

**Corporate Law Reform Committee**  
**Responses and Comments Received on**  
**Consultative Document**  
**“Strategic Framework for the Corporate Law Reform Programme”**

**Respondents:**

A total of nine (9) responses were received from the following:

1. Association of Merchant Banks in Malaysia (AMBM)
2. Bank Negara Malaysia (BNM)
3. CPA Australia
4. The Institution of Surveyors, Malaysia (ISM)
5. Malaysian Accounting Standards Board (MASB)
6. Joint submission from the Malaysian Institute of Accountants and Malaysian Institute of Certified Public Accountants (MIA/MICPA)
7. Malaysian Retailer-Chains Association (MRCA)
8. The Association of Banks in Malaysia (ABM)
9. The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)

**Summary of responses and comments:**

<b>Respondents</b>	<b>Comments</b>
<b>BNM</b>	<p><i>Specific Comments:</i></p> <ol style="list-style-type: none"> <li><b>1. The Australian experience and the experience of other jurisdictions</b> <ul style="list-style-type: none"> <li>• To consider the Australian approach in simplifying the language of the Act to make it readily understood by non-lawyers.</li> <li>• To consider the Hong Kong experience of reviewing the Corporate Rescue and Insolvent Trading 1996 by examining various procedural issues such as the renaming</li> </ul> </li> </ol>

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	<p>of solvent and insolvent liquidations and the introduction of standard powers for provisional liquidators.</p> <p><b>2. Insolvency Regime</b></p> <ul style="list-style-type: none"> <li>• To take into account developments in United Kingdom and Hong Kong respectively. In UK, the draft Bill 1999/2000 introduced new moratorium provisions and voluntary arrangement procedures for merging companies. Hong Kong had review its Corporate Rescue and Insolvent trading 1996 as above stated above.</li> <li>• There may be a need to review the relevant provisions in the Bankruptcy Act 1967 and the CA 1965 to determine if they need to be amended to cater for the development in other jurisdictions on the recognition of the finality of payments under the solvency regime.</li> </ul> <p><b>3. BNM Regulatees</b></p> <ul style="list-style-type: none"> <li>• As the review may have an impact on BNM's regulates such as the banks and insurance companies, to take into accounts corporate governance issues not provided for in the BAFIA and the Insurance Act 1996 including: <ul style="list-style-type: none"> <li>(i) the composition of independent directors on the board of directors; and</li> <li>(ii) the separation of powers between the chairman of the board of directors and the chief executive officer.</li> </ul> </li> </ul> <p><b>4. Development in ICT</b></p> <ul style="list-style-type: none"> <li>• To take into accounts developments in ICT. For example, to do away with the archaic approach that in board meetings only physical presence will suffice and allow the use of ICT for quorum purposes for directors who are unable to be physically at meetings, to participate through the use of new technology.</li> </ul> <p><b>5. Regulatory Body</b></p> <ul style="list-style-type: none"> <li>• There is no single regulatory body that oversees the activities of company secretaries i.e. secretaries are either licensed by CCM or are members of prescribed bodies.</li> </ul>

