



Suruhanjaya Sekuriti
Securities Commission

FORMAT AND CONTENTS OF APPLICATIONS

UNDER

**DIVISION 2, PART IV OF
THE SECURITIES COMMISSION ACT 1993**

AND

THE MALAYSIAN CODE ON TAKE-OVERS AND MERGERS 1998

Effective date : 1 March 2004

This Format and Contents of Applications is intended to facilitate the submission of applications to the Securities Commission pursuant to Division 2, Part IV of the Securities Commission Act 1993 (the Act) and the Malaysian Code on Take-overs and Mergers 1998 (the Code). All matters that require the consideration / approval of the Securities Commission, and/or involving dispensation from the requirements of the said Act / Code, will only be considered by the Securities Commission upon the receipt of a written application from advisers acting on behalf of the parties concerned. Such application must be made within a reasonable time frame so as to provide sufficient time for the consideration of the Securities Commission.

Without limiting the discretion of the Commission to request for further information, advisers are required to submit the submission documents containing the minimum information as set out herein to the Commission. Notwithstanding the requirements set-out herein, regard shall also be made to the relevant provisions in the Securities Commission Act 1993 and the Malaysian Code on Take-overs and Mergers 1998 in respect of the submission.

I. Covering Letter

A. Brief description of the application.

Please ensure that the following information is included:

- (i) Name of applicant(s), i.e. party(ies) on behalf of whom the application is made by the adviser [including their identification card number (IC No.)(new) or passport number or company registration number (Company No.)] [To enclose **Appendix I**];
- (ii) Name of offeree / acquiree company (including the Company No.) [To enclose **Appendix II**];
- (iii) Subject matter of approval sought;

[e.g. application for consent to the offer documentation, application for appointment of independent adviser, application for exemption from a mandatory-offer obligation, application for ruling, etc]; and
- (iv) The relevant provision of Securities Commission Act 1993 (SCA) / the Malaysian Code on Take-overs and Mergers 1998 (the Code) or Practice Note (PN) under which the application is made [To enclose **Appendix III**].

B. Background information.

- (i) Description of event(s) (e.g. a corporate proposal, an announcement, an agreement or arrangement or understanding, etc) which necessitated the current application (please include the date of the event);
- (ii) In demonstrating the incurrance of the take-over-offer obligation or potential take-over-offer obligation, please ensure the following information is included:
 - The identity of the controlling/ potential controlling holders of voting shares [which will include all parties acting in concert with them and their IC No. (new), Passport No. or Company No.];
 - Description of relationship between all the controlling/ potential controlling holders of voting shares (which will include relationship with the parties acting in concert with them). The above is to be accompanied by a declaration in accordance with the format in **Appendix IV** by each member of the parties acting in concert;
 - The changes in the shareholding of the controlling/ potential controlling holders of voting shares (which will include the shareholding of their concert parties individually and collectively), after each stage of the proposal, and the controlling/ potential controlling position which the proposal will eventually create. Please show the corresponding enlarged share capital of the acquiree company;
 - Full details of the maximum potential controlling holding of voting shares are disclosed. Where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling holders of voting shares will, in addition to any other entitlement, take up their full underwriting participation;
 - Where there are outstanding convertible securities, the potential controlling holding of voting shares must be indicated on the assumption that only the controlling holders of voting shares will convert or exercise the subscription rights;
 - Where the potential controlling holding of voting shares will be held by more than one person, their individual potential holding of voting shares must be disclosed; and
 - Corporate structure both before and after the incurrance of the take-over offer obligation.

C. Detailed rationale and justification for the application.

In relation to exemption sought pursuant to Section 33C of the SCA, please demonstrate the compliance with Subsection 33A(5) of the SCA.

Applicant may include industry practices, practices in other jurisdictions or precedent cases, where appropriate, to support the application.

D. Approval(s) obtained/pending in relation to the proposal relevant to the application.

E. Outstanding proposal(s) by the offeree/ acquiree company announced but pending implementation.

F. Timetable of implementation of proposal(s).

G. Confirmation by the applicant(s) that -

- they are not undischarged bankrupts nor are they subject to any proceedings under bankruptcy laws (applicable to individuals);
- they have never been charged with, convicted for or compounded for any offence under securities laws, corporations laws or any other laws involving fraud or dishonesty in a court of law for the last 10 years prior to the submission of the application;
- no action has been taken against them for any breach of the listing requirements or rules issued by the stock exchange for the past 5 years prior to the submission of the application; and
- to the best of their knowledge, they have not been subject to any inquiry or investigation by any government or regulatory authority or body for the past 5 years prior to the submission of the application.

