

Application of the Malaysian Code on Take-overs and Mergers, 1998 in relation to making announcements on competing offers

Arising from a take-over offer for shares in an offeree company, the board of directors of the offeree (“Offeree Board”) had announced its intention to seek an alternative person to undertake a competing offer for the offeree’s shares.

In the absence of any further information on the competing offer even after the dispatch of the offer document on the take-over offer, the Securities Commission Malaysia (“the Commission”) issued a ruling requiring the Offeree Board to make an announcement on whether the competing offer would be forthcoming or otherwise, following from its intention to seek a competing offer. The ruling required that should the competing offer be forthcoming, the party undertaking the competing offer was to make an announcement under section 12(1) of Malaysian Code on Take-overs and Mergers, 1998 (“the Code”). All these announcements were to be made within 5 days from the date of the ruling.

The ruling was made in view of the uncertainty of the competing offer and the importance of such information to the remaining shareholders of the offeree in making an informed decision on the subsisting take-over offer.

The Board of Directors of an offeree involved in a similar situation in the future is expected to take proactive steps in protecting the interests of its shareholders by ensuring that information on competing offer is provided promptly. Following this ruling and for the avoidance of doubt, early consultation with the Commission is encouraged if similar situation is faced by an offeree.