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**PART I
GENERAL INTERPRETATION AND APPLICATION****Practice Note 1.1
Administration of the Code**

In the administration of the Malaysian Code on Take-overs and Mergers, 1998 (the “Code”), the Commission may from time to time issue rulings in the form of practice notes in the interpretation of the Code and lay down the practice and conduct of persons involved in or affected by a take-over offer, merger or compulsory acquisition or in the course of a take-over offer, merger or compulsory acquisition pursuant to subsection 33A(4) of the Securities Commission Act 1993 (the “Act”). These Notes are rulings for the purposes of the Code.

**Practice Note 1.2
Application of the Code to private companies**

The Code applies to a take-over of a private company which has either shareholders’ funds or a paid-up capital of RM10 million or more based on the latest audited accounts (on a consolidated basis, if applicable), as the case may be, and where the purchase consideration for the voting shares over a period of 12 months before the date of written notice and announcement pursuant to subsection 12(3)(a) and (b) of the Code, is RM 20 million or more.

**Practice Note 1.3
Advisers in any take-over offer and submissions to the Commission**

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This Note is to establish procedures for the provision of proper advice by competent persons in relation to a take-over offer, merger or compulsory acquisition for submission to the Commission in view of the objectives stated in subsection 33A(5) of the Act.

Appointment of advisers

- (1) Any person who intends to or who is obliged to make a take-over offer, or who intends to apply for an exemption from the provisions of the Code, should seek advice from advisers, who have the necessary expertise and experience in corporate matters. Where an acquirer or a person wishes to seek an exemption from a mandatory offer obligation under Part II of the Code, he should seek advice from accounting firms, lawyers or merchant banks.
- (2) The board of directors of any offeree should seek independent advice from such advisers who have the necessary expertise and experience in corporate matters.
- (3) Any aggrieved minority holder of voting shares of either the offeror or offeree wishing to seek a ruling by the Commission should seek advice from persons having the necessary expertise and experience in corporate matters.
- (4) All such relevant advisers are responsible to submit to the Commission any application requesting for any exemption or ruling.

Standard of submission

- (5) Any adviser giving advice or submitting applications to the Commission should be competent and of high professional standard to achieve the following:
 - (a) to provide objective and clear advice which would enable the parties concerned to exercise their judgement;
 - (b) to provide correct advice which would not result in any action which would breach the provisions of the Code;
 - (c) to facilitate early consideration by the Commission as the Code places considerable importance on immediate actions to be taken by persons involved in a take-over offer, merger or compulsory acquisition; and
 - (d) to ensure adherence to the schedule of any take-over offer as provided in the Code.

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- (6) Any person giving advice in a take-over offer, merger or compulsory acquisition resulting in any breach of the provisions of the Code is responsible for the advice given. The Commission may refuse to accept any submissions on matters relating to any take-over offer, merger or compulsory acquisition from any such adviser for a period of 6 months.

Contents of submission by adviser

- (7) A submission made to the Commission must include the following:
- (a) brief information of the offeror and the offeree (detailed background information should be attached as appendices);
 - (b) details of the transaction from which an obligation under Part II of the Code arises;
 - (c) details of all persons acting in concert (if any);
 - (d) requests and justification for an exemption or a ruling applied for; and
 - (e) such other details considered relevant for the Commission's consideration.

Consultation with the Commission

- (8) All matters in which consultation with the Commission is sought should first be communicated to the Commission through advisers in writing. In any such consultation, advisers should :
- (a) clearly define the issues on which they seek the advice of the Commission;
 - (b) be thoroughly familiar with the issues relating to the actual transaction which would give rise to an obligation under Part II of the Code; and
 - (c) provide their views on the issues.
- (9) The Commission may not agree to any consultation unless it is fully satisfied that subsection (8) is complied with.

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Practice Note 1.4**General guidelines for application for exemptions from mandatory offers**

In relation to an application for an exemption from making a mandatory offer, consultation with the Commission at an early stage is essential and applications for an exemption should be submitted prior to the obligation to make a mandatory offer under Part II of the Code arising.

PART II**MANDATORY OFFERS****Practice Note 2.1****Application of section 12 of the Code to mandatory offers**

- (1) When any person acquires voting shares such that it gives rise to an obligation to make a mandatory offer under Part II of the Code, the person must send a written notice and make an announcement of the take-over offer immediately pursuant to paragraphs 12(3)(a) and (b) of the Code.
- (2) When any person acquires voting shares through a sale and purchase agreement such that the acquisition would give rise to an obligation to make a mandatory offer under Part II of the Code, upon the signing of the sale and purchase agreement, the person must make an announcement pursuant to subsection 12(1) of the Code immediately. When the sale and purchase agreement becomes unconditional the person must send a written notice and make an announcement of the take-over offer immediately pursuant to paragraphs 12(3)(a) and (b) of the Code.
- (3) In relation to a scheme for reconstruction or amalgamation under Part VII of the Companies Act 1965, the acquirer must send a written notice and make an announcement pursuant to paragraphs 12(3)(a) and (b) of the Code immediately upon the implementation of the scheme when the acquirer incurs an obligation to make a mandatory offer under Part II of the Code.

Practice Note 2.2**Acquisition of a company through an upstream entity**

- (1) Part II of the Code applies to a person who intends to obtain or has obtained control in an upstream entity which:

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- (a) holds or is entitled to exercise or controls the exercise of more than 33% of the voting shares of a downstream entity; or
 - (b) has a significant degree of influence in that downstream entity if in the Commission's view:
 - (i) the acquisition of the upstream entity to which the Code does not apply is an artificial device to acquire control in the downstream entity to which the Code applies without having to undertake a mandatory offer in the downstream entity under Part II of the Code; or
 - (ii) the control in the downstream entity constitutes a substantial part of the assets of the upstream entity; or
 - (iii) one of the main purposes of acquiring control of the upstream entity was to control the downstream entity.
- (2) For the purposes of this Note, an "upstream entity" includes:
- (a) the ultimate or immediate holding company of a downstream entity;
 - (b) a body corporate that is incorporated in or outside Malaysia;
 - (c) a unit trust scheme; and
 - (d) an interest which is defined under Section 84 of the Companies Act 1965.
- (3) For the purposes of this section, a "downstream entity" includes:
- (a) a subsidiary or associate company of an upstream entity; and
 - (b) a subsidiary or associate company of another subsidiary or associate of an upstream entity.
- (4) The person referred to in subsection (1) is required to make a mandatory offer under Part II of the Code for both the upstream entity and the downstream company unless otherwise exempted by the Commission in writing.