H. Declaration of conflict of interest by adviser in its advisory capacity. If a conflict of interest exists, to provide full disclosure of the nature of the conflict and the steps taken to address such conflict.

I. Statement by applicant that all the information/ documentation relating to the application have been made after due consideration of Section 33E, SCA and Section 38 of the Code.

J. Statement by adviser that the application has been made after due consideration of Section 33E, SCA and Section 38 of the Code.

- K. **Enclosure of upfront fee payment to the SC [based on the Securities Commission (Fees and Charges) Regulations 1993].**
- L. **Name and telephone number of contact person.**
- M. **Name, designation and signatory of authorised personnel of the adviser company/ firm.**

II. Supplementary Appendices

Please refer to the enclosed appendices for the details.

- **Appendix I** - Background information on applicant/ offeror/ acquirer/ potential controlling holder of voting shares
- **Appendix II** - Background information on offeree/ acquiree company
- **Appendix III** - Checklist on compliance with the provisions of the SCA / the Code / Practice Notes
- **Appendix IV** - Standard Format of Declaration by each member of group of parties acting in concert in relation to their concert-party relationship
- **Appendix V** - Standard Format of Declaration to be made pursuant to Paragraphs 5(a) and (6) of PN 2.9.1
- **Appendix VI** - Proforma Undertaking Letter from remaining shareholders of acquiree company under PN 2.9.6
- **Appendix VII** - Additional information in relation to application for an exemption under PN 2.9.3

III. Others

- A. All applications should be submitted in 2 copies and addressed to the Chairman of the Securities Commission at No. 3, Persiaran Bukit Kiara, Bukit Kiara, 50490 Kuala Lumpur.
- B. Enclose a 3.5" floppy disk/ CD containing the soft copy of Appendices I, II, III and VII (in Microsoft Word/ Excel/ PDF format) with all applications.

- C. Enclose a checklist in respect of the compliance with the Format and Contents of Applications. Detailed justification is required for all instances of non-compliance or non-applicability.

(Note: Certain terms used herein shall have the same meaning as in the Securities Commission Act 1993 and the Malaysian Code on Take-overs and Mergers 1998)

Background information on applicant / offeror / acquirer / potential controlling holder of voting shares

Part I In the case of a company

- | | | |
|------|---|---|
| (1) | Company name | : |
| (2) | Place and date of incorporation | : |
| (3) | Company registration no. | : |
| (4) | History and principal activities | : |
| (5) | Listing status (<i>If delisted or suspended, please state reason</i>) | : |
| (6) | Registered and correspondence address | : |
| (7) | Share capital and movement for the past 3 years | : |
| (8) | Substantial shareholders (<i>to include ultimate beneficial owners/ shareholders if the shares are registered under a nominee company/ account</i>) and the movement in the substantial-shareholders composition for the past 3 years | : |
| (9) | Particulars of directors and the movement in the board composition for the past 3 years | : |
| | - Full Name | : |
| | - Identification card no. (new) / passport no. | : |
| | - Address | : |
| | - Contact number | : |
| (10) | Subsidiary and associated companies (<i>including the percentage interest holding and their principal activities</i>) | : |
| (11) | Details of beneficial owners of the shares (<i>if the registered owner of the shares is not the beneficial owner</i>) | : |
| | - If company, please disclose its background information based on the format under Part I of this Appendix, and the ultimate beneficial owners, if applicable | : |
| | - If individual, please disclose his/ her background information based on the format under Part II of this Appendix | : |
| (12) | Company contact number and contact person | : |
| (13) | Company registrar | : |
| | - Name | : |
| | - Address | : |
| | - Contact person | : |
| | - Contact number | : |
| (14) | Company secretary | : |
| | - Name | : |
| | - Address | : |

- Contact person :
- Contact number :
- (15) Bumiputera / non-Bumiputera status (*as defined under paragraph 5.3, Guidance Note 6 of Policies and Guidelines on Issues/ Offer of Securities issued by Securities Commission*) :
- (16) The identity of other person(s) presumed to be acting in concert with the applicant/ offeror/ acquirer pursuant to Section 33(3) of the SCA and the brief description of the relationship with the applicant/ offeror/ acquirer and the involvement in the offeree/ acquiree company (*e.g. shareholding/ directorship*) :

