

MALAYSIAN CODE ON TAKE-OVERS AND MERGERS

GUIDELINES ON OFFER DOCUMENTATION

INDEX OF CONTENTS

Part 1

GENERAL INTERPRETATION AND APPLICATION

Document Guidelines 1.1

Purpose of the Guidelines

Document Guidelines 1.2

Interpretation of the Guidelines

Document Guidelines 1.3

General Points Concerning Offer Documentation and the Guidelines

Document Guidelines 1.4

Underlying principles of the Code and the Practice Notes

Part 2

OFFER DOCUMENTS

Document Guidelines 2.1

Cover Page

Document Guidelines 2.2

Executive Summary of the Offer

Document Guidelines 2.3

Offer Letter

Document Guidelines 2.4

Profit Forecasts

Document Guidelines 2.5

Specimen Format for Offer Document (Stand-Alone)

Part 3
INDEPENDENT ADVICE CIRCULARS

Document Guidelines 3.1
Cover Page

Document Guidelines 3.2
Contents of Letter from Offeree Board of Directors

Document Guidelines 3.3
Contents of Letter from Independent Adviser

Document Guidelines 3.4
Independent Adviser's Recommendation

Document Guidelines 3.5
Profit Forecasts

Document Guidelines 3.6
Specimen Format for Independent Advice Circular (Stand-Alone)

Part 4
JOINT DOCUMENTATION IN RECOMMENDED OFFERS

Document Guidelines 4.1
Advantages and Disadvantages of Joint Documentation

Document Guidelines 4.2
Future Recommended Offers

Document Guidelines 4.3
Specimen Format for Recommended Offer Document

Part 5
DOCUMENTATION FOR WHITEWASH PROCEDURE

Document Guidelines 5.1
"Whitewash" Situations

Document Guidelines 5.2
Specimen Format for Whitewash Document

Appendix 1
SPECIMEN FORMAT FOR OFFER DOCUMENT (STAND-ALONE)

Appendix 2
SPECIMEN FORMAT FOR INDEPENDENT ADVICE CIRCULAR (STAND-ALONE)

Appendix 2A
GENERAL AREAS OF DISCUSSION IN CONNECTION WITH FUTURE PROSPECTS

Appendix 3
SPECIMEN FORMAT FOR ADVISERS' LETTERS IN CONNECTION WITH PROFIT FORECASTS

Appendix 4
SPECIMEN FORMAT FOR RECOMMENDED OFFER DOCUMENT

Appendix 5
SPECIMEN FORMAT FOR WHITEWASH DOCUMENT

Part 1

GENERAL INTERPRETATION AND APPLICATION

Document Guidelines 1.1

Purpose of the Guidelines

These Guidelines are issued pursuant to Practice Note 1.1 to the Malaysian Code on Take-overs and Mergers (“the Code”), which states that 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 (“SCA”).

Document Guidelines 1.2

Interpretation of the Guidelines

In these Guidelines, words and expressions used shall, unless the context otherwise requires, bear the same meanings as set out in Section 2 of the Code and section 33 of the SCA.

Document Guidelines 1.3

General Points Concerning Offer Documentation and the Guidelines

The Commission is concerned to ensure that all documentation issued in connection with take-over offers and mergers is as meaningful, clear, precise and useful, both to the shareholders of offeror and offeree companies and to the market as a whole, as possible, and that no relevant information is withheld.

In particular, the Commission would refer practitioners to the following:

- (1) Sections 13, 14 and 15 of the Code, which imposes *inter alia* the requirement on offerors, offeree boards and independent advisers to disclose all such comments and information as holders of voting shares and their professional advisers would reasonably require, and would reasonably expect to find, for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in doing so.

- (2) Practice Note 1.3 (5) (“Standard of Submission”), which imposes the requirement on advisers on take-over offers and mergers to be competent and of high professional standard and to provide objective and clear advice which would enable the parties concerned to exercise their judgement.

Document Guidelines 1.4

Underlying principles of the Code, the Practice Notes and these Guidelines

The Commission stresses to practitioners the following:

- (1) It is impractical, and indeed undesirable, to lay down detailed rules and regulations for all possible situations which may arise.
- (2) In applying these Guidelines, therefore, and in following the Code and the Practice Notes, practitioners should have regard not only to the precise wording but also to the principles behind the relevant rule and regulation, in order to achieve the underlying purpose of the requirement.
- (3) The Commission believes that the underlying purpose of the information and documentation requirements of the Code, the Practice Notes and the Guidelines is to provide advice (whether to offeror or offeree shareholders) that is:
 - (a) straightforward and clear;
 - (b) unambiguous;
 - (c) simple to follow;
 - (d) prepared to the highest standards of care; and
 - (e) as commercially and financially informative as possible;

and the Commission will interpret the information and documentation requirements of the Code, the Practice Notes and these Guidelines accordingly.

