

SECURITIES COMMISSION ACT 1993

MALAYSIAN CODE ON TAKE-OVERS AND MERGERS (AMENDMENT) 2004

IN exercise of the powers conferred by subsection 33A(2) of the Securities Commission Act 1993 [*Act 498*], the Minister makes the following code:

Short title and commencement

1. (1) This code shall be cited as the **Malaysian Code On Take-Overs and Mergers (Amendment) 2004**.

(2) This Code comes into operation on 25 March 2004.

Amendment of section 2

2. The Malaysian Code On Take-Overs and Mergers 1998 [*P.U. (B) 550/1998*], which is referred to as the "principal Code" in these Regulations, is amended in subsection 2(1) —

(a) by inserting before the definition of "chief executive" the following definition:

' "business day" refers to a day which is not a Saturday, Sunday or public holiday;';

(b) by deleting the definition of "officer";

(c) by inserting after the definition of "director" the following definition:

' "major shareholder" means a person who has an interest in the voting shares of a company and the aggregate amount of the voting share is not less than 5% of all the voting shares in the company;'; and

(d) by deleting the definition of “company”.

General amendment

3. The principal Code is amended in the national language text, by substituting for the word “pemeroleh” the word “pengambil”.

Amendment of section 6

4. Section 6 of the principal Code is amended —

(a) in subsection (1) —

(i) in paragraph *(a)*, by deleting the words “who has obtained control in a company”; and

(ii) in paragraph *(b)*, by substituting for the word “acquires” the words “acquires or intends to acquire”;

(b) in subparagraph (2)*(a)*(iii), by substituting for the words “Companies Act 1965” the word “Act”;

(c) by deleting subsection (3); and

(d) by substituting for subsection (4) the following subsection:

“(4) An acquirer who —

(a) has obtained control in a company; or

(b) holds more than 33% but less than 50% of the voting shares of a company and such acquirer acquires in any period of six months more than 2% of the voting shares of the company,

shall extend an offer to the offeree shareholders in accordance with the requirements of this Code.”.

Amendment of section 8

5. Subsection 8(2) of the principal Code is amended by inserting after the words "has acquired" the words "or already holds or is entitled to acquire or hold".

Amendment of section 9

6. The principal Code is amended by substituting for section 9 the following section:

"Nature of the consideration for a mandatory offer

9. An offeror shall provide —
- (a) that the consideration for the mandatory offer that is to be paid, or provided, for the acquisition of the voting shares to which the mandatory offer relates consists solely of a cash sum; or
 - (b) that where the consideration which triggers the mandatory offer obligation does not solely consist of a cash sum, an alternative form of consideration consisting solely of a cash sum."

Amendment of section 12

7. Section 12 of the principal Code is amended —
- (a) in subsection (4) —
 - (i) in subparagraph (c)(i), by substituting for the words "offeror" the words "proposed offeror";
 - (ii) in subparagraph (c)(ii), by substituting for the words "holders of voting shares to which the take-over relates" the words "offeree shareholders"; and

- (iii) in paragraph (d), by substituting for the words “holders of the voting shares to which the take-over relates” the words “offeree shareholders”;
- (b) in paragraph (5)(c), by substituting for the words “holders of the voting shares to which the take-over offer relates” the words “offeree shareholders”; and
- (c) in subsection (10), by substituting for the words “, an acquirer who has obtained control in a company, or an acquirer who holds more than 33% but less than 50% of the voting rights of a company who has acquired in any period of six months more than 2% of the voting shares of the company” the words “or an acquirer under subsection 6(1).”.

Amendment of section 14

8. Section 14 of the principal Code is amended —

- (a) in subsection (1), by substituting for the words “holder of voting shares to which the take-over offer relates” the words “offeree shareholder”;
- (b) in subsection (2) —
 - (i) by substituting for the words “holder of the voting shares to which the take-over offer relates” the words “offeree shareholder”; and
 - (ii) by substituting for the words “holders of such voting shares” the words “offeree shareholders”; and
- (c) by deleting subsection (6).

Amendment of section 15

9. Section 15 of the principal Code is amended —

- (a) in subsection (1), by substituting for the words “holders of the class of the voting shares to which the take-over offer relates” the words “offeree shareholders”;
- (b) in subsection (4), by substituting for the words “all holders of voting shares to which the take-over relates” the words “the offeree shareholders”;
- (c) by inserting after subsection (6) the following subsection:

“(6A) Where the Commission has granted its consent to the independent advice circular, the independent adviser shall include in the independent advice circular a statement that the Commission has consented to the independent advice circular under this section and that the consent of the Commission shall not be taken to indicate that the Commission agrees with the recommendation of the independent adviser.”; and
- (d) in subsection (9), by substituting for the words “all holders of voting shares to which the take-over offer relates” the words “the offeree shareholders”.

Amendment of section 17

10. Section 17 of the principal Code is amended —

- (a) in subsection (1), by substituting for the words “to which the take-over offer relates” the words “of the offeree”; and
- (b) by substituting for subsection (3) the following subsection:

“(3) Subsection (1) shall not apply to a partial offer.”.

