Corporate Law Reform Committee

Responses and Comments Received on
Consultative Document
"Capital Maintenance Rules and Share Capital: Simplifying and Streamlining Provisions Applicable to Shares"

Respondents:

A total of ten (10) responses were received from the following:

1. General Insurance Association of Malaysia (PIAM)
2. Institute of Approved Company Secretaries (IACS)
3. Malaysian Accounting Standards Board (MASB)
4. Malaysian Institute of Accountants (MIA)
5. Malaysian Association of Company Secretaries (MACS)
6. The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)
7. Association of Merchant Banks in Malaysia (AMBM)
8. The Association of Banks in Malaysia (ABM)
9. Securities Commission (SC)
10. Mohd Noh & Co.

Summary of responses and comments:

Respondents	Comments
PIAM	**Authorized Share Capital and Par Value** The abolishment of the authorized share capital and par value of share of share are timely. Without the authorized share capital stated in the memorandum of the company, the company can raise any amount of share capital. The present legislature does not allow a company to issue shares higher than the stated authorized share capital. Any increase in the authorized share capital has to be approved by its shareholders. This is time consuming and a costly procedures. The existing practise of companies having varied par value on the shares is creating much confusion to the public. It is time that the par value of shares

	to be abolished.
IACS	1. The institute wishes to make reference to Section D 2 (ii) of the recommendation by the Corporate Law Reform Committee Report. The CLRC recommends that The Companies Act should be amended to include a statutory valuation procedure for non cash consideration shares. 2. The institute appreciates the there exists statutory bodies like the Securities Commission, Malaysia and guidelines issued by such bodies to govern the valuation of consideration for shares for public companies. However, none exists for private limited companies ("Sdn Bhd"). 3. Third parties who rely on the published capital structure of a Sdn. Bhd are in fact relying solely on the directors of the Sdn Bhd to exercise their fiduciary duty in ensuring that non-cash contribution is not less than the nominal value of the shares to be issued. Further, in view of the fact that a large number of Sdn. Bhd. Have common shareholders and directors, the Institute expresses its reservation whether the existing regime provide an adequate mechanism in ensuring the adequacy of consideration for non-cash contributions. 4. The declaration of the capital structure of a Sdn Bhd is in Form 24. Form 24 is issued by the company secretary bearing his or her signature. This will naturally make the company secretary the first points of inquiry as a when a third party dealing with the Sdn Bhd start to question the adequacy of consideration for non-cash contributions. 5. There are in fact a number of countries which require a body to certify on the adequacy of non-cash contribution for shares. A summary is listed below:

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Countries	Regulating regime
Russia	In kind contribution to the charter capital of a joint venture has to be valued by a licensed independent valuer.
France	In kind contribution to a company against the issue of shares is subject to a prior valuation made by an official valuer (Commission aux apports) appointed by the Commercial Court
Netherlands	Auditor must certify the in kind contribution at least equal the nominal value of the shares. The auditor's statement must be filed with the trade register of the Chamber of Commerce
China	When state owned assets are used by PRC registered accounting firm has to issued a certification in accordance with the guidelines by the Ministry of Finance

While the Institute is not recommending the adoption of any of the regime used in the above countries, the Institute recommends that their regime be considered.
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<tr><td>MASB</td><td>We support the efforts of the Company Law Reform Committee (CLRC) to review the Companies Act 1965 to simplify company operations and to promote corporate governance. In this regard, we are agreeable to CLRC's proposal to abandon the concept of par or nominal value and authorized share capital.</td></tr>
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	We, however, have general reservations in respect of the accounting treatment as illustrated in Section E – Appendix on Pro-forma Accounting Entries. Having closely reviewed the accounting entries, we find that there are inconsistencies in the illustration with the accounting treatment advocated in the accounting standards (FRS). To ensure consistency, may we suggest that the task of determining the appropriate accounting entries be left with the MASB, especially in light of the ongoing review of the FRS. **Treatment of Redeemable Preference Shares** Page 36 of the Consultative Document explains that if redemption of redeemable preference shares (RPS) is made out of available profits, the company transfers the amount redeemed to its contributed capital account from its available profits. The proposal to transfer the amount redeemed to the company's contributed capital seems to suggest that all RPS are equity in nature. This proposal is inconsistent with FRS 132 Financial Instruments: Disclosure and Presentation (FRS 132) which stipulated that RPS can be equity or financial liability depending on the nature of the instrument. If RPS bears a characteristic of a liability and meets the definition of financial liability it should be accounted as such. Likewise if it an equity instrument. FRS 132 prescribes that the substance of a financial instrument, rather than its legal form, governs its classification on the entity's balance sheet. Some financial instruments take the legal form of equity but are liabilities in substance. For example, a preference share that provides for mandatory redemption by the issuer for a fixed or determinable amount at a fixed or determinable future date, or gives the holder the right to require the issuer to redeem the instrument at or after a particular date for a fixed or determinable amount, as a financial liability. **Expenses in Connection with the Issue of Shares** Page 58 of the document stated that, "In an NPV environment …. The expenses in connection with the issue of shares of RM1,000 may be written-off against the Contributed Capital account or the Income Statement."