Part 2

OFFER DOCUMENTS

Document Guidelines 2.1

Cover Page

The cover page should contain the following information:

- (1) customary information and wording concerning, stating or advising:
 - (a) the importance of the document and that it requires immediate attention;
 - (b) that the offeree shareholder should consider consultation with his professional adviser(s);
 - (c) action by the offeree shareholder in the event that he has already sold his shares in the offeree company;
 - (d) a disclaimer of responsibility by each of the Kuala Lumpur Stock Exchange and the Securities Commission;
 - (e) the important dates for the offer, including acceptance and closing dates;
 - (f) the procedure for acceptance; and
 - (g) the date of the offer document.
- (2) significant details of the offer itself, including:
 - (a) whether the offer is for cash or share consideration, or a combination;
 - (b) that (if it be the case) the offer is recommended by the offeree board;
 - (c) the identity of the financial adviser making the offer on behalf of the offeror;
 - (d) the identity of the offeror;
 - (e) the identity of the offeree company; and
 - (f) that (unless it is not the case) the offer is for all the outstanding shares of the offeree company.
- (3) for the avoidance of doubt, the Commission does not consider the following information to be necessary when set out on the cover page of the offer document:
 - (a) the words "voluntary" or "mandatory" as a description of the offer;
 - (b) the specification of the exact number of offeree company shares for which the offer is being made;

- (c) confirmation that the offer will be extended to any new shares issued by the offeree company before the closing of the offer; and
- (d) the total amount of consideration payable by the offeror pursuant to full acceptance of the offer by offeree shareholders.

Document Guidelines 2.2 Executive Summary of the Offer

It is not currently common practice for offer documents to include an opening section setting out a brief summary of the terms of the offer, before the formal offer letter from the offeror's financial adviser. Since the formal offer letter is often framed in detailed and technical language, the Commission considers that the inclusion of such a summary section (albeit making reference to the accompanying more detailed offer letter) would be helpful and informative to offeree shareholders. The Commission confirms that practitioners should include such an executive summary, which would usefully include the following items:

- (a) the terms of the offer and the premium it represents over selected current and past offeree share market prices;
- (b) details of irrevocable undertakings, if any;
- (c) (if share consideration is being offered) the future prospects of the enlarged group;
- (d) the summarised arguments for accepting the offer; and
- (e) outline details of the offer timetable.

The executive summary should state clearly where in the offer letter or the rest of the offer document further details on the terms of the offer may be found. As appropriate, any section, paragraph or clause being referred to should be precisely identified.

Document Guidelines 2.3 Offer Letter

The Commission is concerned to ensure that the offer letter from the offeror's adviser is as informative and as straightforward as possible for the offeree shareholders. However, the Commission is aware that, due to the complex nature of many take-over situations and the minimum information requirements set out in Schedule 1 to the Code, the offer letter will inevitably require to be framed in somewhat technical terms. Nevertheless, the Commission believes that adherence to the following guidelines will be in the interests of offeree shareholders.

- (1) Unlike many of the information requirements set out in Schedule 1 of the Code, the comments required by sections 1 (c)-(f) of Schedule 1 of the

Code are qualitative in nature. In the past, there has been a relatively low level of disclosure in response to these sections. Frequently a standard form of wording (which effectively reveals nothing of the offeror's intentions) has appeared in offer letters in different transactions. However, this information is critical to an assessment of the merits of a transaction by the offeree shareholders. The Commission will therefore require practitioners (after consultation with the offeror in each transaction) to include considerably more detailed and transaction-specific information to cover the information requirements set out in these sections. Furthermore, in order to police the effectiveness of this process, the Commission will also be undertaking systematic reviews, in the periods following the closing of transactions, to verify the actual outcome of events in the offeree company and/or the enlarged group with the statements made in the offer letter.

- (2) Without prejudice to the generality of the requirements set out in (1) above, it shall not be a sufficient comment on the commercial justification or "rationale", as it is often termed in offer documents, of an offer (this comment being required under section 1(e) of Schedule 1 of the Code) simply to state that the offer is being made because the offeror has moved into a mandatory offer position.
- (3) Offer letters should avoid the inclusion of unnecessarily complex or regulatory terms or issues, including (without limitation) the following:
 - (a) the repetitious use of the word "mandatory", which is not meaningful to certain investors and adds nothing to their understanding of the offer situation and their position within it (although offeree shareholders should still be made aware of the percentage shareholding of the offeror and its concert parties in the offeree company);
 - (b) sections which are of a purely procedural nature and which are not directly relevant to the offeree shareholders' commercial or financial analysis of the offer. Such sections could usefully be removed to a later separate section of the offer document (to which the offeree shareholders would be referred in the offer letter itself), and would include (but not necessarily be limited to) the following areas of information:
 - acceptance periods, including the timetable for unconditionality;
 - announcements;
 - rights of withdrawal;

- revision of the offer;
- execution of, and other details concerning, the form of acceptance;
- settlement of offer consideration; and
- general matters such as governing law, responsibility for costs and expenses and delivery of documents and notices.

Document Guidelines 2.4 Profit Forecasts

The provisions set out in Document Guideline 3.5 will equally apply to an offeror in a share for share offer.

Document Guidelines 2.5 Specimen Format for Offer Document (Stand-Alone)

Attached as Appendix 1 is a "Specimen Format for Offer Document (Stand-Alone)", which has been produced by the Commission to assist practitioners in the drafting of offer documents so that they conform to the Document Guidelines. The Commission encourages practitioners to adopt this specimen format in their transactions. However, practitioners will appreciate that the specimen format is for general assistance and guidance only. They should therefore not consider the specimen format to be exhaustive or all-inclusive, and should in each transaction adapt and extend the specimen format to the individual requirements of that particular transaction.

