

Malaysia

Kadir Andri & Partners

Updating the takeovers code

In July 2015, the Capital Market and Services (Amendment) Bill 2015 was passed to amend the Capital Market and Services Act 2007 (CMSA). It contains various provisions to streamline and modernise takeovers and compulsory acquisitions.

Reminiscent of the pre-1999 take-overs code, the Bill will move the principles and objectives (such as fair and equal treatment of all shareholders) governing a takeover

offer, merger or compulsory acquisition from the CMSA to the Malaysian Code on Takeovers and Mergers 2010, which will be renamed as the Malaysian Code on Takeovers, Mergers and Compulsory Acquisition (Code). This will give the Securities

Commission (SC) greater flexibility to convey how the spirit of the Code must be observed and not just the letter.

The Bill also grants new powers to the SC to appoint an independent adviser in the event the offeree fails to appoint one as required under the Code (as long as the SC is satisfied that it is in the interest of the shareholders of the offeree to do so). Any independent adviser will be granted such powers as may be necessary for the performance of its functions, including having access to the records of the offeree and the power to require the offeree and its officers to answer all questions relevant to the preparation of the independent advice circular.

Another important revision is to extend the compulsory acquisition provisions in the CMSA to convertible securities. This will allow an offeror making a takeover for the shares of a company to launch a simultaneous takeover offer for the company's convertibles, as opposed to using more complicated methods, such as a scheme of arrangement.

Finally, the Bill introduces two additional categories of relationships for parties to be

presumed to be acting in concert in a takeover offer: (i) an individual and any person who is accustomed to act in accordance with the instructions of the individual, and the close relative of, companies controlled by, or related trusts of, the individual; and (ii) a person, other than a licensed bank or a prescribed institution, who, directly or indirectly, provides finance or financial assistance, in connection with an acquisition of voting shares or voting rights, with a person who receives such finance or financial assistance.

We await the pronouncement of the effective date of the Bill.

Tan Kong Yam

Contacts

Level 10 Menara BRDB
285 Jalan Maarof
Bukit Bandaraya
59000 Kuala Lumpur, Malaysia
T: +603 2780 2888
F: +603 2780 2832
E: partner@kaaplaw.com
W: www.kaaplaw.com



Tan Kong Yam