

PART A: GENERAL

RULE 1

Introduction

- 1.01 The *Rules on Take-overs, Mergers and Compulsory Acquisitions* are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Rules must be read together with the Code and any rulings issued by the SC pursuant to section 217 of the CMSA.
- 1.03 These Rules set out the required procedures and conduct relating to take-overs, mergers and compulsory acquisitions for the purpose of interpreting the application of Division 2 Part VI of the CMSA and the Code.
- 1.04 To assist with the interpretation of these Rules, notes have been inserted where appropriate, to provide guidance on the application of these Rules. Any conduct which departs from the guidance in the notes will be taken into account by the SC in determining compliance with these Rules.
- 1.05 The Rules are designed principally to ensure that shareholders in an offeree are treated fairly and are not denied an opportunity to decide on the merits of a take-over offer and that shareholders in the offeree of the same class are afforded equivalent treatment by an offeror. The Rules also provide an orderly framework within which take-over offers are conducted.

Applicability

- 1.06 The Rules and the Code apply to any person who is, directly or indirectly, involved in a take-over, merger or compulsory acquisition, including all advisers to such persons.
- 1.07 These Rules and the Code apply to take-overs and mergers of any listed corporation and any company or entity specified under paragraph 1.09, howsoever effected, including by means of a trust scheme, a scheme of arrangement, compromise, amalgamation or selective capital reduction and repayment (*see notes below*).
- 1.08 When any person is in doubt as to whether a proposed course of action or conduct is in accordance with these Rules and the Code, such person or his adviser should consult the SC in advance for guidance on the interpretation or effect of these Rules and the Code on the said course of action or conduct (*see note below*).

Specification of code company

1.09 The following are specified as a "company" for the purposes of Division 2 Part VI of the CMSA:

- (a) An unlisted public company with more than 50 shareholders and net assets of RM15 million or more;
- (b) A business trust listed in Malaysia; and
- (c) A real estate investment trust (REIT) listed in Malaysia.

(see notes below)

Dual jurisdiction

1.10 In relation to an offeree with primary listing both on a stock exchange in Malaysia and outside of Malaysia, the offeree may be subject to the dual jurisdiction of the SC and a foreign take-over regulator. In such cases, early consultation with the SC is required so that guidance can be given on how any conflicts between the relevant rules may be resolved.

1.11 In relation to an offeree with a primary listing on a stock exchange outside of Malaysia and a secondary listing in Malaysia, the SC may consider disapplying these Rules provided that the applicant is able to demonstrate that the relevant take-over regulation in the foreign jurisdiction accords an equivalent level of protection to offeree shareholders as provided under these Rules.

Extension of time

1.12 The SC may, on application, extend the time for compliance with any provision of these Rules if the SC is satisfied that there are mitigating factors which justify the said extension of time *(see note below)*.

Exemption from provisions of the Rules

1.13 All applications for an exemption under section 219 of the CMSA must be made in writing and must be comprehensive and contain all relevant information.

1.14 In considering whether an exemption should be granted, the SC shall have regard to the general principles under the Code.

Requirement to update information

- 1.15 When there are any changes to information submitted or disclosed in any application to the SC, a person responsible for making the submission must forthwith inform the SC.

NOTES TO 1.07

Scheme of arrangement

1. *Any person undertaking a scheme must seek a ruling or direction from the SC on the application of these Rules.*
2. *The requirements of these Rules apply to schemes except where specifically provided in these Rules.*

NOTE TO 1.08

Consultation

To take legal or other professional advice on the interpretation, application or effect of these Rules and the Code, is not an appropriate alternative to obtaining a consultation or ruling, as appropriate, from the SC.

NOTES TO 1.09

1. *Where the net asset value of an unlisted public company does not reflect its current value, a revaluation should be conducted to determine if the company is a Code company.*
2. *Business Trust*

References to company throughout the Rules should be taken as a reference to a trust and/or a company as the context requires.

In the context of a business trust, a reference to shares, shareholders and board of a company, where appropriate, refers to units, unit holders and the trustee-manager.

Consequently,

- (a) *an action taken by the company will refer to an action taken by the trustee-manager and/or any of its directors (in their respective capacity on behalf of a business trust);*

- (b) *voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee-manager and/or any of its directors (in their respective capacity on behalf of the business trust); and*
- (c) *assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee-manager. This would include assets owned, controlled or held by the trustee-manager through any special purpose vehicle.*

3. REITs

References to company throughout the Rules should be taken as a reference to a REIT and/or a company as the context requires. In the context of a REIT, a reference to shares, shareholders and board of a company, where appropriate, refers to units, unit holders and manager.

Consequently,

- (a) *an action taken by the company should refer to an action taken by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT);*
- (b) *voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT); and*
- (c) *assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee (in its capacity as trustee of a REIT). This would include assets owned, controlled or held by the trustee through any special purpose vehicle.*

NOTE TO 1.12

Extension of time

Circumstances which may be taken into account in granting an extension of time include—

- (a) *effort made by the applicant to comply with the prescribed timeframe;*
- (b) *causes of the delay; and*
- (c) *impact on the interest of the remaining shareholders as a result of the delay.*

RULE 2

Interpretation

2.01 Unless otherwise defined, all words used in these Rules shall have the same meaning as defined in the CMSA:

buy-back scheme	means a scheme by a company to purchase its own voting shares or voting rights as prescribed under section 127 of <i>Companies Act 2016</i> or any relevant governing statute or provision;
convertible securities	means securities such as warrants, options and other securities that are issued by the offeror or offeree which are capable of being converted into voting shares or voting rights of the offeror or offeree;
creeping threshold	means an acquisition of more than two per cent of the voting shares or voting rights of a company in any period of six months by an acquirer holding over 33 per cent but not more than 50 per cent of the voting shares or voting rights of the company;
first closing date	means the earliest day a take-over offer can be closed for acceptance, which is not less than 21 days but not more than 60 days from the dispatch of the offer document;
market day	means a day on which the stock exchange in Malaysia is open for trading in securities;
mandatory offer	means a take-over offer made or to be made under subsections 218(2) and 218(3) of the CMSA;
offeree	has the same meaning as defined in the CMSA and includes a potential offeree. In the case of a scheme of arrangement, a reference to the offeree should normally be construed as a reference to the company whose shares are proposed to be acquired under the scheme;

offeree shareholders	means holders of voting shares or voting rights of the offeree to which the take-over offer relates other than the offeror;
offer period	<p>means the period from an announcement of a proposed or possible offer (with or without terms) or serving of a written notice under paragraph 9.10 whichever is earlier until–</p> <ul style="list-style-type: none"> (a) the date when the offer closes for acceptances; (b) the date when the offer lapses; (c) the time when a potential offeror announces that the possible offer will not proceed; (d) the date when an announcement is made of the withdrawal of a proposed offer; or (e) the scheme of arrangement has become effective;
offeror	has the same meaning as defined in the CMSA. In the case of a scheme of arrangement, a reference to an offeror should normally be construed as a reference to the person who it is proposed will acquire shares of the offeree company under the scheme;
partial offer	means a voluntary take-over offer in which a person offers to acquire less than 100 per cent of any class of the voting shares or voting rights of a company from all offeree shareholders;
press notice	means a notice given to at least three main newspapers, one of which shall be in the national language and one in the English language;
relevant stock exchange	means any stock exchange in or outside Malaysia on which the securities of the company are listed;

securities exchange offer	means a take-over offer in which the consideration includes an issue of new shares or an exchange of securities of the offeror or any other body corporate;
scheme of arrangement or scheme	means a transaction to acquire control, or consolidate voting rights, or voting power, howsoever effected including by way of a trust scheme, scheme of arrangement, compromise, amalgamation or selective capital reduction and repayment;
statutory control	means a holding of more than 50 per cent of the voting shares or voting rights in a company;
substantial shareholder	in the case of a corporation and a public company, has the meaning assigned to it in the <i>Companies Act 2016</i> ; and in the case of an entity specified as a "company" in paragraph 1.09 means a person who has an interest in the voting units or voting rights of such a "company" and the aggregate amount of the such voting units or voting rights is not less than five per cent of all the voting units or voting rights in the "company" or all the voting units or voting rights of the same class in which such person holds voting units or voting rights.

2.02 Where a period specified in these Rules ends on a day which is not a market day, the period is extended until the next market day.

2.03 All announcements in respect of listed companies required under these Rules must be made in accordance with the requirements of the relevant listing rules. All announcements in respect of unlisted companies must be made by way of a press notice and delivered to the SC in electronic form (*see note below*).

2.04 For the purposes of take-overs, mergers and compulsory acquisitions, any reference to the board of directors of an offeree—

- (a) in relation to a REIT, means the board of directors of the management company and/or trustee; and

- (b) in relation to a business trust, means the board of directors of the trustee-manager.

Specification of persons acting in concert for REIT and business trust

2.05 Pursuant to subsection 216(3A) of the CMA in relation to a take-over of an entity other than a corporation or a public company—

- (a) where the offeror is a REIT, the following persons are presumed to be parties acting in concert:
 - (i) Its management company;
 - (ii) A director of the management company (together with his spouse, close relatives and related trusts);
 - (iii) Any person who owns or controls 20 per cent or more of the voting shares or voting rights of the management company;
 - (iv) Any person who is related to or an associate of its management company; and
 - (v) Its trustee.

(see notes below).

- (b) where the offeror is a business trust, the following persons are presumed to be parties acting in concert:
 - (i) Its trustee-manager including the agent;
 - (ii) A director of the trustee-manager (together with his spouse, close relatives and related trusts);
 - (iii) Any person who owns or controls 20 per cent or more of the voting shares or voting rights of the trustee-manager; and
 - (iv) Any person who is related to or an associate of the trustee-manager.

NOTE TO PARAGRAPH 2.03

The announcements in respect of unlisted companies under paragraph 2.03 may be delivered to the SC by sending an email to tomannouncement@seccom.com.my

NOTES TO SUBPARAGRAPH 2.05(a)

1. *In relation to a professional trustee, the concert party relationship is limited to the trustee (including its directors) acting in the capacity as trustee of the REIT.*
2. *The SC must be consulted if a manager or a trustee, in its capacity as trustee of a REIT, acts at the same time for more than one of the following:*
 - (a) Offeror or potential offeror;*
 - (b) Competing offeror or potential competing offeror; and*
 - (c) Offeree REIT.*

RULE 3

Advisers

- 3.01 An adviser must comply with all requirements under the Code and the Rules, and ensure that it explains to its client and its directors, their respective responsibilities under these Rules and the Code and use all reasonable effort to ensure that the client and its directors comply with these Rules and the Code. In cases of doubt, the SC must be consulted (*see note below*).
- 3.02 An adviser should, at the beginning of discussions and during the course of the relevant transaction, ensure that its client and any other person assisting such client in relation to the transaction understand the importance of secrecy and security of information.
- 3.03 A person who intends or is obliged to make a take-over offer or participate in other matters to which these Rules and the Code apply shall seek advice from an adviser. For this purpose, only those who are recognised principal advisers (RPA) (as defined under paragraph 7A.02 of the SC's Licensing Handbook) are permitted to submit proposals under these Rules and the Code.
- 3.04 Notwithstanding paragraph 3.03 above, the SC may, on a case-to-case basis, approve any person who has relevant expertise and experience in take-overs, mergers and compulsory acquisitions to submit any application under Division 2 Part VI of the CMSA. Such person must consult the SC at the earliest opportunity before making an application for his appointment as an adviser.
- 3.05 An adviser giving advice in relation to these Rules and the Code shall provide objective and appropriate advice that would enable the person concerned to make an informed decision.

General guidance:

In any consultation with the SC, the adviser shall—

- (a) clearly define the issues in which they are seeking the advice of the SC;
- (b) be thoroughly familiar with the issues relating to the transaction which will give rise to an obligation under these Rules and the Code; and
- (c) provide their views on the issues.

Independent adviser

- 3.06 As soon as reasonably practicable, the board of directors of the offeree shall appoint an independent adviser to provide comments, opinions, information and recommendation on a take-over offer in an independent advice circular. The independent adviser shall be responsible for all comments, opinions, information and recommendation disclosed in the independent advice circular.
- 3.07 Such adviser appointed by the board of directors of the offeree under paragraph 3.06 shall be independent and declare its independence from any conflict of interest or potential conflict of interest to the SC within three days of its appointment. Where an adviser has declared its independence, it must ensure that it remains independent throughout the offer period, or the duration of its appointment.
- 3.08 An independent adviser shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.
- 3.09 The SC would not regard a person as appropriate to give competent independent advice if the person—
- (a) is in the same group as the financial or professional adviser (including a stockbroker) to the offeror or the offeree; or
 - (b) has a substantial interest in or financial connection with, either the offeror or the offeree company of such a kind as to create a conflict of interests for that person.
- 3.10 For the purposes of paragraph 3.09, circumstances which the SC may take into account in considering whether a person is appropriate to give competent independent advice include whether the person—
- (a) holds 10 per cent or more of the voting shares or voting rights in the offeror or the offeree at any time during the last 12 months from the beginning of the offer period;
 - (b) has a business relationship with the offeror or the offeree, at any time during the last 12 months from the beginning of the offer period that contributes to more than 10 per cent in revenue or profit of the adviser, based on the latest audited financial statements or the latest management accounts, if the latest audited financial statements is more than six months;
 - (c) has a representative on the board of directors of the offeror or the offeree;

- (d) has a representative from either the offeror or the offeree on the board of directors of the independent adviser;
- (e) is or will be involved in the financing of the take-over offer;
- (f) is a substantial creditor of either the offeror or the offeree, based on the latest audited financial statements or the latest management accounts, if the latest audited financial statements is more than six months;
- (g) has a financial interest in the outcome of the take-over offer other than outlined in paragraphs (a)–(f) above; or
- (h) was an adviser in any planning, restructuring, acquisition or disposal proposals of the offeror or the offeree at any time during the period of 12 months prior to the beginning of the offer period.

3.11 A person would be considered to be a “substantial creditor” for the purposes of subparagraph 3.10(f), if–

- (a) the loan (including hire purchase, leasing, corporate bonds and Islamic financing) extended by the person to the offeror or the offeree represents more than 10 per cent of the loan outstanding in the offeror or the offeree;
- (b) the loan (including hire purchase, leasing, corporate bonds and Islamic financing) extended by the person to the offeror or the offeree represents more than 10 per cent of the latest audited shareholders’ funds of the adviser; or
- (c) the person is a lead banker in a syndicated loan (including Islamic financing) extended to the offeror or the offeree, at any time during the period of 12 months prior to the beginning of the offer period.

3.12 An independent adviser shall determine what information it requires in order to provide its comments, opinion and recommendation on a take-over or merger transaction.

3.13 The offeree shall provide full access to all persons, premises and documents relevant to the independent adviser’s performance of its duties.

NOTES TO RULE 3

1. *Paragraphs 3.06 to 3.13 would also be applicable in relation to appointments made pursuant to the requirements under paragraphs 4.08, 4.15, and under section 218A of the CMSA.*
2. *The assessment under paragraphs 3.09 and 3.10 should include the independent adviser's group of companies, i.e. its holding company and its subsidiaries.*

Advisers

3. *In relation to paragraph 3.01, advisers who are appointed under paragraph 3.03 and approved under paragraph 3.04 to advise the person who intends or is obliged to make a take-over offer or participate in other matters to which the Rules and the Code apply have a particular responsibility to comply with the Code and the Rules and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and the Rules, and will comply with them. In cases of doubt, the SC must be consulted.*

Partial offer for less than 33 per cent

4. *Paragraph 3.06 does not apply to a partial offer which would not result in the offeror and persons acting in concert holding more than 33 per cent of voting shares or voting rights of the offeree.*

PART B: TAKE-OVER OFFER

RULE 4

Mandatory offer

4.01 Unless otherwise exempted by the SC, a mandatory offer shall apply to an acquirer in the following situations:

- (a) Where the acquirer has obtained control in a company; or
- (b) Where the acquirer has triggered the creeping threshold

irrespective of how control has been effected or the creeping threshold has been triggered, including by way of a scheme.

(see notes below)

Disapplication of mandatory offer

4.02 Notwithstanding paragraph 4.01, a mandatory offer shall not apply in the following situations:

- (a) An acquisition, holding of, or entitlement to exercise voting shares or voting rights of a company made in accordance with a proposal, particulars of which will be set out in a prospectus or other document for an initial listing of the voting shares or voting rights of a company provided that such initial listing is not in connection with a demerger in which the initial listing is on a market different than the market on which the voting shares of the holding company that are currently held by the shareholders are listed *(see note below)*;
- (b) An acquisition, holding of, or entitlement to exercise voting shares or voting rights of a company whereby the acquirer would be issued new shares to replace the shares transferred to an employee to facilitate an employee share or employee share option scheme and the acquirer would not make any financial gain from the transaction; or
- (c) The holding of voting shares or voting rights of a company by the following persons as security for a loan *(see note below)*:
 - (i) A registered person specified in Part 1 of Schedule 4 of the CMSA;

- (ii) A holder of a Capital Markets and Services Licence who carries on a business of dealing in securities or derivatives; and
- (iii) A person who is licensed or otherwise authorised by a competent authority from a recognised and comparable jurisdiction to carry out the business of providing finance or dealing in securities or derivatives.