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Practice Note 2.3**Acquisition of voting shares by members of group acting in concert**

- (1) Where the combined holding of a group of persons acting in concert is less than 33% of the voting shares of an offeree, and thereafter any member of that group acquires voting shares of the offeree such that the combined holding of the group exceeds 33%, Part II of the Code will apply to all the members of the group of persons acting in concert.
- (2) Where the combined holding of a group of persons acting in concert is more than 33% and less than 50% of the voting shares of an offeree, and thereafter any member of that group acquires additional voting shares of the offeree such that the combined holding of the group is increased by more than 2% in any 6 month period, Part II of the Code will apply to all the members of the group of persons acting in concert.
- (3) Where the combined holding of a group of persons acting in concert is more than 33% of the voting shares of an offeree and where an acquisition of voting shares of the offeree taking place among the members of the group of persons acting in concert results in:
 - (a) one or more members of the group of persons acting in concert acquiring or being entitled to exercise or control the exercise of more than 33% of the voting shares of the offeree; or
 - (b) one or more members of the group, holding more than 33% and less than 50% of the voting shares of the offeree, acquiring more than 2% of the voting shares of the offeree in any 6 month period,

Part II of the Code will apply to those members of the group making the acquisition.

- (4) Where a group of persons acting in concert holds more than 50% of the voting shares of the offeree, no obligation under Part II of the Code will arise from any further acquisition by such persons acting in concert unless a single member in the group of persons acting in concert acquires voting shares sufficient to increase his holding to more than 33% of the offeree or, if he holds more than 33% and less than 50%, acquires more than 2% of the voting shares of the offeree in any 6 month period.

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Practice Note 2.4**Vendor of part only of a holding of voting shares**

Holders of voting shares sometimes wish to sell part only of their voting shares or a purchaser may be prepared to acquire part only of a holding of voting shares. This arises particularly where an acquirer wishes to acquire just under 33% of the voting shares of a company, thereby avoiding an obligation to make a mandatory general offer under Part II of the Code. In such a circumstance, the Commission may require the acquirer, or where the acquirer is a body corporate, the board of directors of the acquirer, the board of directors of the company whose voting shares are being acquired and the advisers of the foregoing persons, to provide a confirmation in writing to the Commission that the acquirer has not in fact obtained control of the company. By way of guidance, in providing the written confirmation to the Commission, the relevant parties must have regard to the following situations which would suggest that control of the company by the acquirer has been obtained:

- (a) whether the vendor is acting in concert with the acquirer in such a way as effectively to allow the acquirer to obtain control over the retained voting shares;
- (b) the payment of a significant premium for the voting shares would tend to suggest that a significant degree of control of the company was being secured;
- (c) where the acquirer acquires between 20% and less than 33% of the voting shares of a company and this is followed by a change within a 12 month period from the date of such acquisition in at least one-half of the membership of the board of directors of the company; or a change in at least one-third of the membership of the board of directors including the chief executive; or a restructuring exercise which results in a significant change in the business direction or policy of the company; or in the event that there are no changes or minor changes in the board of directors, control may be established if after such acquisition, there are reasonable grounds to believe that the board of directors of the company acts in accordance with the directions or instructions of the acquirer, unless the contrary is established.

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Practice Note 2.5**Application of the netting off rule to mandatory offers**

If a holder of voting shares or a group of holders of voting shares acting in concert sells any voting shares of an offeree company, an obligation to make a mandatory offer under Part II of the Code will arise if the reduced voting shares after such sale:

- (a) is 33% and below and thereafter is increased to more than 33%; or
- (b) is less than 50% but more than 33% and thereafter is increased by more than 2% in any 6 month period.

The sales of voting shares may not be netted off against purchases in determining whether Part II of the Code applies.

Practice Note 2.6**Dilution of holding of voting shares and mandatory offers**

Where voting shares of a company are diluted as a result of an issue of new voting shares by the company, a holder of voting shares or a group of holders of voting shares wishing to restore their holding in the company to the original level would be under an obligation to make a mandatory offer under Part II of the Code if:

- (a) the holding has been reduced to 33% and below and thereafter the holder of voting shares or group of holders of voting shares acquires voting shares to restore the holding to more than 33% of the voting shares of the company (of the voting capital as enlarged); or
- (b) the holding has been reduced to less than 50% but more than 33% of the voting shares of the company and thereafter the holder of voting shares or group of holders of voting shares acquires voting shares to restore the holding by more than 2% of the voting shares (of the voting capital as enlarged) taking into account any voting shares acquired during the previous 6 months.

Practice Note 2.7**Purchase by a company of its own voting shares and mandatory offers**

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- (1) Part II of the Code applies to:
 - (a) a director of a company, together with persons acting in concert with him (if any), who as a result of a purchase by a company of its own voting shares, obtains control in the company;
 - (b) a person, together with persons acting in concert with him (if any), who has acquired voting shares of a company at a time when he reasonably or ought reasonably to believe that the company would purchase its own voting shares and who as a result of a purchase by the company, obtains control in the company;
 - (c) a director of a company, together with persons acting in concert with him (if any), who holds more than 33% but less than 50% of the voting shares of the company and who as a result of a purchase by the company of its own voting shares, increases his holding in any period of 6 months by an additional 2% or more of the voting shares of the company; and
 - (d) a person, together with persons acting in concert with him (if any), holding more than 33% but less than 50% of the voting shares of a company, who has acquired voting shares of a company at a time when he reasonably or ought reasonably to believe that the company would purchase its own voting shares and who as a result of a purchase by the company, increases his holding in any period of 6 months by an additional 2% or more of the voting shares of the company.
- (2) For the purpose of computing the increase in a person's holding where a company has purchased its own voting shares, the computation must be based by reference to the total number of outstanding voting shares held by the company immediately after the purchase of the company's own voting shares.