Part II In the case of an individual

- (1) Full Name :
- (2) Identification card no. (new)/ passport no. :
- (3) Age :
- (4) Occupation :
- (5) Address :
- (6) Contact number :
- (7) Equity interests / directorship in other companies for the past 3 years :
- (8) Spouse (*if any*):
 - Full Name :
 - Identification card no. (new) / passport no. :
 - Age :
 - Contact number :
 - Equity interests/ directorship in other companies :
- (9) Siblings / children (*if any*):
 - Full Name :
 - Identification card no. (new) / passport no. :
 - Age :
 - Address :
 - Contact number :
 - Equity interests/ directorship in other companies :
- (10) The identity of other person(s) presumed to be acting in concert with the applicant/ offeror/ acquirer pursuant to Section 33(3) of the SCA and the brief description of the relationship with the applicant/ offeror/ acquirer and the involvement in the offeree/ acquiree company (*e.g. shareholding/ directorship*) :

Background information on offeree/ acquiree company
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(1)	Company name	:
(2)	Place and date of incorporation	:
(3)	Company registration no.	:
(4)	History and principal activities	:
(5)	Listing status (<i>If delisted or suspended, please state reason</i>)	:
(6)	Registered and correspondence address	:
(7)	Share capital and movement for the past 3 years	:
(8)	Substantial shareholders (<i>to include ultimate beneficial owners/ shareholders if the shares are registered under a nominee company/ account</i>) and the movement in the substantial-shareholders composition for the past 3 years	:
(9)	Particulars of directors and movement in the board composition for the past 3 years	:
	- Full Name	:
	- Identification card no. (new) / passport no.	:
	- Address	:
	- Contact number	:
(10)	Subsidiary and associated companies (<i>including the percentage interest holding and principal activities</i>)	:
(11)	Company contact number and contact person	:
(12)	Company registrar	:
	- Name	:
	- Address	:
	- Contact number	:
	- Contact person	:
(13)	Company secretary	:
	- Name	:
	- Address	:
	- Contact number	:
	- Contact person	:
(14)	Bumiputera / non-Bumiputera status (<i>as defined under paragraph 5.3, Guidance Note 6 of Policies and Guidelines on Issues/ Offer of Securities issued by Securities Commission</i>)	:

Checklist on compliance with the provisions of the Securities Commission Act 1993/ Malaysian Code on Take-overs and Mergers 1998 or Practice Notes

(These checklists do not purport to be exhaustive. Reference should also be made to the Securities Commission Act 1993 and the Malaysian Code on Take-overs and Mergers 1998)

Part I Application in relation to take-over offer situation

A. Consent to offer document

- (i) Checklist on compliance with Schedule 1 of the Code
- (ii) Checklist on compliance with Guidelines on Offer Documentation

[Appropriate reference(s) must be made in the checklist, to the relevant section(s) of the complete draft offer document that is submitted to the Commission.]

B. Appointment of independent adviser

- (i) Checklist on compliance with Practice Note 4.3 of the Code

C. Consent to independent advice circular

- (i) Checklist on compliance with Schedule 2 of the Code
- (ii) Checklist on compliance with Guidelines on Offer Documentation

[Appropriate reference(s) must be made in the checklist, to the relevant section(s) of the complete draft independent advice circular that is submitted to the Commission.]

[Note: B and C above are also applicable to application for exemption from mandatory-offer obligation under Practice Notes 2.9.1 and 2.9.10 of the Code]

Part II Application in relation to exemption from mandatory-offer obligation under Practice Note (PN)s 2.9.1 – 2.9.10
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A. **Checklist on compliance with the provisions under the respective PNs and the relevant supporting documents**

B. **Notes:**

(i) PN 2.9.1

- *Application under this PN is divided into 2 stages. First stage refers to the initial application where the applicant would lay out the underlying transaction/ scenario leading to the potential mandatory-offer obligation and to demonstrate its eligibility for an exemption under PN2.9.1. Upon Securities Commission (SC)'s consideration of the first-stage application, the applicant would be required to demonstrate to SC its full compliance with the whitewash procedure in its second-stage application. In complying with the white-wash procedure, the applicant is required to adopt the recommended format of submission under Sections B and C, Part I of this Appendix, for its application in relation to the appointment of independent adviser (IA) and consent to the independent advice circular.*
- *When submitting the first-stage application, the applicant and its concert parties have to confirm their dealing in the voting shares of the acquiree company during the 6 months period prior to the date of submission of the application for the exemption but subsequent to negotiation, discussion, understanding or agreement with the directors of the acquiree company in relation to the proposed issue of new securities, whichever is the shorter period.*
- *At the second stage of the application and for the purpose of the requirement under Paragraphs 5(a) and 6 of PN2.9.1, applicant and its concert parties are required to submit declarations in accordance with the format in **Appendix V**.*
- *Application for appointment of IA is required to be made only after SC's consideration of the main adviser's first-stage application, where a condition is usually imposed on the Board of the acquiree company to appoint an IA for the provision of competent advice to the minority shareholders of the acquiree company.*