4.03 Persons acting in concert arrangements which give rise to mandatory offer obligation

- (1) For the purposes of subsection 216(2) of the CMSA, in determining whether an arrangement, agreement or understanding, to co-operate exists, the circumstances which would be considered include–
 - (a) shareholders coming together to co-operate as a group;
 - (b) shareholders voting together on a resolution;
 - (c) shareholders requisitioning or attempting to requisition for a board control-seeking proposal in a general meeting; or
 - (d) agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing shareholdings.

(see notes below)

- (2) For the purposes of subsection 216(3)(i) of the CMSA, financial assistance may include, but not be limited to, lending or advancing any money, guaranteeing, indemnifying or providing collateral for a debt, for the acquisition of voting shares or voting rights.

Formation of new group of persons acting in concert

4.04 A change in the composition of a group of persons acting in concert that effectively results in a new group being formed, or the balance of the group being changed significantly, may give rise to a mandatory offer obligation. This may occur, for example, as a result of the sale of all or a substantial part of his shareholding by one member of a group acting in concert to other existing members or to another person. The SC will also take into consideration *Note 5 to paragraph 4.01* in this regard. In cases of doubt, the SC should be consulted.

Rebuttal or severance of concert party relationship

4.05 For the purposes of rebutting a presumption of or severing a relationship between persons acting in concert, parties must submit clear evidence to enable the SC to establish that such relationship does not or no longer exists, as the case may be (*see note below*).

Exemption from mandatory offer obligation

4.06 Without limiting the discretion of the SC to grant an exemption under section 219 of the CMSA, paragraphs 4.08 to 4.15 provide for types of proposals or transactions where the SC may consider granting an exemption.

4.07 General

- (1) Any application for an exemption from a mandatory offer obligation must be submitted to the SC before the obligation is triggered.
- (2) The word "offeree" used in the context of an exemption refers to the company where a potential mandatory offer obligation will be triggered and the word "offeror" refers to the potential controlling holder of voting shares or voting rights.
- (3) The proposal to which an exemption relates must be implemented within six months from the approval of the SC or such other period as may be specified.

4.08 Vote of independent shareholders on issuance of new securities

- (1) An offeror may apply for an exemption from a mandatory offer obligation when the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, would otherwise result in an obligation to make a mandatory offer. Without limiting the generality of the foregoing, an exemption may be considered if arising from the following proposals:
 - (a) The offeror is issued new voting shares or voting rights as consideration for the sale or disposal of assets and/or interests by him;
 - (b) The offeror subscribes for new voting shares or voting rights in cash;
 - (c) The offeror exercises any conversion or subscription rights or options into new voting shares or voting rights;

- (d) Where as an underwriter, the offeror receives new voting shares or voting rights as a result of his underwriting obligation (*see note below*); and
- (e) The offeror–
 - i. acquires new voting shares or voting rights for the purpose of restoring his holding to the level prior to the issuance of new voting shares or voting rights; and
 - ii. the acquisition of new voting shares or voting rights is from persons who will be allotted the voting shares or voting rights as consideration for the sale or disposal of assets and/or interests by them.

Whitewash procedure

- (2) Where subparagraph 4.08(1) applies, the SC may consider granting an exemption if an offeror and persons acting in concert have satisfied the following conditions:
 - (a) There is no acquisition of shares or instruments convertible into shares and options in respect of shares (other than subscriptions for new shares or new instruments convertible into or options in respect of new shares which have been disclosed in the whitewash circular) by the offeror and persons acting in concert with him, in the six months prior to the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities until completion of the subscription; and
 - (b) Approval has been obtained from independent holders of voting shares or voting rights of the offeree at a meeting of the holders of the relevant class of voting shares or voting rights to waive their rights to receive the mandatory offer from the offeror and persons acting in concert.

Any exemption granted will be invalidated if the offeror or persons acting in concert have engaged or engages in a disqualifying transaction.

(See note below)

- (3) For the purpose of the meeting of independent holders of voting shares or voting rights mentioned in subparagraph 4.08(2)(b), the following procedures must be observed:
- (a) The resolution for the exemption is separate from other resolutions but may be conditional on other resolutions;
 - (b) All interested parties are required to abstain from voting on the resolution at the meeting (*see note below*);
 - (c) The voting at the meeting is conducted by way of a poll;
 - (d) The company convening such meeting must appoint–
 - (i) its auditors;
 - (ii) any share registrar; or
 - (iii) external accountants who are qualified to serve as auditors for such company (*see note below*),as scrutineer for the vote-taking. The identity of the scrutineer and the results of the poll (including the number of shares voted for and against the resolution) must be announced;
 - (e) The whitewash circular must be submitted to the SC for SC's comments on the contents relating to the proposed exemption, and must not be issued until the SC has notified that it has no further comments thereon (*see note below*);
 - (f) Where the SC has notified that it has no further comments to the contents of the whitewash circular relating to the proposed exemption, a statement shall be included that such notification shall not be taken to suggest that the SC recommends the proposed exemption or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the whitewash circular;
 - (g) The holders of the relevant class of voting shares or voting rights of the offeree are provided with competent independent advice regarding the proposed exemption where the independent advice circular must be submitted to the SC for comments and must not be issued until the SC has notified that it has no further comments thereon;
 - (h) The independent advice circular must contain all information as required under Schedule 2;

- (i) Where the SC has notified that it has no further comments to the contents of the independent advice circular, a statement shall be included that such notification shall not be taken to suggest that the SC agrees with the recommendation of the independent adviser or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the independent advice circular; and
 - (j) The independent advice circular is dispatched to the relevant holders at least 14 days before the meeting.
- (4) In relation to subparagraph 4.08(1)(c), the SC may grant an exemption arising from the exercise of conversion or subscription rights or options up to the expiry date of the conversion or subscription rights or options, subject to—
- (a) the offeror and persons acting in concert disclosing in the independent advice circular, the duration of the exemption and that, if granted, subsequent shareholders' approval will not be needed; and
 - (b) the offeree disclosing in its annual accounts and any public document, including annual reports, prospectuses and circulars, throughout the duration of the exemption, the following:
 - (i) The details of the exemption granted, including the duration for which the exemption has been granted;
 - (ii) The number and percentage of voting shares or voting rights and the conversion or subscription rights or options in the offeree held by the offeror and persons acting in concert as at the latest practicable date prior to the disclosure; and
 - (iii) The maximum potential voting shares or voting rights of the offeror and persons acting in concert in the offeree, if only the offeror and persons acting in concert (but not other holders) exercise the conversion or subscription rights or options in full.

(see notes below)

4.09 Rescue operation

- (1) An offeror may apply for an exemption from a mandatory offer obligation where the objective of a proposal is to rescue an offeree which is financially distressed.
- (2) The SC may disallow an application for an exemption under this paragraph where the objective of the proposal is to rescue a major shareholder of an offeree rather than the offeree itself.
- (3) The SC may, where it deems necessary, require the offeror to obtain a confirmation from a competent independent person on the financial position of the offeree. Such person should confirm his independence to the SC.
- (4) The competent independent person must prepare a report on the offeree's financial position for the last three financial years, which includes the following:
 - (a) Financial indicators, including ratio analysis, asset-backing and cash flow position; and
 - (b) Other relevant factors, such as dividend payment ability, liabilities outstanding, legal suits pending, contingent liabilities and other material events.

(see note below)

4.10 Enforcement of security for a loan

- (1) Where a lender referred to in subparagraph 4.02(c) intends to transfer voting shares or voting rights of an offeree to himself for the purposes of enforcing a security for a loan which, as a result, would trigger a mandatory offer obligation, the lender is eligible to apply for an exemption provided that the following criteria are met:
 - (a) The voting shares or voting rights of the offeree 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 SC that foreclosure is necessary; and
 - (c) The lender undertakes to place out the voting shares or voting rights of the offeree within six months from the date of the foreclosure, or such

longer period as may be determined by the SC, so as to reduce its holding to 33 per cent or lesser in the offeree.

- (2) Any exemption granted to a lender will not apply to any person who subsequently acquires such voting shares or voting rights from the lender.

4.11 Placement of voting shares or voting rights

- (1) Pursuant to a restructuring exercise or issuance of new voting shares or voting rights as consideration, an exemption may be sought by an offeror who obtains control in an offeree but makes a prior firm arrangement or gives a written undertaking to the SC to reduce his holding in the voting shares or voting rights of the offeree to 33 per cent or less (*see note below*).
- (2) For the purposes of subparagraph 4.11(1) the written undertaking to the SC must state that–
 - (a) such placement will be undertaken as soon as practicable but not later than three months after the acquisition;
 - (b) such placement will not be made to parties who are acting in concert with the offeror; and
 - (c) an underwriter has been appointed to underwrite the placement.
- (3) Any exemption granted to an offeror under subparagraph 4.11(1) will not apply to an acquirer of the voting shares or voting rights of the offeree from the offeror.

4.12 Written undertakings not to accept a take-over offer

- (1) An offeror may apply for an exemption from a mandatory offer obligation if he is able to satisfy the SC that the remaining holders of voting shares of an offeree have given written affirmations that they will not accept a take-over offer, if such an offer is made.
- (2) The SC may consider an application for an exemption provided that–
 - (a) the offeree is an unlisted public company; and
 - (b) where the offeror holds more than 50 per cent of the voting shares of the offeree, all the remaining holders of voting shares have provided

an undertaking in writing that they do not wish to accept a take-over offer if one is made in accordance with the provisions of the Code; or

- (c) where the offeror holds less than 50 per cent of the voting shares of the offeree, an undertaking in writing by the remaining holders of voting shares, holding more than 50 per cent of the voting shares of the offeree, that they do not wish to accept a take-over offer if one is made in accordance with the provisions of the Code.

4.13 Acquisition of additional voting shares or voting rights by members of a group acting in concert

- (1) An offeror may apply for an exemption from a mandatory offer obligation in a situation where—
 - (a) a group of persons acting in concert holding over 33 per cent but not more than 50 per cent of the voting shares or voting rights of an offeree, and as a result of an acquisition of voting shares or voting rights from one or more members of the group, a member of the group will control the offeree;
 - (b) a group of persons acting in concert holding over 33 per cent but not more than 50 per cent of the voting shares or voting rights of the offeree and one member of the group who holds over 33 per cent but not more than 50 per cent of the voting shares or voting rights, acquires more than two per cent voting shares or voting rights of the offeree in any six month period from one or more members of the group;
 - (c) a group of persons acting in concert having statutory control of an offeree and as a result of acquisition of voting shares or voting rights from either members of the group or non-members, a member of the group will control the offeree; or
 - (d) a group of persons acting in concert having statutory control of an offeree, and one member of the group who holds over 33 per cent but not more than 50 per cent of the voting shares or voting rights, acquires more than two per cent voting shares or voting rights of the offeree in any six month period from either members of the group or non-members.
- (2) In considering the application for exemption, the factors that the SC will take into account include—

- (a) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;
- (b) the price to be paid for the voting shares or voting rights of the offeree; and
- (c) the relationship between the persons acting in concert and how long they have been acting in concert.

(see notes below)

- (3) Notwithstanding subparagraph 4.13(2), the SC will normally grant an exemption–
 - (a) in a transaction involving the introduction or elimination of an intermediate company in which there is no change to the ultimate shareholders and the proportion of the shareholding of the existing shareholders in an offeree or through the intermediate company; or
 - (b) if the transaction is between an individual, his spouse, his close relatives and related trusts, and companies controlled by him.
- (4) The SC may grant an exemption to a person who will inherit voting rights or voting shares in an offeree from a spouse or close relative without any consideration where the beneficiary will trigger a mandatory offer obligation.

4.14 National policy

An offeror may apply for an exemption for an acquisition that has been approved by a relevant sector regulator based on national policy.

4.15 Share buy-back scheme

- (1) An offeror may apply for an exemption from a mandatory offer obligation which will otherwise have been triggered as a result of a share buy-back scheme. SC may consider granting an exemption if the conditions below are fulfilled–
 - (a) there is no acquisition/purchase of voting shares or voting rights in the company (save for subscriptions for new shares which have been fully disclosed in the whitewash circular) by the offeror and persons acting in concert with him, between the date on which they knew that the

announcement of the share buy-back proposal was imminent and the earlier of—

- (i) the date on which the authority of the share buy-back expires; or
- (ii) the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the share buy-back would cause them to incur a mandatory offer obligation; and

- (b) approval has been obtained from independent holders of voting shares or voting rights of the offeree at a meeting of the holders of the relevant class of voting shares or voting rights to waive their rights to receive the mandatory offer from the offeror and persons acting in concert.

Any exemption will be invalidated if the offeror or persons acting in concert have engaged in a disqualifying transaction.

- (2) For the purpose of the meeting mentioned in subparagraph 4.15(1)(b), the following procedures should be observed:
 - (a) The resolution for the exemption is separate from other resolutions but may be conditional on other resolutions;
 - (b) All interested parties have abstained from voting on the resolution at the meeting (*see note below*);
 - (c) The voting at the meeting is conducted by way of a poll;
 - (d) The company convening such meeting must appoint—
 - (i) its auditors;
 - (ii) any share registrar; or
 - (iii) external accountants who are qualified to serve as auditors for such company (*see note below*),

as scrutineer for the vote-taking. The identity of the scrutineer and the results of the poll (including the number of shares voted for and against the resolution) must be announced;

- (e) The whitewash circular must be submitted to the SC for SC's comments on the contents relating to the proposed exemption, and must not be issued until the SC has notified that it has no further comments thereon (*see note below*);
 - (f) Where the SC has notified that it has no further comments to the contents of the whitewash circular relating to the proposed exemption, a statement shall be included that such notification shall not be taken to suggest that the SC recommends the proposed exemption or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the whitewash circular;
 - (g) The holders of the relevant class of voting shares or voting rights of the offeree are provided with competent and independent advice regarding the proposed exemption where the independent advice circular must be submitted to the SC for comments and must not be issued until the SC has notified that it has no further comments thereon;
 - (h) The independent advice circular must contain all information as required under Schedule 2 and must contain a statement that the SC may consider an application for an exemption if the independent holders of voting shares or voting rights have agreed that the parties obtaining control or acquiring over the creeping threshold need not make a mandatory offer;
 - (i) Where the SC has notified that it has no further comments to the contents of the independent advice circular, a statement shall be included that such notification shall not be taken to suggest that the SC agrees with the recommendation of the independent adviser or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the independent advice circular; and
 - (j) The independent advice circular is dispatched to holders of the relevant class of voting shares or voting rights of the offeree at least 14 days before the meeting.
- (3) An exemption granted will expire upon–
- (a) the date of expiry of the relevant shareholders' authority under section 127 of the *Companies Act 2016* or any relevant governing statute or provision;

- (b) the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting; or
- (c) the date on which the offeree announces it has decided to cease buying back its shares,

whichever is earlier.

(see notes below)

NOTES TO PARAGRAPH 4.01

1. *Different classes of voting shares or voting rights*

Where there are different classes of voting shares or voting rights of a company carrying different rights to vote, each voting share or voting right of the company carrying the right to more than one vote shall be deemed to consist of such number of voting shares or voting rights.

2. *Obligation of offeror*

In a mandatory offer, the offeror has no obligation to extend the take-over offer to persons acting in concert with the offeror. However, where an offeror extends the take-over offer to persons acting in concert with him, the offeror shall adhere to the provisions of the Rules and the Code.

3. *Acquisition of a company through an upstream entity*

A mandatory offer may apply to a person or group of persons acting in concert acquiring more than 50 per cent of a company or upstream entity (which need not be a company to which the Rules and the Code apply) thereby acquiring or consolidating control in a second company (downstream company) where—

- (a) *the upstream entity controls the downstream company either directly or indirectly through intermediate entities; or*
- (b) *the upstream entity's holdings when aggregated with those held by the person or group, would secure or consolidate control of the downstream company.*

In such a situation, a mandatory offer will apply where—

- (a) the holding in the downstream company is significant in relation to the upstream entity viz. where it constitutes 50 per cent or more of the assets, market capitalisation, shareholders' funds, sales or earnings to the upstream entity. For the assessment of earnings, this factor may be irrelevant in the case of a loss making company; or*
- (b) securing control of the downstream company might reasonably be considered a significant purpose of acquiring statutory control of the upstream entity.*

Any corporate proposal at the upstream entity which gives rise to a person or group holding more than 50 per cent of the voting shares or voting in the upstream entity is considered an acquisition for the purpose of Note 3.