	We wish to point out that the choice of charging the expenses to Income Statement will be inconsistent with FRS 132. FRS 132 requires transaction costs of an equity transaction, except for costs of issuing as equity instrument that are directly attributable to acquisition of a business, to be deducted from equity. This is because transaction costs incurred as a necessary part of completing an equity transaction are accounted for as part of the transaction to which they relate. We have other suggestion for your consideration; as follows: (a) Special Resolution vs. Ordinary Resolution A special resolution, rather than an ordinary resolution, should be required when a company increases or decreases its contributed capital – this is to protect the interest of the minority shareholders. (b) Section 67A Purchase by a Company of its Own Shares Paragraph (3) of Section 67A of the Companies Act 1965 allows for a company to apply its share premium account for the purchase of the company's own shares. The consultative Document is silent on section 67A. we suggest the revised Companies Act to clarify whether contributed capital can be utilized for the purchase of the company's own shares.
MIA	**General Comments** 1. The Institute acknowledges the need to bring Malaysia's capital maintenance and share capital rules in line with current business needs and note the parallel developments taking place in these areas across comparable jurisdictions. 2. The Institute agree with the proposal to abandon the need for a company limited by shares to state its authorized share capital in its memorandum.

3. The Institute also generally support the proposal to abandon the concept of par value of shares. As highlighted in the Consultative Document, the removal of the par value requirement would eliminate the need to maintain a share premium account, which in effect restricts the use of part of the contributed capital where shares are issued at above the par value. It would also eliminate the need to follow the procedure set out in section 59 of the Companies Act when a company intends to issue shares at a discount, which would result in greater expediency in raising capital and reduction of the cost of doing business in Malaysia.

4. The Institute wish to put forward the suggestion that a thorough assessment of the accounting, market, taxation and legal implications of adopting a no par value regime be conducted prior to its implementation.

Specific Comments

Redeemable Preference Shares (RPS)

1. A transitional period given to allow companies time to convert from a par value to a no par value regime. The Company Law Reform Committee's (CLRC) recommendation on page 14 of the Consultative Document allows, amongst others, the utilization of the share premium account to offset premium payable on the redemption of redeemable preference shares (RPS) during the transitional period. There is a possibility that there will be long term RPS that are issued prior to the conversion date but which are redeemable after the transitional period. How would such redemptions be treated?

2. Paragraph 4.2 (v) on page 15 of the Consultative Document states that when RPS is redeemed out of profits, the company is required to transfer the amount redeemed to its contributed capital account. However, in the illustration provided on page 60, it is stated that the amount to be transferred out profits to contributed capital is the

	subscription amount of the RPS redeemed. The subscription amount and the redemption amount of an RPS can be different. 3. The Institutes suggest that to eliminate ambiguity, the accounting treatment for RPS redeemed after the transitional period should be properly spelt out and the term “subscription amount” clearly defined. Accounting Treatment Relating to Conversion to No Par Value Shares 1. The Institute would like to highlight that the accounting treatment relating to the conversion of par value shares to no par value shares should comply with the requirements prescribed by Malaysian Accounting Standards Board (MASB). **Conclusion** The Institute hope that our comments would be given due consideration by the CLRC. We would be pleased to meet with the CLRC or its Working Group to further discuss our comments if necessary.
MACS	MACS accord agreement and strongly support the recommendations by the Corporate Law Reform Committee in simplifying and streamlining provisions applicable to shares except for the understated suggestions:- **Section C – Capital Maintenance Rules** Item 2 (ii)(iii) under the Conversion from a par value environment to an NPV environment, “that immediately on or after the Conversion ….. contributed capital;” (Page 30) Suggestion:- i. Capital certificates should be issued to reflect the total capital contribution, which should include Share Premium Account prior to the conversion. ii. That a mechanism i.e. NTA / PER / etc be imposed as a basis