Practice Note 2.8**Convertible securities and mandatory offers**

- (1) In general, the acquisition of convertible securities does not give rise to a mandatory obligation under Part II but the exercise of any conversion or subscription rights or options is an acquisition of voting shares for the purposes of the Code.
- (2) The taking of an option constitutes the acquisition of voting shares giving rise to an obligation to make a mandatory offer under Part II of the Code where the

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relationship and arrangements between the parties concerned are such that the voting rights in respect of those voting shares has passed to the taker of the option.

- (3) Any holder of conversion or subscription rights who intends to exercise such conversion or subscription rights and as a result would hold more than 33% of the voting shares of the company, or if he holds more than 33% but less than 50% of the voting shares of the company, would increase his holding by more than 2% in any 6 month period, must consult the Commission before doing so to determine whether a mandatory offer obligation under Part II of the Code would arise and if so at what price.

Practice Note 2.9**Exemptions from Part II of the Code**

- (1) Pursuant to section 33C of the Act, the Commission may grant an exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of the Code and any ruling made under subsection 33A(4) of the Act.
- (2) However, the Commission's consideration for the granting of an exemption must have regard to the principles and objectives as specified in subsection 33A(5) of the Act.
- (3) Any exemption granted by the Commission may also be subject to any conditions, restrictions or limitations as may be imposed by the Commission.
- (4) Without limiting the discretion of the Commission to grant an exemption under section 33C of the Act, the following Notes in this Part II indicate the circumstances or transactions which the Commission would as a matter of policy consider granting an exemption.

Practice Note 2.9.1**Exemption if transactions involve issue of new securities**

- (1) This Note sets out the procedures to be followed if the Commission is to be asked to exempt the obligation to make a mandatory offer under Part II of the Code which would otherwise arise where as a result of the issue of new securities as consideration for an acquisition or a cash subscription or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or persons acting in concert acquires or would acquire

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voting shares to an extent which would normally give rise to an obligation to make a mandatory offer under Part II of the Code.

- (2) Where the word “offeror” is used in any provision of the Code, it should be taken in the context of a “whitewash” as a reference to the potential controlling holders of voting shares. Similarly, the phrase “offeree company” should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.
- (3) The provisions of the Code, where relevant, apply equally to information given in connection with a transaction which is the subject of the whitewash procedure.
- (4) A person may apply for an exemption under this Note from a mandatory offer obligation under Part II of the Code:
 - (a) where the person incurs an obligation under Part II of the Code by reason of the issue of new voting shares to him as consideration for the sale or disposal of assets and/or interests by that person;
 - (b) where the person incurs an obligation under Part II of the Code as a result of cash subscription for new voting shares or the exercise of any conversion or subscription rights or options into new voting shares of a company; or
 - (c) when an underwriter for the issue of new voting shares by a company incurs an obligation under Part II of the Code as a result of his underwriting obligation; or
 - (d) where the person incurs an obligation under Part II of the Code where he acquires newly issued voting shares for the purpose of restoring his voting shares to its previous level prior to the new issue of voting shares and the acquisition of newly issued voting shares was from persons who were allotted the voting shares as consideration for the sale or disposal of assets and/or interests by that person.

Whitewash Procedure

- (5) Where paragraph (4) applies, the Commission may consider granting an exemption if the applicant and parties acting in concert with the applicant, seeking the exemption under this Note have satisfied the following:-
 - (a) there has been no disqualifying transaction;

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- (b) approval has been obtained from the independent holders of voting shares of the offeree, on a poll, at a meeting of the holders of the relevant class of securities for the parties concerned to gain control of the company without having to make a mandatory offer under Part II of the Code. For the purpose of this meeting, the following procedures should have been observed:
 - (i) the holders of the relevant class of voting shares of the offeree must have been provided with competent independent advice regarding the proposed waiver by an independent adviser whose appointment must have been approved by the Commission;
 - (ii) the independent adviser's circular to holders of the relevant class of voting shares of the offeree, setting out details of the proposed waiver, have also been consented to by the Commission before being circulated;
 - (iii) interested parties have abstained from voting at that meeting; and
 - (iv) prior consultation has been held on the matter with the Commission by the applicant for an exemption, persons acting in concert with the applicant and their advisers.

- (6) For the purposes of subparagraph (5)(a), a "disqualifying transaction" refers to a transaction where the person to whom the new securities are to be issued or any group of persons acting in concert with him, has purchased voting shares of the company in the 6 months prior to the posting to the holders of voting shares of the circular relating to the proposal but subsequent to negotiation, discussion, understanding or agreement with the directors of the company in relation to the proposed issue of new securities, whichever is the earlier.

- (7) For the purposes of subparagraph (5)(b)(iii), "interested parties" include the following persons:
 - (a) the applicant for an exemption under this Note and any person acting in concert with the applicant;
 - (b) the directors of the offeree if they have any significant holdings which they intend to retain and which they propose to use in the future in co-

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- operation with the applicant and persons acting in concert with the applicant; or
- (c) any person whose interest in the outcome of the voting may result in some relationship with the applicant and persons acting in concert with him other than as a holder of voting shares of the offeree.
- (8) In cases involving the underwriting or placing of an offeree's voting shares, the applicant and any person acting in concert with him must give the Commission details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of implementation of the proposal.
- (9) The Commission in considering whether to grant a conditional or unconditional exemption would take into consideration whether the holders of voting shares of the offeree had passed the relevant resolution in the meeting referred to in paragraph (5)(b) with or without any conditions.
- (10) An exemption, if granted by the Commission under this Note, would be invalidated if the person who has obtained an exemption under this Note and persons acting in concert with him acquires any voting shares of the offeree during the period between the posting of the circular or application to the Commission for an exemption, and the granting of the exemption by the Commission under this Note.
- (11) A person who has obtained an exemption under this Note and persons acting in concert with him, must at all times disclose to the Commission all dealings in securities in the offeree made by such person and persons acting in concert with him for a period of 12 months after the date of granting of the exemption by the Commission under this Note.
- (12) The independent advice circular referred to in subparagraph (5)(b)(ii) must contain the following information and statements as set out below and comply with the provisions of the Code:
- (a) full details of the proposal, the controlling position which it will create and the effect which this will have on the holders of voting shares generally;
- (b) full details of the maximum potential controlling holding of voting shares, and where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling

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- holders of voting shares will, in addition to any other entitlement, take up their full underwriting participation;
- (c) 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, and will do so in full and at the earliest opportunity (the date of which must also be given);
 - (d) where the maximum potential voting shares resulting from the proposed transaction will exceed 50% of the voting shares of the company, specific and prominent reference to this possibility must be given, and also to the fact that subject to the exemption granted by the Commission, the potential controlling holders of voting shares may increase their voting shares without incurring any further obligation under Part II of the Code;
 - (e) in cases where the potential controlling holding of voting shares will be held by more than one person, the identity of the potential controlling holders of voting shares and their individual potential holding of voting shares must be disclosed;
 - (f) it must contain a prominent statement that the Commission would consider an application for exemption if the holders of voting shares have already agreed to the parties concerned gaining control over the company without making a mandatory offer.
- (13) For the purposes of subsections (6) and (10), “circular” refers to the circular to holders of voting shares to convene a general meeting to approve a proposal to grant a waiver of the obligation to make a mandatory offer.

