

TAKE OVER PROVISIONS IN CMSA COME INTO FORCE

When the Capital Market and Services Act (“CMSA”) came into force on 28 September 2007, provisions relating to take-overs, mergers and compulsory acquisitions contained in Division 2 Part VI of the CMSA (“Division 2”) were not enforced and the then existing provisions in the Securities Commission Act 1993 (“SCA”) were maintained. The Securities Commission had announced that Division 2 will come into force in 2008 together with a revised version of the Code on Take-Overs and Mergers 1998 (“Code”). However that did not materialize. Instead the amendments were made to Division 2 to undo some of the changes originally proposed in the CMSA and the revised Division 2 was finally brought into effect on 1 April 2010.

The changes brought about by the new Division 2 are primarily to clarify and to allow the take-over provisions to be updated in line with market developments. For instance, the definition of ‘control’ and ‘take-over offer’ have been amended to make it clear that control howsoever effected would be regulated. The new definition of ‘company’ in the CMSA now includes “any other entity as may be prescribed in the Code” and the new definition of ‘share’ now includes a unit in an entity prescribed in the Code. These changes will enable the ambit of the Code to be extended to cover new entities and new form of ‘shares’.

Initially the CMSA was supposed to change the definition of ‘control’ such that the mandatory level threshold where the requirement to make a mandatory offer is triggered is reduced from 33% to 30%. The other significant change proposed when the CMSA was first published was in respect of the calculation of the 90% shareholding required to enable a compulsory take over to be effected. When first published, Section 222 of the CMSA included shares already held by the offeror and persons acting in concert with him at the date of the take-over offer in the computation of the 90% shareholding threshold. These proposed changes would invariably make it easier to effect a take-over. However Division 2 has since been amended to reflect the original position contained in the SCA. Hence although there are some changes in the wordings of the new definition of ‘control’ and the new Section 222 of the CMSA, the effect of these new provisions are the same as the corresponding provisions under Sections 33(1) and 34 of the SCA which they replaced.

The Securities Commission presumably dropped the proposed changes to the threshold of control and computation method of the threshold for compulsory acquisition after consultation with industry participants. As the newly enacted Division 2 largely reproduced the take over provisions in the SCA with some minor modifications, there is no new Code and the rules governing take-overs, mergers and compulsory acquisitions generally remains status quo.

For further information and assistance, please contact the RL Corporate Finance Team at T: + 603 2093 3939 ext. 286 or email: rexlex@raslanloong.com.

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KUALA LUMPUR • SINGAPORE • MANNHEIM

KUALA LUMPUR Level 3A, Menara Manulife, 6 Jln Gelenggang, Damansara Heights, 50490 Kuala Lumpur, Malaysia. • www.raslanloong.com • rexlex@raslanloong.com • Fax: +60 3 2093 4848
Tel: General +60 3 2093 3939 • Corporate M & A ext. 284 • Corporate Finance & Banking ext. 286 • Insolvency ext. 288 • Litigation & Recovery ext. 283 • Technology & IP ext. 276
SINGAPORE Level 31, 6, Battery Road, Singapore 049909. • sing.office@raslanloong.com • Fax: +65 6327 8887 • Tel: +65 6327 8885
MANNHEIM Reeg Rechtsanwälte, R3, 4-5, D-68161 Mannheim, Germany. • axelreeg@raslanloong.com • Fax: +49 621 12717 17 • Tel: +49 621 12717 0



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