	"that all new shares issued by all companies as from the Conversion date shall be issued for an issue price that is to be determined by the board of directors" :Price Determinant Mechanism strictly be imposed to avoid arbitrary pricing and manipulation. **Section E – Appendix on Pro-Forma Accounting Entries** Accounting Entries Illustrations – Partly paid shares (Page 65) Suggestion:- The word "Call-in-Arrears" be replaced by "Capital-in-Arrears".
MAICSA	**1. Fees to be paid to the Registrar by a company having a share capital** Currently, the fee to be paid to the Registrar is determined by the amount of authorized capital of the company. Once the concept of "authorized capital" is abolish, assuming that companies must still pay a registration fee to the Registrar, how would this registration fee of a company be determined? If the issued capital is used in lieu of the authorized capital in determining the fee to be paid to the Registrar, using the same bands that are being for the authorized capital, what would happen in a scenario where a company has already paid a fee to the Registrar based on the authorized capital of RM5,000,000, but currently has only issued shares up to a band of RM100,000. The logical conclusion is that this company will not be required to pay any further fees to the Registrar until the issued capital reaches RM5,000,000. Although we understand that this would be a matter for the Registrar to determine, nonetheless we seek clarification for our members who have raised these issues.

	2. Transitional provision for the treatment of the premium account In relation to the proposal put forward by the CLRC that the amount standing to the credit of the company's share premium account prior to the Conversion date, to be permitted during the transitional period, <u>only</u> for the following purposes: a. providing premium payable on the redemption of redeemable preference share (RPS) issued before that date; b. writing off preliminary expenses of the company incurred before that date; and c. writing off expenses incurred, or commissions or brokerages paid or discounts allowed, on or before that date, for any duty, fee or tax payable on or in connection with any issue of the company's shares; and that after the transitional period, the premium portion of the RPS must be funded out of available profits or from the proceeds of a fresh issue of shares made for redemption purposes, we have the following comments; **Comments:-** i. We are of the opinion that the proposed two (2) years (transitional period) may not be sufficient a time frame for companies to decide whether or not to redeem their redeemable preference shares at a premium or to utilize the same for (b) and (c) above. Corporate exercises, especially for Public Listed Companies are time consuming and tedious, requiring approval from the relevant authorities and their shareholders; ii. In the case of redemption of the premium portion of an RPS, it does not appear logical or financially wise to have to issue new shares for the purpose of redemption or use the available profits, after the transitional period, when there is still the amount from the share premium account available; and iii. Additionally, we view the provision for the usage of the share premium account to only three (3) items during the transitional period as very restrictive. Section 60 (3) of the Companies Act

1965 currently provides that the share premium account may be applied:

a. in paying up unissued shares to be issued to members of the company as fully paid bonus shares;

b. in paying up in whole or in part the balance unpaid on shares previously issued to members of the company; and

c. in the payment if dividends if such dividends are satisfied by the issue of shares to members of the company.

Recommendations:-

i. With regards to the two (2) year time period, our Institute takes cognizance that a time period for the utilization of the proceeds should be provided to ensure the complete transition from a Par Value regime to a No Par regime and agree that a time period should be imposed. Instead of the recommended two (2) years, we would like to recommend that the transitional period for the utilization of the share premium account be extended to between three (3) to five (5) years to allow companies sufficient time to plan for the utilization of the share premium account.

ii. We also recommend that the utilization of the share premium account should be extended to include item (iii)(a), (iii)(b) and (iii)(c) above during the transitional period. This allows for greater flexibility in utilizing the share premium account during the transitional period.

3. Capitalization of Profits without increasing the number of shares, that is, without any new issue of shares to shareholders.