A mandatory offer will apply to all the downstream companies throughout the chain of control as long as the criteria above are met.

Provided that, in the case of a listed upstream company, where the major shareholder has a holding which entitles him to obtain statutory control without having to extend a mandatory offer in the upstream company, this safe harbour will similarly apply to downstream companies throughout the chain of control.

4. Acquisition of voting shares or voting rights by persons acting in concert

Under paragraph 4.01, a mandatory offer obligation will apply to all members of a group of persons acting in concert if any member of the group acquires voting shares or voting rights such that collectively the group triggers a mandatory offer obligation.

Where a group of persons acting in concert holds more than 33 per cent of the voting shares or the voting rights of a company, any member of the group will incur a mandatory offer obligation if he acquires voting shares or voting rights resulting in him—

- (a) acquiring more than 33 per cent of the voting shares or voting rights of the company; or*
- (b) acquiring more than two per cent of the voting shares or voting rights of the company in any six-month period (when the person already holds more than 33 per cent but not more than 50 per cent of the voting shares or voting rights of the company.*

Single entity concept

In determining whether a member has incurred a mandatory offer obligation, the SC will have regard to the holdings of persons who are subject to his statutory control. In cases of doubt, the SC should be consulted.

5. Vendor selling part of his voting shares or voting rights

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 33 per cent of the voting rights in a company, thereby avoiding making a mandatory offer.

The SC will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser and/or has effectively allowed the purchaser to acquire a significant degree of control over the shares retained by the vendor such that the purchaser should be treated as having acquired an interest in them, in which case a mandatory offer would be required.

A judgment on whether such significant degree of control exists will depend on the circumstances of each individual case where the SC will have regard, inter alia, to the following:

- (a) There might be less likelihood of a significant degree of control over the retained shares if the vendor was not an "insider";*
- (b) The payment of a very high price for the shares would tend to suggest that control over the entire holding was being secured;*
- (c) Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a greater element of independence may be presumed; and*
- (d) It would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas with regard to the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other*

evidence of a significant degree of control over the retained shares, would not lead the SC to conclude that a general offer should be made.

6. Determining the base for percentage of acquisition

The holding of an acquirer shall be calculated by reference to the number of outstanding issued and paid-up share capital of the company at a particular time. The calculation shall take into consideration any changes to the total issued and paid-up share capital resulting from the exercise of any outstanding convertibles or corporate exercise, including share buy-backs.

7. Creeping provision

(a) Acquisitions and disposals during six month period

A person, or group of persons acting in concert, holding more than 33 per cent of the voting shares or voting rights of a company is free to acquire and dispose of further voting shares or voting rights within a band of two per cent above the greater of 33 per cent or its lowest percentage holding of voting shares or voting rights in the previous six month period without incurring an obligation to make a mandatory offer. Within this band, dispositions of voting rights may be netted off against acquisitions thereof.

(b) Effect of disposals

If a person, or group of persons acting in concert, holding more than 33 per cent of the voting shares or voting rights of a company disposes of voting shares or voting rights in circumstances other than those mentioned in Note 7(a) to paragraph 4.01, the reduced holding establishes a new lowest percentage holding for purposes of the two per cent creeper.

As a result, an obligation to make a mandatory offer will arise if–

- (i) the reduced holding is more than 33 per cent and is increased by net acquisitions of voting shares or voting rights by more than two per cent in any six month period, or*
- (ii) following a reduction of the holding to 33 per cent or less, it is increased to more than 33 per cent.*

Except as mentioned in Note 7(a) to paragraph 4.01, disposals of voting rights may not be netted off against acquisitions thereof.

8. *Dilution of holding of voting shares or voting rights*

Where a holding of voting shares or voting rights is diluted by the issuance of new voting shares or voting rights, a person who restores his holding in the company will trigger a mandatory offer obligation if–

- (a) the holding has been reduced to 33 per cent or less and thereafter, the person acquires voting shares or voting rights to more than 33 per cent of the voting shares or voting rights of the company (based on the enlarged voting shares or voting rights); or*
- (b) the holding has been reduced to more than 33 per cent but not more than 50 per cent of the voting shares or voting rights of the company and thereafter, the person acquires more than two per cent of the voting shares or voting rights (based on the enlarged voting capital or voting rights) in any six-month period.*

9. *Share buy-back scheme*

A mandatory offer obligation arises when as a result of a buy-back scheme by the company–

- (a) a person obtains control in a company; or*
- (b) a person holding more than 33 per cent but not more than 50 per cent of the voting shares or voting rights of a company, increases his holding of the voting shares or voting rights of the company by more than two per cent in any six-month period.*

10. *Convertible securities*

In general, the acquisition of convertible securities does not give rise to a mandatory offer obligation but the exercise of any conversion or subscription rights or options is deemed an acquisition of voting shares or voting rights for the purposes of determining if a mandatory offer has been triggered.

11. *Options and derivatives*

A person who has acquired or written any option or derivative which causes him to have a long economic exposure, whether absolute or conditional, to

changes in the price of securities will be treated as having acquired those securities. Such options and derivatives would exclude instruments convertible into, rights to subscribe for and options in respect of new shares (see Note 10 on paragraph 4.01). Any person who would acquire control or trigger the creeping threshold as a result of acquiring such options or derivatives, or, acquiring securities underlying options or derivatives when already holding such options or derivatives, must consult the SC to determine if an offer is required, and, if so, the terms of the offer to be made.

In determining if an offer is required, the SC will consider, amongst others, the time when the option or derivative is entered into, the consideration paid for the option or derivative, and the relationship and arrangements between the parties to the option or derivative.

12. *Securities borrowing and lending/ Islamic securities selling and buying-negotiated transactions*

In a securities borrowing and lending transaction, the borrower of the shares or rights is deemed to have acquired the voting rights attached to the shares or rights under paragraph 4.01 of the Code. When the borrower returns or sells the shares or rights, he is deemed to have disposed of the voting rights attached to those shares or rights.

A lender is deemed to have disposed of the voting rights attached to the loaned securities. Upon the return of those shares or rights, the lender is deemed to have acquired the voting rights attached to the shares or rights.

Subject to subsections 216(2), (3) and (3A) of the CMSA, a lender is exempted from a mandatory offer obligation arising from the return of the voting shares or voting rights of the loaned securities, in the following circumstances:

- (a) If the lender holds more than 33 per cent but not more than 50 per cent of the voting shares or voting rights of a company at the point of lending out the loaned securities, and the lender's holding drops to 33 per cent or less or reduces by more than two per cent of the voting shares or the voting rights of the company in any six month period as a result of lending out of the loaned securities—*
 - (i) the return of the loaned securities (without the lender recalling the loaned securities) would, but for the exemption referred to above, trigger a mandatory offer obligation; and*

- (ii) *the return of the loaned securities (without the lender recalling the loaned securities) will not increase the lender's holding (including subsequent acquisition, if any) to more than 50 per cent of the voting shares or voting rights of the company; or*
- (b) *if the lender's holding drops to 50 per cent or less arising from lending out the loaned securities, his holding (including subsequent acquisitions which does not trigger a mandatory offer obligation) together with the loaned securities returned would, but for the exemption referred to above cause the lender to trigger a mandatory offer obligation.*

The lender to which the exemption applies under this paragraph is required to—

- (a) *inform the SC of the likelihood of him being subjected to a mandatory offer obligation when the loaned securities are returned to him; and*
- (b) *provide a declaration, within three days upon the return of the voting shares or voting rights, that the lender has complied with either subparagraph (a) or (b) above.*

Islamic securities selling and buying-negotiated transactions

In an Islamic securities selling and buying-negotiated transaction, if the buyer sells back similar or equivalent voting shares or voting rights to the seller who sold him the securities earlier, the seller would be exempted from a mandatory offer obligation in the following circumstances:

- (a) *If the seller holds more than 33 per cent but not more than 50 per cent of the voting shares or voting rights of a company at the point of selling the securities to the buyer, and the seller's holding drops to 33 per cent or less or reduces by more than two per cent of the voting shares or the voting rights of the company in any six month period as a result of selling of the securities,—*
 - (i) *the purchase of the securities (without the seller initiating the transaction) would, but for the exemption referred to above, trigger a mandatory offer obligation; and*
 - (ii) *the purchase of the securities (without seller initiating the transaction) will not increase the seller's holding (including subsequent acquisition, if any) to more than 50 per cent of the voting shares or voting rights of the company; or*

- (b) *if the seller holds more than 50 per cent of the voting shares or voting rights of a company at the point of selling the securities to the buyer, and the seller's holding drops to 50 per cent or less as a result of selling of the securities, his holding (including subsequent acquisitions which does not trigger a mandatory offer obligation) together with the purchase of the securities from the buyer would, but for the exemption referred to above cause the seller to trigger a mandatory offer obligation.*

The seller to which the exemption applies under this paragraph is required to—

- (a) *inform the SC of the likelihood of him being subjected to a mandatory offer obligation when the seller purchases the securities from the buyer; and*
- (b) *provide a declaration, within three days upon the purchase of the voting shares or voting rights, that the seller has complied with either subparagraph (a) or (b) above.*

13. *Over-allotment option and/or price stabilisation mechanism*

The return of the voting shares or voting rights in an over-allotment option and/or price stabilisation mechanism is deemed to be an acquisition. If the acquisition results in a shareholder obtaining control in the company or the acquisition is more than two per cent in any six month period (in the case where the major shareholder holds more than 33 per cent but not more than 50 per cent of the voting shares or voting rights), the shareholder triggers a mandatory offer obligation.

A shareholder is exempted from the mandatory offer obligation arising from the return of the borrowed voting shares or voting rights pursuant to the over-allotment option and/or price stabilisation mechanism, provided the stabilising manager (under the price stabilisation mechanism) and the shareholder submit the following information to the SC within 14 days after the completion of the over-allotment option and/or price stabilisation mechanism, whichever is the later—

- (a) *changes to the interest of the said shareholder in the company between the lending of the voting shares or voting rights and the return of the voting shares or voting rights of the company; and*
- (b) *a confirmation that—*

- (i) *the borrowed voting shares or voting rights have been returned to the shareholder within five market days following the date on which the voting shares or voting rights were purchased from the market or the new voting shares or voting rights were issued by the company to the underwriter;*
- (ii) *the placees were independent and not acting in concert with the stabilising manager; and*
- (iii) *the shareholder and persons acting in concert with him have not been involved in screening or selecting the placees.*

14. *When a voluntary offer becomes a mandatory offer*

A voluntary offer will become a mandatory offer if the offeror or persons acting in concert acquires voting shares or voting rights (other than through acceptances) which triggers a mandatory offer obligation.

In such a circumstance, the offeror must make an immediate announcement of the fact wherein all conditions of the voluntary offer, other than the acceptance condition under subparagraph 6.01(1), would automatically be waived.

If no change in the consideration is involved it will be sufficient, following the announcement, to notify offeree shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition is the only condition remaining, and of the period for which the offer will remain open (see also Note 2 to Paragraph 12.03).

NOTE TO SUBPARAGRAPH 4.02(a)

Initial listing proposal

In such cases, the SC must be consulted. In determining whether the mandatory offer is applicable, the SC may have regard to restrictions in the proposed market for the initial listing including the restrictions in accessibility by the shareholders, or otherwise.

NOTE TO SUBPARAGRAPH 4.02(c)

Enforcement of security

A mandatory offer obligation will apply when the persons mentioned in subparagraph 4.02(c) foreclose on the security.

NOTE TO SUBPARAGRAPH 4.03(1)(a)

Shareholders coming together to act in concert

Where a party has acquired shares independently of other shareholders, or potential shareholders, but subsequently comes together with other shareholders to co-operate to obtain or consolidate control or exercise control over a company, a mandatory offer obligation will arise.

NOTE TO SUBPARAGRAPH 4.03(1)(b)

Shareholders voting together

The SC will not regard the action of shareholders voting together on resolutions at one general meeting as action which of itself indicates that such persons are acting in concert. A voting pattern at more than one general meeting may, however, be taken into account as an indication that the shareholders are acting in concert.

NOTES TO SUBPARAGRAPH 4.03(1)(c)

Board control-seeking proposal

1. *Shareholders who requisition or threaten to requisition for a board control-seeking proposal in a general meeting, together with their supporters as at the date of requisition or threat, will be presumed to be acting in concert with each other and with the proposed directors once an agreement or understanding is reached in respect of a board control-seeking proposal.*
2. *In determining whether a proposal is a board control-seeking proposal, the SC will have regard to the following:*
 - (a) *the relationship between any of the proposed directors and the requisitioning shareholders or their supporters. Factors to be considered include—*
 - (i) *whether there is or has been any prior relationship between any of the requisitioning shareholders, or their supporters, and any of the proposed directors;*
 - (ii) *whether there is any agreement, arrangement or understanding between any of the requisitioning shareholders or their*

supporters, and any of the proposed directors with regard to their proposed appointment; and

- (iii) whether any of the proposed directors will be remunerated in any way by any of the requisitioning shareholders, or their supporters, as a result of or following their appointment.*

If, on this analysis, there is no relationship between any of the proposed directors and any of the requisitioning shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is significant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;

- (b) the number of directors to be appointed or replaced compared with the total size of the board.*

If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will be considered as board control-seeking.

If, however, the proposal would not result in the replacement of the majority of the directors on the board, the proposal will not be considered as board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;

- (c) the board positions held by the directors being replaced and to be held by the proposed directors;*
- (d) the nature of the mandate, if any, for the proposed directors;*
- (e) whether any of the requisitioning shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and*

- (f) *the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the requisitioning shareholders or their supporters.*
- 3. *In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the SC will take into account a number of factors, including the following:*

 - (a) *Whether the parties have been successful in achieving their stated objective;*
 - (b) *Whether there is any evidence to indicate that the parties should continue to be held to be acting in concert;*
 - (c) *Whether there is any evidence of an ongoing struggle between the requisitioning shareholders, or their supporters, and the board of the company;*
 - (d) *The types of requisitioning shareholders involved and the relationship between them; and*
 - (e) *Relationship between the requisitioning shareholders, or their supporters, and the proposed directors.*

NOTE TO PARAGRAPH 4.05

Rebuttal or severance of concert party relationship

The SC may take into consideration the following factors:

- (a) *The pattern, volume, timing and prices of shares or rights purchased by such persons;*
- (b) *Voting patterns of the shares or rights by such persons and any business activities in common or other ties;*
- (c) *Any financial dependence between such persons;*
- (d) *Animosity amongst the persons acting in concert; or*
- (e) *Any other factors as may be relevant.*

NOTES TO PARAGRAPH 4.08

Underwriters applying for whitewash

1. *In relation to subparagraph 4.08(1)(d), the offeror and any person acting in concert must submit to the SC 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 will hold as a result of the implementation of the proposal.*

Disqualifying transactions

2. *In relation to subparagraph 4.08(2)(a), any distribution of shares or instruments convertible into shares and options in respect of shares on a pro rata basis which do not involve fundraising, such as bonus issues, may not be deemed as disqualifying transactions. In cases of doubt, the SC should be consulted.*

Restrictions against favourable deals

3. *In relation to subparagraph 4.08(2), if the offeror or persons acting in concert with him acquires shares within six months after the shareholders' meeting from a person who was a director or substantial shareholder of the company at the time of the whitewash proposal, such acquisition will be deemed to be a favourable deal prohibited under Rule 18. The SC may consider granting a waiver to the offeror or the person acting in concert with the offeror if such acquisition is de minimis. In the absence of SC's waiver, any exemption granted under paragraph 4.08 will be invalidated if the offeror or persons acting in concert have engaged or engages in a favourable deal.*

"Interested parties"

4. *In relation to subparagraph 4.08(3)(b), "interested parties" include the following persons:*
 - (a) *The offeror and any person acting in concert;*
 - (b) *The directors of the offeree if they have any holdings which they intend to retain and which they propose to use in the future in co-operation with the offeror and persons acting in concert with the offeror; or*
 - (c) *Any person whose interest in the outcome of the voting will result in some relationship and future co-operation with the offeror and persons acting in concert with the offeror other than as a holder of voting shares or voting rights of the offeree.*

External accountants

5. For the purpose of subparagraph 4.08(3)(d)(iii), external accountants mean a firm of public accountants that is registered with the Audit Oversight Board (established under section 31C of the Securities Commission Malaysia Act 1993) as an auditor of public interest entities, and whose registration has not been suspended.

Information to be included in the whitewash circular

6. In relation to subparagraph 4.08(3)(e), the whitewash circular shall include the following information:
- (a) Identities of the offeror and persons acting in concert with him and their respective holdings of voting shares or voting rights in the offeree;
 - (b) Full details of the maximum potential holdings of the offeror and persons acting in concert with him arising from the proposal, in cases where the potential holdings would trigger a mandatory offer obligation; and
 - (c) The intention of the offeror and persons acting in concert to seek an exemption from having to undertake a mandatory offer in the offeree company under subparagraph 4.08(1) of the Rules.