Amendment of section 20

11. Section 20 of the principal Code is amended —

- (a) by substituting for subsection (5) the following subsection:

“(5) The offeror, in any take-over offer, shall post the cash consideration to all persons accepting the take-over offer —

(a) within twenty-one days from the date the offer becomes or is declared wholly unconditional;

(b) in the event the take-over offer has already become or been declared wholly unconditional at the date of posting of the offer document in accordance with subsection 13(7), within twenty-one days from the date of such posting; or

(c) where acceptances are received after the periods mentioned in paragraph (a) or (b), immediately upon acceptance of the offer, or at the latest within fourteen days from the date the acceptances are received.”; and

(b) by inserting after subsection (5) the following subsections:

“(6) In the case where the consideration involves securities, the offeror, in any take-over offer, shall post or credit, as the case may be, the consideration to all persons, or the persons’ securities account, as the case may be, accepting the take-over offer within twenty-one days from the date of the close of the take-over offer, provided that the take-over offer has become or has been declared wholly unconditional prior to the date of the close of the take-over offer.

(7) For the purpose of this section, “securities account” means an account established by a central depository for a depositor for the recording of deposit of securities and for dealings in such securities by the depositor.”.

Amendment of section 24

12. Section 24 of the principal Code is amended —

(a) by inserting after subsection (1) the following subsection:

“(1A) Where a take-over offer has already become or been declared unconditional as to acceptances as at the date of the posting of the offer document in accordance with subsection 13(7), the closing date of the take-over offer shall not be later than the sixtieth day from such posting date.”;

(b) in subsection (2), by inserting after the words “less than fourteen days” the words “from the date on which the take-over offer becomes and is declared unconditional”;

(c) in subsection (3), by substituting for the words “the offeror shall keep the take-over open for acceptances for not less than fourteen days” the words “the offeror shall keep the take-over offer open for acceptances for not less than fourteen days from the date in which the take-over offer becomes and is declared unconditional”;

(d) by substituting for subsection (4) the following subsection:

“(4) Without prejudice to subsections (1A), (2) and (3) and subject to subsection 22(1), the offeror shall give not less than fourteen days notice in writing to the offeree shareholders before closing the take-over offer.”;

(e) by inserting after subsection 4 the following subsection:

“(4A) Subject to the Commission’s approval, subsection (4) shall not apply where a take-over offer has become unconditional as to acceptances before an expiry date and the offer document clearly states that the offer will be closed on a specific date.”;

- (f) in subsection (5), by substituting for the words “subsection (4)” the words “subsection (4A)”;
- (g) in subparagraph (6)(bb), by substituting for the words “subsection (4)” the words “subsection (4A)”;
- (h) by deleting subsection (7).

Amendment of section 25

13. Section 25 of the principal Code is amended —

- (a) by substituting for subsection (1) the following subsection:

“(1) If the securities or voting shares of the offeror or offeree are listed on a stock exchange, the offeror shall inform the Commission and the relevant stock exchange and announce by way of press notice on the market day following the day on which a take-over offer is closed, becomes or is declared unconditional as to acceptances, revised or extended —

- (a) the position of the take-over offer, that is, as to whether the take-over offer is closed, becomes or is declared unconditional as to acceptances, revised or extended; and
- (b) the total number of voting shares to which the take-over offer relates —
 - (i) for which acceptances of the take-over offer have been received after the posting of the offer document by the offeror to the offeree shareholders in accordance with subsection 13(7);
 - (ii) held by the offeror and all persons acting in concert with the offeror at the

time of the posting of the offer document to the offeree shareholders in accordance with subsection 13(7); and

- (iii) acquired or agreed to be acquired during the offer period,

and shall specify the percentages of the relevant classes of share capital represented by these figures before trading in the securities of the offeror or offeree commences at the relevant stock exchange.”;

(b) in subsection (2) —

- (i) by substituting for the words “paragraphs (1)(a), (b) and (c)” the words “paragraphs (1)(a) and (b)”; and
- (ii) by substituting for the word “market” the word “business”; and

(c) by substituting for subsection (3) the following subsection:

“(3) Where the offeror, having announced the offer to be unconditional as to acceptances, fails to comply with any of the requirements of subsections (1) and (2) —

- (i) by the close of trading at the relevant stock exchange on the day referred to in subsection (1), where the offeror or offeree is listed on a stock exchange; or
- (ii) by 5.00 p.m. on the day referred to in subsection (2), where the offeror and offeree is unlisted,

any person who has accepted the take-over offer shall be entitled to withdraw his or its acceptance immediately thereafter.”.

Amendment of section 27

14. The principal Code is amended by substituting for section 27 the following section:

“Evidence of ability to implement the take-over offer

27. Where the offer is for cash or includes an element of cash, a person who is required to make an announcement under subsection 12(1) or 12(3) shall ensure and the person's financial adviser shall be reasonably satisfied that —

- (a) the take-over offer would not fail due to the insufficient financial capability of the offeror; and
- (b) every offeree shareholder who wishes to accept the take-over offer will be paid in full.”.