Practice Note 2.9.2**Exemption if convertible securities are exercised**

- (1) A person who holds convertible securities in an offeree, and who has not exercised his right of conversion or subscription in relation to the convertible securities, whether in part or otherwise, may apply for an exemption from a mandatory offer obligation under Part II of the Code when he intends to exercise such conversion or subscription rights in order to maintain his previous level of voting shares of the offeree which has been diluted as a result of the exercise of conversion or subscription by other holders of convertible securities.

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- (2) The Commission will consider an application for an exemption under this Note if:
- (a) such convertible securities held by the applicant were previously obtained through a rights issue entitlement to the applicant that had been approved at a holders of voting shares meeting;
 - (b) the applicant has not acquired such convertible securities other than by way of his rights issue entitlement (excluding any convertible securities obtained by way of rights renounceable by other holders of voting shares); and
 - (c) the applicant and his advisers give a written confirmation to the Commission that paragraphs (a) and (b) above have been complied with and that the purpose of exercising such conversion or subscription rights is so as to maintain his previous level of voting shares of the offeree.

Practice Note 2.9.3**Exemption if rescue operation**

- (1) A person may apply for an exemption from an obligation under Part II of the Code where the objective of a transaction is to save the financial position of an offeree whose voting shares are being acquired by an urgent rescue operation.
- (2) The Commission will not consider an application for an exemption under this Note in a case where a major holder of voting shares of a company rather than that company itself is in need of rescue.
- (3) In reviewing an application for an exemption by an applicant under this Note, the Commission may consider whether:
 - (a) the net tangible assets per voting share of the offeree is less than 50% of its par value;
 - (b) the offeree has a debt-equity ratio of usually more than 3:1;
 - (c) any rights issue by the offeree would likely be under-subscribed; and
 - (d) the rescue operation would benefit the offeree.

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- (4) The Commission may, in cases where it deems necessary, require to its satisfaction, the confirmation of a competent independent person as to the financial position of the offeree whose voting shares are being acquired.
- (5) The appointment of such a competent independent person referred to in subsection (4) requires the prior approval of the Commission.
- (6) The confirmation by the competent independent person of the financial position of the company whose voting shares are being acquired must be accompanied by a report on the financial position of that company over the last 3 financial years based on the following:
 - (a) financial indications, such as ratio analysis, earnings (loss) per voting share and net tangible assets backing;
 - (b) sources of funds and cash flow statements; and
 - (c) other relevant transactions, such as dividend payment, liabilities outstanding, legal suits pending, contingent liabilities and material events.

Practice Note 2.9.4.**Exemption arising from foreclosure of voting shares**

- (1) A licensed commercial bank, a licensed finance company or a licensed merchant bank under the Banking and Finance Institutions Act 1989, or a licensed dealer in securities (hereinafter referred to as "lender") may apply for an exemption from an obligation under Part II of the Code where voting shares of a company are held by the lender as security for a loan and upon foreclosure, the lender would incur an obligation under Part II of the Code.
- (2) The Commission will consider an application for an exemption under this Note if all the following criteria are met:
 - (a) the voting shares were not pledged under circumstances where the lender had reason to believe that foreclosure would be likely;
 - (b) the lender is able to justify to the Commission that foreclosure is necessary; and

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- (c) the lender must undertake to place the voting shares of the company within a period of 6 months from the date of foreclosure, or such longer period as may be determined by the Commission, so as to reduce his holding to below 33% of the voting shares of the company

However, any exemption granted to the lender would not apply to a purchaser who acquires from the lender the voting shares of the company.

- (3) A receiver or liquidator is not required to make an offer when he takes control of a holding of more than 33% of a company. However, a purchaser from such a person is subject to Part II of the Code.
- (4) In an application for an exemption to the Commission under this Note, the following information must be submitted:
 - (a) date when the security was taken and reasons;
 - (b) details of the voting shares held as security;
 - (c) date and reasons for foreclosure;
 - (d) proposed placement of the securities; and
 - (e) such other details considered relevant for the Commission's consideration.

Practice Note 2.9.5

Exemption from a general offer involving placement of securities having voting shares

- (1) A person may apply for an exemption from an obligation under Part II of the Code where in either a restructuring exercise or pursuant to an acquisition involving the issue of new securities, the person obtains control of more than 33% of the voting shares of a company but makes a prior arrangement or gives a written undertaking to reduce his holding in the voting shares of the company to less than 33%.
- (2) Where subsection (1) applies, the Commission will consider the application for an exemption provided all the following criteria are met:

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- (a) the acquisition which causes the applicant to seek an exemption under this Note would result in the applicant obtaining control in the company through the issue of new securities;
 - (b) there is, prior to the proposal, a firm arrangement entered into for the placement of any voting shares to a level below 33% in the company. A firm arrangement could be based on the following:
 - (i) the proposal is conditional upon the placement of the excess voting shares; or
 - (ii) the applicant had entered into an agreement for placement of the voting shares of the company; and
 - (iii) an underwriter has been appointed to underwrite the placement;
 - (c) the Commission may dispose of the requirement stated under subparagraph (2)(b)(iii) above if there is a definite identification of a placee for the voting shares of the company; and
 - (d) the applicant who seeks an exemption under this Note must, through a written confirmation to the Commission, declare that none of the parties who would be acquiring the voting shares as a result of the transaction referred to in subsection (1) is acting in concert with him.
- (3) The Commission may consider granting an exemption under this Note in certain exceptional circumstances if an undertaking is given by the applicant to the Commission to make such a placement as soon as practicable but not later than 3 months after the acquisition, and an underwriter has been appointed to underwrite the placement.
- (4) Where the voting shares of a company are underwritten and these voting shares, together with the voting shares already held by the same underwriter, allow the underwriter to hold, acquire or be entitled to hold, or entitled to exercise or control the exercise of, more than 33% of the voting shares of the company, the Commission would only consider granting an exemption to that underwriter if:
- (a) underwriting is in the normal course of business of the underwriter; and