Subsequent acquisitions by controlling shareholders

7. When an offeror or group of persons acting in concert, has obtained an exemption under subparagraph 4.08(1), such offeror, or group of persons, shall be deemed to have a lowest percentage holding equal to the percentage holding of such offeror, or group of persons, immediately after the whitewashed transaction. Any acquisition of additional voting shares or voting rights by such person, or group of persons, subsequent to the whitewashed transaction shall be subject to the creeping threshold by reference to the lowest percentage holding in the six-month period ending on the date of the completion of the relevant acquisition.

Convertible securities, warrants and options

8. If the potential controlling shareholders acquire further voting rights after the date of the issue of the relevant convertible securities, warrants and options, the exemption will only apply to conversion into, or subscription for, such number of voting rights as, when added to the purchases, does not exceed the number originally approved by shareholders. Such further acquisition of voting rights would be subject to the mandatory offer obligation if the percentage shareholding of the

potential controlling shareholders increased to over 33 per cent or, if already over 33 per cent, by more than two per cent in any six-month period.

Announcements following completion of proposal

9. *An announcement must be made by the offeree following the issuance of the new securities stating the number and percentage of voting shares or voting rights of the controlling shareholders at that time.*

Where the final controlling holding of voting shares or voting rights is dependent on the results of underwriting, the offeree must make an announcement following the issue of the new securities stating the number and percentage of voting shares or voting rights held by the controlling shareholders at that time.

Where convertible securities, warrants, options or other subscription rights are to be issued—

- (i) the announcement of the controlling holdings of voting shares or voting rights must be made on the basis of the assumptions described in paragraph 3(c) of Schedule 2: Part II of the Rules; and*
- (ii) following each issue of new voting shares or voting rights pursuant to the conversion or exercise of the securities, a further announcement must be made confirming the number and percentage of voting shares or voting rights held by the controlling shareholders at that time.*

Exemption is not transferable

10. *Only the person(s) whose name(s) appear in the whitewash circular as the offeror can avail himself of the exemption if the resolution for the exemption is approved subject to the conditions under subparagraph 4.08(2). An exemption granted cannot be transferred or assigned to another person. If the offeror is a company and there is a change in statutory control of the offeror on or after the date of shareholders' approval of the resolution for the exemption, the exemption granted will cease to be valid. In cases of doubt, the SC should be consulted.*

NOTE TO PARAGRAPH 4.09

Where subparagraph 4.09(1) applies, the SC must be satisfied about the urgency of the rescue proposal before granting an exemption. In determining this, the factors that the SC will take into consideration include:

- (a) The justifications that it would be impracticable for the rescue proposal to be submitted for approval of shareholders; and*

- (b) *The benefit of the rescue proposal to the offeree.*

NOTE TO SUBPARAGRAPH 4.11(1)

Placement

For the purposes of subparagraph 4.11(1), a firm arrangement means the following:

- (a) *The proposal is conditional upon the placement of the excess voting shares or voting rights; or*
- (b) *The offeror has entered into an agreement for placement of the voting shares or voting rights of the offeree; and*
- (c) *An underwriter has been appointed to underwrite the placement, or in the absence of an underwriter, a placee has been identified for the voting shares or voting rights of the offeree.*

NOTES TO SUBPARAGRAPH 4.13(2)

Exemption involving persons acting in concert

1. *In relation to subparagraph 4.13(2)(a), whether one or more of the members of the persons acting in concert will increase their voting shares or voting rights to more than 50 per cent in the offeree would be relevant for the SC in considering whether there is a significant change in the balance of shareholdings.*
2. *In relation to subparagraph 4.13(2)(b), in determining whether a premium will be paid for the voting shares or voting rights of the offeree, the SC may have regard to either—*
- (a) *the prevailing market price of the voting shares or voting rights of the offeree, in the case of a listed offeree; or*
- (b) *the net assets and net tangible assets of the offeree, in the case of an unlisted offeree.*
3. *In relation to subparagraph 4.13(2)(c), the SC should be provided with details on how and when the vendor obtained his interest in the offeree.*

NOTES TO PARAGRAPH 4.15

Disqualifying transactions

1. *In relation to subparagraph 4.15(1)(a), any distribution of voting shares or voting rights on a pro rata basis which do not involve fundraising, such as bonus issues, may not be deemed as disqualifying transactions. In cases of doubt, the SC should be consulted.*

Restrictions against favourable deals

2. *In relation to subparagraph 4.15(1), if the offeror or persons acting in concert with him acquires shares within six months after the shareholders' meeting from a person who was a director or substantial shareholder of the company at the time of the whitewash proposal, such acquisition will be deemed to be a favourable deal prohibited under Rule 18. The SC may consider granting a waiver to the offeror or the person acting in concert with the offeror if such acquisition is de minimis. In the absence of SC's waiver, any exemption granted under paragraph 4.15 will be invalidated if the offeror or persons acting in concert have engaged or engages in a favourable deal.*

Interested parties

3. *For the purposes of subparagraph 4.15(2)(b), "interested parties" include the following persons:*
 - (a) *The offeror and persons acting in concert;*
 - (b) *The directors of the offeree if they have any holdings which they intend to retain and which they propose to use in the future in co-operation with the offeror and persons acting in concert with the offeror; or*
 - (c) *Any person whose interest in the outcome of the voting may result in some relationship and future co-operation with the offeror and persons acting in concert with the offeror other than as a holder of voting shares or voting rights of the offeree.*

External accountants

4. *For the purpose of subparagraph 4.15(2)(d)(iii), external accountants mean a firm of public accountants that is registered with the Audit Oversight Board (established under section 31C of the Securities Commission Malaysia Act 1993) as an auditor of public interest entities, and whose registration has not been suspended.*

Information to be included in the whitewash circular

5. In relation to subparagraph 4.15(2)(e), the whitewash circular shall include the following information:
- (a) Identities of the offeror and the persons acting in concert with him and their respective holdings of voting shares or voting rights in the offeree;
 - (b) Full details of the maximum potential holdings of the offeror and persons acting in concert with him arising from a share buy-back scheme, in cases where the potential holdings would trigger a mandatory offer obligation; and
 - (c) The intention of the offeror and persons acting in concert to seek an exemption from having to undertake a mandatory offer in the offeree company under subparagraph 4.15(1) of the Rules.

Acquisitions of shares after the share buy-back

6. Shareholders will be subject to the creeping threshold if they acquire voting shares or voting rights after the company's share buy-back. For this purpose, an increase in the percentage of voting shares or voting rights as a result of the share buy-back will be taken into account in determining whether a shareholder and persons acting in concert with him have increased their voting shares or voting rights by more than 2% in any period of six months.

Exemption is not transferable

7. Only the person(s) whose name(s) appear in the whitewash circular as the offeror can avail himself of the exemption if the resolution for the exemption is approved subject to the conditions under subparagraph 4.15(1). An exemption granted cannot be transferred or assigned to another person. If the offeror is a company and there is a change in statutory control of the offeror on or after the date of shareholders' approval of the resolution for the exemption, the exemption granted will cease to be valid. In cases of doubt, the SC should be consulted.

RULE 5

Types of voluntary offer

Voluntary offer

5.01 A voluntary offer is a take-over offer for the voting shares or voting rights of a company made by a person when he has not incurred an obligation to make a mandatory offer.

NOTE

A voluntary offer should not be made at a price that is substantially below the market price of the shares in the offeree company. A voluntary offer at more than a 50 per cent discount to the lesser of the closing price of the relevant shares of the offeree company on the day before the announcement under paragraph 9.10 and the five-day average closing price prior to such day will be considered as being "substantially below the market price of the shares in the offeree company". In all cases which fall within this Note, the SC should be consulted.

Partial voluntary offer

5.02 Unless otherwise approved by the SC, no person shall make a partial offer. The SC may consider granting an approval where—

- (a) a partial offer would not result in the offeror and persons acting in concert obtaining control of the offeree; or
- (b) the offeror and persons acting in concert already have statutory control of the offeree and the partial offer is to obtain such percentage that would allow the offeree to maintain the public spread requirement under the listing requirements.

5.03 If a partial offer may result in the offeror obtaining control of or acquiring over the creeping threshold in the offeree, the SC may consider not granting approval under paragraph 5.02 if the offeror or persons acting in concert have acquired voting shares or voting rights in the offeree company during the six months prior to the commencement of an offer period.

5.04 An offeror in a partial offer shall accept all voting shares or voting rights tendered by offeree shareholders up to the percentage proposed to be acquired.

5.05 Where an offeror in a partial offer obtains acceptances totalling more than the percentage of voting shares or voting rights proposed to be acquired, the offeror shall accept such voting shares or voting rights in the same proportion as the number

tendered from each offeree shareholder to the extent necessary to enable him to obtain the percentage proposed to be acquired.

- 5.06 An offeror and the persons acting in concert shall not acquire any voting shares or voting rights to which the partial offer relates during the offer period other than through acceptances of the offer.
- 5.07 Any person who intends to make a partial offer for the same offeree within 12 months from the date of the close of a previous partial offer must seek the SC's prior approval. The SC will not normally grant approval unless the subsequent partial offer is recommended by the offeree board.
- 5.08 Where an offeror makes a partial offer which would result in the offeror and the persons acting in concert having an aggregated holding of over 33 per cent but not more than 50 per cent of the voting shares or voting rights of the offeree, the offeror shall state in the offer document—
- (a) the precise percentage of voting shares or voting rights proposed to be acquired;
 - (b) the partial offer will only be declared unconditional as to acceptances when the percentage as stated in (a) is achieved; and
 - (c) the partial offer is conditional upon obtaining approval from independent shareholders holding more than 50 per cent of voting shares or voting rights of the offeree not held by the offeror and the persons acting in concert, signified by means of a separate box in the form of acceptance.
- 5.09 The SC may exempt any person from the requirement under subparagraph 5.08(c) if an independent shareholder holding more than 50 per cent of such voting shares or voting rights has indicated his approval.
- 5.10 Subject to paragraph 5.07, where a partial offer may result in the offeror and the persons acting in concert holding more than 50 per cent of the voting shares or voting rights of the offeree, the offeror shall ensure that the offer document contains specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror or, where appropriate, the offeror and persons acting in concert, will be free to acquire further voting shares or voting rights without having to make a mandatory offer.

NOTES TO RULE 5

1. Dual consideration offer for 100 per cent considered as a partial offer

A take-over offer for all voting shares or voting rights where a certain consideration is offered for part of each shareholder's holding and a lower consideration for the balance may be considered a partial offer which requires the SC's approval under paragraph 5.02.

2. Regulatory restriction

The SC may consider granting an approval to make a partial offer in a situation where there is any restriction on equity holdings imposed by a relevant regulatory authority.

3. Odd lots

An offeror in a partial offer should arrange its acceptance procedures to minimise the number of existing and new odd lot shareholdings.

RULE 6

Key Terms

6.01 Acceptance condition

- (1) A mandatory offer must be conditional upon, and only upon, the offeror having received acceptances which would result in the offeror and persons acting in concert holding in aggregate more than 50 per cent of the voting shares or voting rights of the offeree.
- (2) A voluntary offer must be conditional upon the offeror having received acceptances which would result in the offeror holding in aggregate more than 50 per cent of the voting shares or voting rights of the offeree.
- (3) A take-over offer shall lapse if the condition referred to in subparagraphs 6.01(1) or 6.01(2) is not fulfilled by 5.00 p.m. on the 60th day from the date on which the offer document was dispatched to the offeree shareholders.

(see notes below)

6.02 Other conditions to a voluntary take-over offer

- (1) A voluntary offer may include other conditions, except conditions which fulfilment depend on—
 - (a) the subjective interpretation or judgement of the offeror; or
 - (b) whether or not a particular event happens, being an event that is within the control of the offeror.
- (2) A condition to a voluntary offer made in contravention of subparagraph 6.02(1) shall be void.
- (3) All conditions attached to a voluntary offer, other than the acceptance condition referred to in subparagraph 6.01(2), must be fulfilled within 21 days after—
 - (a) the first closing date of the take-over offer; or
 - (b) the acceptance condition being fulfilled,whichever is the later *(see notes below)*.

6.03 Offer price

- (1) The offer price in a mandatory take-over offer must not be less than the highest price (excluding stamp duty and commission) paid or agreed to be paid by the offeror or persons acting in concert for any voting shares or voting rights to which the take-over offer relates, during the offer period and within six months prior to the beginning of the offer period.
- (2) The offer price in a voluntary take-over offer must not be less than the highest price (excluding stamp duty and commission) paid or agreed to be paid by the offeror or persons acting in concert for any voting shares or voting rights to which the take-over offer relates, during the offer period and within three months prior to the beginning of the offer period.

(see notes below)

6.04 Nature of consideration

When a cash consideration is required

- (1) In the case of a mandatory offer, an offeror shall provide—
 - (a) a wholly cash consideration; or
 - (b) other consideration accompanied by a wholly cash alternative.
- (2) In the case of a voluntary offer, an offeror shall provide a wholly cash consideration as an alternative where—
 - (a) 10 per cent or more of the voting shares or voting rights of the offeree to which the take-over offer relates have been purchased for cash by the offeror and persons acting in concert during the offer period and within six months prior to the beginning of the offer period; or
 - (b) the SC determines that it is necessary to give effect to the requirement under the *General Principles of the Code*.

When a securities consideration is required

- (3) Where 10 per cent or more of the voting shares or voting rights of the offeree to which a take-over offer relates have been purchased by the offeror and persons acting in concert in exchange for securities in the three months prior to the commencement of and during the offer period, such securities must be offered as consideration to all shareholders of the offeree.

(see notes below)

6.05 Acceptor's right of withdrawal

- (1) An accepting shareholder shall be entitled to withdraw his acceptance from the date which is 21 days after the first closing date of the offer, if the offer has not by such date become unconditional as to acceptances.
- (2) The entitlement to withdraw shall be exercisable until such time as the offer becomes or is declared unconditional as to acceptances.

(see note below)

NOTES TO PARAGRAPH 6.01

Schemes

1. *Paragraph 6.01 is disapplied in a scheme.*

Acceptance condition for mandatory offer

2. *In computing the level of acceptances for a mandatory offer under subparagraph 6.01(1), voting shares or voting rights that are already acquired, held, or entitled to be acquired or held by the offeror and persons acting in concert shall be included.*
3. *Where an offeror and persons acting in concert already hold more than 50 per cent of the voting shares or voting rights of the offeree, the mandatory offer shall be unconditional.*

Acceptance condition for voluntary offer

4. *Where an offeror holds more than 50 per cent of voting shares or voting rights in the offeree, the voluntary offer need not be subject to an acceptance condition under subparagraph 6.01(2).*
5. *An acceptance condition to a voluntary offer can be set at any higher level but not less than statutory control.*
6. *In computing the level of acceptances for a voluntary offer, voting shares or voting rights that are already acquired, held, or entitled to be acquired or held by the offeror shall be included. However, the offeror must not aggregate the voting shares or voting rights of persons acting in concert in computing the level of acceptances unless such persons are joint offerors.*

7. *The SC may allow for the offeror to revise the acceptance condition to a lower level (but above 50 per cent as required by subparagraph 6.01) subject to the following:*
- (i) The take-over offer is kept open for not less than 14 days following the revision;*
 - (ii) Shareholders who have accepted the initial take-over offer should be permitted to withdraw their acceptances within eight days of notification of the revision. The revised acceptance level will take into account withdrawals and new acceptances as at the close of the take-over offer; and*
 - (iii) The offeror has stated in the offer document that he reserves the right to revise the acceptance condition to a lower level.*

NOTES TO PARAGRAPH 6.02

Schemes

1. *Subparagraph 6.02(3) is disapplied in a scheme.*

Invocation of condition to voluntary offer

2. *In relation to subparagraph 6.02(1), an offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer, and information about the condition is not available from public records or is not known to the offeror before the offer announcement.*

Fulfilment of conditions

3. *The date for fulfilment of all conditions under subparagraph 6.02(3) must not be later than 21 days after the 60th day from the date the offer document was posted to the offeree shareholders.*

Pre-conditions to voluntary offer

4. *A take-over offer must not be subject to conditions or pre-conditions which depend solely on subjective judgements by the offeror. The SC may be prepared to accept an element of subjectivity in certain circumstances where it is not practicable to specify all the factors on which satisfaction of a particular*

condition or pre-condition may depend, especially in cases involving official authorisations or regulatory approvals.