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	<ul style="list-style-type: none"> <li>• To undertake review in the following areas: <ul style="list-style-type: none"> <li>a. mechanism for licensing / right to practise as company secretaries</li> <li>b. enhanced role in regulating and supervising company secretaries and other institutions</li> <li>c. the role of CCM in enforcing AMLA for reporting Institutions under its purview.</li> </ul> </li> </ul> <p><b>6. Overlap in enforcement and investigation</b></p> <ul style="list-style-type: none"> <li>• Agreed that the elimination of overlaps in enforcement and investigation powers between corporate regulatory authorities (as per paragraph 9 of the Strategic Framework) will ultimately reduce the administrative costs of these authorities.</li> </ul> <p><b>7. Scripless securities</b></p> <ul style="list-style-type: none"> <li>• To review relevant provisions of the CA 1965, Securities Commission Act 1993, Securities Industry Act 1983 and Securities Industry (Central Depositories) Act 1991 (SICDA) to be amended to cater for scripless private debt security (PDS) to provide a sound legal basis for scripless securities in the RENTAS system. This will be in line with the Loan (Local) Ordinance 1959, Treasury Bills (Local) Act 1946 and Government Investment Act 1983 which have already been amended in 1989.</li> </ul> <p><b>8. Penalties</b></p> <ul style="list-style-type: none"> <li>• To address the need for stiffer punishment/penalties for non-compliance of the CA 1965.</li> </ul>
CPA Australia	<p><i>Specific Comments:</i></p> <p><b>1. Members of Working Groups</b></p> <p>WGA should have a wider view and as such have a broader representation. Accountants in practice would be able to provide some expertise in some of the issues involving the private sector. If needed, CPA Australia can nominate some names.</p>

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	<p><b>2. Strategic Framework for the Corporate Law Reform Programme</b></p> <p>It is a well-researched and well-written document.</p> <p><b>3. Establishment of the Corporate Law Reform Committee and its Powers</b></p> <p>The terms of reference of the CLRC are clear and well-defined.</p> <p><b>4. The Scope of the Company Law Reform Programme</b></p> <p>Recommend that representation from the Malaysian Institute of Directors and the Minority Shareholder Watchdog Group be sought.</p> <p>While special attention is paid to private companies (Scope 5), there is also a need to consider the burden faced by the public listed companies. In fact the amount can be quite prohibitive for the PLCs. It is suggested that the compliance cost should be looked at in totality and not confined to private companies singularly.</p> <p><b>5. The Reform Programme Process</b></p> <p>The flow-chart of the process and role of each working groups is clear and well-defined. Likewise it seems fair and reasonable to expect the final report to be ready by end 2006.</p>
ISM	<p><i>General comments:</i></p> <p>(i) The scope and terms of reference of the CLRC are wide and comprehensive. The interests of most business sectors, professions and the public appear to be within the coverage of the Committee.</p> <p><i>Specific Comments:</i></p> <p>(ii) To examine the creation of limited liability sole proprietorship and partnership as an alternative business vehicle. Though the Quantity Surveyors Act 1967 and the Valuers, Appraisers and Estate Agents Act 1981 enable surveyors and valuers and general practice surveyor to practice by way of body corporate with limited liability, this is not so for land surveyors who are regulated by the</p>

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	Licensed Land Surveyors Act 1958.
<b>MIA/MICPA</b>	<p data-bbox="544 304 803 336"><i>General Comments:</i></p> <ol data-bbox="544 378 1412 1533" style="list-style-type: none"> <li data-bbox="544 378 1412 525">1. That the Strategic Framework is a useful reference for industry players, business community and other key stakeholders to assess the parameters of the review undertaken by CLRFC.</li> <li data-bbox="544 567 1412 745">2. That the composition of the working groups established under the CLRC, if not the CRC itself, be expanded to include business and finance professionals to ensure that the objectives of the corporate law reform programme are achieved.</li> <li data-bbox="544 787 1412 1008">3. That the representation from the accountancy profession appears somewhat lacking particularly in WGA, WGB and WGC and that the Institutes hope that more members of the accountancy profession be invited to serve on the working groups so as to play a more constructive role in the law reform process, as partners of the CLRC.</li> <li data-bbox="544 1050 1412 1186">4. That the Institutes be included in all the consultation process to be undertaken by CLRC to ensure the views of the accountancy profession and the business communities they serve are taken into account in the law reform initiative.</li> <li data-bbox="544 1228 1412 1375">5. That a reasonable time frame should be given for the various interest groups and constituencies to review and submit their comments on the law reform proposals contain in future consultation papers and exposure drafts.</li> <li data-bbox="544 1417 1412 1533">6. That time lines be provided for the various consultation paper and exposure draft to be issued by the CLRC from time to time. This would facilitate the consultation process.</li> </ol>
<b>MRCA</b>	<p data-bbox="544 1570 803 1602"><i>General Comments:</i></p> <p data-bbox="544 1644 1404 1791">(iii) That changes on proper corporate governance in private limited companies where directors and managerial staff have to be accountable for the companies to the shareholders whether the shareholders are minority or otherwise.</p>
<b>ABM</b>	<p data-bbox="544 1829 803 1860"><i>Specific Comments:</i></p> <ol data-bbox="544 1902 1364 1934" style="list-style-type: none"> <li data-bbox="544 1902 1364 1934">1. To consider changes in law in countries like Australia and</li> </ol>