Amendment of section 31

15. Subsection 31(2) of the principal Code is amended in the English language text, by inserting after the words “sections 34 and 34A” the words “of the Act”.

Amendment of section 32

16. Section 32 of the principal Code is amended —

- (a) by substituting for subsection (1) the following subsection:

“(1) During the offer period, the offeror or any person acting in concert with the offeror shall not dispose any voting shares of the offeree, whether by way of sale, transfer or otherwise, unless the disposal of such shares is between the offeror and persons acting in concert with him.”;

- (b) by deleting subsection (2);

- (c) in subsection (3) —
- (i) by substituting for the words “subsection 11(6)” the words “subsection 11(5)”;
 - (ii) by inserting after the words “own account” the words “during the offer period”; and
 - (iii) in paragraph (b), by substituting for the word “substantial” the word “major”; and
- (d) by substituting for subsection (4) the following subsection:

“(4) The disclosure under subsection (3) shall be —

- (a) made to the relevant stock exchange, if the securities of the offeror or the offeree are listed on the relevant stock exchange;
- (b) made to the Commission;
- (c) announced by way of a press notice,

not later than 12.00 p.m. on the market day, if the securities of the offeror or the offeree are listed, or on the business day, if the securities of the offeror and the offeree are not listed, following the date of the relevant transaction.”.

Amendment of section 36

17. Section 36 of the principal Code is amended —

- (a) in paragraph (1)(b), by substituting for the word “substantial” the word “major”; and
- (b) by substituting for subsection (2) the following subsection:

“(2) The disclosure under subsection (1) shall be —

(a) made to the relevant stock exchange, if the securities of the offeror or the offeree are listed on the relevant stock exchange;

(b) made to the Commission; and

(c) announced by way of a press notice,

not later than 12.00 noon on the market day, if the securities of the offeror or the offeree are listed, or on the business day, if the securities of the offeror and the offeree are not listed, following the date of the relevant transaction.”; and

(c) by deleting subsection (5).

Amendment of section 37

18. Subsection 37(1) of the principal Code is amended by substituting for the words “holders of the voting shares to which the take-over offer relates” the words “offeree shareholders”.

Amendment of section 38

19. Section 38 of the principal Code is amended in subsection (1) —

(a) in paragraph (a), by substituting for the words “any document or information in a take-over offer” the words “any document or information in relation to or in connection with a take-over offer or compulsory acquisition”;

(b) in paragraph (b), by substituting for the words “any document or information in a take-over offer” the words “any document or

information in relation to or in connection with a take-over offer or compulsory acquisition"; and

- (c) in paragraph (c), by inserting after the words "take-over offer" the words "or compulsory acquisition".

Amendment of section 42

20. Subsection 42(2) of the principal Code is amended by substituting for the words "take-overs, mergers or compulsory acquisition" the words "take-over offers, mergers or compulsory acquisitions".

Amendment of Schedule 1

21. Schedule 1 to the principal Code is amended —

- (a) in subparagraph (1)(e), by deleting the word "and" at the end of that subparagraph;
- (b) in subparagraph (1)(f)—
 - (i) by deleting the word "company" in the English language text; and
 - (ii) by substituting for the full stop at the end of that subparagraph a semi-colon; and
- (c) by inserting after subparagraph (1)(f) the following subparagraphs:
 - "(g) whether the offeror has any intention to resort to compulsory acquisition powers; and
 - (h) where the offeror has disclosed an intention to resort to compulsory acquisition powers under paragraph (g) and if the take-over offer contains two or more alternative sets of terms, the terms applying to the dissenting shareholders.";

- (d) in subparagraph 4 (a)—
- (i) by substituting for the words “directors, past directors” the words “directors or past directors of the offeree”; and
 - (ii) by inserting after the words “holders of voting shares or past holders of voting shares” the words “of the offeree”;
- (e) in paragraph 9, by substituting for the words “the Code” the words “paragraphs 5 and 6”;
- (f) in paragraph 10, by inserting after the words “a cash offer only.” the words “If there will be no effect, this must be stated.”; and
- (g) by inserting after paragraph 11 the following paragraphs :

“12. A reference to the ultimate shareholder means a reference to the ultimate owner of the shares who is the person beneficially entitled to all rights, benefits, powers and privileges and subject to all liabilities, duties and obligations in respect of, or arising from, the shares and does not include a nominee of any description.

13. The offer document shall state that each director of the offeror has taken reasonable care to ensure both that the facts stated and opinions expressed therein are fair and accurate and that no material facts have been omitted. The offer document must also state that each director accepts responsibility accordingly.”.

Amendment of Schedule 2

22. Paragraph 6 of Schedule 2 to the principal Code is amended by substituting for the words "the Code" the words "paragraph 3".

Made on 4th March 2004

[S (8.02) 248/23-49 (SJ.19);PN(PU2)637]

TAN SRI NOR MOHAMED YAKCOP
Second Minister of Finance