Part 3

INDEPENDENT ADVICE CIRCULARS

Document Guidelines 3.1

Cover Page

In addition to those items specified in Document Guidelines 2.1 (2), the cover page of the independent advice circular (IAC) should also confirm:

- (a) that the IAC should be read in conjunction with the offer document; and
- (b) the identity of the independent adviser to the offeree board.

Document Guidelines 3.2

Contents of Letter from Offeree Board of Directors

The Commission is concerned that there is significant overlap and repetition between the contents of the letter from the offeree board and the letter from the independent adviser, even though these two letters are usually contained in the same document (the IAC) and the offeree board's letter explicitly refers to that of the independent adviser.

- (1) The Commission therefore recommends that the scope of the offeree board's letter be restricted to the following specific items:
 - (a) an introduction, giving brief details of the background to the transaction and the offer;
 - (b) a detailed consideration and discussion of the rationale for the offer, as stated by the offeror in the offer document, including the future prospects of the enlarged group;
 - (c) details of the future management of the enlarged group and how the existing management of the offeree company will be involved (if at all);
 - (d) details of any offeree shareholders who have already accepted the offer or agreed to do so by way of an irrevocable undertaking;
 - (e) the recommendation by the offeree board as to acceptance or rejection of the offer, together with details of the intentions to accept or otherwise of the members of the offeree board; and
 - (f) a clear referral of the offeree shareholders to the letter from the independent adviser.
- (2) For the avoidance of doubt, the Commission confirms that the offeree board will be considered to have fulfilled its obligations under section 14

of the Code and Practice Note 4.2 to provide certain items of information to offeree shareholders if:

- (a) the information in question is set out in the letter from the independent adviser or in another part of the IAC; and
 - (b) the letter from the offeree board is set out in the IAC; and
 - (c) there is clear reference in the letter from the offeree board to the letter from the independent adviser.
- (3) In its shorter version, the letter from the offeree board could be usefully viewed as providing an executive summary of the offer and the views (including the recommendation) of the offeree board and the independent adviser. Nevertheless, the Commission would strongly encourage offeree boards and independent advisers to consider including a specific “Executive Summary” section at the start of the IAC, the contents of which would be similar to the executive summary for offer documents considered in Document Guidelines 2.2 above.

Document Guidelines 3.3

Contents of Letter from Independent Adviser

The Commission believes that many of the comments made in Document Guidelines 2.3 above concerning the offer letter in offer documents are applicable to the independent adviser’s letter in the IAC. As with offer letters, the Commission is concerned to ensure that the letter from the independent adviser is as informative and as straightforward as possible for the offeree shareholders. While the Commission is aware that, due to the complex nature of many take-over situations and the minimum information requirements set out in Schedule 2 to the Code, the letter from independent advisers will inevitably require to be framed in somewhat technical terms, nevertheless, the Commission believes that adherence to the following guidelines will be in the interests of offeree shareholders.

- (1) Unlike many of the information requirements set out in Schedule 2 of the Code, the comments required by sections 1(c)-(e) and section 2 of Schedule 2 of the Code are qualitative in nature. In the past, there has been a relatively low level of comment and advice in response to these sections. While the Commission accepts that the level of comment and advice achievable under sections 1(c)-(e) depends to some extent on the corresponding level of disclosure in the offer document, nevertheless the Commission believes this comment and advice is critical to an assessment of the merits of a transaction by the offeree shareholders.

- (2) The independent adviser letter should avoid:
- (a) the inclusion of unnecessarily complex or regulatory terms or issues, including (without limitation) the use of the word “mandatory”, which is not meaningful to certain investors and adds nothing to their understanding of the offer situation and their position within it (although offeree shareholders should still be made aware of the percentage shareholding of the offeror and its concert parties in the offeree company);
 - (b) wholesale quotation from the offer letter (a copy of which the offeree shareholders will already have received), particularly when included in the independent adviser’s letter without any, or any significant or meaningful, comment or critique;
 - (c) wholesale quotation from the offeree company’s published annual reports (copies of which offeree shareholders will already have received), since presumably more up-to-date information concerning the business and prospects for the offeree company can be readily obtained from the offeree board direct;
 - (d) inclusion of sections which are of a purely procedural nature and which are not directly relevant to the offeree shareholders’ commercial or financial analysis of the offer. Such sections could usefully be removed to a later separate section of the IAC (to which the offeree shareholders would be referred in the offeree board’s letter and the independent adviser’s letter), and would include the following areas of information:
 - disclosure of offeree directors’ and other interests;
 - confirmation of offeror’s financial resources;
 - acceptance periods, including the timetable for unconditionality and duration of the offer;
 - announcements;
 - rights of withdrawal;
 - revision of the offer;
 - execution of, and other details concerning, the form of acceptance;
 - settlement of offer consideration; and
 - general matters such as governing law, responsibility for costs and expenses and delivery of documents and notices.
- (3) The independent adviser’s letter should include:
- (a) the following sections:
 - introduction;
 - detailed background to the offer;
 - principal terms and conditions of the offer;

- details of acceptances of the offer as at the latest available date before the date of the IAC;
 - offeror's intentions regarding the listed status of the offeree company after the offer has closed;
 - comment and advice on the offeror's plans (disclosed under section 1 of Schedule 1 of the Code) for the offeree company's business, employees etc. after the offer has closed;
 - notification that (if it be the case) the offeror intends to use the compulsory acquisition rules, and the implications thereof for offeree shareholders; and
 - the commercial and financial assessment and evaluation of the offer; and
- (b) the independent adviser's recommendation, which is considered in more detail in Document Guideline 3.4 below.