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- (b) the underwriter gives a written undertaking to the Commission to place the voting shares within a period of 6 months from the date an exemption under this Note is granted or such longer period as may be determined by the Commission.
- (5) Any exemption granted to a person, including an underwriter, under this Note would not apply to a purchaser who acquires the voting shares of the company from that person or underwriter.
- (6) In any application for an exemption under this Note, the applicant must provide in full the following information to the Commission:
 - (a) details of the proposed restructuring or acquisition;
 - (b) details of the proposed placement;
 - (c) identities of the persons acting in concert and voting shares held by each one of them;
 - (d) identities of those who will be acquiring the voting shares; and
 - (e) such other details considered relevant for the Commission's consideration.

Practice Note 2.9.6.

Exemption if the remaining holders of voting shares of a company have given written undertakings not to accept an offer

- (1) A person may apply for an exemption from the obligations of Part II of the Code on the grounds that the remaining holders of voting shares of a company have given written affirmations that they would not be accepting a take-over offer, if such a take-over offer is made.
- (2) An applicant seeking an exemption under this Note must be able to satisfy the Commission that the remaining holders of voting shares of the company have given written affirmations that they would not accept such a take-over offer should an offer be made.
- (3) The Commission may consider an application for an exemption under this Note provided that:
 - (a) the company is an unlisted company; and

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- (b) where the applicant- holds more than 50% of the voting shares of the company, all the remaining holders of voting shares have provided an undertaking in writing that they do not wish to accept a take-over offer made in accordance with the provisions of the Code; or
- (c) where the applicant holds less than 50% of the voting shares of the company, the remaining holders of voting shares, holding more than 50% of the voting shares of the company, have provided an undertaking in writing that they do not wish to accept a take-over offer made in accordance with the provisions of the Code.

Practice Note 2.9.7**Exemption in transactions involving acquisition of additional voting shares by members of a group acting in concert**

- (1) A person may apply for an exemption from the obligation to make a mandatory offer under Part II of the Code arising from the circumstances mentioned in Note 2.3.
- (2) In any application for an exemption under this Note, the Commission would have regard to the following factors:
 - (a) whether the leader of the group of persons acting in concert or the largest individual holding of voting shares had changed and whether the balance between the holding of voting shares of the group has changed significantly;
 - (b) whether the price paid for the voting shares acquired amounted to a significant premium or not;
 - (c) the relationship between the persons acting in concert and how long they had been acting in concert; and
 - (d) whether one or more of the members of the persons acting in concert increased their voting shares to more than 50% in the company.
- (3) In determining whether a premium has been paid for the voting shares of the offeree, the Commission may have regard to either the prevailing market price of the voting shares, in the case of a listed company, or the original cost of acquisition to the vendor, in the case of an unlisted company.

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Practice Note 2.9.8**Exemption in compulsory acquisition circumstances**

- (1) A person may apply for an exemption from an obligation under Part II of the Code where the person intends to proceed with a compulsory acquisition pursuant to section 180 of the Companies Act 1965.
- (2) The Commission may consider granting an exemption to the applicant who is intending to implement a compulsory acquisition pursuant to section 180 of the Companies Act 1965 if the applicant gives a written undertaking to the Commission that it would implement a compulsory acquisition under section 180 of the Companies Act 1965.
- (3) Where an applicant has given a written undertaking to the Commission that it will implement a compulsory acquisition under section 180 of the Companies Act 1965, the Commission must be reasonably satisfied that the acquisition would not fail due to insufficient financial capability.
- (4) Where an applicant has been granted an exemption by the Commission under this Note but is unable to implement the compulsory acquisition scheme under section 180 of the Companies Act 1965 within 6 months from the date the exemption was granted, the exemption will be invalidated and the applicant will be required to make a mandatory offer under Part II of the Code immediately.

Practice Note 2.9.9**Exemption based on national policy**

- (1) A person may apply for an exemption where the acquisition which would cause the person to incur an obligation under Part II of the Code has been approved by the Foreign Investment Committee (FIC) based on national policy.
- (2) The Commission may grant an exemption under the foregoing circumstances if the person complies with the following:
 - (a) approval has been obtained from the FIC, whereby the person or a group of persons acting in concert with him is allowed to increase or

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maintain their voting shares of the offeree company to or at a certain specified threshold of the voting shares of the company, if any ; and

- (b) prior consultation should have been held on the matter with the Commission by the applicant, persons acting in concert with the applicant, and their advisers.

Practice Note 2.9.10**Exemption for holders of voting shares, directors and persons acting in concert when company purchases its own voting shares**

- (1) A holder of voting shares who, as a result of a reduction of the voting shares of the company through a buy back scheme under the Companies Act, has increased his holding of voting shares to more than 33% or, if his existing holding of voting shares is more than 33% but less than 50%, by more than 2% in any 6 month period, will be exempted if the increase in his holding is inadvertent and as a result of any action that is outside his direct participation.
- (2) The Commission, however, will not grant an exemption if the holder of voting shares has previously acquired voting shares in the knowledge that the company intended to seek permission from its holders of voting shares to purchase its own voting shares.
- (2) Directors and any persons acting in concert with the directors may apply for an exemption from a mandatory offer obligation under Part II of the Code arising from the circumstances mentioned in Note 2.7.
- (3) The Commission may consider granting an exemption if the directors and/or persons acting in concert with the directors have obtained the approval from the independent holders of voting shares of the offeree, on a poll, at a meeting of the holders of the relevant class of securities for the parties concerned to gain control of the company, or, if their existing holding of voting shares is more than 33% but less than 50%, to increase their voting shares by more than 2% in any 6 month period, without having to make a mandatory offer under Part II of the Code.
- (5) For the purpose of the meeting mentioned in subsection (4) above, the following procedures should have been observed:
 - (a) the holders of the relevant class of voting shares of the offeree must have been provided with competent independent advice regarding the