Although the consultative document states that both South Africa and Australia allow for the capitalization of profits without increasing the number of shares, it has yet to convincingly explain why Malaysia ought to follow this method of capitalization or the rationale for such a provision.

With regards to the statement, which appears on page 38 of the consultative document, that "*In such an instance, there could be a*

perception that there is a loss in the value of the shareholding since no new shares are issued", we are of the opinion that the result of capitalizing profits without increasing the number of shares would lead to the contrary being perceived. Furthermore, investors should be aware that the book value of shares bears little meaning in the event that the company is liquidated.

Whilst the flexibility is welcomed, it is felt that there should be sufficient and reasonable reasons for changing the manner in which things are done. Failing which, the objective of simplifying the Companies Act 1965 may not be achieved.

4. Power to make different arrangements for calls and payments for shares: section 56 of the Companies Act, 1965.

Although the CLRC has recommended that Section 56 of the Companies Act 1965 be maintained, our Institute is of the view that the power under Section 56 should be deleted. Our view is in line with the simplification process of the Companies Act 1965, by removing burdensome administrative time and expenses.

Allowing for partly paid in a company can be administratively burdensome. Although issuing shares as partly paid "commits" the shareholder to an outstanding amount when a call is made, there is no guarantee that this amount will be actually paid up. When the shareholder fails to pay up the balance when called, although Table A has provisions for the forfeiture of shares, this process is administratively burdensome. Briefly the procedures required will be as follows:-

a. notice requiring payment of the call, together with any interest which may be accrued, must be sent (Reg. 29);
b. if payment is still not paid on the date stated in the notice, the partly paid shares will be forfeited (Reg. 30);
c. the forfeited share may be sold, disposed off and cancelled (Reg. 31);
d. the person whose shares have been forfeited will cease to be a member but will remain liable to pay to the company all money which at the date of forfeited was payable by him to the company

in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such money in respect of the shares (Reg. 32)

e. a statutory declaration in writing from a director or the secretary of the company, stating that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share (Reg. 33)

The arguments **FOR** maintaining Section 56 of the Companies Act 1965 are mainly to allow for flexibility for the company in raising its share capital. For example, a company may wish to ultimately raise RM10 million. In this scenario, lets say the shares of the company have been valued at RM10 each. This means that the company will issue 1,000,000 shares valued at RM10 each to raise RM10 million. If the shares are to be offered to the company's shareholders at a pro rata basis, RM10 million may be too much to be paid all at once. However, if the company decides that it really only needs half the amount immediately and issue shares paid up to half the amount, that is, RM5 million, shareholders may be more willing to inject the capital into the company. The remaining amount can then be called up at a later date. In this scenario, the company would effectively be issuing 1,000,000 shares valued at RM10 at a partly paid price of RM5 each. If there were two (2) shareholders in the company with equal shareholding, they will each be paying RM2.5 million first, with the other RM2.5 million each to be paid at a later date.

However, as previously stated, there is no guarantee that the remaining total of RM5 million will eventually be paid when called. If this happens, the company will have to go through the process of forfeiting those shares.

Those who argue **AGAINST** maintaining Section 56 of the Companies Act 1965 opine that the above scenario could easily be resolved by preventing the issuance of partly paid shares. In such a scenario, if the shareholders do not have sufficient funds to inject 1,000,000 shares valued RM10 each into the company, then the company should only

	issue 500,000 shares valued at RM10 each, the total of which is RM5 million. The effect of issuing 500,000 fully paid shares valued at RM10 each and the effect of issuing 1,000,000 shares valued RM10 each paid up to RM5 each, is the same. In both instances, the company receives RM5 million. With the former, when the company needs the remaining RM5 million, all it needs to do is to a fresh issue of shares. If the shareholders do not have sufficient funds to inject into the company, the company will then have to source for other methods to raise capital. With the latter, when the company needs the remaining RM5 million, it will need to make a call on those shares. However, as there is no guarantee that the shareholders will be able to meet their obligation in paying up for those shares, there may be a possibility that the company may have to forfeit the shares. This becomes administratively burdensome. There is another view that the provision of issuing shares as partly assists companies in their loan application. The unpaid portion of the shares acts as a safeguard for financial institute that moneys can be injected into the company if need be. However, with the lack of certainty that the unpaid amount of the shares will indeed be paid when a call is made, there are questions on whether uncertainty of the shareholders paying up the balance is an appropriate security for creditors. With the above scenario, and in line with the objective of simplification, we are of the view that the provision for the issuance of shares as partly paid should be abolished. **5. Share Buyback and Capital Reduction Exercise** This consultative document has not considered topics on share buyback and capital reduction exercises in an NPV environment. In our

