

## Malaysian Code on Take-Overs and Mergers 2010 – A Fresh Approach?

The Malaysian Code on Take-Overs and Mergers 1998 (“**Old Code**”) has been superseded by the Malaysian Code on Take-Overs and Mergers 2010 (“**New Code**”) with effect from 15 December 2010.

Key changes arising from the implementation of the New Code include the following:

- (i) Potential offerors or offerees are required to make an announcement on possible offers which might result in unusual share movements or increase in the volume of share turnover of the offerees. However, a potential offeror is not allowed to undertake a second take-over offer within six months of any announcement that the said offeror is not undertaking a potential take-over offer;
- (ii) the following two new categories of “persons acting in concert” have been added to the New Code:-
  - (a) a company, the directors of the company, and shareholders of the company where there is an agreement, arrangement or understanding between the company or directors of the company, and shareholders of the company which restricts the director or the shareholder from offering or accepting a take-over offer, or increasing/reducing his shareholdings in the company;
  - (b) a partner who is a partner of a partnership;
- (iii) the New Code explicitly allows voluntary offers with a higher acceptance threshold to be undertaken. Pursuant to the Old Code, a voluntary offer would normally have been conditional upon the offeror having received acceptances which would result in the offeror holding more than 50% of the voting shares of the offeree. Under the New Code, offerors are entitled to make a voluntary offer conditional upon receiving acceptances which would result in the offeror holding in aggregate more than 90% of the voting shares of the offeree;
- (iv) companies that are incorporated outside Malaysia but listed on Bursa Malaysia Securities Berhad and real estate investment trusts that are listed on Bursa Malaysia Securities Berhad are now subject to the New Code;
- (v) the New Code has reduced the payment period in a take-over offer from 21 days to 10 days for payment of cash consideration. In cases where the consideration involves only securities or a combination of cash and securities, the payment period has been reduced from 21 days to 14 days;

- (vi) the New Code would apply to any person who undertakes a take-over offer, howsoever effected, by way of a scheme of arrangement, compromise, amalgamation or selective capital reduction.

In light of the above changes, the New Code highlights the Malaysian Securities Commission's continuous efforts to enhance investor' protection and transparency and to establish higher standards of governance in take-over and merger activities in Malaysia.

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