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- proposal by an independent adviser whose appointment must have been approved by the Commission;
- (b) the independent adviser's circular to holders of the relevant class of voting shares of the offeree, setting out details of the proposal, must have also been consented to by the Commission before being circulated;
 - (c) interested parties should have abstained from voting at that meeting; and
 - (d) prior consultation should have been held on the matter with the Commission by the applicant and persons acting in concert with the applicant, and their advisers.
- (6) For the purposes of paragraph 5(c), "interested parties" include the following persons:
- (a) the applicant for a waiver under this Note and persons acting in concert with the applicant;
 - (b) the directors of the offeree if they have any significant holdings which they intend to retain and which they propose to use in the future in co-operation with the applicant and persons acting in concert with the applicant; or
 - (c) any person whose interest in the outcome of the voting may result in some relationship with the applicant and persons acting in concert with him other than as a holder of voting shares of the offeree.
- (7) The Commission in considering whether to grant a conditional or unconditional waiver would take into consideration whether the holders of voting shares of the offeree had passed the relevant resolution in the meeting referred to in subsection (4) with or without any conditions.
- (8) Notwithstanding the fact that the purchase of voting shares is made conditional upon the prior approval of a majority of the holders of voting shares independent of the transaction at a general meeting of the company, the Commission will not normally waive an obligation under Part II of the Code if the directors or persons acting in concert with them have previously acquired voting shares in the knowledge that the company intended to seek permission from its holders of voting shares to purchase its own voting shares.

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- (9) An exemption, if granted by the Commission under this Note, would be invalidated if the applicant seeking a waiver under this Note and persons acting in concert with him purchases, acquires or becomes entitled to any voting shares of the offeree during the period between the holders of voting shares' meeting referred to in subsection (4) and the granting of the exemption by the Commission under this Note.
- (10) An applicant seeking an exemption under this Note and persons acting in concert with him, must at all times disclose to the Commission all acquisitions, purchases or entitlements to acquire or purchase voting shares of the offeree made by the applicant and persons acting in concert in a 12 month period from the date of granting of an exemption by the Commission.
- (11) The independent advice circular referred to in paragraph 5(b) must contain the following information and statements as set out below and comply appropriately with the Code:
- (a) full details of the proposal, the controlling position which it will create and the effect which this will have on the holders of voting shares generally;
 - (b) full details of the maximum potential controlling holder's holding of voting shares, and where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling holder's holding of voting shares will, in addition to any other entitlement, take up their full underwriting participation;
 - (c) 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 to exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);
 - (d) where the maximum potential holding of voting shares resulting from the proposed transaction will exceed 50% of the voting rights of the company, specific and prominent reference to this possibility must be given, and also to the fact that subject to the exemption granted by the Commission (conditional or non-conditional), the potential controlling holders of voting shares may increase their voting shares without incurring any further obligation under the Code;
 - (e) in cases where the potential controlling holding of voting shares will be held by more than one person, the identity of the potential controlling

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holders of voting shares and their individual potential holding of voting shares must be disclosed; and

- (f) it must contain a statement that the Commission may consider an application for an exemption if the holders of voting shares have already agreed to the parties concerned gaining control over the company without making a mandatory offer.

**PART III
PARTIAL OFFERS****Practice Note 3.1
When consent for partial offers will be granted**

- (1) No offeror who has made a take-over offer that is approved by the Commission under subsection 11(1) of the Code and no person acting in concert with the offeror shall acquire any voting shares of the offeree during the offer period other than by acceptances of the take-over offer unless approved in writing by the Commission.
- (2) The consent under subsection 11(6) of the Code may be given by the Commission for voting share purchases within 12 months from the end of the offer period in a situation:
 - (a) where a partial offer has resulted in a holding of voting shares carrying less than 33% of the voting shares of a company; or
 - (b) in a rescue operation where such a purchase is necessary for the offeror to gain control of a company.
- (3) An offeror and all persons acting in concert with the offeror who has previously acquired voting shares of the offeree during the 6 month period prior to the take-over offer made under subsection 11(1) of the Code must not make a take-over offer which would result in the offeror and any person acting in concert with the offeror holding more than 33% but less than 100% of the voting shares of an offeree.
- (4) Any offer made for all voting share capital not already held by the offeror which carry dual consideration (i.e. a certain consideration is offered by the offeror for part of each holders of voting shares holding and a lower consideration for the

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balance) may be treated by the Commission as a partial offer under subsection 11(1) of the Code.

- (5) Any offer which would result in the offeror and any person acting in concert with the offeror holding more than 33% of the voting shares of the offeree must normally be conditional, not only on the relevant number of acceptances being received, but also on the approval of the offer, which must be signified by means of a separate box on the Form of Acceptance and Transfer, being given by holders of voting shares holding over 50% of the voting shares not held by the offeror and persons acting in concert with it.

PART IV ANNOUNCEMENTS, WRITTEN NOTICES AND DOCUMENTS TO SHAREHOLDERS

Practice Note 4.1

Section 13 - Offer document

- (1) The acquirer must ensure that-
- (a) the market is well-informed of any conflict of interest situation in the offer to enable relevant parties to exercise the necessary caution;
 - (b) statements or advertisements issued are unbiased; and
 - (c) interested parties expressing any opinion or issuing any statement with regards to the offer do so within the strict limits as set out under the Code or by the Commission.
- (2) There should always be disclosed any conflict of interest situation. A conflict of interest is deemed where:
- (a) a director is common to the offeror and the offeree;
 - (b) a director has substantial interest in either the offeror or the offeree, or both, held either directly or indirectly;
 - (c) where cross-holdings of substantial interest occur between the offeror and the offeree; or
 - (d) a holder of voting shares has substantial interest in both the offeror and the offeree.

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In this Note, “substantial interest” refers to a holding of more than 20% of the voting shares.

- (3) On the same date of sending the offer document, the offeror must state in a press notice that copies of the offer document and acceptance forms will be made available from the share registrar.

