

CAPITAL MARKETS AND SERVICES ACT 2007
MALAYSIAN CODE ON TAKE-OVERS AND MERGERS 2016

IN exercise of the powers conferred by section 217 of the Capital Markets and Services Act 2007 [Act 671], the Minister, on the recommendation of the Commission, prescribes the following code:

Citation and commencement

1. (1) This Code may be cited as the **Malaysian Code on Take-overs and Mergers 2016**.

(2) This Code comes into operation on 15 August 2016.

General

2. This Code sets out the general principles that shall be observed and complied with by all persons engaged in any take-over or merger transaction.

General principle 1

3. So far as practicable, all shareholders of an offeree of the same class shall be treated equally in relation to a take-over offer and have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control.

General principle 2

4. (1) The acquirer or offeror, as the case may be, and the board of directors of the offeree, shall act in good faith in observing the general principles set out in this Code and any guidelines, directions, practice notes and rulings issued by the Commission.

(2) All shareholders, particularly minority shareholders, shall not be subject to oppression or disadvantage by the treatment and conduct of the acquirer or offeror, as the case may be, or of the board of directors of the offeree.

General principle 3

5. (1) Any person who—

(a) is an acquirer who proposes to make an acquisition which may lead to an obligation to make a take-over offer; or

(b) is an offeror,

shall ensure that he is able to implement the offer in full.

(2) The financial advisers of the person referred to in paragraph (1) shall be satisfied that the person is able and will continue to be able to implement the offer in full.

General principle 4

6. An offeree which receives an offer or is approached with a view to a take-over offer being made shall, in the interests of its shareholders, appoint a competent independent adviser to provide comments, opinions, information and recommendation on the take-over offer.

General principle 5

7. All parties involved in a take-over or merger transaction shall make full and prompt disclosure of all relevant information.

General principle 6

8. The shareholders and the board of directors of an offeree and the market for the shares that are the subject of a take-over offer shall be provided with—

(a) relevant and sufficient information, including the identity of the acquirer or offeror, to enable them to reach an informed decision on the take-over offer; and

(b) reasonable time to consider the take-over offer.

General principle 7

9. Any document or advertisement addressed to the shareholders containing information, opinions or recommendations from the offeror, the board of directors of an offeror, the board of directors of an offeree or their respective advisers shall be prepared with the same standard of care as if the document or advertisement was a prospectus within the meaning of the Act.

General principle 8

10. An offeror, the board of directors of an offeror, the board of directors of an offeree and their respective advisers are prohibited from making selective disclosure to the shareholders in the course of a take-over or merger transaction, or when such transaction is in contemplation, except where such information is provided in confidence by the board of directors of the offeree to a *bona fide* potential offeror or by a *bona fide* potential offeror to the board of directors of the offeree.

General principle 9

11. While the boards of directors of an offeror and the board of directors of an offeree, and their respective advisers and associates have a primary duty to act in the best interests of their respective shareholders, any guidelines and rulings issued by the Commission may restrict the board and persons involved in a take-over or merger transaction from undertaking certain actions.

General principle 10

12. (1) A take-over offer shall be made to all shareholders within the same class in an offeree for all the voting shares or voting rights in the offeree.

(2) The offeror shall, in the case of an approved partial offer, accept such voting shares or voting rights in the same proportion from each shareholder of an offeree in order to achieve the specified percentage of holding in the offeree.

General principle 11

13. The board of directors of an offeree shall act in the interests of the shareholders as a whole and shall not deny the shareholders the opportunity to decide on the take-over offer.

General principle 12

14. The period in which an offeree is subject to a take-over or merger shall not be longer than what is reasonable.

Acquisition pursuant to subsection 218(3)

15. (1) For the purpose of subsection 218(3) of the Act, an acquirer who has obtained control of a company but does not hold more than fifty per centum of the voting shares or voting rights of the company, may acquire additional voting shares or voting rights in the

company without the obligation to undertake a take-over offer if he acquires two per centum or lower in any period of six months.

(2) Where the an acquirer acquires additional voting shares or voting rights of more than two per centum in any period of six months, the acquirer is required to undertake a take-over offer in accordance with the provision of this Code or any guidelines, directions, practice notes or rulings issued by the Commission.

Revocation and saving

16. (1) The Malaysian Code on Take-overs and Mergers 2010 [*P.U. (B) 538/2010*] is revoked.

(2) All take-over and merger transactions that have been commenced or undertaken before the commencement of this Code shall be dealt with under the provisions of the Malaysian Code on Take-overs and Mergers 2010 as if the Code has not been revoked.

Made 11 August 2016

[SC/GC (R&R)/Subsidiary-TOM Code/2015 (210)-1; KK/SID/P/(S)/483/669/4 JLD. 2(SK.1); PN(PU2)662/XI]

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