

NATIONAL CONFERENCE ON MERGERS & ACQUISITIONS

*The Regulatory Framework For Take-Overs
& Mergers*



6 June, 2000

BACKGROUND

- Prior to 1993, take-overs and mergers were regulated by the Panel On Take-Overs & Mergers under section 179 of Companies Act 1965
- After March, 1993 upon the coming into force of the Securities Commission Act 1993, the functions of TOP were absorbed by the SC

RATIONALE FOR CHANGES

- To redraft provisions in clear statutory language
- To enhance standards of practice by market participants and professionals
- To enhance investor protection
- To resolve policy conflicts, including by way of administrative arrangements
- To provide for transparent regulation by a single authority

REGULATORY FRAMEWORK

- Legal framework
- Enforcement framework
- Administrative framework

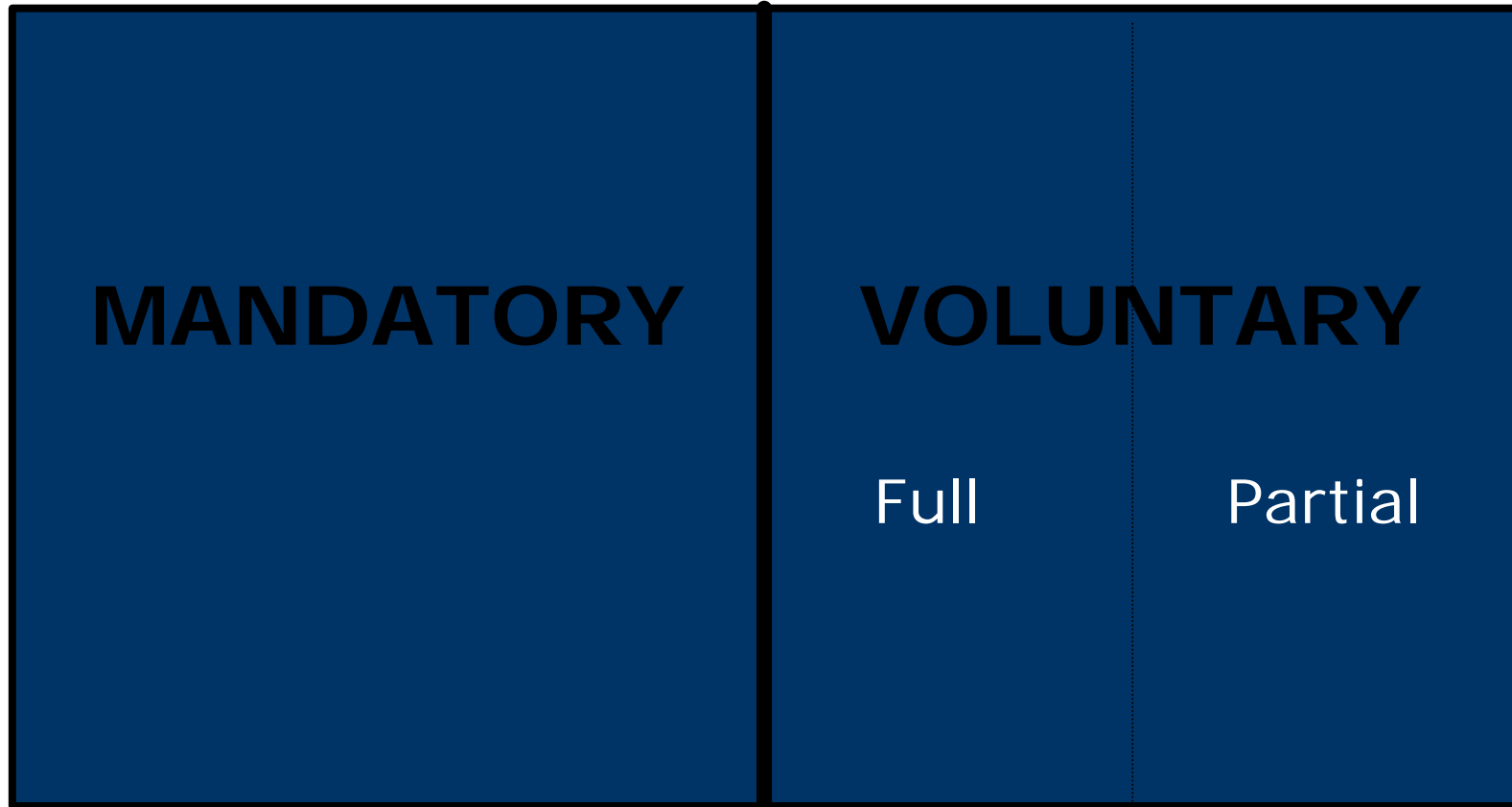
LEGAL FRAMEWORK

- Part IV Division 2 of the Securities Commission Act 1993
- The Malaysian Code On Take-Overs & Mergers 1998
- Practice Notes
- KLSE Listing Requirements

BASIC CONCEPTS

- Types of take-overs
- Terminology
- Enhanced standards of practice
- Enhanced investor protection rules

TYPES OF TAKE-OVER OFFERS



TERMINOLOGY

STRAIGHT ACQUISITION OF CONTROL

An acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise.

CREEPING TAKE-OVER

An acquirer who has obtained more than 33% but less than 50% of the voting shares in a company shall not acquire more than 2% of the voting shares in any period of 6 months except in accordance with the Code and rulings.

ACQUIRER & SUB-SETS

ACQUIRER