Practice Note 4.2**Section 14 - Offeree board of directors’ comments on the take-over offer**

With regard to subsection 14(1) of the Code, in the case of a take-over offer that is a management buy-out or is being made by the existing controlling holders of voting shares, or a group of holders of voting shares, the board of directors of the offeree must appoint an independent adviser to the board of directors of the offeree and holders of voting shares as soon as possible after it becomes aware of the possibility that a take-over offer may be made.

Practice Note 4.3**Section 15 - Independent advice circular**

- (1) The reverse take-over situation as mentioned in subsection 15(2) of the Code arises where an acquirer may as a result of a take-over offer need to increase its existing issued voting equity share capital by more than 100%.
- (2) The Commission will not approve an independent adviser required to be appointed under subsection 15(8) of the Code if the person:
 - (a) has an interest in 10% or more of the voting shares of an offeror or offeree at the present time or at any time during the last 12 months; or
 - (b) has a substantial business relationship with the offeror or offeree at the present time or at any time during the last 12 months; or
 - (c) where the person is a company, the person has a director on its board of directors who is also a director on the board of directors of the offeror (if the offeror is a company) or on the board of directors of the offeree, as the case may be; or
 - (d) is involved in financing the offer by the offeror; or

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- (e) is a substantial creditor of either the offeror or the offeree. An applicant is deemed a "substantial creditor" if:
 - (i) the loan extended represents more than 10% of the loan outstanding in the offeror or the offeree; or
 - (ii) the loan extended to either the offeror or the offeree represents more than 10% of the latest audited shareholders' funds of the adviser; or
 - (iii) the applicant is a lead banker in a syndicated loan extended to either the offeror or the offeree in the last 3 years;;or
 - (f) has a financial interest in the outcome of the take-over offer other than outlined in paragraphs (a) - (d) above; or
 - (g) has been an adviser in planning or restructuring of the offeror or offeree including acquisitions, at any time during the period of 12 months immediately prior to the date of announcement of the take-over offer.
- (4) The Commission, however, in considering an application for an appointment of an adviser under subsection 15(8) of the Code will not preclude such an applicant if the applicant merely:
- (a) acted on behalf of a corporation which in the course of the business of the corporation deals with the offeror or offeree; or
 - (b) acted for a corporation which manages an investment portfolio that includes securities of the offeror or the offeree.

Practice Note 4.4**Section 16 - Profit forecasts and asset valuation**

- (1) Certain offerees which are the subject of an unexpected offer may find difficulty in obtaining within the time available, the opinion of an independent named valuer to support an asset valuation as required under paragraph 16(4)(b) of the Code before the views of its Board of directors are circulated to its holders of voting shares under subsection 14(1). In such cases, the Commission may be prepared in exceptional circumstances to waive strict

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compliance from this requirement based on the following general circumstances:

- (a) where the interest of the holders of voting shares seems on balance to be best served by permitting an informal valuation; and
 - (b) the informal valuation is substantiated by certain relevant indicators best known to the Board of directors of the offeree.
- (2) The lack of time required for a valuation is not, however, a ground for a request for an extension of the offer period.
- (3) Any request for the Commission's consideration under this Note is to be made at the earliest opportunity after the Board of directors of the offeree has received official notification of a take-over from the offeror. The request should include full details of the offer and the rationale for the request to dispense with the opinion of a named independent valuer.

Practice Note 4.5**Approval by other relevant authorities**

Following an announcement that is made pursuant to section 12 of the Code, where a take-over requires the approval of other relevant authorities, the offeror must ensure that all the necessary approvals are obtained as soon as is practicable before sending out the offer document.

Practice Note 4.6**Exemption from the provisions of the Code relating to procedures for a mandatory offer**

- (1) A person may apply for an exemption from the full provisions of the Code in relation to the procedures for a take-over offer.
- (2) The Commission may consider such an application if:
 - (a) the take-over offer is not regarded as hostile;
 - (b) the application for an exemption is submitted by the applicant to the Commission before incurring an obligation under Part II of the Code;
 - (c) the remaining holders of voting shares of the offeree are less than 30 in number;

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- (d) the remaining voting shares are less than 33% of the total voting shares of the offeree; and
 - (e) the value of the remaining voting shares of the offeree based on the offer price is less than RM10 million.
- (3) An applicant who has been granted an exemption under this Note must undertake the take-over offer by way of an offer letter which is to be approved by the Commission.
 - (4) The applicant who has been granted an exemption under this Note must post the offer letter to remaining holders of voting shares of the offeree within 14 days of incurring the take-over obligation under Part II of the Code.
 - (5) An exemption given by the Commission to an applicant under this Note does not exempt the applicant from the requirement to appoint a competent and independent adviser in accordance with section 15 of the Code unless an exemption under the relevant Note has been granted to the applicant as well.
 - (6) A person may apply for an exemption from the requirement to appoint an independent adviser under section 15 of the Code on the grounds that the remaining holders of voting shares of the offeree have given written confirmations that they would have no objection to such request for an exemption and directors of the offeree confirm in writing that the minority holders of voting shares' interests will not be prejudiced as a result of the exemption.

PART V**TERMS OF OFFER****Practice Note 5.1****Section 20 - Offer price**

- (1) Calculation of the price

If voting shares have been acquired by the exercise of conversion rights or warrants, the price will normally be established by reference to the average of the high and low market prices of the voting shares in question at the close of business on the day on which the relevant notice was submitted to the company. In addition, if the convertible securities or warrants were acquired in the 12

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months before the obligation under Part II of the Code arose, the Commission will take into account the cost of such securities together with any costs of exercise.

(2) Dispensation from section 20(1)

Factors which the Commission may take into account when considering an application for an adjusted price include:

- (a) the size and timing of the relevant purchases;
- (b) the attitude of the board of directors of the offeree;
- (c) whether voting shares had been purchased at high prices from directors or other persons closely connected with the offeror or the offeree; and
- (d) the number of voting shares purchased in the preceding 12 months.

(3) Cum dividend

When holders of voting shares of a class that is subject to the take-over offer are entitled under the take-over offer to retain a dividend declared by the offeree but not yet paid, the offeror, in establishing the price of a cash offer, may deduct from the highest price he paid the net dividend to which such holders are entitled.

(4) Theoretical ex-all price

When the offeree undertakes a share consolidation, share split, or further issue of shares, i.e. via rights, bonus issues, prior or during the take-over offer period, the offeror in establishing the price of the cash offer, may adjust the highest price he paid to reflect the new voting shares issued pursuant to the share consolidation, share split, or further issue of shares.