5. *The SC must be consulted in advance if a person proposes to include in an announcement, any pre-condition to which the making of a take-over offer will be subjected to. Except with the consent of the SC, a take-over offer must not be announced subject to a pre-condition.*
6. *In addition to obtaining SC's consent to announce a pre-conditional voluntary offer, an offeror may announce a pre-conditional voluntary offer where the announcement of a firm intention to make a take-over offer is subject to the fulfilment of certain pre-conditions, subject to the following:*
 - (a) *The pre-conditions should be stated clearly in the announcement of the pre-conditional offer;*
 - (b) *The pre-conditions should be objective and reasonable;*
 - (c) *The announcement of the pre-conditional offer must specify a reasonable period for the fulfilment of the pre-conditions failing which the take-over offer will lapse; and*
 - (d) *No pre-condition should be relied upon to cause the offer to lapse unless the SC is satisfied that–*
 - (i) *the offeror has demonstrated reasonable efforts to fulfil the condition within the time period specified; and*
 - (ii) *the circumstances that give rise to the right to rely upon the condition is material in the context of the proposed transaction.*

NOTES TO PARAGRAPH 6.03

1. *Any revision made under paragraph 6.03 shall be subject to subparagraph 12.03(1).*

Price adjustment

2. *An offeror must make an application to the SC for any downward adjustment to the offer price. The SC in considering such application may take into account relevant factors including–*

- (a) *the size and timing of the purchases by the offeror and persons acting in concert;*
- (b) *the view of the board of directors of the offeree; and*
- (c) *whether any of the voting shares or voting rights have been purchased from directors or persons connected with the offeror or the offeree.*

Dividends

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

Adjustment for corporate exercise

- 4. *When an offeree undertakes a corporate exercise such as a share consolidation, share split, or further issue of shares, viz. rights or bonus issues, prior to or during the offer period, the offeror in establishing the offer price may adjust the highest price he paid to reflect the effect of the corporate exercise.*

Calculation of offer price

- 5. *Where a mandatory offer is triggered via acquisition of voting shares or voting rights through the exercise of rights or options, the offer price will normally be established based on the higher of–*
 - (a) *the highest price (excluding stamp duty and commission) paid or agreed to be paid by the offeror or persons acting in concert for any voting shares or voting rights to which the take-over offer relates, during the offer period and within six months prior to the beginning of the offer period; and*
 - (b) *either the–*
 - (i) *highest price paid by the offeror and its concert parties for such securities together with the exercise price of such securities where the offeror and its concert parties have acquired any such rights or options within six months prior to the offer and during the offer period; or*

(ii) volume weighted average traded price of the voting shares or voting rights of the offeree on the day where the conversion notice was submitted. Where such day is not a market day, the last market day shall be used as reference. The SC reserves the right to disregard any unusually high or low traded prices of that relevant day.

If, however the rights or options were issued or sold privately to the purchaser and when the offer price as established under (b)(i) is at a steep discount to the market, the SC may also take into account volume weighted average traded price of the voting shares or voting rights on the day on which notice of conversion or subscription was submitted.

In cases of doubt, the SC should be consulted.

6. If non-listed voting shares have been acquired by way of exercise of rights or options, the offer price will normally be established based on either the—

(a) net tangible assets value, appropriate price earnings ratio, discounted cash flow approach or other relevant supported valuation; or

(b) cost of such securities together with any cost of exercise.

7. If a take-over offer is to be made for voting shares or voting rights of a listed downstream company, the offer price will be based on the higher of the—

(a) volume weighted average traded price of the downstream company for the last 20 market days prior to the announcement of the take-over offer made under subparagraph 9.10(1). The SC reserves the right to disregard any unusually high or low traded prices within the relevant period;

(b) proportion of the price paid for the upstream entity over the interest in the downstream company; and

(c) highest price paid for the voting shares or voting rights of the downstream company in accordance with subparagraph 6.03(1).

In relation to (a) above, where there is no transaction for the voting shares or voting rights of the downstream company in the last six months prior to a take-over offer, an offeror shall provide the basis of the offer price for the downstream company. If the offeror is in doubt, prior consultation with the SC is required.

8. *If a take-over offer is to be made for voting shares or voting rights of an unlisted downstream company, the offer price will be based on the higher of the–*
- (a) net tangible asset or net asset value, or other valuation methodology as may be appropriate for the downstream company;*
 - (b) proportion of the price paid for the upstream entity over the interest in the downstream company; and*
 - (c) highest price paid for the voting shares or voting rights of the downstream company in accordance with subparagraph 6.03(1).*
9. *For a mandatory offer arising from a share buy-back scheme, the offer price will be based on the higher of–*
- (a) the highest price paid by the offeror and persons acting in concert or the offeree, for the voting shares or voting rights of the offeree in the six months prior to triggering of the mandatory offer obligation; and*
 - (b) the highest price paid by the offeree for its own shares in the six months prior to triggering of the mandatory offer obligation.*
10. *For a mandatory offer arising from an arrangement, agreement or understanding to control pursuant to subparagraph 4.03(1), the offer price shall be the higher of–*
- (a) the highest price paid by the offeror or persons acting in concert pursuant to subparagraph 6.03(1), for the voting shares or voting rights of the offeree in the six months prior to the triggering of the mandatory offer obligation; and*
 - (b) the volume weighted average traded price of the offeree for the last 20 market days prior to the triggering of the mandatory offer obligation. The SC reserves the right to disregard any unusually high or low traded prices within the relevant period.*

In relation to (b) above, where there is no transaction for the voting shares or voting rights of the offeree in the last six months prior to a take-over offer, an offeror has to provide the basis for the offer price. Prior consultation with the SC is required.

Securities consideration

11. *When the offer involves issuance of unlisted securities, an estimate of the value of such securities shall be provided by a competent adviser, together with the assumptions and methodology used in arriving at the value, in the offer document or any circular or document issued by the offeror in relation to the offer.*

NOTES TO PARAGRAPH 6.04

When cash consideration required

1. *Shares acquired by an offeror and persons acting in concert in exchange for securities, either during or in the six months prior to the beginning of the offer period, will be deemed to be purchases for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares is required to hold the securities received in exchange until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under subparagraph 6.04(2) will be incurred.*
2. *The SC may require a cash alternative to be provided by the offeror where in the view of the SC there are circumstances which render such a course necessary in order to give effect to the principle of equality of treatment to all shareholders.*

When securities consideration required

3. *Any securities required to be offered pursuant to paragraph 6.04 must be offered on the basis of the same number of consideration securities received by the vendor for each offeree share rather than on the basis of securities equivalent to the value of the securities received by the vendor at the time of the relevant purchase. Where there has been more than one relevant purchase, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received for each offeree share.*

NOTE TO PARAGRAPH 6.05

Paragraph 6.05 is disapplied in a scheme.

RULE 7

Comparable offers for more than one class of equity shares

7.01 Comparable offers for more than one class of equity shares

- (1) Where an offeree has more than one class of share capital, the offeror shall make a comparable take-over offer for each class of share capital on terms which shall be subject to prior consultation with the SC.
- (2) The comparable offer for each class of share capital should normally be subject to similar conditions.

NOTES TO RULE 7

- 1. Subject to paragraph 8.01, non-voting shares need not be the subject of a take-over offer.*
- 2. Where an offer for non-voting shares only is being made, comparable offers for voting classes are not required.*
- 3. A comparable offer need not be an identical offer but the difference must be capable of being justified to the SC.*
- 4. An offer for non-voting share capital should not be made conditional on any particular level of acceptances in respect of that class, or on the approval of that class, unless the offer for the voting share capital is also conditional on the success of the offer for the non-voting share capital.*

RULE 8

Appropriate offers for convertible securities

8.01 Appropriate offers for convertible securities

- (1) Where a take-over offer is made for the voting shares or voting rights of an offeree and the offeree has outstanding convertible securities, the offeror shall make an appropriate offer or arrangement to holders of the convertible securities and safeguard their interest.
- (2) The offer document must be dispatched to the holders of convertible securities at the same time that the offer document is dispatched to the offeree shareholders.
- (3) The take-over offer to holders of the convertible securities referred to in subparagraph 8.01(1) may be effected by way of a scheme approved at a meeting of the holders of the convertible securities.

NOTES TO RULE 8

1. *In making an appropriate offer, equality of treatment is required i.e. equality of treatment within a class of security holders as opposed to equality of treatment between different classes of securities.*
2. *For outstanding convertible securities with rights attached to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is normally used to determine the appropriate offer price. An appropriate offer or proposal for such instruments, subscription rights or options is at least the higher of the following:*
 - (a) *The "see-through" price. For rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is the excess of the offer price for the underlying securities over the exercise or subscription price of such subscription rights or options. For instruments convertible into securities being offered for or which carry voting rights, the "see-through" price is the offer price for the underlying securities multiplied by the conversion ratio; and*
 - (b) *The highest price paid by the offeror and persons acting in concert for such instruments, subscription rights or options during the offer period and-*

- (i) for a mandatory offer, within six months prior to the commencement of the offer period; or*
 - (ii) for a voluntary offer, within three months prior to the commencement of the offer period.*
- 3. A higher price would not be considered appropriate if it is part of a special deal to provide an incentive to persons who also hold shares or other securities of the offeree company to accept the offer.*
- 4. There may be cases where a basis other than the "see-through" price is more appropriate, and if the offeror is of the view that the consideration should be determined on some other basis, the SC should be consulted in advance.*
- 5. Where the offeror and persons acting in concert have not acquired any instruments convertible into rights to subscribe for, nor options in respect of, securities being offered for, or which carry voting rights during the time periods set out in Note 2(b) above and the see-through price is zero or negative, the offeror may offer a nominal amount for such instruments, subscription rights or options.*

PART C: PROCESS AND PROCEDURE OF TAKE-OVER OFFER

RULE 9

Announcements and Notices

9.01 Approach

The offer must be put forward to the board of the offeree before the offer is announced to the public.

9.02 Identity of offeror

If the offer or an approach with a view to an offer being made is not made by the ultimate offeror or potential offeror, as the case may be, the identity of the ultimate or potential offeror must be disclosed at the outset to the board of the offeree.

9.03 Implementation of offer

A board of offeree is entitled, in good faith, to make enquiries to satisfy themselves that the offeror will be able to implement the offer.

9.04 Requirement for secrecy

- (1) Prior to the announcement of an offer or possible offer, all persons privy to any confidential information relating to a take-over offer or proposed take-over offer, particularly price-sensitive information, must treat the 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 to maintain the confidentiality of the information.
- (2) Advisers must at the very beginning of discussions warn clients of the importance of secrecy and security and draw attention to restrictions on dealings.

9.05 Announcements to be made by the offeror or potential offeror

- (1) Before the board of the offeree is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror.
- (2) The offeror or potential offeror should keep a close watch on the offeree share price and volume for signs of undue movement and must make an announcement–
 - (a) when, before the board of the offeree is approached, the offeree is the subject of rumour or speculation about a possible offer, or there is undue 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 offeror or potential offeror's actions which have directly contributed to the situation (*see note below*);

- (b) where negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know or are involved at that stage of the discussion and their immediate advisers) (*see note below*); or
- (c) upon the signing of the sale and purchase agreement for the voting shares or voting rights of the offeree which will lead to the acquirer being obliged to extend a mandatory offer obligation.

9.06 Announcements to be made by the offeree

- (1) 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.
- (2) The offeree should keep a close watch on its share price and volume. The offeree must make an announcement when–
 - (a) the board of offeree receives notification of a firm intention to make an offer from the offeror or the offeror's advisers, irrespective of whether the board of offeree views the offer favourably or otherwise;
 - (b) following an approach to the offeree, the offeree is the subject of rumour or speculation about a possible offer, or there is undue 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 (*see note below*);
 - (c) negotiations or discussions between the offeror or potential offeror and the offeree are about to be extended to include more than a very restricted number of people (*see note below*); or
 - (d) the board of offeree is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying more than 33 per cent of the voting shares or voting rights of an offeree or when the board of offeree is seeking potential offerors, and–
 - (i) the offeree is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or
 - (ii) more than a very restricted number of potential purchasers or offerors are about to be approached (*see note below*).

- (3) The offeror or potential offeror shall not attempt to prevent the board of offeree from making an announcement or requesting the stock exchange to grant a temporary suspension of trading at any time the board of the offeree thinks appropriate.

9.07 Possible offer announcement

- (1) When an announcement is required to be made pursuant to subparagraphs 9.05(2) and 9.06(2)(b) to (d), but the intention to make an offer is premature or have not been firmed up, the offeror, potential offeror or offeree is required to make a brief announcement that negotiations are taking place (*see note below*).
- (2) If no further announcement has been made within 1 month subsequent to an announcement pursuant to subparagraph 9.07(1) above, the offeror, potential offeror or offeree shall make a monthly announcement setting out the progress of negotiations until the announcement of–
 - (a) a take-over offer under subparagraph 9.10(1);
 - (b) a decision not to proceed with a take-over offer; or
 - (c) negotiations being terminated by the offeror, potential offeror or offeree.

9.08 Statements of intention not to make an offer

An announcement by a potential offeror or any party acting in concert with him that he does not intend to make a take-over offer or there is no possible take-over offer by him must be clear and unambiguous.

9.09 Terms and pre-conditions in possible offer announcements

- (1) The SC must be consulted in advance if a person proposes to include in a possible offer announcement–
 - (i) any pre-condition to which the making of an offer will be subject; or
 - (ii) a statement in relation to the terms on which an offer might be made for the offeree companybefore an announcement of a firm intention to make an offer (*see note below*).
- (2) If any such statement is made by or on behalf of a potential offeror, its directors, officials or advisers, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made (*see note below*).

9.10 Announcement of firm intention

- (1) An offeror who has a firm intention to make a take-over offer shall—
 - (a) make an immediate announcement regarding the take-over offer, including by way of press notice; and
 - (b) send a written notice to—
 - (i) the board of the offeree or an adviser designated by the board of the offeree;
 - (ii) the SC; and
 - (iii) the relevant stock exchange in Malaysia, if the securities of the offeree or the offeror are listed on the relevant stock exchange in Malaysia.

The announcement 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 main adviser to the offeror.

(see notes below)

- (2) When an offeror has a firm intention to make a take-over offer, notwithstanding that a written notice has been sent pursuant to subparagraph 9.10(1)(b) above, the offeror and persons acting in concert are prohibited from making any purchases of the offeree shares until the announcement under subparagraph 9.10(1)(a) or subparagraph 9.10(5) is made, whichever is earlier.
- (3) The announcement and written notice under subparagraph 9.10(1) shall include the following information:
 - (a) The identity of the ultimate offeror, offeror and all persons acting in concert with the offeror;
 - (b) The basis of the offer price;
 - (c) The basis of consideration, if other than by way of cash;
 - (d) The type and total number of voting shares or voting rights of the offeree—
 - (i) which have been acquired, held or controlled directly or indirectly by the offeror or any person acting in concert with the offeror;
 - (ii) in respect of which the offeror or any person acting in concert with the offeror has received an irrevocable undertaking from other offeree shareholders to accept the take-over offer; and

- (iii) in respect of which the offeror or any person acting in concert with the offeror has an option to acquire;
 - (e) the details of any existing or proposed agreement, arrangement or understanding relating to voting shares or voting rights referred to in subparagraph 9.10(3)(d) between the offeror or any person acting in concert with the offeror and the offeree shareholders; and
 - (f) the terms and conditions of the take-over offer, including conditions relating to acceptances, listing and increase of capital.
- (4) The announcement of an offer should include confirmation by the main adviser that resources available to the offeror are sufficient to satisfy full acceptance of the offer in accordance with Rule 17 and paragraph 14 of Schedule 1 of the Rules (*see note below*).
- (5) The board of the offeree shall, upon receiving a written notice under subparagraph 9.10(1)–
- (a) make an immediate announcement of the receipt of the written notice; and
 - (b) dispatch a copy of the written notice to all offeree shareholders within seven days of receipt.

(see note below)

9.11 No withdrawal of offer

Where there has been an announcement of an intention to make a take-over offer under subparagraphs 9.10(1) the offeror shall not withdraw the take-over offer without the prior written consent of the SC.

9.12 Announcement required for withdrawn or lapsed offer

Before 9.00 a.m. on the market day following the day on which an offeror is permitted to withdraw or a take-over offer lapses because of non-fulfilment of a condition, the offeror must make an announcement to explain why the take-over offer has been withdrawn or has lapsed.