(ii) PN2.9.3

- *For the purpose of ascertaining whether the rescue proposal is to save the financial position of an offeree company whose voting shares are being acquired by an urgent rescue operation, additional information as outlined under **Appendix VII** is required.*

(iii) PN2.9.5

- *For the purpose of the requirement under Paragraphs 2(b) and (c) of PN2.9.5, application for an exemption has to be accompanied by supporting documents in relation to the requirement as stated therein (e.g. copy of the placement agreement entered into, appointment letter of the underwriter, relevant written confirmation/ undertaking etc).*

(iv) PN2.9.6

- *For the purpose of the requirement under Paragraph 3(b) or (c) of PN2.9.6, the required undertaking letter has to be prepared in accordance with the format in **Appendix VI**.*

<p>Part III Application in relation to ruling/ exemption from specific provision of the Code</p>

Application for ruling/ exemption from specific provision of the Code has to be specific and, where appropriate, accompanied with a legal opinion.

For application involving any of the PNs under the Code, relevant checklist on compliance with the provisions of the said PN is required to be submitted.

Prior consultation with the SC for application under this Part is strongly encouraged.

[Note: Detailed justification in relation to the application made has to be clearly disclosed in the covering letter and the applicant may include, for instance, industry practices, practices in other jurisdictions or precedent cases, where appropriate, to support its application]

Standard Format of Declaration by each member of the group of parties acting in concert in relation to their concert-party relationship

[Name of member of the group acting in concert] [Company registration number/ IC number (new) / passport number]
[Address]

[Date]

Chairman
Securities Commission
No. 3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

Dear Sir,

[Name of acquiree company] [Company registration number]
- Declaration of a Concert-party Relationship pursuant to take-over offer/ application made under Division 2, Part IV, Securities Commission Act 1993/ the Malaysian Code on Take-overs and Mergers 1998

I, [name of member of the group acting in concert or authorised personnel of a company], [IC number (new)], of [address], hereby declare that I am / <in the case of a company, as authorised by the board of director of [name of company], hereby declare that [name of company] is > acting in concert with [names of the remaining members of the group of parties acting in concert] pursuant to Section [either 33(2) or 33(3) or both] of the Securities Commission Act 1993 in relation to [description of the transaction/ circumstances].

2. [Detailed description as to how the concert-party relationship arises and the length of the relationship. To also make specific reference to the Code implication and, where applicable, the relevant Practice Note, which an application has been/ would be made to the SC].

3. The above declaration has been made after due consideration of and with full knowledge of the implication under Section 33E of the Securities Commission Act 1993 and Section 38 of the Malaysian Code on Take-overs and Mergers 1998.

Yours faithfully

[Signature]

[Name. If a company, name and designation of the person authorized to sign on behalf of the company]

APPENDIX V

Standard Format of Declaration pursuant to Paragraphs 5(a) and (6) of Practice Note 2.9.1, the Malaysian Code on Take-overs and Mergers 1998

[*Name of applicant and its concert parties*] [*Company registration number/ IC number (new)/ passport number*]
[*Address*]

[*Date*]

Chairman
Securities Commission
No. 3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

Dear Sir,

[*Name of acquiree company*] [*Company registration number*]

- Declaration pursuant to application for an Exemption from mandatory-offer obligation under Practice Note 2.9.1 of the Malaysian Code on Take-overs and Mergers 1998 (the Code)

I, [*name of individual applicant or authorised personnel of an applicant corporation*], [*IC number (new)*], of [*address*], <*if a corporation, on behalf of [the name of applicant corporation]*>[*Company registration number*], hereby declare the following:-

(a) [*To confirm the applicant's shareholding in the acquiree company, and the applicant's intention to seek an exemption from a mandatory-offer obligation under Practice Note 2.9.1 of the Code*]

[*In addition, if the declaration is made by authorised personnel of an applicant corporation, to also confirm that he/ she has been authorised by the Board of directors of the applicant corporation to make such declaration on its behalf*]

(b) [*I/ applicant corporation*] have/ has not acquired any voting shares in [*name of acquiree company*] -

(i) in the six (6) months prior to the posting of the circular to the shareholders of [*name of acquiree company*] dated [*date*] in relation to the proposal; but

(ii) subsequent to negotiation, discussion, understanding or agreement with the Directors of [*name of acquiree company*] in relation to the new issue

of shares pursuant to [*description of transaction leading to the issuance of new shares, which necessitated the application for exemption*] on [*date of such negotiation, discussion, understanding or agreement*],

whichever is earlier.

