is laid out in Division 2: Electronic Prospectuses and Application Guidelines under Part IV: Prospectus Related Guidelines.

4.1. The Purpose of the Guideline on Electronic Prospectus

As discussed earlier, the rules pertaining to the content of the prospectus are already laid out in Part II of Prospectus Guidelines. Division 2 which provides guidelines for electronic prospectus requires that the issuer of electronic prospectus ensure that the electronic prospectus issued is a copy of the corresponding prospectus that has been registered by the Securities Commission. Division 2 aims to provide guidance to person who intend to issue, circulate or distribute electronic prospectuses and electronic application forms and to provide for Internet securities application. Hence, it only touches on the procedural aspect on how to make prospectus available electronically and how to provide electronic share application (ESA) system, which operates via automated teller machines (ATM) or other such media.

The guidelines require the issuer to state a notice stating that the electronic prospectus and electronic application forms are issued, circulated and distributed for informational purposes only.

4.2. The Contents of Electronic Prospectus

As mentioned above, the contents of electronic prospectus will remain the same as the main prospectus that has been registered by the Securities Commission. Electronic prospectus is regarded as a "copy" of the corresponding prospectus; it is a reproduction of the printed prospectus, containing the same information and appearing in the same sequence. Any information contained in the electronic prospectus has legal implication. The Electronic Commerce Act 2006 affirmed the validity and the enforceability of information contained in the electronic form.

4.3. Safeguards for E-Prospectuses

The e-host must take adequate and appropriate measures to ensure that the electronic prospectus and electronic application form are protected from unauthorised tampering or alteration. In simple words, the issuer shall protect the electronic prospectuses and the online application form from being modified or hacked by unauthorised person or entity. The e-host, for example have to take measures to avoid downloading failure from internet into electronic storage as the result of disturbance caused by a hacker.

If there is a system failure or breach of security resulting in the inability to access the electronic prospectus, the e-host is required to take remedial action as soon as is reasonably practicable to rectify such failure. After the action has been taken to remedy such failure and report to the Securities Commission within 24 hours. For the purpose of backup, the e-host must ensure that a copy of the format and information displayed to an applicant is retained in a durable and legible medium for seven years, in which the Securities Commission may have access to or request for copies of the records.

4.4. The Responsibility of E-host to the Prospective Applicant

Electronic prospectus allows an investor to have access to corporate information at their fingertips. It is a responsible for e-host to ensure that the online application is user friendly to allow investors an avenue to make an informed decision through having online prospectus.

Hence, the e-host must ensure that the electronic prospectus is presented in a way that the applicant will make his decision on the basis of the prospectus, not on the basis of the advertisement, promotional material or other informational material. In providing certainty, the e-host must state that any other information that is available outside of the designated area does not form the part of the electronic prospectus and that the securities are offered solely on the basis of the information contained in the electronic prospectus.

It is worth to note that the e-host shall provide clear and simple instructions as to how an applicant can hyperlink to, as well as access, view or download the electronic prospectus and the electronic application form. If the e-host requires a particular software to access or download the electronic prospectuses, then the e-host must provide the applicant with such software of the address of the Internet site where such software may be obtained free of charge. For example, where the electronic prospectus requires Adobe Reader, the e-host must provide the link to download the Adobe Reader.

If there are supplementary/replacement prospectuses, the prospect applicant shall be given access to both the original prospectus and the supplementary/replacement prospectus.

For the purpose of registering the prospectus, the following details must be provided by the adviser:

a) The address of the Internet sites in which the electronic prospectus and electronic application form will be made available and/or copy of the electronic storage medium containing the electronic storage medium containing the electronic prospectus and electronic application form;
b) The date on which the electronic -prospectus will be first posted on the relevant Internet site, or will be first issued, circulated or distributed via the electronic storage medium; and
c) Such other information as maybe required by the Securities Commission.

5. CONCLUSION

This study sought to determine whether the Malaysian legal framework requires the initial public offering company to disclose information that could assist the investors in anticipating or predicting the likelihood of that company to engage in takeovers and mergers. A recent study has suggested that the information that can be used as the signs for takeovers and mergers include

information relating to proceeds accumulated from initial public offering, pricing of the shares, ownership structure, deal protection measure, allocation of shares (dual shares), reputation of underwriters, promotional activities and timing to market. Hence, by adopting the result of that study, this paper analyses the legal framework of the capital market in Malaysia. The analysis shows that the disclosure based regime in Malaysia obligates the initial public offering company to disclose that material information which could assist the investors in anticipating the likelihood of takeovers and mergers post initial public offering period.

It is interesting to note that the material information that is required by investors is within the category of minimum standard of disclosure. In this regard, the Malaysian capital market regulators are well aware of the information needed by the investors for the purpose of making an informed decision in relation to their investment.

There are, however some material information that are not specifically required to be disclosed in the prospectus. As been highlighted earlier, there is no specific duty or minimum standard that requires the initial public offering company to make disclosure on any deal protection measures or agreement to this effect. In this regard, the lacuna can be addressed by Paragraph 5.04 of Prospectus Guidelines, which requires the initial public offering company to disclose any agreement entered by the companies not in the course of the company's ordinary business.

Though the discussion is focused on the information that can be used for prediction, the current disclosure-based regulation convinces the investors to have certainty on the future engagement in takeovers and mergers. The capital market regulations require the initial public offering company to disclose the fact that it will participate in takeovers and mergers. The current regulatory framework in Malaysia and the standard of disclosure required in IPO provides certainty for investors to predict takeovers and mergers activities post IPO.

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REFERENCES

Afza, N., Ayoib, A. &, & Ahmad, C. (2013). Effects of ownership structure on malaysian companies performance. *Asian Journal of Accounting and Governance*, *4*, 51–60.

Anderson, C. W., Huang, J., & Torna, G. (2017). Can investors anticipate post-IPO mergers and acquisitions? *Journal of Corporate Finance*, *45*, 496–521.

Bursa Malaysia Berhad. (2019). *Main market listing requirements.* Retrieved from http://www.bursamalaysia.com/misc/system/assets/15741/Consolidated_listing_requirement_main_market_consolidated_3Jun20192.pdf

Capital Markets and Services Act 2007. (2015, September 15). Retrieved from https://www.sc.com.my/api/documentms/download.ashx?id=2093f82c-7929-47e8-9279-f88e3b85dbbfcmsa_151007.pdf

Celikyurt, U., Sevilir, M., & Shivdasani, A. (2010). Going public to acquire? The acquisition motive in IPOs. *Journal of Financial Economics*, *96*(3), 345–363.

Companies Act 2016. (2018, November 1). Retrieved from https://www.ssm.com.my/Pages/Legal_Framework/Document/Act%20777%20Reprint.pdf

Edwards, J. (2018). Why dell stock doesn't exist. *Investopedia.* Retrieved from http://www.investopedia.com/articles/markets/110915/dell-stock-doesnt-exist-here-why.asp.

Electronic Commerce Act 2006. (2012, November 1). Retrieved from http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20658.pdf

Geoffrey, S. (2010). *Capital Market Laws of Malaysia*. Lexis Nexis, Kuala Lumpur.

Securities Commission Malaysia. (2019). *Prospectus guidelines.* Retrieved from https://www.sc.com.my/api/documentms/download.ashx?id=a7946037-d3bc-4adf-bc5d-e15fef62f3fe