NOTES TO RULE 9

Consultation required

1. *For the purposes of subparagraphs 9.05(2)(a), 9.06(2)(b) and 9.06(2)(d)(i) whether or not there is undue movement in the share price or volume of a potential offeree will be considered based on relevant facts and not solely by reference to the absolute percentage movement in the price or volume. Relevant factors may include general market and sector movements, information relating to the company, trading activity in the offeree's securities and the time period over which the price or volume movement has occurred. In this regard, the SC must be consulted before any announcement is made.*
2. *For the purposes of subparagraphs 9.05(2)(b), 9.06(2)(c) and 9.06(2)(d)(ii), an offeror, potential offeror or offeree wishing to approach a wider group should consult the SC.*

Possible offer announcement under paragraph 9.07

3. *An offeror shall announce his firm intention to make a take-over offer within two months from his first preliminary announcement unless an extension of time has been granted by the SC.*
4. *There is no requirement for the offeree to name the potential offeror in the brief announcement.*

Deadline for clarification by potential competing offerors

5. *Where an offeror has announced a firm intention to make an offer and a potential offeror has emerged, the potential offeror shall, by the 53rd day from the date the first offeror dispatches its initial offer document, either–*
 - (a) announce a firm intention to make an offer; or*
 - (b) announce that it does not intend to make an offer.*
6. *Where the first offeror's offer is being implemented by way of a scheme, the above deadline for the potential offeror to clarify its intention shall be no later than the seventh day prior to the date of the shareholders' meeting to approve the relevant scheme. The SC reserves the right to impose an earlier or later deadline where appropriate.*

Pre-conditional possible offer announcements

7. *The SC must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject. Any such pre-conditional possible offer announcement must:*

- (a) *clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waivable; and*
 - (b) *include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.*
8. *Where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a possible securities exchange offer), any offer by the potential offeror for the offeree company will be required to be made on the same or better terms.*

Announcement of firm intention

9. *The SC may direct any offeror, or board of directors of the offeree, or both to make the announcement referred to under paragraph 9.10 in any other manner as the SC thinks fit.*
10. *The following situations require an announcement under subparagraph 9.10(1):*
- (a) *When an acquirer triggers a mandatory offer obligation;*
 - (b) *When the sale and purchase agreement to acquire voting shares or voting rights which will cause the acquirer to trigger a mandatory offer obligation becomes unconditional; or*
 - (c) *When the offeree board receives a proposal in relation to a scheme.*
11. *In the case of an unconditional mandatory offer in an upstream entity, an announcement of the mandatory offer for the downstream company must be made concurrently. In this regard, the written notice as required under subparagraph 9.10(1) to the downstream company must be dispatched concurrently with the dispatch of the written notice to the upstream entity.*
12. *In the case of a voluntary offer or a conditional mandatory offer in an upstream entity, the announcement and written notice of the mandatory offer for the downstream company must be made and dispatched upon the offer in the upstream entity becoming unconditional.*

Timing of announcement of firm intention

13. *The announcements required under 9.10(1) and 9.10(5) should be made within one hour of incurring an obligation to make an offer or to revise an offer already made; otherwise a request should be made to the relevant stock exchange in Malaysia for a temporary halt in trading of the offeree shares until the announcement is made.*

Schemes

14. *Subparagraphs 9.10(1)(b) and 9.10(5) are disapplied in the case of a scheme.*
15. *For the purpose of subparagraph 9.10(4), the announcement by the board of the offeree to table the resolution for the scheme to shareholders for approval should include a confirmation by the main adviser that resources available to the offeror are sufficient to satisfy full consideration of the scheme.*

Evidence of financial resources

16. *The SC may require evidence to support a statement that resources are available to satisfy the offeror's obligations in respect of the offer.*
17. *The SC may also require evidence that an acquirer has sufficient resources to complete the purchase of shares which gives rise to the offer obligation.*

General guidance:

When a joint announcement is released, all directors of the offeror should take responsibility for the joint announcement or the composite document, other than for the information in the announcement or document relating to the offeree company. The directors of the offeree should take responsibility for the information in the announcement or document relating to the offeree.

Rule 10

Standard of Care and Responsibility

10.01 Standard of care

Any document issued or statement made in relation to an offer or possible offer whether issued or made by the company, its adviser on its behalf, or by any other relevant person must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented (*see notes below*).

10.02 Sufficient information

- (1) The offeree board, offeree shareholders, holders of convertible securities must be given relevant and sufficient information and advice to enable them to reach a properly informed decision, which shall include information required under Schedules 1 and 2.
- (2) The obligation of an offeror in this respect towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders.

10.03 Directors' responsibility statement

Any document issued in relation to an offer or possible offer must state that the board of directors of the company issuing the document jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading (*see note below*).

10.04 Equality of information to shareholders and to competing offeror

- (1) Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.
- (2) An offeree or board of directors of the offeree who gives any information, including particulars of offeree shareholders to an offeror shall give the same information to another *bona fide* potential offeror upon request.

(see note below)

NOTES TO PARAGRAPH 10.01

1. *Any interested party expressing any opinion or issuing any statement with regard to a take-over offer shall do so in compliance with the Rules or any ruling made by the SC.*

Unambiguous language

2. *The language used in documents must clearly and concisely reflect the position being described.*

Sources

3. *The source for any fact which is material to an argument must be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the information has been included in a document recently sent to shareholders, an appropriate cross reference may instead be made.*

Quotations

4. *A quotation (e.g. from a newspaper or a stockbroker's circular) must not be used out of context and details of the origin must be included. Since quotations will necessarily carry the implication that the comments quoted are endorsed by the board, such comments must not be quoted unless the board is prepared, where appropriate, to corroborate or substantiate them to the standard required under the Rules and the directors' responsibility statement pursuant to paragraph 10.03 is included.*

Diagrams etc.

5. *Pictorial representations, charts, graphs and diagrams must be presented without distortion and, when relevant, must be to scale.*

Use of comparables

6. *Any comparables referred to in a document must be a fair and representative sample. The bases for compiling any comparables must be clearly stated in the document.*

NOTE TO PARAGRAPH 10.03

Conflict of interest

Where a director has a conflict of interest, depending on the circumstances, the director may amend the responsibility statement required to make it clear that he does not accept responsibility for the views of the board on the take-over offer.

NOTE TO PARAGRAPH 10.04

Subparagraph 10.04(2) does not prevent the furnishing of information in confidence by an offeree company to a bona fide potential offeror or vice versa.

Rule 11

Timing and Contents of Documents

11.01 Submission and publication of documents

- (1) The following documents relating to a take-over or merger transaction must be submitted to the SC for comment–
 - (a) The offer document must be submitted within four days from the date of the written notice under subparagraph 9.10(1); and
 - (b) The independent advice circular, together with the offeree board circular, must be submitted within 20 days from the date of the written notice under subparagraph 9.10(1).
- (2) A copy each of the offer document and the independent advice circular (including the offeree board circular) must be submitted to the SC, together with an electronic copy in PDF format, immediately after the dispatch of the relevant documents. Evidence of the date of dispatch must be provided to the SC in relation to an offer document and independent advice circular.
- (3) All documents issued in respect of a listed company must be provided to the stock exchange in accordance with the relevant provisions of the listing requirements.
- (4) All documents published in respect of an unlisted offeree must be made via press notice and delivered to the SC in electronic form in PDF format.

11.02 Offer document

- (1) The offer document shall be dispatched to the offeree board, offeree shareholders and holders of convertible securities of the offeree within 21 days from the date of the written notice under subparagraph 9.10(1). The offeror must provide the form of acceptance and transfer for securities of the offeree and the procedures for acceptance of the take-over offer, together with the offer document (*see note below*).
- (2) The SC's consent is required if the making of an offer is subject to the prior fulfilment of a pre-condition and the pre-condition cannot be fulfilled within the period stipulated in subparagraph 11.02(1) above. In such a situation, the offer document shall be dispatched within seven days from the fulfilment of the pre-condition.
- (3) The offer document must not be dispatched until the SC has notified that it has no further comments thereon. Where the SC has notified that it has no further comments to the offer document, a statement shall be included in the offer document that such notification shall not be taken to suggest that the SC

recommends the offer or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the offer document.

- (4) An offeror shall include in the offer document all information and statements as required under Schedule 1, together with any other relevant information to enable the offeree shareholders and holders of convertible securities to reach a properly informed decision.
- (5) The information required to be disclosed in an offer document shall include–
 - (a) information which is within the knowledge of–
 - (i) an offeror and all persons acting in concert with the offeror;
 - (ii) in the case of a corporation, its officers and associates; or
 - (iii) in relation to the take-over offer, an expert appointed by an offeror and all persons acting in concert with the offeror; and
 - (b) information which the persons referred to in subparagraph 11.02(5)(a) would be able to obtain by making such enquiries as were reasonable in the circumstances.
- (6) A person referred to under subparagraphs 11.02(5)(a)(i), (ii) and (iii) shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.

11.03 Offeree board circular

- (1) The offeree board shall issue its comments, opinion and views on the take-over offer, in a circular to offeree shareholders and holders of convertible securities of the offeree within 10 days from the dispatch of the offer document.
- (2) The circular must not be issued until the SC has notified that it has no further comments thereon. Where the SC has notified that it has no further comments to the circular, a statement shall be included in the circular that such notification shall not be taken to suggest that the SC agrees with the recommendation of the offeree board or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the circular.
- (3) The offeree board shall disclose all information that the offeree shareholders, holders of convertible securities of the offeree and their advisers would reasonably require and expect to find in a circular issued under subparagraph 11.03(1) to enable the offeree shareholders and holders of convertible securities to reach a properly informed decision.
- (4) The circular shall include, but shall not be limited to such comments, opinions and information on–

- (a) the offeror's stated intentions regarding the continuation of the business of the offeree;
 - (b) the offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets or redeploy the fixed assets of the offeree or make any other major change in the business of the offeree;
 - (c) the offeror's stated long-term justification for the proposed take-over offer;
 - (d) the offeror's stated intentions with regard to the continued employment of the employees of the offeree and of its subsidiaries; and
 - (e) the fairness and reasonableness of the take-over offer.
- (5) The comments, opinions and information required to be disclosed under subparagraph 11.03(3) in the circular shall include—
- (a) information which is within the knowledge of—
 - (i) the offeree board; or
 - (ii) in relation to the take-over offer, an expert appointed by the offeree board; and
 - (b) information which the offeree board or an expert appointed by the offeree board in relation to the take-over offer, would be able to obtain by making such enquiries as were reasonable in the circumstances.
- (6) A person referred to under subparagraph 11.03(5)(a)(i) and (ii) shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.
- (7) Where a revised take-over offer results in a change in the offeree board's comments, opinions and recommendations, the board of the offeree is required to circulate its revised comments, opinions and recommendations to offeree shareholders and holders of convertible securities, including those who have accepted the original take-over offer, within seven days of the notice of the revised take-over offer under subparagraph 12.03(1).

(see notes below)

11.04 Independent advice circular

- (1) The independent adviser appointed under paragraph 3.06 shall issue an independent advice circular to the offeree board, offeree shareholders and

holders of convertible securities of the offeree within 10 days from the dispatch of the offer document.

- (2) The independent advice circular must not be issued until the SC has notified that it has no further comments thereon. Where the SC has notified that it has no further comments to the contents of the independent advice circular, a statement shall be included in the independent advice circular that such notification shall not be taken to suggest that the SC agrees with the recommendation of the independent adviser or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the independent advice circular (*see note below*).
- (3) An independent adviser shall include in the independent advice circular all information and statements as required under Schedule 2, together with any other information it considers to be relevant to enable the offeree shareholders and holders of convertible securities to reach a properly informed decision on the offer.
- (4) The information required to be disclosed in the independent advice circular shall include information which—
 - (a) is within the knowledge of the independent adviser; and
 - (b) the independent adviser would be able to obtain by making such enquiries as were reasonable in the circumstances.
- (5) Where a revised take-over offer results in a change in the independent adviser's comments, opinions and recommendations, the independent adviser is required to circulate its revised comments, opinions and recommendations to every offeree shareholder and holders of convertible securities, including those who have accepted the original take-over offer, within seven days of the notice of the revised take-over offer under subparagraph 12.03(1).

11.05 Profit forecasts and asset valuations

- (1) An offeror or offeree who provides profit forecasts shall ensure that such profit forecasts comply with the following:
 - (a) The assumptions, including the commercial assumptions, upon which a profit forecast has been based, shall be stated in any document sent to offeree shareholders in connection with a take-over offer;
 - (b) The accounting policies and calculations for the forecasts shall have been examined and reported on by the auditors, consultant accountants or other financial adviser of the offeror or the offeree; and
 - (c) When a profit forecast includes a specified period, any previously published profit figures which are available in respect of any expired

portion of such period together with comparable figures for the preceding year shall be stated.

- (2) A financial adviser mentioned in the document shall also comment on the profit forecasts.
- (3) The offeror or offeree shall include in the document a statement that the relevant advisers, including the consultant accountants and financial advisers, have given and have not withdrawn their consent to the publication of their statement and their name in the document.
- (4) Where any valuation of assets is given by the offeror or the offeree, they shall include in the document containing the valuation–
 - (a) details of the valuation;
 - (b) the basis of valuation;
 - (c) an opinion of an independent valuer supporting the valuation;
 - (d) a statement that the independent valuer has given and has not withdrawn his consent to the publication of his statement and name in the document; and
 - (e) the material date as at which the assets were valued. If the valuation is not current, a statement must be included whether a current valuation would be materially different.

11.06 Delivery of document

If a document or any information is required to be sent to any person, it will be treated as having been sent–

- (a) in the case of delivery by post, if it is properly addressed, pre-paid and dispatched by post;
- (b) where the shareholder has opted to receive electronic documents, if it is properly addressed and there is proof of email delivery; or
- (c) if it is published on a designated website, provided that the relevant person is sent a summary notification no later than the date on which it is published on the website. The summary notification will be treated as having been sent if it is properly addressed, pre-paid and dispatched by post.

11.07 Requirement to disclose material information

- (1) Where a person who circulates or provides any information or document required to be circulated or provided under these Rules becomes aware that the information or document previously circulated or provided–
 - (a) contains a material statement which is false or misleading;

- (b) contains a statement from which there is a material omission; or
 - (c) does not contain a statement relating to a material development, before an offer closes or lapses, he shall–
 - (i) disclose such fact to the SC in writing; and
 - (ii) make an announcement–
 - (A) by way of a press notice; and
 - (B) if the securities of the offeree or offeror are listed on the relevant stock exchange in Malaysia, to the relevant stock exchange in Malaysia,
- of such matters which are necessary to correct the false or misleading matter or the omission.
- (2) If circumstances require, such person referred to in paragraph (1) must also send a supplementary document to the offeree shareholders.
 - (3) The disclosure and announcement referred to in subparagraph 11.07(1) shall be made before 9 a.m. on the next market day.

NOTES TO PARAGRAPHS 11.02, 11.03 AND 11.04

Scheme

1. *In the case of a scheme, the scheme documents (including the independent advice circular) must be posted within 35 days of the announcement by the board of offeree to table the resolution for the scheme to the shareholders for approval. The SC should be consulted if an extended period is required to accommodate the Court timetable.*

Directors' recommendation in offeree board circular

2. *The board of directors of the offeree must provide a firm recommendation on whether the take-over offer should be accepted or rejected.*
3. *If there is a divergence of views amongst the members of the offeree board, or between the board and the independent adviser, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors. The views of any directors who are in a minority should also be included in the circular.*
4. *A director shall consult the SC if he intends to act contrary to his views.*

5. *Where the board of directors is seeking an alternative person to make a take-over offer, the board shall announce the progress of the same by the 53rd day from the date the first offeror dispatches its initial offer document.*

NOTES TO SUBPARAGRAPH 11.06

1. *In relation to subparagraph 11.06(b), the delivery method may be utilised as a way to send the relevant document or information only if all of the shareholders of the offeree company have registered their email address with the relevant stock exchange in Malaysia, and such document or information has been published on a website.*

Summary notification

2. *In relation to subparagraph 11.06(c), the summary notification must include the relevant information including, but not limited to, the following:*

(a) The salient information regarding the take-over offer:

- (i) Name of the offeror, the ultimate offeror; and persons acting in concert;*
- (ii) Name of the offeree;*
- (iii) Key terms of the offer: Securities to which the offer is extended to, offer price, mode of consideration, important dates on the offer timeline;*

(b) In the case of a publication of an offeree board circular and independent advice circular, a brief summary of the opinion and recommendation by the offeree board and independent adviser; and

(c) A statement requiring shareholders to register their e-mail addresses with Bursa Depository via Bursa Malaysia's website (https://www.bursamalaysia.com/trade/our_products_services/central_depository_system/request_for_estatement) or via the Bursa Anywhere application.

Form

3. *The form of acceptance and transfer must be dispatched by post together with the summary notification.*

Designated website

4. *The designated websites on which the required information or documents are to be placed are:*

(a) Bursa Malaysia Berhad's website, where the offeror or the offeree company is a publicly listed company in Malaysia; and

(b) Securities Commission Malaysia's website, where neither the offeror nor the offeree company is publicly listed in Malaysia.

General guidance:

1. For the purpose of SC's clearance, the first draft of the document submitted should be in advanced form, and points of difficulty should be drawn to the attention of the SC as early as possible. Where the Rules prescribe specific disclosure to be made, parties and their advisers are expected to exercise due diligence to ensure that the required information is fully disclosed in the first draft document submitted to the SC for comment. The SC will not verify the accuracy of statements made in documents submitted for comment. If it subsequently becomes apparent that any statement was incorrect, or any document was incomplete, the SC may require an immediate correction to be issued in addition to considering any possible action in accordance with the CMSA.
2. The SC's role in the commenting process is no more than a consulting role where the SC provides guidance in resolving any Rules issues. It is the sole responsibility of the issuer of the document (and its directors and advisers) to ensure that the Rules are fully complied with.
3. Parties and their advisers should not be under the misconception that by expressing that it has no further comment on a draft document, the SC is confirming that the document fully complies with the Rules.
4. Each document must clearly and prominently identify the party on whose behalf it is published.