Document Guidelines 3.4 Independent Adviser's Recommendation

The Commission is concerned to ensure that the independent adviser's recommendation be as clear, understandable and reliable to offeree shareholders as possible, taking into account the acknowledged complexities of many public market transactions. The Commission would encourage independent advisers to take into account the following points when drafting recommendations:

- (a) they should aim to be as short as possible. Longer recommendations tend, by their nature, to be less meaningful and less clear than shorter ones.
- (b) they may contain a brief resume of the rationale underlying the recommendation, drawn from the commercial and financial assessment and evaluation of the offer set out in more detail in the body of the independent adviser's letter. This resume should not, however, be allowed to prejudice the overall target for the recommendation of brevity, clarity and certainty.
- (c) they should contain no restrictions on the reliability or applicability of the recommendation, except for those, which are absolutely necessary.
- (d) they should not contain so many alternative pieces of advice and, therefore, alternative courses of action for offeree shareholders that the overall recommendation is obscured or rendered less meaningful. An example of this would be to draw a distinction between, and therefore giving a separate recommendation for, "short term" and "long term" investors.

Document Guidelines 3.5

Profit Forecasts

The regulations governing profit forecasts are set out in section 16 of the Code, with additional guidance in Practice Note 4.4. The Commission notes that there is no explicit requirement on offeree boards and independent advisers to provide profit forecasts in respect of the offeree company but that, if one is provided for offeree shareholders in the IAC, there are certain conditions (including informational requirements) which must be complied with.

The Commission believes that the provision of useful information to offeree shareholders to assist them in their contemplation of an offer must be the paramount consideration for the offeree board and the independent adviser. In this regard, the Commission is of the view that the offeree shareholders should be provided with full information as to the future prospects of the offeree company. Such information to be furnished to the offeree shareholders need not necessarily be in the form of an actual profit forecast but could be a qualitative review of the offeree company.

The Commission therefore issues the following specific guidelines in connection with the discussion of the future prospects for the offeree company in the IAC.

- (1) The Commission refers to sections 14(2) and 15(9) of the Code, which state *inter alia* that the offeree board and the independent adviser shall disclose to the offeree shareholders “all such information as...[offeree shareholders and their professional advisers] would reasonably require, and would reasonably expect to find, in an independent advice circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in doing so”. Sections 14(3) and 15(10) confirm that the requisite information is that already “within the knowledge of [the offeree board or independent adviser (as the case may be)]” or which the appropriate person “would be able to obtain by making such enquiries as [are] reasonable in the circumstances”.
- (2) In view of the above and taking into account the following factors:
 - (a) the offeree shareholders can be expected to be already aware of the business, history and published accounts of the offeree company; and
 - (b) the “information” referred to in the above-mentioned sections of the Code should include information which is forward-looking;

the Commission confirms that it will expect offeree boards to provide detailed information in the IAC on the future prospects of the offeree company. At the discretion of the offeree board and independent advisers, such detailed information may or may not involve the making of a profit forecast. As a guide, Appendix 2A sets out areas of discussion with regard to the future prospects of a company. However, practitioners will appreciate that the appendix is for general assistance and guidance only. They should therefore not consider the same to be exhaustive or all-inclusive, and should in each transaction adapt and extend the areas of discussion of that particular transaction.

- (3) Without prejudice to the generality of the presumption set out in section (2) above, the Commission would strongly encourage that a profit forecast/estimate be issued in the following circumstances:
 - (a) where the offeree company has, as at the date of the IAC, already ended a financial year but has not yet formally issued its report and accounts thereupon, the offeree company should issue a profit forecast (in this case, referred to as "a profit estimate") in respect of that financial year; and
 - (b) where, before the offer period has commenced (including before any offer was in contemplation), the offeree company has for whatever reason issued a profit forecast, that profit forecast should be repeated and reported on in the normal way in the IAC, unless as at the date of the IAC circumstances have changed such as would render the said forecast unachievable (in which case a full explanation of the change in circumstances and the reasons underlying them must be given in the IAC).
- (4) Where an IAC does include a profit forecast, the Commission interprets sections 16 (1)(c) and 16 (2) of the Code to mean that:
 - (a) the reporting accountants must report on the accounting policies and calculations for the profit forecast, and a letter from the accountants to this effect must appear in the IAC; and
 - (b) the independent adviser must comment on the profit forecast, and a letter containing their comments must appear in the IAC.
- (5) To assist practitioners, attached as Appendix 3 are:
 - (a) a standard form draft letter from the independent adviser, to comply with section 16(2) of the Code; and
 - (b) a standard form draft letter from the reporting accountants, to comply with section 16(1)(c) of the Code.