	current par value environment, shares are bought back or reduced based on their par value. How would the NPV environment affect these two exercises? As both these exercises involve a lot of administrative work, the practical aspects of these two exercises in an NPV environment is of great interest of MAICSA. **6. General** On the whole, we commend the CLRC – Working Group B for having painstakingly examined these provisions on share capital matters, and making the consultative document as succinct and user friendly as possible. The concept and ideas put forward have been carefully researched and clearly articulated. However, we would like to also see debates on the various issues and concerns raised by the CLRC during their formulation of their proposal published in future consultative documents. This would hopefully help us further understand the rationale behind the different proposals clearer and perhaps also allow the public to be more accepting of the concepts which require a change of mindset. We hope that our comments above have been useful in contributing to the overall effectiveness of the review of the Companies Act, 1965. We look forward to our continuous partnership in enhancing the level of Corporate Governance in Malaysia
AMBM	**1. Corollary Changes and Transitional Provision in relation to introduction of No Par Value Shares (Page 43)** Comments The transitional provisions are stated to cover: a) Treatment of the amount standing to the share premium account: and b) Liability on partly paid shares. Transitional provisions to address the abolishment of the authorized share capital concept vis-a vis existing companies (all of which would have the authorized share capital clause in their memorandum) do

	not appear to have been considered. How will this issue be addressed? Are existing companies required to observe the authorized share capital principle unless steps are taken amend their memorandum? If yes, compliance cost is an issue. 2. Recommendation not to amend the Companies Act to include: (Page 51) i. Statutory provisions that will have the effect of regulating the type of consideration that is receivable by the company when the company issues its shares; and ii. A statutory valuation procedure for non cash consideration for shares. The rationale given is that: a) In so far as the Companies Act is concerned, adequacy of consideration should be dealt with by way of directors' duties; and b) Adequacies of consideration by way of valuation for shares issued are primarily a capital markets issue and should be dealt with by capital markets regulations. Comments The Corporate Law Reform Committee should take the opportunity to promote shareholders' interest and limit the potential for directors to abuse their powers in relation to unlisted companies given that capital markets regulations are only applicable to listed companies. Other Feedback / Comments Issues relating to Redeemable Preference Shares 1) In general we appreciate the rationale for simplifying concept of par value and understand the use of contributed capital concept is probably unavoidable. The immediate impact faced by a bank or its subsidiaries would be on the redemption of redeemable preference shares (RPS). Whilst the ability to issue RPS stays intact under the proposed law, it does not address how RPS can be fully redeemed in the situation where the company does not

	have sufficient profit or does not wish to issue new shares post transition period. This deviates from the current position where the share premium account essentially allows RPS holders to redeem periodically and ultimately in full (where par value is nominal). However, under the proposed changes, the bank or its subsidiaries (after transition period) will not be able to redeem periodically if it does not have sufficient profit and the RPS holders will not be able to get their full subscription price unless the bank or its subsidiaries goes through capital reduction exercise or is wound up. It might be difficult to sell such concept to RPS investors. What is considered "RPS issued before conversion date"? If RPS were partly paid, then does it fall within or outside the transitional provisions? Assuming it enjoys transitional rules, to what extent? Only to the extent of the partly paid amount before conversion date? Issues relating to capital Reduction / Share Buy Back 2) (i) We would appreciate if the Committee address other complexities in the current Companies Act e.g. in relation to capital reduction / share buy back (where allowed) exercise which is often time consuming and costly to undertake. This has made it difficult to companies to effectively manage its capital. We understand that the Australian simplification also addresses the simplification of capital reduction / share buybacks. Perhaps the Committee could address this? If the process of capital reduction is simplified, it will also help address the redemption of RPS issue highlighted in (1). (ii) In the event Securities Commission (SC) finds material omission or information contained in the prospectus to be misleading, the SC can issue a stop order to prevent the company from completing the Initial Public Offering (IPO). Pursuant to Section 54 of the SC Act 1993 however, there may be cases where the company has already issued and allotted shares pursuant to the IPO prior to the issue of the stop order by SC. In Singapore's context, for cases of IPOs where the authorities