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	<p data-bbox="597 233 1409 338">UK. For example, insolvency laws in the UK have recently led to a sway in our Malaysian's judges' decision on winding up.</p> <ol style="list-style-type: none"> <li data-bbox="542 380 1414 709">2. To review the current insolvency procedures in Malaysia which are currently seen in the Companies Act and Bankruptcy Act for companies and individual respectively. It would be welcoming to see an omnibus legislation which is applicable for both companies and individuals. By combining the laws relating to winding up and bankruptcy, the legislation would set out common principles and procedures, consolidating core areas like voluntary arrangements, court winding up, and preferential debt.</li> <li data-bbox="542 751 1414 894">3. To consider the proposed Limited Liability Partnership Act as a new form of business vehicle. If introduced, this would have an impact on the review of the country's corporate structure and framework.</li> <li data-bbox="542 936 1414 1936">4. The Reform Programme Process: <ul style="list-style-type: none"> <li data-bbox="597 1010 894 1052">(i) Paragraph 6a. (ii)</li> </ul> <p data-bbox="597 1087 1409 1304">It is not agreeable that the requirement of audit and company secretary be eliminated. The company's secretary duty is to ensure proper and efficient administration of a company and thus it is in the opinion of the bank that the requirement of having a company secretary is not onerous for private companies.</p> <p data-bbox="597 1346 1398 1640">The requirement of having an external auditors' report is a basic control mechanism to ensure good corporate governance. A truly independent external auditor will often be the first person to detect corporate abuse. In this connection, it is suggested that CCM (and other relevant regulators) should make further inquiries if a company's audit report is qualified (i.e. contains adverse comments by the auditors).</p> <ul style="list-style-type: none"> <li data-bbox="597 1682 797 1717">• Paragraph 6</li> </ul> <p data-bbox="597 1759 1398 1936">On the issue of accessibility of the company's records and documents to shareholders, there should be greater and faster accessibility of such information to the public at large. The successful functioning of a market driven economy depends largely on good information flow and full disclosure</p> </li> </ol>

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	<p>of information.</p> <p>For example, a more expeditious process to produce company winding up searches and company records in real-time would result in faster disbursement of loans by banks to their corporate customers based on reliable information.</p> <ul style="list-style-type: none"> <li>• Paragraph 7</li> </ul> <p>The sanctions prescribed under the CA 1965 are sufficient. Nevertheless, rigorous enforcement of the penal provisions of the Act is required in order to reduce instances of corporate breaches (e.g. section 132G of the CA – prohibited transactions involving shareholders and directors). This will ensure that investors perceive Malaysia economy to be transparent and internationally competitive.</p> <p>5. To amend section 122A of the CA (persons connected with a director) to provide certainty to third party. Section 122A(1) is so wide that it is next to impossible for persons such as banks to determine if a person/company is connected to a director. One possible amendment is to allow bank to rely on a company secretary’s certification that the company is not associated with a particular director.</p> <p>6. To discuss the requirement of independent directors for public listed companies by the relevant working group.</p>
MAICSA	<p><i>General Comments:</i></p> <ul style="list-style-type: none"> <li>• The following principles should be thoroughly understood: <ul style="list-style-type: none"> <li>(i) Company law should be designed to be “consumer friendly” and not be overburdened with a rigid and stifling set of rules;</li> <li>(ii) Company law must assist in business development and be less prescriptive;</li> <li>(iii) Certain minimum but necessary and essential legal framework of company law should be maintained, however this has to be in line with the Malaysian culture, level of civil literacy and habits; and</li> <li>(iv) Company law should be in harmony with other</li> </ul> </li> </ul>

