

Clarification to Section 12(1) of the Malaysian Code on Take-Overs and Merger 1998, in Relation to Announcements

In our effort to promote market efficiency and to ensure timely dissemination of information to all stakeholders, the Commission is providing further clarification in situations when an announcement is required.

1. **Situations where announcements are required include the following:**
 - (a) Immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Section 6;
 - (b) When, following an approach to the offeree, the offeree is the subject of a rumour and speculation or there is an untoward movement in its share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;
 - (c) When, before an approach has been made, the offeree is subject of rumour and speculation or there is an untoward movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise);
 - (d) When negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). An offeror wishing to approach a wider group, for example in order to arrange financing for the offer (whether equity or debt), to seek irrevocable commitments or to organise a consortium to make the offer should consult the Commission;
 - (e) When a holder(s) of shares carrying more than 33% voting shares of a company hold negotiations or discussions with a potential offeror, before the offeror makes an approach to the board of the company, and if the company then becomes the subject of rumour or speculation about the possible offer, or there is undue toward movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that the actions of the potential vendor(s) (whether through inadequate security or otherwise) have contributed to the situation, the potential vendor(s) must make an announcement; or
 - (f) When a purchaser is being sought for a holding, or aggregate holdings, of shares carrying 33% or more of the voting rights of a company or when the board of a company is seeking one or more potential offerors; and:

- (i) the company is the subject of rumour and speculation or there is an untoward movement in its share price or a significant increase in the volume of share turnover; or
- (ii) the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

A copy of such announcement should also be sent to the Commission.

2. Written notice of take-over offer/announcement of firm intention to make an offer

- (a) The announcement of a firm intention should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.
- (b) When a firm intention to make an offer is announced, the announcement must contain the information stated in Section 12(4) of the Code.
- (c) The announcement of a take-over offer should include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

3. Statements of intention not to make an offer

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except with the consent of the Commission, such a person will normally be bound by that statement for a period of six months unless there is material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside. Except with the consent of the Commission, the person making the statement or any person who acted in concert with him or any person who is subsequently acting in concert with either of them, may not within six months from the date of the statement:

- (a) announce an offer or possible offer for the offeree;
- (b) acquire any interest in shares of the offeree if any such person would thereby become obliged under Section 6 to make an offer;
- (c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree if the shares in which such person, together with any persons acting in concert with him, would be interested and the

shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry more than 33% voting rights of the offeree;

- (d) makes any statement which raises or confirms the possibility that an offer might be made for the offeree; or
- (e) take any steps in connection with a possible offer for the offeree where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers.

4. **Responsibilities of offeror and offeree:**

- (a) Before the board of the offeree is approached, the responsibility for making an announcement can lie only with the offeror. The offeror should, therefore, keep a close watch on the offeree's share price for any signs of untoward movement or increase in the volume of share turnover.
- (b) Following an approach to the board of the offeree, which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree which must, therefore, keep a close watch on its share price and volume of share turnover.
- (c) A potential offeror must not attempt to prevent the board of an offeree from making an announcement or requesting the stock exchange to grant a temporary suspension of listing at any time the board thinks appropriate.
- (d) Until a firm intention to make an offer has been notified, a brief announcement by either the offeror or offeree, that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this section. (However, in cases where an announcement to make an offer is premature or inappropriate and no further announcement has been made in respect of the offer or possible offer within 1 month, an announcement must be made setting out the progress on the talks or the consideration of the offer or possible offer. A monthly announcement to update the status continues until a firm intention to make an offer or when talks are terminated or a decision not to proceed with an offer is announced, and the announcement will be treated as a statement to which the rule under paragraph (3) above applies).
- (e) At any time following the announcement of a possible offer (provided the potential offeror has been publicly named), the offeree may request that the Commission impose a time limit for the potential offeror to clarify its intentions with regard to the offeree. If a time limit for clarification is

imposed by the Commission, the potential offeror must, before the expiry of such time limit, announce either a firm intention to make a take-over offer for the offer, or that it does not intend to make an offer for the offeree, in which case, the announcement will be treated as a statement to which the rule under paragraph (3) above applies.

5. **Secrecy before announcements**

All persons privy to confidential information, relating to an offer or contemplated offer, must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the risk of an accidental leak of information. Advisers should warn clients of the importance of secrecy and security.

In all cases of doubt, the Commission should be consulted. In any event, the Commission may, at its discretion, impose that certain announcements be made and a time limit for the potential offeror to clarify its intentions with regard to the offeree.

The requirement for preliminary announcements takes effect from 21 March 2007.