	issues stop order after registration of IPO prospectus and issuance of shares pursuant to the IPOs we understand that the affected companies can cancel such shares issued pursuant to the IPO without obtaining a court confirmation (as required under Section 64 of our Companies Act, 1965) We would like to suggest to the Committee to consider introducing provisions under Section 64 of the Companies Act, 1965 to allow public companies to cancel any new shares issued pursuant to the offering of securities based on prospectus which has been registered with the Securities Commission (SC) and lodged with ROC but where SC has subsequently issued a stop order pursuant to Section 54 of the SC Act, 1993. Issues in Investment Vehicles 3) From an Investment Fund's perspective, Malaysia (unlike other jurisdictions) does not offer a wide choice of investment vehicles for setting up of investment funds. It is mainly restricted to unit trusts (which has restrictions) or companies limited by liability. In other jurisdictions, use of limited liability partnerships or unit trusts (with less limitations) etc are quite common. We would appreciate if the Committee could address this unique situation. 4) Can we also pursue / lobby for other / more relaxed investment vehicle option eg. Limited Liability Partnership, more relaxed closed end fund requirement etc. Implementation and Transitional Issues 5) We would like to know how was the overseas experiences received, what problems they faced and how the companies overcame these challenges? Is Singapore's proposal similar to ours or does it cover a broader range of issues? 6) We would like to know if the time effective date is 2 to 3 years and transitional period 2 years?. The transitional period is critical as it may impact some investment decisions to be made by companies.

ABM	1. Section 36 (1) of the Banking and Financial Institution Act. 1989 (BAFIA) i. Banks are governed by Section 36 (1) of the Banking and Financial Act, 1989 ("BAFIA") which requires that each financial institution maintain a reserve fund, and that a specified sum be transferred out of its net profits each year to the said reserve. This transfer to reserve on a yearly basis is for the purpose of ensuring the amount of reserve fund of such institution is sufficient for the purpose of its business and adequate in relation to its liabilities. ii. Section 36 (1) makes reference to the use of paid-up capital as a benchmark for the determination of the quantum of net profits to be set aside for the reserve fund. In an NPV environment, the paid-up capital portion will no longer be available / obtainable as it will form an integral part of the Contributed Capital. iii. It is opined that the move to an NPV environment will make obsolete Section 36 (1) of BAFIA. Recommendations Given the more restrictive nature of the "no par value" environment and that the adequacy of capital for banking institutions is being monitored (both domestically and internationally) by a separate Capital Accord (Base II), it is therefore proposed that:- a. The BAFIA, particularly Section 36 be reviewed and revised accordingly, otherwise banking institutions will be required to set aside additional Section 36 Statutory Reserves (non-distributed) to cover for the existing share premium, which will be converted to "contributed capital". This will restrict the banking institutions' capacity to pay dividends. 2. Transitional Period i. The document also stated that to ensure a smooth transition from a par value environment to an NPV environment, a

	Conversion date will be set. Further, after the conversion date, there will be a transitional period to enable companies to take all necessary steps to comply with the new law. This transitional period will be set by the Minister in consultation with the business and professional community. The CLRC recommends that the transitional period should not exceed two years from the Conversion date. ii. The transitional provisions for abandoning the concept of par value need to be more accommodative to ensure that all existing capital structures (capital issued prior to conversion) are not adversely affected. Recommendation It is therefore proposed that:- a. The transition period should not be for a fixed period but should rather be flexible to allow time for any existing capital structures that may be adversely affected, to mature. 3. Hybrid Capital Instruments i. The conversion to “no par value” environment will provide less flexibility to restructure hybrid capital instruments since after the Conversion date, a company shall have only one capital account which is referred to as ‘contributed capital’ account. Recommendation Hence it is proposed that:- a. Clarification be obtained on the treatment of hybrid capital instruments issued under NPV environment. 4. Implications of NPV environment on all other laws and regulations Recommendation a. Other than the Companies Act itself, all other laws and regulations