Document Guidelines 3.6
Specimen Format for Independent Advice Circular (Stand-Alone)

Attached as Appendix 2 is a "Specimen Format for Independent Advice Circular (Stand-Alone)", which has been produced by the Commission to assist practitioners in the drafting of IACs so that they conform to the Document Guidelines. The Commission encourages practitioners to adopt this specimen format in their transactions. However, practitioners will appreciate that the specimen format is for general assistance and guidance only. They should therefore not consider the specimen format to be exhaustive or all-inclusive, and should in each transaction adapt and extend the specimen format to the individual requirements of that particular transaction.

Part 4

JOINT DOCUMENTATION IN RECOMMENDED OFFERS

Document Guidelines 4.1

Advantages and Disadvantages of Joint Documentation

The Commission has given detailed consideration to the idea that, in a situation where the offeree board and independent adviser have already decided to recommend the offer before the offer document is issued, the offer document and the IAC could be combined into one document (the “recommended offer document”). The Commission notes that this is standard practice in several other countries using take-over regulations similar in form and content to the Code. The arguments for and against such a course of conduct are summarised below.

- (1) Against the combination of offer document and IAC into a recommended offer document:
 - (a) that it might weaken the perception of the market as a whole and offeree shareholders in particular as to the independence of the independent adviser and hence the IAC; and
 - (b) that the wording of section 15 of the Code (particularly sections 15 (1) and 15 (7)) appears to require that the IAC be a document which is physically separate from the offer document.

- (2) In favour of the combination of offer document and IAC into a recommended offer document:
 - (a) that it would be likely to lead to a reduction of the combined costs of a transaction;
 - (b) that it would be likely to lead to a shortening of the effective timetable for recommended offers;
 - (c) that it would reduce the amount of informational overlap between the offer document and the IAC; and
 - (d) that it might be overall more informative for offeree shareholders to see both the offer and the views of the offeree board and the independent adviser in the same document, rather than have to cross-refer (as at present) to two separate documents which are received by the offeree shareholders at different times.

Document Guidelines 4.2 Future Recommended Offers

- (1) After due consideration, the Commission has reached the following conclusions:
 - (a) it is keen to encourage the efficiency for practitioners and the accessibility to offeree shareholders of the take-over offer process;
 - (b) it discounts concerns over the possible market and offeree shareholder perception of the independence of the independent adviser, since there is no such concern in other countries where the combination of documents for recommended offers is standard practice; and
 - (c) it has the authority under Practice Note 1.1 to issue rulings in the interpretation of the Code and to lay down the practice and conduct of persons involved in take-over offers or mergers.

- (2) Therefore the Commission would encourage practitioners to produce a recommended offer document in the following situations:
 - (a) where, because of discussions between the parties ahead of the announcement of the offer, the offeree board and the independent adviser have confirmed to the offeror, before it makes its offer announcement, that the offer will be recommended; or
 - (b) where, following the offer announcement but before the offer document is issued, discussions have taken place which have led to the recommendation of the offer by the offeree board and the independent adviser; or
 - (c) where an offer is not at first recommended by the offeree board and the independent adviser, and the offeror then makes a revised offer, requiring the issue of a revised offer document, which is recommended.

- (3) The Commission would draw the attention of practitioners to the following points of interpretation of Document Guidelines 4.2 (2) above:
 - (a) parties proposing to issue a recommended offer document must approach the Commission at the earliest opportunity for guidance;
 - (b) both the adviser to the offeror and the independent adviser must confirm to the Commission their intention in each specific case before a recommended offer document can be issued;

- (c) the Commission reserves the right, and without giving any reason therefor, to disallow any proposal for the issue of a recommended offer document;
- (d) the Commission will be concerned to ensure that in a recommended offer document there is still a clear demarcation between:
 - the offer letter (setting out the terms and details of the offer);
 - the offeree board's letter (setting out the recommendation of the offer by the offeree board); and
 - the independent adviser's letter (setting out the views of the independent adviser on the offer);
- (e) the Commission is unlikely to agree to an extension of the time periods for the approval and issue of an offer document set out in sections 13(1) and 13(7) of the Code if the only reason for granting the extension is to allow a recommended offer document to be issued; and
- (f) the recommended offer document should contain an interlocking (but not overlapping) responsibility statement from the boards of directors of each of the offeror and the offeree, so that the two sets of directors have between them taken responsibility for all the information in the recommended offer document. The Commission has approved the following draft wording for this responsibility statement:

"This Offer Document has been reviewed and approved by the Directors of [the Offeror] who collectively and individually accept full responsibility for the information given herein, save for the information relating to [the Offeree and the Directors of the Offeree]. The Directors of [the Offeror] confirm that, after making all reasonable enquiries, to the best of their knowledge and belief there are no material facts relating to the information contained herein for which they take responsibility the omission of which would make any statement herein false or misleading.

This Offer Document has been reviewed and approved by the Directors of [the Offeree] who collectively and individually accept full responsibility for the information given herein relating to [the Offeree and the Directors of the Offeree]. The Directors of [the Offeree] confirm that, after making all reasonable enquiries, to the best of their knowledge and belief there are no material facts relating to

the information contained herein for which they take responsibility the omission of which would make any statement herein false or misleading.”

