

APPENDIX 3

SUBMISSIONS TO THE SC IN RELATION TO TAKE-OVERS AND MERGERS

Introduction

1. The purpose of this Appendix is to provide non-exhaustive guidance to parties and their advisers. It remains the sole responsibility of the applicant, its directors and advisers to ensure that the Code, the Rules and any other applicable laws and regulations are fully complied with. Where there is any doubt as to whether a proposed course of conduct is in accordance with the Code or the Rules, parties and their advisers should consult with the SC in advance.

Submission to SC

2. An application relating to take-overs or mergers must be made in writing and within a reasonable time frame so as to provide sufficient time for the consideration of the SC. In relation to the submission of documents for the SC's comments, such documents must be submitted in accordance with the requirements under Rule 11 and Schedule 3 of the Rules.
3. The submission must be complete, comprehensive and contain all relevant information which the SC will require to reach a fully informed decision. Such information should, at the minimum include the following—

(a) Brief description of the application

A summary of the nature of the application should be clearly described together with the issues for consideration. The relevant provisions in the CMSA, the Code and the Rules should be identified.

(b) Information on parties

All parties with a material interest in the submission, and their respective financial and legal advisers must be identified.

(c) Material facts

All material facts relevant to the application should be stated and should include, as appropriate, the following:

(i) Description of the proposed transaction including—

- the timetable for implementation;
- related regulatory requirements; and
- the reasons and commercial rationale for the transaction; and

(ii) A description of the offeror and the offeree including—

- the identity of the controlling or potential controlling holders of voting shares or voting rights, including all persons acting in concert with them;

- description of the relationship between all the controlling or potential controlling holders of voting shares or voting rights, including relationship with the persons acting in concert with them;
 - the changes in the shareholding of the controlling or potential controlling holders of voting shares or voting rights, including the shareholding of their persons acting in concert, both individually and collectively, after each stage of the proposal, and the controlling/potential controlling position which the proposal will eventually create;
 - full details of the maximum potential controlling holding of voting shares or voting rights. Where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling holders of voting shares or voting rights will, in addition to any other entitlement, take up their full underwriting entitlement;
 - where there are outstanding convertible securities, the potential controlling holding of voting shares or voting rights, on the assumption that only the controlling holders of voting shares or voting rights will convert or exercise the subscription rights; and
 - the corporate structure both before and after the implementation of the proposed transaction;
- (iii) a historical chronology of related events;
- (iv) the interest which directors of the relevant offeror and the offeree company have in the proposed transaction;
- (v) steps to be taken, if any, to safeguard the interests of independent shareholders; and
- (vi) a description of the financing arrangements for the proposed transaction;
- (d) Detailed rationale and justification for the application—
- (i) in relation to an exemption sought pursuant to section 219 of the CMSA, the application shall be in compliance with the General Principles under the Code and the Rules; and
 - (ii) an applicant may include industry practices, practices in other jurisdictions or precedent cases, where appropriate, to support the application;
- (e) Any outstanding proposal by the offeree announced but pending implementation that may have an impact on the application;
- (f) Declaration of conflict of interest, if any, by an adviser in relation to the application. If a conflict of interest exists, the adviser is to provide full disclosure of the nature of the conflict and the steps taken to address such conflict;
- (g) Confirmation by an applicant that all the information or documentation relating to the application have been made after due consideration of section 221 of the CMSA and paragraph 11.07 of the Rules;

- (h) Confirmation by an adviser that the application has been made after due consideration of section 221 of the CMSA and paragraph 11.07 of the Rules;
- (i) Enclosure of fee payment and statement of calculation in accordance with *Schedule 2 of Capital Markets and Services (Fees) Regulations 2012*; and
- (j) Name, designation and signatory of authorised personnel of the adviser.

4. The adviser, on behalf of the applicant, shall–

(a) submit two copies of the application to:

Chairman
Securities Commission Malaysia
No. 3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Head of Take-overs & Mergers Department)

- (b) enclose a CD containing the soft copy of the application together with relevant Appendices (in Microsoft Office format or PDF format);
- (c) enclose a checklist in respect of compliance with the applicable requirements and, where appropriate, accompanied with any supporting legal opinion.

Additional requirements

5. The following is also required:

- (a) For submissions pursuant to paragraph 11.01(1) of the Rules, a list of the relevant parties and their associates under paragraph 19.04(1) of the Rules, as follows–
 - Name
 - Nationality
 - NRIC number, passport number or registration number
 - Nature of associated status
 - Correspondence address
- (b) In the case of a take-over offer or a scheme, confirmation by the offeror within three market days of the expiry of six months from the end of the offer period that it and all persons acting in concert have complied with Rule 18 and paragraph 21.02 of the Rules.

- (c) In the case of a whitewash transaction, confirmation by the offeror/applicant within three market days of the expiry of six months from the shareholders' meeting that it and all persons acting in concert have complied with Rule 18.

Proforma information

A. In the case of a company	
(1) Name or registration number	
(2) Registered and correspondence address	
(3) Place and date of incorporation	
(4) History and principal activities	
(5) Listing status. If delisted or suspended, to state reason	
(6) Details of authorised and paid-up share capital	
(7) Details of outstanding convertibles	
(8) Particulars of substantial shareholders <ul style="list-style-type: none"> • Name • Nationality • NRIC number, passport number or registration number • Shareholding in company and ultimate beneficial owners or shareholders if the shares are registered under a nominee company or account • Correspondence address 	
(9) Particulars of directors <ul style="list-style-type: none"> • Name • Nationality • NRIC number or passport number • Date of appointment • Shareholding in company • Correspondence address 	
(10) Subsidiary and associated companies, including percentage interest holding and principal activities	
(11) Information of persons acting in concert, as relevant to the application <ul style="list-style-type: none"> • Name • Nationality • NRIC number, passport number or registration number • Nature of relationship • Correspondence address 	

B. In the case of an individual	
(1) Name	
(2) Nationality	
(3) NRIC number or passport number	
(4) Correspondence address	
(5) Occupation	
(6) Equity interest and directorship in relevant companies as at latest practicable date	
(7) Information of persons acting in concert, as relevant to the application <ul style="list-style-type: none"> • Name • Nationality • NRIC number, passport number or registration number • Nature of relationship • Correspondence address 	