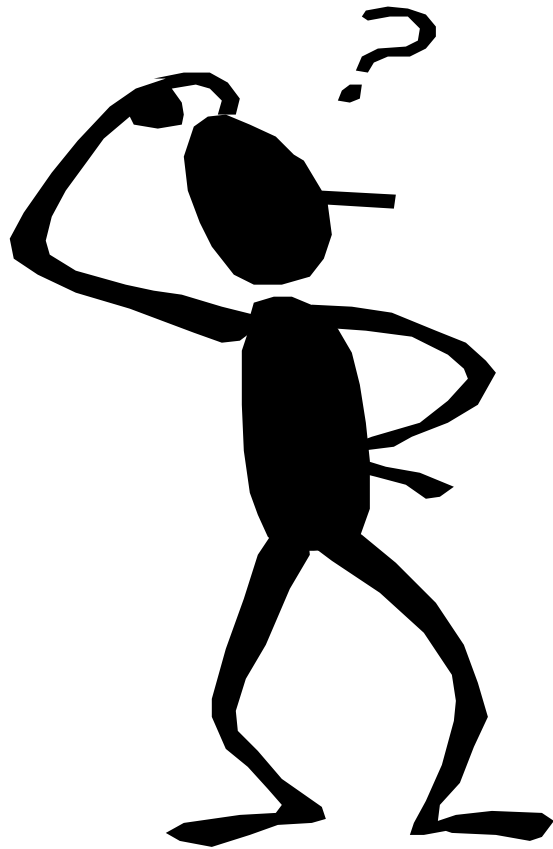
Acting In Concert

Presumed to be acting
in concert

CONTROL

- An acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares of more than 33% in a company
- Includes by way of agreements, arrangements or understanding, formal or informal, express or implied, legal or equitable.

VOTING SHARES



**XYZ
Berhad**

CLASS A
SHARES

1 share
=
1 vote

**XYZ
Berhad**

CLASS B
SUPER
SHARES

1 share
=
10 votes

COMPANY

- Include both public and private
- Practice Note 2.2 - “Upstream and downstream acquisitions”

ENHANCED STANDARDS

Offer documents, board of directors comments and independent advice circulars must:

contain all such information as the the targetted persons to which the take-over relates and their professional advisers would reasonably require and would reasonably expect to find in the document for the purpose of making an assessment of the merits and the risks of accepting of the offer.

ENHANCED STANDARDS

- Section 33E(2) - due diligence defence
- Section 38 of the Code

ENFORCEMENT FRAMEWORK

- Securities Commission Act 1993
 - prosecution under 33B, 33E
 - administrative action under 33D
- KLSE Listing Requirements
- Securities Industry Act 1983
 - administrative action under 11
 - civil enforcement under 99C and 100

ADMINISTRATIVE FRAMEWORK

- Exercise of administrative powers
 - must comply with 33A(5) SCA
 - subject to judicial review
- Every prosecution requires consent of Public Prosecutor
- Administrative arrangements with other bodies such as FIC and BNM

THANK YOU