

**SUMMARY OF KEY AMENDMENTS
RULES ON TAKE-OVERS, MERGERS AND COMPULSORY ACQUISITIONS
(Issued: 28 December 2021)**

The following table provides a summary of key amendments made to the revised *Rules on Take-overs, Mergers and Compulsory Acquisitions* (Rules) issued on 28 December 2021:

Key Amendments		
A.	Relevant sections under the Rules	Comment
1.	Rule 1 - Introduction	Amendment to clarify the purpose of the Rules and that obtaining legal or other professional advice will not be treated as an alternative to seeking consultation from the Securities Commission Malaysia (SC).
2.	Rule 2 - Interpretation	Definition of "offer period" is amended to include the expiry of offer period in a possible offer and scheme of arrangement.
3.	Rule 3 - Advisers	Amendment to clarify that, among others, the main responsibility to comply with the Code and the Rules and ensure compliance by clients and their directors lies with advisers appointed under paragraph 3.03 or approved under paragraph 3.04.
4.	Rule 4 – Mandatory offer	Amendments, among others, to– (i) impose conditions to when a mandatory offer will not apply under subparagraph 4.02(a), and impose a requirement to consult SC when determining the application of subparagraph 4.02(a); (ii) provide clarification on the provision of financial assistance for the purpose of subsection 216(3)(i) of the <i>Capital Markets and Services Act 2007</i> (CMSA); (iii) impose requirements and provide clarification in relation to the whitewash procedures and transactions under paragraphs 4.08 and 4.15, as follows: (a) Imposition of similar conduct requirements applicable during take-over offers on whitewash transactions, including restrictions on the appointment and resignation of directors, and against favourable deals;

		<p>(b) Inclusion of additional content requirements in respect of the proposed exemption from a mandatory offer obligation (Proposed Exemption) in the whitewash circular;</p> <p>(c) Requirements for SC's clearance of the content relating to the Proposed Exemption in the whitewash circular before issuance of the whitewash circular to the shareholders;</p> <p>(d) Clarification that any issuance of shares pursuant to a company's remuneration will not be deemed as disqualifying transactions;</p> <p>(e) Clarification on the eligibility of external accountants to act as scrutineers for the vote-taking in a company's shareholders' meeting;</p> <p>(f) Requirement for offerees to announce the number and percentage of voting shares held by controlling shareholders upon the completion of proposals and the issuance of new securities; and</p> <p>(g) Clarification that the exemption granted is not transferable;</p> <p>(iv) insert factors to be considered by the SC in granting an exemption from a mandatory offer obligation for a rescue proposal;</p> <p>(v) clarify that an application will need to be made in order to obtain an exemption from a mandatory offer obligation arising from a share buy-back scheme;</p> <p>(vi) specify the end of the duration of a disqualifying transaction in respect of a share buy-back scheme; and</p> <p>(vii) clarify that the increase in shareholding arising from the share buy-back would be included for creeping provision for offeror's further acquisition after share buy-back.</p>
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5.	Rule 6 – Key Terms	<p>Amendments, among others, to–</p> <ul style="list-style-type: none"> (i) clarify the computation of revised acceptance level in the event the offeror revises the acceptance condition to a lower level; and (ii) clarify the computation of the offer price when a mandatory offer is triggered via the exercise of rights or options.
6.	Rule 9 – Announcement and Notices	<p>Amendments, among others, to–</p> <ul style="list-style-type: none"> (i) clarify that the restriction under subparagraph 9.10(2) is only applicable during the period between the service of the notice until the announcement under subparagraph 9.10(1)(a) or subparagraph 9.10(5) is made; (ii) insert a requirement for an offeror to announce a lapsed or withdrawn take-over offer and to provide an explanation for the lapsed or withdrawn take-over offer; and (iii) insert a requirement for the main adviser to include in the announcement by the offeree board to table the resolution for the scheme to shareholders for approval, a confirmation that resources available to the offeror are sufficient to satisfy full consideration of the scheme.
7.	Rule 11- Timing and Contents of Documents	<p>Amended, among others, to–</p> <ul style="list-style-type: none"> (i) reduce the number of hardcopies of documents to be submitted to the SC from two copies to one copy; (ii) clarify that subparagraph 11.06(b) may only be utilised by the offeror if all shareholders have registered their email address with Bursa Malaysia Securities Berhad; and (iii) allow dispatch of a summary notification as part of the method of delivery of documents, including providing– <ul style="list-style-type: none"> (a) the information required to be disclosed in the summary notification;

		<p>(b) that the form of acceptance and transfer must be dispatched together with the summary notification; and</p> <p>(c) for the designated websites on which the information and documents must be published.</p>
8.	Rule 12 – Timing of Offer	<p>Amendments, among others, to–</p> <p>(i) clarify that subparagraph 12.01(2) will only apply to an offer that is subject to conditions other than the acceptance conditions;</p> <p>(ii) clarify that a change in the nature of an offer from a voluntary offer to a mandatory offer (at no higher price than the existing offer) will not be viewed as a revision; and</p> <p>(iii) require an offeror making a voluntary offer to consult the SC in advance if the offeror intends to incur a mandatory offer obligation.</p>
9.	Rule 16 – Frustration of offer	<p>Amendment to clarify that the assessment under Note 6(c) to paragraph 16.01 should be based on the operating profit attributable to the assets, compared against the profit of the offeree.</p>
10.	Rule 18 – Favourable Deals	<p>Amendment to require disclosure of any arrangements between the joint offerors in the offer document.</p>
11.	Rule 19 – Dealings During Offer Period	<p>Amendments, among others, to–</p> <p>(i) include a restriction on dealings prior to the take-over offer by any person, not being the offeror, who has confidential price-sensitive information concerning the take-over offer; and</p> <p>(ii) clarify that the requirement under subparagraph 19.05(1)(e) will apply to an adviser who is involved in the proposal leading up to the take-over offer.</p>

12.	Rule 21 – Restrictions Following Offers and Possible Offers	Amended to clarify that the restriction under paragraph 21.02 is only applicable in the event that the previous take-over offer/scheme was successful.
13.	Rule 22 – Compulsory Acquisition and Rights of Minority Shareholder	<p>Amendments, among others, to–</p> <ul style="list-style-type: none"> <li data-bbox="619 510 1401 656">(i) clarify the requirement for an offeror to make another announcement on whether he is still eligible to undertake a compulsory acquisition at the close of a take-over offer; and <li data-bbox="619 689 1401 869">(ii) clarify that for the purpose of section 222(1A) of the CMSA, shares arising from the conversion of convertible securities by the offeror will not be considered as acceptances for the compulsory acquisition threshold.
14.	Schedule 3 – Scheme of Arrangement	<p>Amendments, among others, to–</p> <ul style="list-style-type: none"> <li data-bbox="619 1003 1401 1115">(i) clarify that a scheme will be considered to be unconditional in all respects on the effective date of the scheme; <li data-bbox="619 1149 1401 1283">(ii) insert a new requirement for a company to appoint a scrutineer for vote-taking for the purpose of convening shareholders’ meeting for the scheme; and <li data-bbox="619 1317 1401 1462">(iii) insert a new requirement that any revision to a scheme of arrangement should normally be made by no later than the date which is 14 days prior to the date of the shareholders’ meeting.