- (c) [*I/ applicant corporation*] will not acquire nor cause any parties acting in concert with [*me/ applicant corporation*] to acquire any shares in [*name of acquiree company*] during the period between:
- (i) the date of this declaration or posting of the circular relating to the proposal or application to the Securities Commission for the proposed exemption; and
 - (ii) the granting of the exemption by the Securities Commission.

2. The above declaration has been made after due consideration of and with full knowledge of the implication under Section 33E of the Securities Commission Act 1993 and Section 38 of the Malaysian Code on Take-overs and Mergers 1998.

Yours faithfully

[*Signature*]

[*Name. If a company, name and designation of the person authorized to sign on behalf of the company*]

Proforma Undertaking Letter from remaining shareholders of acquiree company under Practice Note 2.9.6, the Malaysian Code on Take-overs and Mergers 1998

[Name of remaining shareholder of acquiree] [Company registration number/IC number (new)/ passport number]

[Address]

[Date]

[Name of acquirer] [Company registration number/IC number (new)/ passport number]

[Address]

Dear Sirs,

[Name of acquiree company] [Company registration number]

- Letter of Undertaking pursuant to application for an Exemption from mandatory-offer obligation under Practice Note 2.9.6 of the Malaysian Code on Take-overs and Mergers 1998 (the Code)

[Detailed background of proposed transaction leading to the mandatory-offer obligation, including, but not limited to, the following:

- Background information on acquirer and remaining shareholder, including name and number of shares held in acquiree;
- Details of transaction, i.e. whether acquisition is through sale and purchase agreement (S&P) or market purchase. If through S&P, to include principal terms other than those outlined below (in particular the main warranties and indemnities to be sought from the shareholders and whether such warranties and indemnities differ between shareholders);
- Purchase consideration, form of consideration (cash/share exchange/convertibles) and consideration per share;
- Confirmation on any special arrangements between the acquirer and any shareholders other than the proposed consideration set out above (negative statement if none);
- Potential offer price per share to be offered by acquirer, if such mandatory offer is to be undertaken in accordance with the relevant provisions of the Code;
- Rationale for the transaction; and
- Resultant shareholding of acquirer in acquiree after completion of proposed transaction.]

2. *[Code implications pursuant to the transaction and the seeking of exemption under PN2.9.6 wherein the exemption would only be granted upon fulfilment of certain specified criteria under the said practice note, which include, inter alia, the submission of an undertaking from remaining shareholder that it would not accept a take-over offer if such an offer is extended by the acquirer.]*

3. *[Undertaking by remaining shareholder that, after giving due consideration to the legal and financial implications of the transaction, including the mandatory offer implications thereof, not to accept any take-over offer at the potential offer price of [RM] per share, if such an offer is extended by the acquirer to acquire the shares in the acquiree held by the remaining shareholder.]*

Yours sincerely

[Signature]

[Name of the remaining shareholder. If the remaining shareholder is a corporation, name and designation of person authorized to issue undertaking letter on behalf of the corporation]

APPENDIX VII

Additional information in relation to application for an exemption from mandatory-offer obligation under Practice Note 2.9.3, the Malaysian Code on Take-overs and Mergers 1998

- A. Details of the rescue proposal.
- B. Confirmation from the competent independent person as to the financial position of the subject company, in cases where it is necessary to support the rescue proposal.
- C. Summary of the pertinent aspects of the acquiree company / business (including, but not limited to, the past financial performance and cashflow position of the acquiree company / business for the past 3 financial years, disclosure of material commitments and contingent liabilities incurred or known to be incurred by the company / business and their impact on the profits or the net asset value of the company / business upon becoming enforceable, etc). The summary is required to be accompanied by commentary / analysis, particularly on the following aspects / matters:-
- significant and specific factors contributing to exceptional performance in any of the financial years under review and significant changes in the financial performance on a year-to-year basis, whether favourable or adverse;
 - accounting policies adopted which are peculiar to the company / business because of the nature of the business or the industry it is involved in, as well as the effects of such policies on the determination of income or financial position; and
 - any audit qualification of the accounts in any of the financial years under review.
- D. Future financial information [as per the format under Appendix XI, Part B of the Format and Content of Applications under Policies and Guidelines on Issue / Offer of Securities issued by the Securities Commission].
- E. Financial effects of the rescue proposal [as per the format under Appendix IX, Part B of the Format and Content of Applications under Policies and Guidelines on Issue / Offer of Securities issued by the Securities Commission].
- F. Detailed discussion and demonstration on the **effectiveness** of the rescue proposal [which would result in the triggering of the mandatory-offer obligation on the part of the applicant] in turning around the financial position of the ailing company.