

Application of the Malaysian Code on Take-overs and Mergers, 1998 in relation to Selective Capital Reductions

The Securities Commission Malaysia ("the Commission") has recently issued a ruling pursuant to section 33A(4) of the Securities Commission Act 1993, in relation to a selective capital reduction ("SCR") proposal under section 64 of the Companies Act 1965.

The major shareholder of Company A ("the Company") and persons acting in concert with him (collectively known as "the Offerors") collectively held more than 50% interest in the Company. The Offerors proposed to privatise the Company via a SCR. The SCR involved capital reduction by way of cancelling all shares held by shareholders other than the Offerors ("Non-interested Shareholders") and a certain portion of the shares held by the Offerors. The Company would make a cash payment to the Non-interested Shareholders whose shares are cancelled. As a result of the SCR, the Company would be owned entirely by the Offerors. To facilitate the privatization exercise and to ensure the interests of the Non-interested Shareholders are not compromised, the Commission made a ruling requiring that:

- (a) The independent adviser ("IA") of the SCR was to confirm its appointment with the Commission and the contents of the independent advice circular were to comply with the requirements of the Malaysian Code on Take-overs and Mergers, 1998 ("the Code");
- (b) The IA was to confirm that the Offerors and all other interested parties abstained from voting on the SCR; and
- (c) The pricing for the shares be subjected to the requirements of the Code, whereby the Offerors were to revise the price if they acquired shares of the company at a higher price during the period from the date of the announcement of the SCR until the implementation of the SCR.

Following this ruling and for avoidance of doubt on the application of the Code to parties intending to undertake a privatization exercise via a SCR, early consultation with the Commission is strongly encouraged.

Application of the Malaysian Code on Take-overs and Mergers, 1998 in relation to making announcements on competing offers

Arising from a take-over offer for shares in an offeree company, the board of directors of the offeree ("Offeree Board") had announced its intention to seek an alternative person to undertake a competing offer for the offeree's shares.

In the absence of any further information on the competing offer even after the dispatch of the offer document on the take-over offer, the Securities Commission Malaysia ("the Commission") issued a ruling requiring the Offeree Board to make an announcement on whether the competing offer would be forthcoming or otherwise, following from its intention to seek a competing offer. The ruling required that should the competing offer be forthcoming, the party undertaking the competing offer was to make an announcement under section 12(1) of Malaysian Code on Take-overs and Mergers, 1998 ("the Code"). All these announcements were to be made within 5 days from the date of the ruling.

The ruling was made in view of the uncertainty of the competing offer and the importance of such information to the remaining shareholders of the offeree in making an informed decision on the subsisting take-over offer.

The Board of Directors of an offeree involved in a similar situation in the future is expected to take proactive steps in protecting the interests of its shareholders by ensuring that information on competing offer is provided promptly. Following this ruling and for the avoidance of doubt, early consultation with the Commission is encouraged if similar situation is faced by an offeree.