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	<p style="text-align: center;">business and regulatory requirements.</p> <p><i>Specific Comments:</i></p> <p><b>1. International Perspective</b></p> <ul style="list-style-type: none"> <li>• In addition to making references to law reform initiatives in other jurisdictions, it is also necessary to study the effects of those reforms and to ponder if these initiatives would be applicable to the Malaysian context. For example, several jurisdictions have removed the mandatory requirement for private companies to appoint secretaries. New Zealand has done away with the requirement for secretary entirely and although this was done with a view to reduce the cost of doing business, proper research should be carried out to determine if that objective was achieved in that jurisdiction, and whether similar results could be achieved in Malaysia.</li> </ul> <p><b>2. Developments on Corporate Governance</b></p> <ul style="list-style-type: none"> <li>• Recommend that Corporate Governance reports such as the Higgs Report and the King Report and King Report II be considered in the course of review.</li> </ul> <p><b>3. The Reform Programme Process</b></p> <ul style="list-style-type: none"> <li>• To consider inviting representatives from professional bodies to be members of sub-groups and approaching them to be the Secretariat for the sub-groups.</li> </ul> <p><b>4. Working Group on Company's Formation, Private Company and Alternative Forms of Business Vehicles</b></p> <ul style="list-style-type: none"> <li>• To consider the following: <ul style="list-style-type: none"> <li>(ii) that the audit to be carried out on small companies may not be in current format but comprise a new set of mechanism to certify the correctness and integrity of the financial position of a small private company.</li> <li>(iii) that the elimination of requirements for audit and company secretary by a certain category of small companies, currently viewed as an administrative burden, may be detrimental in the long term to such small companies.</li> </ul> </li> </ul>

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	<p>(iv) that the requirement of company secretary is actually an investment by SME owners in good governance and that the requirement to appoint companies by private companies be maintained.</p> <p>(v) that the existing role of company secretary should be strengthened and in doing so the government will, amongst others:</p> <ul style="list-style-type: none"> <li>a. save itself from a foreseeably huge social bill if small business owners can operate in a “clean” business environment.</li> <li>b. be seen worldwide as an attractive destination, regardless of the business size, simply because Malaysians as an Institution is well guided by trained and qualified professionals who will act as the social conscience of the business community. This could be our country’s USP (Unique Selling Proposition).</li> <li>c. Give “bite” to the beautiful philosophies underlying Malaysia’s National Integrity Plan (PIN) which will require the involvement of professionals during implementation.</li> </ul> <p>(vi) That in considering whether or not a company secretary is required for all types of businesses, the review should focus on the following:</p> <ul style="list-style-type: none"> <li>a. SME entrepreneurs should be encouraged to use ALL of their time on how to capture a bigger market share rather than spend a substantial part of their time learning how to complete statutory forms etc. This is because the market share of the small individual Malaysian is also the market share of Malaysia the country.</li> <li>b. SMEs should be nurtured on a diet of good governance even from the cradle and this can be best done by appointing qualified company secretaries to provide proper advise.</li> <li>c. Strengthen the role of company secretaries to equip them, not merely with a strong advisory role, but</li> </ul>

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	<p>also an enforcement role as they invariably “vet” the information provided by business owners prior submission. The Government should empower them and mobilise them.</p> <p>(vii) That distinction be made on company secretary who is an external service provider from a company secretary who is employed by a company as an employee, and to ensure that their duties are clearly defined.</p>
<b>AMBM</b>	No comments
<b>MASB</b>	No comments