- (4) For the avoidance of doubt :
- (a) with particular reference to Document Guideline 4.2(2)(c) above, the Commission hereby confirms that references in the Code (in particular, but without limitation, in section 15 thereof) to a “take-over offer” should be interpreted to refer to both an original offer and any revised take-over offer. Therefore, if an offer is later revised by the offeror, the offeree board and the independent adviser are under an obligation to send a further IAC to the offeree shareholders setting out their views and recommendations on the revised offer; and
 - (b) the Commission considers that the offeree board and the independent adviser will be presumed to have fulfilled their respective obligations under sections 14 and 15 of the Code, Schedules 1 and 2 of the Code and Practice Notes 4.2 and 4.3, to provide certain items of information to offeree shareholders, even if the information is not set out in the offeree board letter or the independent adviser’s letter (as the case may be) provided that:
 - the information in question is set out in another part of the recommended offer document; and
 - the information set out in the recommended offer document complies with the appropriate requirements of the Code and the Practice Notes; and
 - both the letter from the offeree board and the letter from the independent adviser are set out in the recommended offer document; and
 - there is clear reference in the letter from the offeree board and the letter from the independent adviser to the other parts of the recommended offer document.

Document Guidelines 4.3 Specimen Format for Recommended Offer Document

Attached as Appendix 4 is a “Specimen Format for Recommended Offer Document”, which has been produced by the Commission to assist practitioners in the drafting of recommended offer documents so that they conform to the Document Guidelines. The Commission encourages practitioners to adopt this specimen format in their transactions. However, practitioners will appreciate that the specimen format is for general assistance and guidance only. They should therefore not consider the specimen format to be exhaustive or all-

inclusive, and should in each transaction adapt and extend the specimen format to the individual requirements of that particular transaction.

Part 5

DOCUMENTATION FOR WHITEWASH PROCEDURE

Document Guidelines 5.1

“Whitewash” Situations

A “Whitewash” situation is one where a person seeks to take a shareholding position in a company listed on the KLSE which is above the mandatory threshold level but without afterwards having to make a bid for the remainder of the shares of that company.

The Commission considers that a “Whitewash” situation *prima facie* runs against one of the most important underlying principles of the Code, which is that, once control of a public company has effectively changed, the remaining shareholders should be given an opportunity to exit that company through a cash offer made by the person taking control of that company, such offer to be at the highest price paid by such person for any shares of that company in the previous twelve months.

The Commission accepts that there will be circumstances in which it will be in the interests of the Company and its shareholders for a Whitewash to be allowed to proceed, as long as the proposal is recommended by independent advisers and approved by the independent shareholders. The Commission nevertheless feels that, in view of the clash with one of the Code’s underlying principles (as mentioned above) and the opportunity for the interests of the independent shareholders to be compromised, a high standard of protection of the interests of such independent shareholders is required.

Document Guidelines 5.2

Specimen Format for Whitewash Document

Pursuant to the Commission’s views set out in Document Guidelines 5.1 above, attached as Appendix 5 is a “Specimen Format for Whitewash Document”, which has been produced by the Commission to assist practitioners in the drafting of whitewash documents. The Commission encourages practitioners to adopt this specimen format in their transactions. However, practitioners will appreciate that the specimen format is for general assistance and guidance only. They should therefore not consider the specimen format to be exhaustive or all-inclusive, and should in each transaction adapt and extend the specimen format to the individual requirements of that particular transaction.

Appendix 1

SPECIMEN STANDARD FORMAT FOR OFFER DOCUMENT (STAND-ALONE) Outline of Contents

Cover Page

Executive Summary of the Offer

Index of Contents

Definitions

Offer Letter

- Introduction and background to the Offer
- Terms of the Offer
- Financial effects of acceptance
- Outline information on Offeror
- Outline information on Offeree
- Information required under section 1 (c)-(f) of Schedule 1 of the Code
 - Offeror's intentions regarding continuation of Offeree's business
 - Offeror's intentions regarding any major changes to Offeree's business
 - Long-term commercial justification for the Offer (if any)
 - Offeror's intentions regarding employees of Offeree
- Procedure for acceptance and expected settlement date
- Reference to further information in other parts of Offer Document
- Acceptances of the Offer
 - Already accepted
 - Irrevocable undertakings to accept
- Confirmation of financial resources (if cash consideration in Offer)
- Notification of use of compulsory acquisition rules

Copy of Notice of Take-Over Offer

Conditions and Further Terms of the Offer

- Conditions of the Offer
- Further terms of the Offer
 - Acceptance period
 - Announcements
 - Rights of withdrawal
 - Revised offer(s)

- Acceptances and purchases in the market
- Close/lapse of the Offer and settlement of consideration
- Governing law and submission to jurisdiction

Form of Acceptance

- Instructions on completing

Information on Offeror

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities

Information on Offeree

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities
- Share prices

Additional Information

- Directors' responsibility statement
- Material litigation
- Material contracts
- Service contracts of directors
- Consent(s) from advisers
- Statements required under
 - sections 4-11 of Schedule 1 of the Code
 - regulations of the KLSE
 - Companies Act of Malaysia
 - [any other relevant legislation]
- Documents on display