RULE 12

Timing of Offer

12.01 Duration of take-over offer

- (1) An offeror shall keep a take-over offer open for acceptance for a period of at least 21 days from the date the offer document is first posted in accordance with subparagraph 11.02(1).
- (2) In the case of a voluntary offer that is subject to conditions other than the acceptance condition referred to in subparagraph 6.02(3), a take-over offer may be accepted by offeree shareholders at any day after the dispatch of the offer document until the closing of the take-over offer, but in any case shall not be more than 95 days from the dispatch of the offer document.
- (3) Where a take-over offer has become or been declared unconditional as to acceptances—
 - (a) as at the date the offer document is dispatched to the offeree shareholders, the closing date of the take-over offer shall not be later than the 60th day from such dispatch date;
 - (b) on or before the 46th day from the date the offer document is dispatched to the offeree shareholders, the offeror shall keep the take-over offer open for acceptances for at least 14 days from the date on which the take-over offer becomes and is declared unconditional which, in any event, shall not be later than the 60th day from the date on which the offer document is dispatched to the offeree shareholders; and
 - (c) on any day after the 46th day from the date on which the offer document is dispatched to the offeree shareholders, the offeror shall keep the take-over open for acceptances for at least 14 days from the date on which the take-over offer becomes and is declared unconditional which, in any event, shall not be later than the 74th day from the date on which the offer document is dispatched to the offeree shareholders.
- (4) Where a competing take-over offer is made during the period referred to in subparagraphs 12.01(1) to (3) above, the offer document sent by the offeror shall be deemed to have been posted on the date that the competing take-over offer document was posted.

(see note below)

12.02 Offeree company announcements

- (1) The board of directors of the offeree should not announce material information relating to trading results, profit or dividend forecasts, and asset valuations after the 39th day following the dispatch of the offer document.
- (2) When the matter giving rise to the announcement arises on or after the 39th day, the board of directors shall obtain the prior consent of the SC before making the announcement (*see note below*).

12.03 Revisions of take-over offer

- (1) Where an offeror revises or is required to revise the take-over offer, the offeror shall–
 - (a) announce such revision together with the following information–
 - (i) the revised offer price; and
 - (ii) the price paid or agreed to be paid and the number of voting shares or voting rights purchased or agreed to be purchased, which lead to the revision;
 - (b) post the written notification of the revised take-over offer to all offeree shareholders, including those who have accepted the original take-over offer, no later than the 46th day from the date of the offer document; and
 - (c) keep the take-over offer open for acceptance for at least another 14 days from the date on which the written notification is posted.
- (2) An offeror shall state the next closing date of a revised take-over offer in any announcement of extension of time for accepting the take-over offer.
- (3) An offeror shall not revise a take-over offer or cause a take-over offer to be revised after the 46th day from the date on which the offer document was dispatched to the offeree shareholders.
- (4) An offeror shall ensure that all offeree shareholders who have accepted the original take-over offer shall receive the revised consideration as consideration that is to be paid or provided for the acceptances of the take-over offer.
- (5) The SC may direct the offeror to make the announcement referred to under subparagraph 12.03(1) in any other manner as the SC thinks fit.
- (6) In a revised take-over offer, the offeree board and the independent adviser are required to announce whether their earlier comments, opinions and recommendations in relation to the original take-over offer to the offeree shareholders have changed. Such announcement shall be–

- (i) by way of a press notice; and
- (ii) if the securities of the offeree or the offeror are listed on the relevant stock exchange of Malaysia, to the stock exchange in Malaysia.

(see notes below)

12.04 Competitive situation

If a competing take-over offer continues to exist in the later stages of the offer period, the SC will require revised offers to be announced in accordance with an auction procedure, the terms of which will be determined by the SC. Such auction will normally follow the procedure set out in Schedule 4. However, the SC will consider applying any alternative procedure as agreed between competing offerors and the offeree board. Under any auction procedure, the SC may set a deadline by which any revised offer must be made (*see notes below*).

12.05 Closing of take-over offer

- (1) A take-over offer shall be deemed to be closed prior to the expiry date as stated in the offer document when–
 - (a) the offeror receives acceptances amounting to all of the voting shares or voting rights to which the take-over offer relates;
 - (b) the take-over offer is no longer subject to any conditions; and
 - (c) the offeror has made an announcement under Rule 13.
- (2) Where a conditional offer becomes or is declared unconditional, whether as to acceptances or in all respects, the offeror must–
 - (a) keep the offer open for acceptance for not less than 14 days thereafter; and
 - (b) announce that the take-over offer is still open for acceptance–
 - (i) by way of a press notice; and
 - (ii) if the securities of the offeree or offeror are listed on the relevant stock exchange in Malaysia, to the relevant stock exchange in Malaysia.
- (3) An offeror shall not make an announcement and give notice referred to under subparagraph 12.05(2) if a competing take-over offer has been announced unless the competing take-over offer has been declared unsuccessful or the offeree shareholders who hold more than 50 per cent of such voting shares or voting rights have irrevocably rejected the competing take-over offer in favour of the original take-over offer.

(see note below)

NOTE TO PARAGRAPHS 12.01, 12.02 AND 12.05

Paragraphs 12.01, 12.02 and 12.05 are disapplied in the case of a scheme.

NOTE TO SUBPARAGRAPH 12.02(2)

Where the announcement of trading results and dividends would normally take place after the 39th day, every effort should be made to bring forward the date of the announcement, but, where this is not practicable, the SC should be consulted.

NOTES TO PARAGRAPH 12.03

When revision required

- 1. An offeror will be required to revise an offer if he or any person acting in concert, purchases securities at above the offer price or becomes obliged to introduce an offer under paragraph 6.04 or to make a cash offer or increases an existing cash offer.*

Triggering a mandatory offer

- 2. When an offeror, which is making a voluntary offer, makes an acquisition which causes it to have to extend a mandatory offer at no higher price than the existing offer, the change in the nature of the offer will not be viewed as a revision. However, such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the revised offer document is posted.*

If no change in the consideration is involved it will be sufficient, following the announcement, simply to notify the offeree company shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition in the form required by paragraph 6.01 is the only condition remaining, and of the period for which the offer will remain open following posting of the offer document.

- 3. The SC must be consulted in advance if the offeror, which is making a voluntary offer, intends to incur a mandatory offer obligation.*

NOTES TO PARAGRAPH 12.04

Exemption from obligation to make an offer

- 1. The SC may grant an exemption from the obligation to make a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.*

Schemes

2. *Where one or more of the competing offers is being implemented by way of a scheme, the parties must consult the SC as to the applicable timetable.*

Timetable for competing offer

3. *The SC will extend "Day 46" and "Day 60" in accordance with any auction procedure established by the SC under paragraph 12.04.*

General guidance:

1. Any announcement of an extension of a take-over offer must be made at least two days before the relevant closing date.
2. Such announcement must state the next closing date of the take-over offer or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice, in which case at least 14 days' notice must be given, before the offer is closed.

RULE 13

Announcement of Results of Offer

13.01 Nature of announcement

Before 9.00 a.m. on the market day following the day on which a take-over offer is due to close, or becomes or is declared unconditional (whether as to acceptances or in all respects), or is revised or extended, an offeror must make an announcement in accordance with the listing requirements, or by way of a press notice where relevant, and inform the SC in writing, of the following:

- (a) The fact of the take-over offer being closed, becoming or being declared unconditional (whether as to acceptances or in all respects), being revised or extended; and
- (b) The total number of voting shares or voting rights–
 - (i) for which acceptances of the take-over offer have been received;
 - (ii) held at the time of dispatch of the offer document by–
 - (A) the offeror and all persons acting in concert with the offeror, in the case of a mandatory offer; or
 - (B) the offeror and the joint offerors, in the case of a voluntary offer; and
 - (iii) acquired or agreed to be acquired by the offeror or persons acting in concert during the offer period but after the dispatch of the offer document;

and must specify the percentage of each class of relevant securities represented by these numbers.

13.02 Consequences of failure to announce

- (1) Where the offeror, having announced the offer to be unconditional as to acceptances, fails to comply with any of the requirements of paragraph 13.01–
 - (a) by the close of trading at the relevant stock exchange in Malaysia on the day referred to in paragraph 13.01, if the offeror or offeree is listed on a stock exchange in Malaysia; or
 - (b) by 5.00 p.m. on the day referred to in paragraph 13.01, if the offeror or offeree is not listed on a relevant stock exchange in Malaysia,

any person who has accepted the take-over offer shall be entitled to withdraw his acceptance immediately.

- (2) The SC may terminate the right of withdrawal referred to in subparagraph 13.02(1) not less than eight days from–
- (a) the offeror complying with the requirements referred to in paragraph 13.01; and
 - (b) the offeror confirming, if such is the case, that the take-over offer is still unconditional as to acceptances by way of announcement to the relevant stock exchange in Malaysia, by press notice where relevant and to the SC in writing.

NOTE TO RULE 13

Rule 13 is disapplied in a scheme.

RULE 14

Settlement of Consideration

14.01 Settlement of consideration

- (1) The offeror, in any take-over offer, shall pay the cash consideration to all persons accepting the take-over offer within 10 days from—
 - (a) the date the offer becomes or is declared wholly unconditional, if the valid acceptances are received during the period when the take-over offer is still conditional; or
 - (b) the date of the valid acceptances, if the valid acceptances are received during the period after the take-over offer is or has become or has been declared wholly unconditional.
- (2) In the case where the consideration involves only securities, or a combination of cash and securities, as the case may be, the offeror shall post or credit the consideration to all persons or the persons' securities account, as the case may be, accepting the take-over offer within 14 days from—
 - (a) the date the offer becomes or is declared wholly unconditional, if the valid acceptances are received during the period when the offer is still conditional; or
 - (b) the date of the valid acceptances, if the valid acceptances are received during the period after the offer is or has become or has been declared wholly unconditional.
- (3) For the purpose of this Rule, "securities account" means an account established by a central depository for a depositor for the recording of deposit of securities and for dealings in such securities by the depositor.
- (4) An offeror or any person acting in concert with the offeror shall not exercise the voting rights attached to the shares received through acceptances of the take-over offer prior to full settlement of the consideration.

NOTE TO RULE 14

In relation to a scheme, the cash consideration shall be provided to all entitled shareholders within 10 days from the scheme becoming effective. In the case where the consideration involves only securities, or a combination of cash and securities, as the case may be, the consideration shall be provided to all entitled shareholders within 14 days from the scheme becoming effective.

PART D: CONDUCT DURING OFFER

RULE 15

Management of Affairs and Resignation by Directors

15.01 Management of affairs of offeree

Except with the consent of the SC, no nominee of an offeror or persons acting in concert shall be appointed to the board of the offeree, nor may an offeror and persons acting in concert exercise voting shares or voting rights in the offeree, until the offer document or the whitewash circular has been dispatched (*see note below*).

15.02 Resignation by directors of offeree

A director of the offeree shall not resign from the board of the offeree until the first closing date of the take-over offer or the date when the take-over offer becomes or is declared wholly unconditional, whichever is the later, or shareholders have voted on the proposed exemption under paragraph 4.08 or 4.15. This section applies upon commencement of the offer period, or once the offeree board has reason to believe that a bona fide offer is imminent, whichever is earlier (*see note below*).

NOTE TO PARAGRAPH 15.01

The SC may grant consent for an offeror to appoint a person to the board of the offeree where the offeror and persons acting in concert with the offeror already hold more than 50 per cent of the voting shares or voting rights in the offeree.

NOTE TO PARAGRAPH 15.02

The SC must be consulted if any of the directors of the offeree is due to retire during such period.

RULE 16

Frustration of Offer

16.01 Frustration of offer

- (1) During the offer period, or where the board of the offeree has any reason to believe that a bona fide take-over offer might be imminent, the board of the offeree shall not undertake any action or make any decision (other than in the ordinary course of business) without obtaining the approval of shareholders at a general meeting on the affairs of the offeree that could effectively result in any bona fide take-over offer being frustrated or the shareholders being denied an opportunity to decide on the merits of a take-over offer. The notice convening such a meeting of shareholders must include information about the offer or possible offer (*see notes below*).
- (2) The action or decision mentioned in subparagraph 16.01(1) shall include—
 - (a) the issuance of any authorised but unissued shares of the offeree and the selling of treasury shares into the market (*see note below*);
 - (b) the issuance or granting options in respect of any unissued shares of the offeree (*see note below*);
 - (c) the creation or issuance or permitting the creation or issuance of any securities carrying rights of conversion into or subscription for shares of the offeree;
 - (d) the sale, disposal of or acquisition or agreement to sell, dispose of or acquire assets of the offeree of a material amount (*see note below*);
 - (e) the entering into of contracts, including service contracts, otherwise than in the ordinary course of business of the offeree (*see note below*);
 - (f) any action which may cause the offeree or any subsidiary or associated company of the offeree to purchase or redeem shares in the offeree or provide any financial assistance for any such purchase or redemption;
or
 - (g) the declaration of dividends, other than in the normal course and the usual quantum (*see note below*).

The SC must be consulted in advance if there is any doubt as to whether any proposed action may fall under this paragraph.

- (3) Where the offeree is under a prior contractual obligation to take any such action, or where there are other special circumstances, the SC must be consulted at the earliest opportunity.

- (4) The SC's waiver must be obtained prior to undertaking proposals under this Rule without obtaining shareholders' approval at a general meeting (*see notes below*).
- (5) In relation to a business trust or a REIT, in addition to the matters set out in subparagraph 16.01(2), the relevant parties must not, without the approval of the unit holders, do or agree to do the following:
 - (a) In the case of a business trust, otherwise than in the ordinary course of business–
 - (i) alter the terms of engagement between the offeree business trust and its trustee-manager; or
 - (ii) enter into or alter the terms of, the service contracts between the trustee-manager and any of its directors; and
 - (b) In the case of a REIT, otherwise than in the ordinary course of business–
 - (i) alter the terms of engagement between the REIT and its manager; or
 - (ii) enter into or alter the terms of, the service contracts between the manager and any of its directors.

NOTES TO PARAGRAPH 16.01

1. *Where this Rule would otherwise apply, it will normally be waived by the SC if the proposed action is acceptable to the offeror.*

Votes of controlling shareholders and directors

2. *The SC should be consulted on whether controlling shareholders, directors and their respective persons acting in concert can vote at the shareholders' meeting, where an actual or potential conflict of interest exists.*

SC waiver

3. *The SC may waive the requirement to obtain shareholders' approval if the board of directors of the offeree:*
 - (a) *has disclosed to its shareholders of any contractual obligation, duty or right, the fulfilment or enforcement of which may result in the offer being frustrated or the shareholders of the offeree company being denied the opportunity to decide on the merits of the offer; or*
 - (b) *is able to demonstrate that the holders of shares carrying more than 50 per cent of the voting rights approve the action proposed and would*

vote in favour of any resolution to that effect proposed at a general meeting.

4. *For the purpose of subparagraph 16.01(2)(a), the issuance of any authorised but unissued shares of the offeree pursuant to the exercise of convertible securities are excluded.*
5. *For the purpose of subparagraph 16.01(2)(b), the SC will normally allow the granting of options under an established share option scheme if the timing and quantum are in accordance with the company's normal practice.*
6. *In relation to subparagraph 16.01(2)(d), the SC may take the following factors into consideration in determining whether an asset is "material"–*
 - (a) *whether the value of the assets to be disposed of or acquired, based on the latest audited financial statements, is 10 per cent or more compared with the net assets of the offeree (on a consolidated basis, if applicable);*
 - (b) *whether the aggregate value of the consideration to be received or given, based on the latest audited financial statements, is 10 per cent or more, compared with the net assets of the offeree (on a consolidated basis, if applicable); or*
 - (c) *whether the profit (after deducting all charges except taxation and extraordinary items) attributable to the assets to be disposed of or acquired compared with those of the offeree, based on the latest audited financial statements is 10 per cent or more.*

Notwithstanding the above, a relative value lower than 10 per cent may be considered "material" if, in the opinion of the SC, the assets to be disposed of or acquired could adversely affect the earnings capability of the offeree that would render the offeree less attractive to the offeror.

Where the board of directors of the offeree undertakes several transactions in relation to its assets which separately are not of a material amount, the SC may aggregate such transactions as a factor in determining whether the assets in relation to these transactions are of material amount.