(5) Offer price in a voting share buy-back situation

Where there have been transactions, the offer price is the highest price that is paid in the last 6 months prior to the incurring of the obligation through a voting share buy-back either by the company or by the major holders of voting shares, directors and all persons acting in concert with them.

Where there have been no transactions, the offer price is the highest price paid by the company during the buy-back.

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**PART VI
TIMING OF OFFER**

[nil]

**PART VII
OBLIGATION OF OFFEROR IN RELATION TO OFFER****Practice Note 7.1****Section 29 - Comparable offers to be made for more than one class**

- (1) A comparable offer need not necessarily be an identical offer. In the case of offers involving two or more classes of listed voting shares, the ratio of the offer values should normally be equal to the ratios of the weighted average market price of the listed equities over 3 months preceding the commencement of the offer period. The Commission may not allow the use of other ratios unless both the advisers of the offeror and offeree companies are jointly able to justify it and such new ratios are reasonable in that:
 - (a) minority holders of voting shares must not be treated unfairly in the course of or as a result of a take-over or merger transaction. Rights of control must be exercised in good faith and the oppression of minority holders of voting shares is totally unacceptable; and
 - (b) all holders of voting shares of the same class of an offeree will be treated similarly by an acquirer.
- (2) The comparable price for convertible securities will normally be established by reference to the price which would be payable under the offer for equity share capital, less the price payable on the exercise of such subscription rights.
- (3) Offer for non-voting non-equity shares - When an offer for non-voting non-equity shares is being made, comparable offers for voting classes of shares are not required.

Practice Note 7.2**Section 30 - Treatment of convertible securities**

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In a situation when conversion rights etc. are exercisable during the offer, all relevant documents issued to holders of voting shares of a class which is subject to a take-over offer must also, where applicable, be issued simultaneously to the holders of convertible securities.

Practice Note 7.3**Section 32 – Sales and disclosure of dealings by offeror during offer period**

- (1) The offeror must ensure that the offer document contains details of any purchase of the offeror's own voting shares during the period commencing 6 months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, including dates and prices.
- (2) For the purposes of section 32 of the Code, dealings in voting shares include a purchase by the offeror of the offeror's own voting shares.
- (3) For purposes of subsection 32(4) of the Code, the documents sent to the relevant stock exchange must be marked "Not for Public Release Unless Approved by the Commission".

PART VIII**OBLIGATION OF OFFEREE IN RELATION TO OFFER****Practice Note 8.1****Section 35 - Frustration of offers by a board of directors**

- (1) Where subsection 35(2) of the Code applies, the board of directors of the offeree should obtain the Commission's prior approval for any of its actions stated in subsection 35(1) of the Code except when the action is in relation to assets which are not material.
- (2) The Commission in granting an approval under subsection (1) will normally consider whether the action of the board of directors of the offeree:
 - (a) has been approved by the holders of voting shares in a general meeting;
 - (b) is in pursuance of a contract entered earlier;

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- (c) arises due to obligations or special circumstances; or
 - (d) is in the ordinary course of business of the offeree.
- (3) For the purpose of determining whether an asset is of “material amount” under subsection (1):
- (a) the Commission will take into account the following factors:
 - (i) whether the value of the assets, based on the latest audited accounts, to be disposed or acquired compared with the net tangible assets (on a consolidated basis, if applicable) of the offeree is 10% or more;
 - (ii) whether the aggregate value of the consideration to be received or given compared with the net tangible assets (on a consolidated basis, if applicable) of the offeree is 10% or more;
 - (iii) where appropriate, whether the net profits (after deducting all charges and taxation but excluding extraordinary items) attributable to the assets to be disposed of or acquired is 10% or more.
 - (b) notwithstanding paragraph (3)(a), a relative value lower than 10% may be considered “material” if, in the opinion of the Commission, the assets to be disposed could adversely affect the earnings capability of the offeree in such a way that it renders the offeree less attractive to the offeror.
 - (c) if the board of directors of the offeree takes several actions in relation to its assets which individually are not of material amount, the Commission will have the discretion to aggregate such actions to determine whether the assets in relation to these actions are of material amount.
- (4) For the purposes of paragraph (2)(c), the Commission will normally consider that special circumstances exist if the offeree has made certain commitments and the non-performance of those commitments would lead to adverse effect on the offeree, such as:
- (a) the commitment is meant to avoid adverse financial effect based on circumstances known to the offeree;

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- (b) the commitment is meant to comply with legislation or Government directives; or
- (c) the non-performance of the commitment may result in legal action against the offeree by those to whom the offeree has made the commitment,

although a formal contract has not been entered into.

- (5) The notice of convening a meeting of holders of voting shares to get their approvals on the actions to be taken by the board of directors of offeree, if any, must include information about the offer or imminent offer.
- (6) In any application under this Note, the Commission may take into consideration whether such action by the board of directors of the offeree is acceptable to the offeror.
- (7) The board of directors of the offeree must not, without the approval of the holders of voting shares in a general meeting, either before the date of receipt of the written notice of take-over offer under paragraphs 12(2) or 12(3)(a) of the Code if the directors of the offeree has reason to believe that a bona fide take-over offer might be imminent, or during the course of a take-over offer, cause the offeree to purchase the offeree's own voting shares.

Practice Note 8.2**Section 36 – Disclosure of dealings by offeree during offer period**

- (1) The board of directors of the offeree must ensure that the board of directors' comments under section 14 of the Code contains details of any purchase of the offeree's own voting shares during the period commencing 6 months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the comments, including dates and prices.
- (2) For the purposes of section 36 of the Code, dealings in voting shares include a purchase by the offeree of its own voting shares.
- (3) For purposes of subsection 36(3) of the Code, the documents sent to the relevant stock exchange must be marked "Not for Public Release Unless Approved by the Commission".

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**PART IX
GENERAL****Practice Note 9.1****When a voluntary offer becomes a mandatory offer**

In a voluntary offer situation, not falling under section 11 of the Code, once an acquirer acquires, holds, or becomes entitled to exercise or control the exercise of, more than 33% of the voting shares of a company other than through acceptances under the offer, the voluntary offer will become a mandatory offer and will become subject to the relevant provisions of the Code relating to mandatory offers.