	which rely on the concept of par value shares should be reviewed and revised accordingly to ensure neutrality.
SC	There is support for the proposals in the Consultative Document on the basis that the current importance attached to these traditional components of capital may be misleading to investors. In addition, these concepts have no impact on valuation from an analytical viewpoint as the valuation of a company is driven by its cash-flow analysis and per share comparisons. However, the following suggestions are made strengthen the proposed framework:- **1. Safeguards** a) Removal of section 59 • Currently, section 59 serves as a control mechanism to ensure that directors do not issue shares below par and where that is carried out, it would require a prior court order to be secured. • With the removal of section 59, it is felt that **safeguards for minority shareholders** need to be strengthened particularly to ensure that their rights are not diluted. This point is underscored as the shareholding structure of Malaysian companies is often times characterised by the dominance of a single controlling shareholder. Therefore, in an NPV regime, safeguards need to be inbuilt to ensure that the controlling shareholder does not fix the issue price at a disadvantage to the minority shareholders. b) Cost savings The CLRC should ensure that cost savings in the NPV environment would translate into *actual cost savings* as there might be other forms of unforeseen costs that may have to be dealt with under the NPV regime (for example costs pertaining to an increase in disclosure requirements and an increase in costs due to additional MASB reporting requirements under NPV)

	c) Directors' duties In the short to medium term after the introduction of the NPV environment, there is a possibility that unethical parties may take advantage of investors' unfamiliarity with NPV to mislead and misinform, especially where corporate transactions and disclosure of financial statements are concerned. In this regard, the scope of directors' duties should be enhanced in tandem with the introduction of NPV. **2. Operational concerns** a) Awareness Currently, financial institutions and investors place reliance on the concept of authorized capital as a means of control. As such, the CLRC should ensure that the transition period and the launch of these initiatives is properly managed in order to sufficiently educate companies, investors, creditors and any other relevant stakeholders. Early education and awareness programmes need to be rolled out to clear any misconceptions relating to the NPV concept. b) Accounting systems • The Malaysian Accounting Standards Board (MASB) should be given a greater role in the process to ensure that the relevant accounting treatment issues are clearly articulated to the users of financial statements. • When setting out the accounting standards in the NPV regime there should be clarity in the items reflected on the balance sheet such as contributed capital and other components of capital. In this regard, there is significance from a credit and investment viewpoint to be able to distinguish between the amount invested in the company directly by shareholders (contributed capital), revaluation reserves and retained earnings.
Mohd Noh & Co.	We have perused through your group B proposal and our comments are as below:-

	1. Not much saving to be made with the withdrawals of the existing section of the Companies Act. The obvious saving was the abolishment of payment for registration of authorised capital however other filing requirement do not gives substantial saving. Please tabulate the financial saving to be made and additional paper work required in complying with proposed amendment. **2. Countries that have been using NPV** (a) We noticed that New Zealand have been mentioned as the country that have fully implemented NPV. Our Companies Act was based on UK, India and Australia as a source of our reference. Does NZ have company law cases under NPV that can be used as a precedent in our court of law? (b) New Zealand is a population with 5 million people which is 20% of our population. NZ are not similar in many ways cannot be used as a reference in our proposed changes. England used NPV but limited to private limited companies must have certain reservation for application in public companies. Have you studied their reservation? (c) Singapore is still studying the NPV. If the NPV are good surely Singapore had implemented them. **3. Determination voting power and right at particular shareholder.** In implementing NPV there may be difficulty in determining the voting power attached to every shareholder at any point of time especially in cases of: i. Company continues making profit/loss but no financial statements being prepared. When NPV share are issued at different times and prices. ii. When NPV share are issued at different times and prices; iii. When no accounts are available. **4. Implication on the proposed amendment** The proposal does not provide detailed paper works required in implementing the NPV. This should be highlighted so that what is being

	planned is achievable. The proposal prepared on piecemeal basis is very difficult to comment because all provisions of the Acts are interrelated. Time is given again for comment once all the proposed amendment completed. We proposed that the simplification be made on two stages:- a. Stage I – reduce filing fees, penalties and registration fees as incentive to entrepreneurs to embark on proposed amendment of the Act; and b. Stage II – Introduce proposed amendment two years after implementing Stage I.