Form of Acceptance and Transfer

Appendix 2

SPECIMEN FORMAT FOR INDEPENDENT ADVICE CIRCULAR (STAND-ALONE) Outline of Contents

Cover Page

[Executive Summary of Offeree Board's Recommendation]

Index of Contents

Definitions

Letter from Offeree Board

- Brief background to the Offer
- Consideration and discussion of the rationale for the Offer
- Details of the future management of the enlarged group
- Details of acceptances
 - already accepted
 - irrevocable undertakings
- Recommendation as to acceptance or rejection of the Offer
- Intentions to accept or otherwise of the Offeree directors
- Referral of Offeree shareholders to the letter from the independent adviser

Letter from Independent Adviser

- Introduction
- Detailed background to the Offer
- Principal terms and conditions of the Offer
- Details of acceptances of the Offer as at the latest available date
- Offeror's intentions regarding listed status of Offeree after the Offer has closed
- Comment and advice on Offeror's plans (disclosed under section 1 (c)-(f) of Schedule 1 of the Code)
- Commercial and financial evaluation of the Offer
 - Rationale for the Offer
 - Industry outlook and prospects for
 - Offeror
 - Offeree
 - enlarged group
 - Other information required under sections 1 and 2 of Schedule 2 of the Code

- Financial evaluation of the Offer
- Notice regarding compulsory acquisition (if Offeror intends to use)
- Recommendation

Information on Offeree

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities

Information on Offeror

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities

*[Valuers' Letter on Assets of Offeree]

*[Profit Forecast by Offeree Board]

- Profit forecast
- Assumptions underlying profit forecast
- Letter from accountants regarding profit forecast
- Letter from independent adviser regarding profit forecast]

Additional Information

- Directors' responsibility statement
- Disclosure of interests
- Material litigation
- Material contracts
- Material commitments
- Service contracts of directors
- Consent(s) from advisers
- Statements required under

- sections 3-8 of Schedule 2 of the Code
- regulations of the KLSE
- Companies Act of Malaysia
- [any other relevant legislation]
- Documents on display

* = *optional, based upon judgement of Offeree Board of Directors*

APPENDIX 2A

GENERAL AREAS OF DISCUSSION IN CONNECTION WITH FUTURE PROSPECTS

The following points could be used as a guide in discussion on the future prospects of a company:

Business

- ?? The prospects and likely trends for the sector/industry as a whole
- ?? The prospects for the economy as a whole
- ?? The prospects for the target company within the sector and the economy
- ?? Any changes to regulatory or political matters concerning the target company and/or the sector

Operations

- ?? Any anticipated significant changes in the operations
- ?? The effect of technological developments on the company
- ?? Plans for future growth or expansion which are already agreed or in the process of being agreed
- ?? Any material or significant threatened litigation or proceedings against the target company
- ?? Current level of the order book and how its level compares with the past levels of the order book: if materially different, the implications of this on the company's operations
- ?? Any significant changes anticipated to the company's normal working capital position, including the likelihood of an increase in stocks, receivables and bad debts

Financing

- ?? The company's present liquidity position : cash, marketable securities and unused bank lines; projected financial requirements
- ?? Availability (or lack thereof) of debt or equity capital to finance planned future growth
- ?? Any other restrictions or limitations on the target company's likely future financing requirements

Share Capital

- ?? Any planned or likely acquisitions or disposals of shares of the company by directors or major shareholders
- ?? Any planned or likely issues of new shares by the company, whether in connection with a proposed acquisition by the company or otherwise

Management and Employees

- ?? Likelihood and frequency of changes in wage levels and other costs
- ?? Any likely or known changes to the senior management of the target company

Tax

- ?? Any significant likely change to the tax position of and/or tax rate paid by the company

APPENDIX 3

SPECIMEN FORMAT FOR ADVISERS LETTERS IN CONNECTION WITH PROFIT FORECASTS

- (a) **Standard form draft letter from independent adviser
commenting on profit forecast of offeree board**

[The Directors
Offeree Company,
Registered Office]

[Date as of date of IAC]

Dear Sirs,

We refer to the forecast for [name of offeree company] (the "Offeree") for the period of [number] months ending [date of end of financial year] (the "Forecast") set out on page * of the independent adviser's circular dated [date of IAC].

We have discussed the Forecast and the bases and assumptions on which it has been prepared with you as Directors of the Offeree and in respect of which you as Directors are solely responsible. We have also discussed the accounting policies and calculations for the Forecast with [name of reporting accountants], the Offeree's auditors, and we have considered their letter of today's date addressed to you on this matter.

On the basis of the foregoing, we consider that the Forecast has been prepared with due care and consideration.

Yours faithfully

For [name of independent adviser]

[Name of director of independent adviser]

APPENDIX 3

(b) Standard form draft letter from reporting accountants commenting on profit forecast of offeree board

[The Directors
Offeree Company,
Registered Office]

[The Directors
Name of independent adviser,
Registered Office]

[Date as of date of IAC]

Dear Sirs,

We refer to the forecast for [name of offeree company] (the "Offeree") for the period of [number] months ending [date of end of financial year] (the "Forecast") set out on page * of the independent advisers' circular dated [date of IAC].