7. *In relation to subparagraph 16.01(2)(e), the SC will regard any change to a director's service contract or terms of employment which leads to a significant improvement in his terms of service as entering into a contract "other than in the ordinary course of business". This will not prevent any such improvement which results from a genuine promotion or new appointment, but the SC must be consulted in advance in such cases.*

8. *In relation to subparagraph 16.01(2)(g), the scheduled payment of dividends declared before the board of the offeree company has reason to believe that a bona fide offer is imminent, would not be regarded as a frustrating action.*

When there is no need to proceed with an offer

9. *The SC may allow an offeror not to proceed with its offer if, prior to the posting of the offer document, the offeree company—*
 - (a) *passes a resolution in general meeting as provided under paragraph 16.01; or*
 - (b) *announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the SC has ruled that an obligation or other special circumstance exists.*

RULE 17

Evidence of ability to implement take-over offer

17.01 Evidence of ability to implement take-over offer

Where the take-over offer is for cash or includes an element of cash, an offeror shall ensure and his financial adviser shall be satisfied that–

- (a) the take-over offer would not fail due to the insufficient financial capability of the offeror; and
- (b) every offeree shareholder who wishes to accept the take-over offer would be paid in full.

RULE 18

Favourable Deals

18.01 Favourable deals in relation to offers

Unless otherwise approved by the SC in writing, the offeror or persons acting in concert with it shall not make any arrangements with selected shareholders and shall not deal or enter into arrangements to deal or make purchases or sales of shares of the offeree, or enter into arrangements concerning acceptance of an offer, either during an offer or when an offer is reasonably in contemplation or for six months after the close of such offer, if such arrangements have favourable conditions which are not to be extended to all shareholders.

(See notes below)

18.02 Favourable deals in relation to whitewash procedures

The offeror or persons acting in concert with him in relation to a whitewash procedure under subparagraphs 4.08 or 4.15 shall not acquire shares within a period of six months after the shareholders' meeting from a person who was a director or substantial shareholder of the company at the time of the whitewash proposal, as such acquisition will be deemed to be a favourable deal under Rule 18. The SC may consider granting a waiver to the offeror or the persons acting in concert with him if such acquisition is *de minimis*.

NOTES TO PARAGRAPH 18.01

1. Top-ups and other arrangements

An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer or any other price top-up arrangements. An irrevocable commitment to accept an offer combined with an option to put the shares should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby shares in the offeree are purchased by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, would not be considered as a favourable deal under this paragraph. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the SC must be consulted.

2. Finders' Fees

This provision also covers cases where a shareholder in an offeree is to be remunerated for playing a part in promoting an offer. The SC will normally consent to such remuneration, provided that the shareholding is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been a shareholder, would be entitled to receive no less remuneration.

3. Disposal of offeree assets

In some cases, certain assets of the offeree may be of no interest to the offeror. There is a possibility if an offeree shareholder seeks to acquire the assets in question that the terms of the transaction will be such as to confer a special benefit on him and the arrangement is not capable of being extended to all shareholders.

The SC will normally consent to such a transaction, provided that the independent adviser to the offeree states that in his opinion the terms of the transaction are fair and reasonable and the transaction is approved at a general meeting of the offeree's shareholders. At this meeting, the vote must be a separate vote by non-interested shareholders. Where a sale of assets takes place after the offer has become unconditional, the SC will be concerned to see that there was no element of pre-arrangement in the transaction. The SC will consider allowing such a procedure in respect of other transactions where the issues are similar, e.g. a transaction with an offeree shareholder involving offeror assets.

4. Repayment of shareholder loans

A repayment to a shareholder of indebtedness due by the offeree, or an assignment by a shareholder to the offeror or a person acting in concert with the offeror of a debt due from the offeree, may be considered as a favourable deal under this provision. In considering whether to grant consent, the SC shall take into account whether such repayment or assignment is transacted at arms' length and on normal commercial term, subject to compliance with the requirements under Note 3 to paragraph 18.01 above.

5. Joint offerors

- (i) When two or more persons come together to form a consortium on such terms and in such circumstances that each of them can be considered to be a joint offeror, Rule 18 is not breached if one (or more) of them is already a shareholder in the offeree. Subject to that, joint offerors may make arrangements between themselves regarding the future membership, control and management of the business being acquired. The factors that the SC will take into account in determining whether a person is a joint offeror include the following:*

- (a) *The proportion of equity share capital of the offer vehicle which the person will own after completion of the acquisition;*
 - (b) *Whether the person will be able to exert a significant influence over the future management and direction of the offer vehicle;*
 - (c) *The contribution the person is making to the consortium;*
 - (d) *Whether the person will be able to influence significantly the conduct of the offer; and*
 - (e) *Whether there are arrangements in place to enable the person to exit from his investment in the offer vehicle within a short time or at a time when other equity investors cannot.*
- (ii) *For the purposes of this Note, any arrangements between the joint offerors are required to be disclosed in the offer document.*

6. *Management retaining an interest*

The SC should be consulted if the management of the offeree company is to remain financially interested in the business after the offer is completed. The methods by which this may be achieved vary but the principle which the SC is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest. For example, an option arrangement which guarantees the original offer price as a minimum would be considered unacceptable.

The SC will normally require, as a condition of its consent, that the independent adviser to the offeree publicly states that in its opinion, the arrangements with the management of the offeree are fair and reasonable. In addition, where the value of the arrangements entered into or proposed is significant and/or the nature of the arrangements is unusual, the SC may also require that the arrangements be approved at a general meeting of the offeree shareholders. At this meeting, the vote must be a vote of non-interested shareholders.

RULE 19

Dealings Before and During Offer Period

19.01 Restrictions on dealings before the offer

No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Such restriction does not apply to persons acting in concert with an offeror in respect of such dealings where the securities the subject of such dealings are excluded from the offer or where there are no-profit arrangements in place.

No such dealings may take place in the securities of the offeror except where the offer or proposed offer is not price-sensitive in relation to those securities.

No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.

19.02 Restrictions on dealings during offer period

Except with the consent of the SC, an offeror and persons acting in concert shall not sell any securities in the offeree, or enter into an arrangement or agreement, to reduce holdings or entitlements of the offeror or persons acting in concert in relation to the voting shares or voting rights in the offeree during the offer period.

19.03 Restrictions on dealings by offeror during securities exchange offers

Except with the consent of the SC, where the consideration for an offer includes securities of the offeror or a person acting in concert, the offeror and any person acting in concert shall not deal in any such securities during the offer period.

19.04 Restrictions on dealings in offeree company securities by certain offeree company associates

Except with the consent of the SC, no financial adviser (or any person controlling, controlled by or under the same control as any such adviser) to an offeree (or any of its parents, subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) shall for its own account, or for any of its investment accounts managed on a discretionary basis, purchase voting shares and voting rights of the offeree, or deal in convertible securities, warrants, options or derivatives in respect of such voting shares or voting rights during the offer period (*see notes below*).

19.05 Disclosure of dealings by parties and their associates

- (1) The following persons shall disclose the total number and price of all voting shares, voting rights, or convertible securities of the offeree and the offeror which are dealt in for their own account or for discretionary clients during the offer period:
 - (a) The offeror and persons acting in concert;
 - (b) The offeree and persons acting in concert;
 - (c) A substantial shareholder of the offeror and offeree;
 - (d) Any chief executive, a director or an officer of the offeror or offeree who occupies or acts in a senior managerial position in the offeror or offeree by whatever name called and whether or not he is a director;
 - (e) A bank, stockbroking company, financial and other professional adviser to the offeror, the offeree, or appointed for or in connection with the take-over offer, merger or compulsory acquisition (including the underlying transaction that leads to the take-over offer) by any person falling under subparagraphs (a) and (b) above; and
 - (f) A person who in accordance with whose directions and instructions the persons referred to in subparagraph 19.05(1) (a), (b), (c) or (d) are accustomed to act
- (2) The disclosure under subparagraph 19.05(1) shall be made to the SC and announced—
 - (a) by way of a press notice, if the securities of the offeror or the offeree are not listed on the relevant stock exchange in Malaysia; and
 - (b) to the relevant stock exchange in Malaysia, if the securities of the offeror or the offeree are listed on the relevant stock exchange in Malaysia,

not later than 12.00 noon on the market day following the date of the relevant transaction.
- (3) All dealings in voting shares, voting rights or convertible securities of the offeree or the offeror made by any of the persons mentioned in subparagraph 19.05(1) for the account of investment clients who are not themselves connected with the offeror or offeree shall be similarly disclosed to the SC not later than 12.00 noon on the market day following the date of the relevant transaction.

(see notes below)

NOTES TO PARAGRAPH 19.04

Financial advisers belonging to a large group

1. *For a financial or professional adviser that belongs to a group with an extensive network of companies internationally, the SC may consider exempting the companies within the group (other than the adviser itself, the Malaysian entities of the group and their respective subsidiaries and associated companies) from the requirements of this Rule if the group has in place distinct and effective "Chinese Walls" between its various operations.*

Dealing for investment clients

2. *Companies within the group of the independent adviser which are connected persons under paragraph 19.05 are not prohibited from dealing for the accounts of their investment clients subject to adherence to the principles of the Code and the requirements under these Rules.*

Recommended or unconditional mandatory offers

3. *The SC will normally give its consent under paragraph 19.04 where the offer is recommended by the board of the offeree company and there is no competing offer, or where the offer is an unconditional mandatory offer.*

NOTES TO PARAGRAPH 19.05

Bare trustee

1. *A nominee company which is a bare trustee of a pool of beneficial owners of voting shares or voting rights in the offeree or offeror and does not have any discretionary dealings for such shares is excluded from subparagraph 19.05 (1)(e). Such exclusion will not apply if the nominee company's beneficial interest is five per cent or more of the voting shares or voting rights of the offeror or the offeree.*

Disclosure of dealings in offeror securities

2. *In relation to paragraph 19.05, disclosure of dealings in relevant securities of an offeror is only required in the case of a securities exchange offer.*

Indemnity and other arrangements

3. *For the purposes of this Note, an arrangement includes any arrangement involving rights over shares, any indemnity arrangement, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or to refrain from dealing.*

When an arrangement exists with any offeror, with the offeree or with an associate of any offeror or the offeree in relation to relevant securities, details of the arrangement must be publicly disclosed whether or not any dealing takes place.

Method of disclosure

4. *The disclosure under paragraph 19.05 may be made to the SC by sending an email not later than 12.00 noon on the market day following the date of the relevant transaction to tomdisclosure@seccom.com.my*

RULE 20

Prompt Registration

20.01 Prompt registration and provision of information

- (1) The board of directors and officers of an offeree should use their best endeavours to ensure the prompt registration of transfers during an offer period so that shareholders can freely exercise their voting and other rights.
- (2) The board of directors and officers of an offeree shall respond, within four market days to a request from an offeror, for details in respect of–
 - (a) the register of members, in the case of unlisted voting shares, including addresses and other information provided to the offeree by shareholders of the offeree for the receipt of documents, announcements and other information; or
 - (b) the record of depositors, in the case of listed voting shares and voting rights.
- (3) The information provided to an offeror in compliance with subparagraph 20.01(2) above should be updated to reflect the position as at the close of business on the day of the request. The offeree shall ensure, or shall instruct its registrar to ensure, that the information above is kept as up-to-date as the relevant maintenance system will allow and updates shall be provided to the offeror in respect of any changes in that information at the same time as updates to the company's register.

RULE 21

Restrictions Following Offers and Possible Offers

21.01 Delay before subsequent offer

- (1) Unless otherwise approved by the SC, the offeror and all persons acting in concert with the offeror shall not, within 12 months from the date of the announcement that a take-over offer has been withdrawn, has lapsed or failed—
 - (a) announce a take-over offer or possible take-over offer for the offeree;
or
 - (b) acquire any voting shares or voting rights of the offeree if the offeror would thereby become obliged to make a mandatory offer;
- (2) The restrictions in this Rule apply for a period of six months to any potential offeror, a person acting in concert with the potential offeror or a person subsequently acting in concert with the potential offeror where the potential offeror, having made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that a take-over offer may be made, does not announce a firm intention to make a take-over offer.
- (3) The restrictions in this Rule apply for a period of six months to any potential offeror, a person acting in concert with the potential offeror or a person subsequently acting in concert with the potential offeror who makes an announcement in paragraph 9.08.
- (4) In relation to a partial offer—
 - (a) the restrictions in subparagraph 21.01(1) apply following a partial offer—
 - (i) for more than 33 per cent but less than 50 per cent of the voting shares or voting rights of an offeree whether or not the partial offer has become or been declared unconditional; or
 - (ii) for more than 50 per cent of the voting shares or voting rights of an offeree which has not become or been declared unconditional.
 - (b) the restrictions in subparagraphs 21.01(2) and (3) apply where a person makes the relevant announcement.

(see notes below)

21.02 Six months delay before acquisition over offer price

Unless otherwise approved by the SC, if an offeror and any person acting in concert with the offeror, holds more than 50 per cent of the voting shares or voting rights of an offeree, neither the offeror nor any person acting in concert shall make a second offer to, or acquire any voting shares or voting rights in the offeree, on more favourable terms than the previous take-over offer, which became or was declared wholly unconditional, within six months after the close of the take-over offer (*see note below*).

NOTES TO PARAGRAPH 21.01

1. *In relation to subparagraph 21.01(1), for the avoidance of doubt, the offeror should not—*
 - (a) *procure an irrevocable commitment to acquire shares of the offeree which would result in an obligation to make a mandatory take-over offer;*
 - (b) *make any statement which raises or confirms the possibility that a take-over offer may be made for the offeree; or*
 - (c) *take any step in connection with a possible take-over offer for the potential offeree.*
2. *When a take-over has been withdrawn, has lapsed or failed, all acceptances received under the take-over offer must be returned immediately by the offeror, together with any documents of title lodged.*
3. *The restrictions under this Rule will not apply following a partial offer which would not result in the offeror and persons acting in concert holding more than 33 per cent of voting shares or voting rights of the offeree.*
4. *The SC may consider granting exemption from the restrictions under this Rule if—*
 - (a) *the new offer is recommended by the independent board of the offeree company;*
 - (b) *the new offer follows the announcement by a third party of a firm intention to make an offer for the offeree company;*
 - (c) *the new offer follows the announcement by the offeree company of a whitewash proposal or a reverse take-over which has not failed or lapsed or been withdrawn; or*

- (d) the SC determines that there has been a material change of circumstances.*
- 5. The SC may also give consent in circumstances in which it is likely to prove, or has proved, impossible to obtain material official authorisations or regulatory clearances relating to an offer within the Rules timetable. The SC should be consulted by an offeror or potential offeror as soon as it has reason to believe that this may become the position.*

NOTE TO PARAGRAPH 21.02

The issue of new shares by placing, subscription or in exchange for assets and an on-market transaction which is not pre-arranged, would not be considered as being on more favourable terms than the previous take-over offer.

PART E: COMPULSORY ACQUISITION AND RIGHT OF MINORITY SHAREHOLDER

RULE 22

Compulsory acquisition and right of minority shareholder

22.01 Compulsory acquisition and right of minority shareholder

- (1) Where an offeror makes a take-over offer for more than one class of shares, separate offers shall be made for each class and the offeror shall state, if the offeror intends to avail itself of any powers of compulsory acquisition under section 222 of the CMSA, that the section will be used in respect of each class separately (*see note below*).
- (2) A notice to be given by the offeror to a dissenting shareholder under subsection 222(1) of the CMSA shall be made in accordance with Form 1 of Schedule 5, where relevant.
- (3) A notice to be given by the offeror to a shareholder who has not accepted the take-over offer under subsection 223(2) of the CMSA shall be made in accordance with Form 2 of Schedule 5 where relevant.
- (4) Before 9 a.m. on the market day following the day on which an offeror has obtained, whether by acquisitions during the offer or pursuant to acceptances, shares amounting to nine-tenths in the nominal value of the shares of a class or shares sufficient to enable the offeror to avail itself of any powers of compulsory acquisition, the offeror must announce, including by way of a press notice, and inform the SC in writing of the following:
 - (a) The fact of the offeror having attained such level; and
 - (b) Full details on the level attained.
- (5) The offeror must make another announcement on whether it is still eligible to avail itself of any powers of compulsory acquisition, at the close of the take-over offer.
- (6) For the purposes of subsection 222(2) of the CMSA, an offeror is required to provide upon demand by a dissenting shareholder in the manner so prescribed, a written statement of the names and addresses of other dissenting shareholders within four market days from the date of receipt of such demand.
- (7) For the purposes of this Rule, "dissenting shareholder" and "share" shall have the same meaning assigned to it under subsection 216(6) of the CMSA.

NOTE TO SUBPARAGRAPH 22.01(1)

The following voting shares or voting rights shall be excluded from being considered as acceptances for compulsory acquisition threshold:

- (a) Such voting shares or voting rights where an offeror has entered into an agreement to acquire before the offer period, regardless whether the agreement has become unconditional or otherwise during the offer period; or*

- (b) Such voting shares arising from the conversion of the convertible securities by the offeror.*