We have reviewed the bases and assumptions for the Forecast, for which the Directors of the Offeree are solely responsible, and the accounting policies for the Forecast. In our opinion the Forecast has been properly compiled on the basis stated and the basis of accounting is consistent with the accounting policies of the Offeree.

Yours faithfully

For [name of accounting firm]

Appendix 4

SPECIMEN FORMAT FOR RECOMMENDED OFFER DOCUMENT Outline of Contents

Cover Page

Executive Summary of Offer and Recommendation

Index of Contents

Definitions

Offer Letter

- Introduction and background to the Offer
- Terms of the Offer
- Information required under section 1 (c)-(f) of Schedule 1 of the Code
 - Offeror's intentions regarding continuation of Offeree's business
 - Offeror's intentions regarding any major changes to Offeree's business
 - Long-term commercial justification for the Offer (if any)
 - Offeror's intentions regarding employees of Offeree
- Procedure for acceptance and expected settlement date
- Reference to further information in other parts of Offer Document
- Acceptances of the Offer
 - Already accepted
 - Irrevocable undertakings to accept
- Confirmation of financial resources (if cash in Offer)
- Notification of use of compulsory acquisition rules

Letter from Offeree Board

- Brief background to the Offer
- Consideration and discussion of the rationale for the Offer
- Details of the future management of the enlarged group
- Details of acceptances:
 - already accepted
 - irrevocable undertakings
- Recommendation to accept the Offer
- Intentions to accept or otherwise of Offeree directors
- Referral of Offeree shareholders to the letter from the independent advisers.

Letter from Independent Adviser

- Introduction
- Principal terms and conditions of the Offer
- Details of acceptances of the Offer as at the latest available date
- Offeror's intentions regarding listed status of Offeree after the Offer has closed
- Comment and advice on Offeror's plans (disclosed under section 1 (c)-(f) of Schedule 1 of the Code)
- Commercial and financial evaluation of the Offer
 - Rationale for the Offer
 - Industry outlook and prospects for:
 - Offeror
 - Offeree
 - enlarged group
 - Other information required under sections 1 and 2 of Schedule 2 of the Code
 - Financial evaluation of the Offer
- Notice regarding compulsory acquisition (if Offeror intends to use)
- Recommendation

Copy of Notice of Take-Over Offer

Conditions and Further Terms of the Offer

- Conditions of the Offer
- Further terms of the Offer
 - Acceptance period
 - Announcements
 - Rights of withdrawal
 - Revised offer(s)
 - Acceptances and purchases in the market
 - Close/lapse of the Offer and settlement of consideration
 - Governing law and submission to jurisdiction

Form of Acceptance

- Instructions on completing

Information on Offeror

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record

- Statement of assets and liabilities

Information on Offeree

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities
- Share prices

*[Valuers' Letter on Assets of Offeree]

*[Profit Forecast by Offeree Board

- Profit forecast
- Assumptions underlying profit forecast
- Letter from accountants regarding profit forecast
- Letter from independent adviser regarding profit forecast]

Additional Information

- Directors' responsibility statements:
 - for information on Offeror etc.
 - for information on Offeree etc.
- Material litigation
- Material contracts
- Material commitments
- Service contracts of directors
- Consent(s) from advisers
- Statements required under
 - sections 4-11 of Schedule 1 of the Code
 - sections 3-8 of Schedule 2 of the Code
 - regulations of the KLSE
 - Companies Act of Malaysia
 - [any other relevant legislation]
- Documents on display

Form of Acceptance and Transfer

* = optional, based upon judgement of Offeree Board of Directors

Appendix 5

SPECIMEN FORMAT FOR INDEPENDENT ADVICE CIRCULAR ("WHITEWASH") Outline of Contents

Cover Page

Executive Summary of Whitewash Proposal and Independent
Adviser's
Recommendation

Index of Contents

Definitions

Letter from Independent Adviser

- Introduction
- Detailed background to the mandatory position
 - How it would arise
 - Implications for independent shareholders
 - Rationale given by applicant for not making a full bid
- Summary details of applicant (refer to section below for more information)
- Comment and advice on applicant's plans for the company (disclosed under section 1 (c)-(f) of Schedule 1 of the Code)
- Commercial and financial evaluation of the whitewash proposal
 - Industry outlook and prospects for the company
 - Before the whitewash
 - After the whitewash
 - Other information required under sections 1 and 2 of Schedule 2 of the Code
 - Financial evaluation of the whitewash proposal
- Information and statements required to be given under Practice Note 2.9.1 (12)
- Recommendation to independent shareholders

Information on Company

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors

- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities

Information on Applicant (adapt for individual(s)/company)

- History and principal activities
- Share capital
 - Authorised
 - Issued
- Substantial shareholders
- Particulars of Directors
- Subsidiary and associated companies
- Profit and dividend record
- Statement of assets and liabilities

Additional Information

- Directors' responsibility statement
- Disclosure of interests
- Material litigation
- Material contracts
- Service contracts of directors
- Consent(s) from advisers
- Statements required under
 - sections 4-11 of Schedule 1 of the Code
 - sections 3-8 of Schedule 2 of the Code
 - regulations of the KLSE
 - Companies Act of Malaysia
 - [any other relevant legislation]
- Documents on display

Notice of Extraordinary General Meeting (only independent shareholders to vote)

Proxy Form